

# Belgian NBA

Business and Human Rights

## National Baseline Assessment Business and Human Rights in Belgium - Main Report - Version 2.0 -



## About this report

This report covers the findings and recommendations of the Belgian National Baseline Assessment (NBA) on Business and Human Rights. The NBA charts the progress made by Belgian authorities and companies since the launch of Belgium's first National Action Plan on Business and Human Rights, in June 2017. The research was commissioned by the Belgian Federal Institute for Sustainable Development ([FIDO/IFDD](#)), and was executed by a consortium of the research institutes [HIVA-KU Leuven](#), and the [Law and Development Research Group](#) (University of Antwerp). [IPIS Research](#) supported the team in the topics of conflict zones and arms trade. The report draws on a comprehensive data collection and review process covering the 31 UN Guiding Principles on Business and Human Rights (UNGPs).

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# Executive summary

While the globalisation of production has lifted hundreds of millions of people out of poverty, many Global Value Chains (GVCs) remain beset by serious violations of human rights. The Covid-19 pandemic has not only exposed, but has in many cases exacerbated the risks of human rights violations. In 2011, the United Nations Human Rights Council (UN HRC) unanimously adopted the UNGPs. Pillar I outlines the duty of states to protect people against human rights abuses committed by companies within their territory and/or jurisdiction. The operational principles of this duty require states to: (1) enforce laws that require companies to respect human rights; (2) ensure that other laws and policies do not prevent companies from respecting human rights; and (3) guide companies on the implementation of adequate mechanisms to identify, redress or mitigate human rights risks throughout their operations. Pillar II lays out the responsibility of companies to respect human rights by, (1) putting in place a policy commitment to respect human rights; (2) carrying out Human Rights Due Diligence (HRDD); and (3) creating processes that enable the remediation of adverse human rights impacts. Finally, Pillar III deals with the duty of states to ensure that whenever adverse human rights impacts do occur, rightsholders (e.g. local communities, workers) have access to an effective remedy through judicial, administrative or legislative means.

In the decade that followed the adoption of the UNGPs, there has been a proliferation of initiatives that attempt to improve corporate behaviour in the domain of human rights and that variably align with (elements of) the UNGPs. Prime examples include international initiatives like the OECD Due Diligence Guidance for Responsible Supply Chains and Multi-Stakeholder Initiatives (MSIs) like the Fair Wear Foundation. Increasingly, however, voluntary mechanisms are being complemented with hard regulation. Several of Belgium's neighbouring countries have adopted legislation that obliges companies to carry out (aspects of) HRDD processes. For instance, the UK Modern Slavery Act requires all companies active on the UK market to report on modern slavery risks in their supply chains. In France, all large companies are required to publish and implement a 'vigilance plan' in which they outline their approach to identifying and addressing risks in their own activities and in their supply chains. At level of the European Union (EU), the European Parliament (EP) released a [Draft report](#) on corporate due diligence and corporate accountability, in which it urges the European Commission to propose mandatory due diligence requirements on human rights, environmental and governance risks for European companies.<sup>1</sup> Similarly, on 1 December 2020, the European Council issued a call for a proposal from the Commission for an EU legal framework on corporate due diligence. It also called on member states to step up their efforts to implement the UNGPs, including "through new or updated National Action Plans (NAPs) that contain a mix of voluntary and mandatory measures."<sup>2</sup> In 2017, Belgium published its first National Action Plan on business and human rights (B-NAP). This plan contains 33 Action Points through which the federal and subnational governments should work towards implementing the UNGPs. With this National Baseline Assessment (NBA), the research team assessed where the Belgian state and Belgian companies are situated today with the implementation of the UNGPs. The chapters in this report deal respectively with Pillar I (the Belgian state's duty to protect human rights), Pillar II (the responsibility of Belgian companies to respect human rights), and Pillar III (the duty of the Belgian state to provide access to an effective remedy).

Overall, the results of the NBA indicate that while Belgium has taken a number of valuable steps (e.g. the fight against Trafficking in Human Beings (THB) and commissioning of tools and studies on business and human rights), Belgian governments and companies still have a long way to go before they fulfil their responsibilities as outlined in the UNGPs. Belgian authorities are not yet aligning their own

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<sup>1</sup> The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs.

<sup>2</sup> The full text can be consulted [here](#).

activities with the UNGPs, e.g. in public procurement, or in mechanisms to support companies that set up activities abroad. There are also challenges related to a lack of vertical (between different levels of government) and horizontal (among different government agencies and ministries) policy coherence. There is a need for stronger institutional support mechanisms with a clear mandate that can drive the business and human rights agenda in a systematic and coherent way. Moreover, earlier initiatives taken by Belgian governments, which include the first NAP, have primarily emphasised voluntary action by companies. The results of this NBA (and particularly of pillar II) suggest that this one-sided emphasis on voluntary action has not resulted in higher degrees of corporate alignment with the UNGPs. While a growing number of large companies are now formally committed to respecting human rights, none of the companies analysed in Pillar II translate this commitment into systematic HRDD processes, or into independent and accessible mechanisms that allow rightsholders and stakeholders to raise concerns and to claim a remedy.

Belgian authorities would do well to re-evaluate the existing regulatory mix in light of these findings, and in line with the recommendations made by the EU and other international organisations. In particular, the current emphasis on voluntary action might need to be complemented with some form of hard regulation. A growing number of stakeholders inside Belgium endorse this view including not only civil society organizations, but also, a growing number of companies and business federations.

Finally, it is worth highlighting that both Belgian authorities and Belgian companies are currently undertaking a wide range of efforts to help achieve the Sustainable Development Goals (SDGs). While the SDGs can certainly contribute to improving the human rights situation in GVCs (e.g. SDG 8 on decent work and SDG 12 on sustainable consumption and production), it is important that efforts to achieve them are aligned with the UNGPs.

## Conclusions per pillar

### Pillar I – The state duty to protect human rights

Pillar I deals with the state duty to protect against actual or potential human rights abuses perpetrated by companies within their territory and/or jurisdiction. Section A assesses how Belgium aligns with the operational principles of Pillar I (UNGP Principle 3) that require states (1) to enforce laws that require companies to respect human rights; (2) to ensure that other laws and policies do not prevent companies to respect human rights; and (3) to guide companies on the implementation of adequate mechanisms to identify, redress or mitigate human rights risks throughout their operations. The selected legal areas relevant for the implementation of the UNGPs coincide more or less with the results of the empirical research reported in the [EU FRA \(2019\)](#)<sup>3</sup> focus paper. In each selected area, the NBA team focused, firstly, on the relevance of the area for Belgium. Secondly, it assessed progress since the adoption of the B-NAP, and whether the measures taken can be aligned with the [EP Draft EU Directive](#)<sup>4</sup> (2020) where applicable. The assessment consists of the identification of structural reforms and policies adopted in line with the UNGPs. Thirdly, it described the key outcomes or gaps for the implementation of the UNGPs. In particular, two parameters were considered: whether the measures adopted, (1) target vulnerable or marginalised groups and, (2) seek to address salient human rights risks in the value chains of corporate groups headquartered in Belgium.

Section A reports progress in several legal areas. Firstly, there have been important legislative amendments regarding corporate responsibility, notably reforms to the criminal responsibility of companies and on compensation funds that cover serious disasters. However, the structural reform of corporate governance did not require companies to implement HRDD procedures. Secondly, social

<sup>3</sup> [EU FRA \(12/2019\)](#) Business-related human rights abuse reported in the EU and available remedies. Focus paper.

<sup>4</sup> The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs.

(labour, occupational and anti-discrimination legal areas) protection are covered by a consolidated legal framework. Belgian governments, however, encounter several challenges linked to the globalisation and digitalisation that create new labour relations and new environmental protection needs. In the fight against THB and modern slavery, globalisation and the free movement of people inside the EU have exacerbated existing challenges and created new ones for Belgium. [Myria](#) and the inspectorates have played a crucial role, that is internationally recognised. They have been able to target actions of THB in value chains operating in Belgium. Thirdly, Belgium also reported progress in environmental and consumer protection, although part of the progress reported for Belgium is connected to the implementation of EU law.

Section B deals with the state-business nexus. This area is very important because public procurement, State-Owned Companies (SOCs) and the provision of services of general interest carry significant economic weight. The standards of compliance with human rights are expected to be higher.<sup>5</sup> State support for export and investment activities could act as an important lever towards responsible conduct of Belgian companies abroad. Several B-NAP actions refer to concrete commitments to this end. These include systematically mainstreaming human rights in trade missions or creating synergies to implement due diligence or impact assessment processes before providing economic assistance. The outcomes of these actions however, are rather modest. There were practically no structural reforms in line with the UNGPs and when there were, for e.g. in the case of public procurement, the implementation needs to advance further. In general, while several of these agencies have implemented policies seeking to align with the SDGs and some have promoted CSR schemes, the NBA team did not find concrete actions seeking to implement the UNGPs in a systematic way. Although CSR mechanisms are relevant, the materiality analysis looks at risks for the company but not necessarily at salient human rights risks for rightsholders. The NBA did not find any measure targeting vulnerable communities that may be affected by value chains driven by Belgian companies.

The NBA team also consider the role of the EU because many of the legal areas of relevance for the implementation of the UNGPs are a shared competence with the EU. These include public procurement, trade and investment and the reinforced protection of consumer rights and of privacy of personal data. The creation of stringent measures means that the latter rights obtain solid protection, which represents progress, but also discloses the lack of efforts to protect other human rights or at least human rights of citizens in third countries.

The main gaps in the implementation of the UNGPs include, firstly, the lack of measures taken to seek greater responsibility from companies headquartered in Belgium. After a detailed screening, the NBA team found no systematic structural or policy reforms that encourage or require parent companies based in Belgium to create mechanisms to influence the systematic respect for human rights across their value chains. There have been several missed opportunities such as, the regulation of the joint liability of subcontractors in the framework of public procurement, for all economic sectors, the inclusion of a clause for objective liability when companies do not implement HRDD processes or the creation of complaint mechanisms by all entities that support companies doing business abroad. These conclusions however, cannot claim to be one hundred percent accurate. This is related to the second gap, which is the deficient access to information for stakeholders. While reporting of state activities has improved, there is also a systematic lack of statistics which prevents an effective assessment of the progress made in each of the analysed areas. This, in fact, has been one of the recommendations from international agencies such as the Council of Europe (CoE), the EU and the UN.

A third gap is that human rights are not mainstreamed into the Belgian state's agenda yet. This observation also applies to the adoption of reinforced measures to protect vulnerable communities.

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<sup>5</sup> Cf. Committee on Economic, Social and Cultural Rights (CESCR) [General comment \(GC\)24 \(2017\)](#) regarding state obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the context of business activities.

In some areas such as in labour law or THB, the adopted measures protect vulnerable persons because this is the main objective, but in other areas connected to the operations of companies, there is no explicit attention to vulnerable communities.

A fourth gap was also identified in assessments of NAPs in other countries, namely that they do not sufficiently explore regulatory options to ensure adequate human rights protection. Instead, they emphasise voluntary actions by companies, e.g. through awareness-raising, training, research, and the promotion of best practices.<sup>6</sup> While the Belgian government adopted some structural reforms and policies aligned with the UNGPs, they were not (explicitly) adopted with the purpose of implementing the UNGPs.

Section C deals with the state's role in relation to business conducted in Conflict-Affected and High-Risk areas (CAHRAs). According to UNGP 7, states have a responsibility to ensure that companies respect human rights in CAHRAs. As the risk of human rights abuses is heightened in these areas, actions by the state and due diligence by companies should be increased accordingly. To date, Belgium has no policies or policy instruments that can guide companies or sector federations on how to assess and address human rights risks in CAHRAs. Belgian embassies in CAHRAs also do not give systematic support to companies about potential "red flags".

Section D deals with policy coherence. The NBA observes challenges related to a lack of policy coherence in the domain of business and human rights. In part, this is a consequence of Belgium's complex institutional architecture, and a concomitant lack of vertical coordination between different government levels. However, the NBA has also revealed a lack of horizontal coherence across government agencies and ministries. While the creation of a National Human Rights Institute (NHRI) represents a window of opportunity to achieve greater coherence, its mandate is currently constrained to the federal level and limited to residual competences. At the international level, while Belgium has always been a proponent of multilateralism, it has been sending out mixed signals over the possibility of binding agreements on business and human rights.

### Policy recommendations pillar I

- While progress has been made in certain areas (e.g. liability, labour law, THB, etc. ), important gaps remain. The most relevant reforms were not aimed at enforcing corporate respect for human rights as such. Belgian governments need to consider a more structural human rights agenda that also has leverage over companies operating overseas that have headquarters in Belgium.
- Belgium has ratified relevant international treaties on humanitarian law and human rights. Following the adoption of the NAP, Belgian authorities have raised awareness on the importance of supply chain due diligence, but heightened risks in the CAHRAs were focussed on only in the minerals and timber sector. To date, there is no general guidance nor policy for companies specifically addressing heightened risk of doing business in CAHRAs.
- Policy coherence remains a challenge in Belgium, both vertically (between levels of government) and horizontally (between different agencies and ministries). While the NHRI could play an important role in situating human rights at the centre of the political agenda and in ensuring policy coherence, its mandate needs to be strong enough to actually fulfil this task.
- The NBA team encountered difficulties when attempting to map the progress made in the implementation of the UNGPs due to gaps in state reporting practices and a lack of statistics. The governments should design a strong reporting system with solid statistics that is accessible to all relevant stakeholders.

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<sup>6</sup>Cf. [ICAR, ECCJ, DEJUSTICIA](#). A critical assessment of National Action Plans on Business and Human Rights (2017 update) 23/8/2017.



## Pillar II – The corporate responsibility to respect human rights

To assess the extent to which Belgian companies assume their responsibility to respect human rights, we used a combination of tools, (1) a screening of Belgian companies from 11 sectors;<sup>7</sup> (2) a mapping of human rights abuses (allegedly) implicating Belgian companies; and (3) a consultation of key stakeholders. Our analysis reveals that Belgian companies currently do not undertake systematic attempts to meet the corporate responsibility to respect human rights as outlined in the UNGPs. This is a worrying observation considering the ongoing shift (both at EU level and in neighbouring countries) towards hard regulation that obliges companies to carry out (aspects of) HRDD.

While a growing number of companies are formally committed to respecting human rights, none of the companies that we assessed translates this commitment into effective HRDD processes that allow them to proactively identify, assess, address, and communicate about adverse human rights impacts. In addition, few companies that are sourcing from CAHRAs have specific policies on how to deal with human rights risks in these areas. Instead, the focus lies one-sidedly on efforts to avoid the sourcing of ‘conflict minerals’. Even in the arms industry, a sector that is highly problematic from a human rights perspective and that has particular relevance in Belgium, policy commitments and management systems are minimal and rarely look beyond the rights of the company’s own workforce.

One explanation for the low levels of corporate alignment with the UNGPs observed in Belgium is company size. Our sample contains a large number of companies that, while not technically qualifying as SMEs, are still relatively small in an international context. Larger companies often (but not always) score better on this type of assessment, whereas smaller companies face different barriers when attempting to carry out HRDD. However, this does not relieve them of their responsibility to do so. A second important explanation relates to the institutional context (outlined in pillar I), which currently fails to encourage companies to assume their responsibility, let alone oblige them to do so. Thirdly, while membership in multi-stakeholder initiatives (MSIs) can have a positive impact on the extent to which companies act in accordance with the UNGPs, not all MSIs are oriented towards this goal. To the extent that companies in our sample participate in MSIs, these MSIs mostly have a more ‘generic’ focus on sustainability issues, and pay only limited attention to human rights.

### Policy recommendations pillar II

- Belgian companies should increase their efforts to align their policies, procedures and practices with the UNGPs. This involves adopting human rights policy commitments, and carrying out HRDD to proactively identify, assess, address and communicate about adverse human rights impacts. The means through which they do this should be proportional to their size and operating context and to the risks they face.
- The regulatory environment in Belgium does not seem to incentivise companies to align their policies, procedures and practices with the UNGPs. This raises questions about the existing regulatory mix and the balance between voluntary action and hard regulation.
- A lot of work is needed to raise awareness about the corporate responsibility to respect human rights, and what it means for specific sectors and companies. The governments (notably intermediary structures like the SERV), employer organizations (e.g. VBO-FEB, UNIZO, VOKA, UWE, sector federations), but also trade unions and NGOs, can all play an important role in this.
- There is a need to develop instruments that can help companies meet their responsibilities. Many instruments are available internationally, and it is often a matter of tailoring them to the needs of Belgian companies, ideally through multi-stakeholder collaboration. There is a particular need to ensure that instruments are responsive to the needs of smaller companies.

<sup>7</sup> First, we screened 10 sectors (Agri-Food, Metals, Precious Metals and Diamonds, Retail, Chemistry and Pharma, Construction, Transport, Textiles, Electronics, Public Utilities) using the CHRB Core UNGP Indicator Assessment developed by the Corporate Human Rights Benchmark. In addition, we conducted a qualitative assessment of the human rights policies of 15 companies active in the arms industry.

- While MSIs can play a crucial role in helping companies meet their responsibility to respect human rights, it is crucial for governments and for other stakeholders to support initiatives that are oriented towards achieving corporate alignment with the UNGPs.

### Pillar III – Access to remedy

Pillar III focuses on rightsholders (actual or potential victims), as states have the duty to protect them against adverse business-related human rights impacts or abuses. Therefore, 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 who are affected have access to effective remedy. This obligation has several components. Firstly, it includes the duty to secure access to state-based judicial and non-judicial mechanisms without procedural obstacles (i.e. effective access to justice). Secondly, it includes the duty to guarantee an effective remedy depending on the particular circumstances, on the human right affected or violated, on the condition of the victim, and on the severity of the impact or abuse. This means that the analysis of whether a remedy is effective can only be conducted on a case-by-case basis.

The NBA followed international standards to assess the procedural (access to justice) and substantial (effective remedy) components of Pillar III. It assessed four elements. Firstly, it assessed the minimum conditions to obtain access to effective remedy, i.e. how Belgium guarantees access to justice. Secondly, it assessed the possibilities that rightsholders or stakeholders (e.g. human rights defenders) have to trigger available state-based non-judicial mechanisms (NJ-SBM) and whether these mechanisms in principle allow for obtaining 'effective' remedies. Thirdly, it assessed the possibilities that victims have to trigger available state-based judicial mechanisms (SBJM), whether they can be used for human rights claims, and whether victims could get (from a regulatory perspective) an effective remedy. And finally, it assessed complementary mechanisms that are directly related to Pillar III of the UNGPs, i.e., transnational litigation, active state support to operational-level grievance mechanisms (OLGM), and inter-state cooperation.

The NBA of Pillar III focused on the following aspects: (1) the relevance of the issue or the mechanism in (for) Belgium; (2) whether the corresponding actions of the B-NAP and the recommendations of the report on access to justice (2017)<sup>8</sup> were implemented or considered; and (3) the identification of the key outcomes and gaps in the implementation of the UNGPs.

Several important findings arose from the analysis. Firstly, the B-NAP did not commit to specific actions to implement Pillar III. It only referred to the creation of a NHRI, and to some specific actions by the OECD National Contact Point (NCP). In general, this corroborates the findings of NAP assessments in other countries, which also found a lack of attention for Pillar III<sup>9</sup>.

Secondly, few structural reforms were implemented in line with the UNGPs. Only the recommendation on the creation of the NHRI was explicitly adopted. Other reforms sought to increase the efficiency of state-based mechanisms in general, but could nonetheless benefit actual or potential victims of adverse impacts or abuses committed by companies. This finding coincides with the observation by the CESCR that the applicability of the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been rarely invoked before the courts in Belgium<sup>10</sup>. In fact, the reforms reported in Pillar III did not refer to the enforcement of human rights and even less to the implementation of the UNGPs. The CESCR celebrated the creation of the NHRI, but regretted that it only has residual competences at the federal level and that it lacks a complaint mechanism.

<sup>8</sup> UNGPs. State-Based Judicial Mechanisms and State Based Non judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy. [Fido Project MP-OO/FIDO/2016/5](#) L. Lizarazo Rodríguez (2017).

<sup>9</sup>Cf. [ICAR, ECCJ, DEJUSTICIA](#). A critical assessment of National Action Plans on Business and Human Rights (2017 update) 23/8/2017.

<sup>10</sup> Cf. CESCR, Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

Thirdly, the reforms and policies adopted in line with the UNGPs did not systematically reinforce the protection of marginalised communities in Belgium and did not foresee any measures to allow actual or potential victims from third countries to lodge claims in Belgium against companies headquartered in Belgium.

Fourthly, the NBA team actively looked for judicial and non-judicial decisions on business-related human rights abuses. Yet the NBA team faced difficulties in accessing important information. Belgium does not provide systematic access to judgments in many courts, which makes a detailed analysis of case law almost impossible. There are also no statistics available on the number of cases filed, resolved and rejected. While information can be found in the [EU Justice Scoreboard](#), even this report issues a warning about the lack of information regarding the activities of the courts in Belgium. These observations do not apply to the Belgian Constitutional Court (BCC) and the Council of State, where most decisions are available online, although there are no statistics on the activity of these courts. Regarding non-judicial mechanisms, UNIA, Myria, the Data Protection Authority (DPA), the OECD NCP and some environmental, public health and (to a lesser extent) labour inspections offer publicly available information on their activities and the number of cases lodged and addressed. The duty of courts to communicate case law related to the areas of competence of UNIA and Myria is a good practice that guarantees better access to information and case law. The report on access to remedy (2017) recommended expanding this practice to other jurisdictions and topics, but the NBA team did not find evidence for the adoption of this good practice for other human rights. The NBA team found some cases where courts adjudicated on claims against companies. However, they are not a representative sample of what happens in courts. Important to note is that in certain courts, there is a growing number of decisions that make direct references to human rights, such as the Courts of Appeal (which annulled arms export licences, protected the right to a healthy environment, or recognised compensation for non-working victims of asbestos). The Council of State and the BCC have also rendered important decisions related to the need to conduct impact assessments to identify human rights risks in third countries or environmental risks. However, there is still considerable room for improvement in terms of the systematisation and publicity of judicial decisions and the systematic adoption of a human rights approach to justice.

Finally, regarding the mechanisms explicitly conceived for the implementation of UNGPs, there is still a long way to go. Belgian authorities have not assessed the possibility of accepting jurisdiction for transnational complaints, and there is no systematic state policy to support and promote OIGM. The reform of public interest litigation represents progress in the enforcement of human rights but has a very limited scope, as it does not admit collective claims seeking concrete remedies. It is also important to explore the option to include human rights complaints against companies headquartered in Belgium when they cause adverse impacts in third countries in the jurisdiction of the international commercial court, whose creation is being discussed in the Federal Parliament. Besides these efforts, Belgian governments can reinforce judicial and diplomatic cooperation with countries where Belgian companies operate and have high risks of causing adverse impacts on human rights.

### Policy recommendations pillar III

- Belgian governments need to include the implementation of Pillar III of the UNGPs in the political agenda by creating concrete ways to enforce respect for human rights by companies. Some recommendations are tailored to the specific mechanisms (cf. below).
- Access to information, including systematic access to case law and to statistics on court activities, is crucial to guarantee access to an effective remedy. While non-judicial mechanisms can be a valid option for actual or potential victims of business-related human rights abuses, according to the empirical analysis of the EU FRA (2019), more than 70% of reported abuses against companies are lodged before judicial authorities.
- Belgian authorities need to assess how to adopt structural reforms and policies to allow transnational claims in the framework of the UNGPs, to promote and support the implementation

of OLGm by companies, and to reinforce cooperation between judiciaries and the diplomatic service, to increase the possibilities for rightsholders to obtain effective remedy when Belgian companies and their partners worldwide cause adverse impacts or harms.

- Belgian authorities need to implement permanent and tailored capacity building of diplomatic, judicial and administrative officers in the three pillars of the of UNGPs.

## Overall conclusions and recommendations

### Findings

- Overall, the implementation of the UNGPs by the Belgian authorities and by Belgian companies is limited. Many of the actions that were proposed in the NAP are still pending. The NAP itself adopted a minimalistic approach to the responsibility of companies and instead limited itself to activities that aim to create an enabling environment for voluntary action by companies. In this institutional context, companies are insufficiently incentivised to align their policies and processes with the UNGPs.
- There is a lack of vertical (between levels of government) and horizontal (among government agencies and relevant ministries) policy coherence. Moreover, there are gaps in the institutional support structures that could push for a more systematic and more coherent business and human rights agenda.
- A lot of the positive efforts that are being undertaken by Belgian authorities and companies are framed in the context of the Sustainable Development Goals. However, all too often, the SDGs and the UNGPs are treated in isolation, and no systematic efforts are made to marry both agendas.
- The B-NAP did not focus on Pillar III, and therefore, the most urgent structural reforms and policies have not even been discussed. The obstacles that have been denounced for years have not been systematically addressed, which makes that victims' rights are not duly protected.

### Recommendations

- Belgian authorities should develop a smart regulatory mix that combines initiatives to promote and support voluntary actions by companies, with consistent and coherent legislative work that requires companies to systematically respect human rights across their operations and value chains. In particular, a more incisive approach is needed for those companies that face clear risks of adverse human rights impacts, but currently fail to acknowledge, let alone address, these risks in a systematic way.
- This smart regulatory mix needs to be embedded, as much as possible, in a coherent institutional architecture. While this inevitably represents a challenge in the Belgian context, the NHRI, but also 'intermediary structures' like the SERV/ CESE Wallonia could play a role in achieving greater policy coherence. However, it is important that these structures are sufficiently resourced, and have the mandate to fulfil these tasks.
- Belgian authorities need to implement crucial reforms and policies in order to make possible that when Belgian companies cause adverse impacts on human rights or the environment, victims can get and opportune and effective remedy. Particularly, Belgian authorities need to assess how Belgian victims of adverse impacts, caused by Belgian companies or their partners in third countries, can claim for an effective remedy before Belgian competent authorities.
- There is a need to critically rethink how efforts to achieve the SDGs can be more systematically coupled with efforts to implement the UNGPs. In particular, it is important that efforts to achieve the SDGs are informed by a thorough understanding of human rights risks, so as to avoid actions that result in improvements in one domain, but risk undermining gains made in others.

# List of acronyms

ADR	Alternative Dispute Resolution
Amfori BSCI	Amfori Business Social Compliance Initiative
BC	Belgian Constitution
BCAC	Belgian Companies and Associations Code
BCC	Belgian Constitutional Court
BIO	Belgian Investment Company for Developing countries
B-NAP	Belgian National Action Plan on Business and Human Rights (2017)
CAHRAs	Conflict Affected and High-Risk Areas
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPEJ	European Commission for the Evaluation of the Efficiency of Justice
CESCR	UN Committee on Economic Social and Cultural Rights
CFSP	Common Foreign and Security Policy
CHRB	Corporate Human Rights Benchmark
CIPL	(Belgian) Code of International Private Law
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CSO	Civil Society Organisation
CSR	Corporate social responsibility
DIHR	Danish Institute for Human Rights
DSM	Dispute settlement mechanism
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDFI	European Development Finance Institutions
EIB	European Investment Bank
EITI	Extractive Industries Transparency Initiative
ELA	The European Labour Authority
EP	European Parliament
EPRM	European Partnership for Responsible Minerals
ESCR	Economic, Social and Cultural Rights
EU	European Union
EU Charter	Charter of fundamental rights of the European Union
FEB	Fédérations des entreprises de Belgique
FEDRIS	Federal Agency for Professional Risks
FIT	Flanders Investment and Trade
FLAG	Flemish Aerospace Group (FLAG)
FRA	EU Agency for Fundamental Rights
FSMA	Financial Services and Markets Authority
FTAs	Free Trade Agreements
FWF	Fair Wear Foundation
GC	(United Nations) General Comment
GDP	Gross Domestic Product (GDP)
GFAs	Global Framework Agreements
GRECO	Group of States against Corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings

GVCs	Global Value Chains
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
HRW	Human Rights Watch
ICAR	International Corporate Accountability Roundtable
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICoCA	International Code of Conduct for Private Security Service Providers' Association
ICSD	Interdepartmental Commission for Sustainable Development
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information and communications technologies
IFC	International Finance Corporation of the World Bank
IFDD/FIDO	Belgian Federal Institute for Sustainable Development
IGWO	Intergovernmental Working Group
ILO	International Labour Organisation
IPL	International Private Law
IPR	Intellectual Property Rights
IRBC	International Responsible Business Conduct (Agreement)g
ITI	International Tracing Instrument
JAC	Joint Audit Cooperation
KP	Kimberley Process
MLA	Mutual legal Assistance
MNCs	Multinational companies
MSIs	Multistakeholder initiatives
MVO	Maatschappelijk Verantwoord Ondernemen
Myria	Belgian Federal Migration Centre
NAP	National Action Plan
NBA	National Baseline Assessment
NBB	National Bank of Belgium
NBN	Belgian National Standards Body
NCP	National Contact Point (OECD)
NGOs	Non-Governmental Organisations
NHRI	National Human Rights Institute
OECD	Organisation of Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OLGM	Operational level grievance mechanisms
OSCE	Organization for Security & Co-operation in Europe
PoA	Programme of Action
PPP	Public Private Partnership
RD	Royal Decree (Arrêté Royal/Koninklijk Besluit)
RSPO	Roundtable on Sustainable Palm Oil
RvS	Raad van State
SBJM	State-based judicial mechanisms
SBN-JM	State-based non-judicial mechanisms
SDG	Sustainable Development Goals
SMEs	Small and medium sized enterprises

SOC	State-owned companies
SPP	Sustainable Public Procurement
TDC	Trade for Development Centre
TEU	The treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in Human Beings
ToR	Terms of Reference
UN HRC	United Nations Human Rights Council
UN PRI	United Nations Principles for Responsible Investment
UNECE	United Nations Economic Commission for Europe
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNIA	Inter-Federal Centre for Equal Opportunities
UNWG	UN Working Group on Business and Human Rights
VBO	Verbond van Belgische Ondernemingen
VPs	Voluntary Principles
WEF	World Economic Forum
WSM	We Social Movements
WTO	World Trade Organisation

# Introduction

This report covers the findings and recommendations resulting from the Belgian National Baseline Assessment (NBA) on business and human rights. The NBA charts the progress made by Belgian governments and companies since the launch of Belgium's first National Action Plan on Business and Human Rights, in December 2017 (B-NAP). It was commissioned by the Belgian Federal Institute for Sustainable Development (FIDO/IFDD)<sup>11</sup>, and was carried out between December 2019 and March 2021. It included a comprehensive data-collection and review process covering the 31 [UN Guiding Principles on Business and Human Rights](#) (UNGPs).

In this introduction, we describe the background of the NBA, as well as important aspects regarding its implementation. Subsequent chapters delve into the findings and recommendations for each of the three pillars: pillar I (the state's duty to protect human rights), pillar II (business' responsibility to respect human rights) and pillar III (access to remedy). In addition to the executive summary at the beginning of this report that includes overarching findings and recommendations, each chapter begins with an overview of the main findings and recommendations per pillar.

## 1 Background

The Belgian NBA on business and human rights was initiated two years after the launch of B-NAP. This section provides a background for the origins of the NAP as the main instrument to coordinate national actions on business and human rights. It also includes a brief description of the development process of the NAP in Belgium. First, we examine the changing international context on business and human rights.

### 1.1 Globalization and the business and human rights agenda

Recent decades have been characterized by a strong expansion of global value chains (GVCs). This means products and services result from complex interactions between firms and workers across the globe. Decades of research, reporting and in some cases legal action has exposed the risk of human rights abuses within these GVCs. Prominent examples include child labour in Congolese gold and cobalt mines, in Bangladeshi sweatshops, 'modern slavery' in the Asian fishing industry and the exploitation of migrant workers on Italian tomato farms<sup>12</sup> and in Belgian nail salons<sup>13</sup>. The COVID-19 crisis has laid bare and, in many cases, exacerbated the vulnerability of workers and small firms. According to the latest estimates of the International Labour Organisation (ILO), during the first three quarters of 2020 the equivalent of as many as 1 billion full-time jobs may have been lost.<sup>14</sup>

The UNGPs were unanimously adopted by the UN Human Rights Council in 2011. UNGPs are essentially a set of non-binding but authoritative principles that outline the human rights duties and responsibilities of states and companies. Pillar I reaffirms that at the international level, states are the only actors accountable for the respect, protection and fulfilment of human rights. At the national level, states are also accountable for taking the necessary legislative, policy, or adjudicative measures to prevent any actions or omissions of companies from causing adverse human rights impacts. Pillar III recalls that when harmful events do occur, states must provide for mechanisms to guarantee the right to access to an effective remedy, which is recognised in itself as an independent human right by key international and regional human rights conventions.

Companies in turn are facing increased pressures to demonstrate how they respect human rights. While media reports continue to expose how companies are implicated in human rights abuses, civil

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<sup>11</sup> ISDD/FIDO's work on the NAP is steered by the Social Responsibility Working Group of the Interdepartmental Commission for Sustainable Development (ICSD), which comprises representatives from federal and subnational governments.

<sup>12</sup> <https://views-voices.oxfam.org.uk/2019/02/tomatoes-labour-exploitation/>

<sup>13</sup> <https://www.vrt.be/vrtnws/nl/2019/07/01/steeds-meer-moderne-slavernij-en-uitbuiting-in-belgische-nagelsa/>

<sup>14</sup> [ILO \(2020\)](#). ILO Monitor: COVID-19 and the world of work. Sixth edition Updated estimates and analysis. Retrieved from



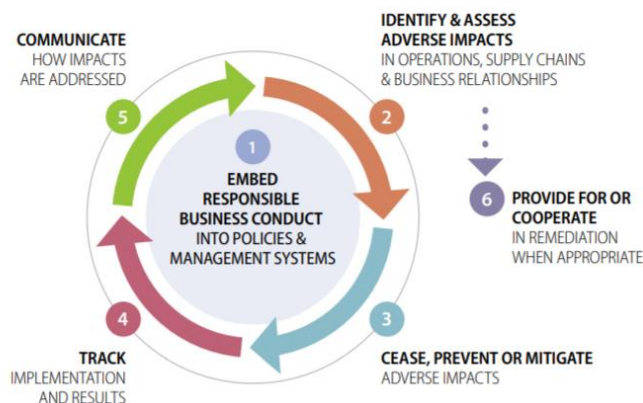
society is increasingly holding companies to account. Growing consumer awareness about human rights risks translates into increased demand for ‘ethical’ products and services. Most importantly, a wide range of initiatives seeking to regulate corporate behaviour exist both at the national and at the international level now. Many of these initiatives refer to the UNGPs whose central concept is Human Rights Due Diligence (HRDD), a process through which companies (or other organisations) proactively and systematically try to identify and address human rights risks (cf. box 1).

**Box 1: Human Rights Due Diligence: What’s in a name?**

The central idea underpinning pillar 2 of the UNGPs is that companies should carry out Human Rights Due Diligence (HRDD). Specifically, UNGP 17 states that, “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.” These four elements of a HRDD-process are subsequently elaborated in UNGPs 18-21. Significantly, UNGP 13 states that the responsibility to respect human rights and to carry out HRDD is not limited to a company’s own operations, but also to business relationships (e.g. throughout a company’s supply chain). While each of these principles is elaborated in an associated commentary, the UNGPs required an operational translation to support governments and business in their implementation.

In its [Due Diligence Guidance for Responsible Business Conduct report](#), the OECD (2018) provides practical guidance for enterprises on how the UNGPs can be implemented in practice. While the guidance describes the HRDD process on a step-by-step basis (figure 1), it highlights that in practice this process is, “iterative and not necessarily sequential, as several steps may be carried out simultaneously with results feeding into each other” (OECD 2018: 10). For each of the six steps, the Guidance outlines a series of practical actions “to further illustrate ways to implement, or adapt as needed, the supporting measures and due diligence process (OECD 2018: 10-11).

*Human Rights Due Diligence according to the OECD (source: OECD, 2018: 21)*



Due diligence requirements as outlined in the UNGPs and the OECD’s Due Diligence Guidance increasingly provide inspiration for multi-stakeholder initiatives like the Dutch agreements on international business responsibility, or for legal initiatives like the French law on *Devoir de Vigilance*. As a result, companies are now facing increased pressures to pay attention to human rights risks more systematically, either by other companies, by critical consumers and/or by governments.

In recent years, there has been a clear shift away from purely voluntary initiatives under the broad banner of Corporate Social Responsibility (CSR) and from non-binding but authoritative international guidelines and instruments (‘soft law’), towards hard regulation that obliges companies to take action. Many of Belgium’s neighbouring countries have adopted legislation that forces companies to carry out (aspects of) HRDD, including the UK Modern Slavery Act, the French Corporate Duty of Vigilance Law and the Dutch Child Labour Due Diligence Law (Huysse & Verbrugge 2018; Smit et al. 2020). At the EU level besides the EU Directive on non-financial reporting and EU regulations on timber,<sup>15</sup> and

<sup>15</sup> Regulation (EU) 995/2010 of the EP and of the Council of 20/10/2010 laying down the obligations of operators who place timber and timber products on the market. (OJ 12/11/2010) (hereinafter ‘The Timber Regulation’).

conflict minerals,<sup>16</sup> the European Parliament (EP) released a [report](#) in September 2020 with recommendations to the European Commission (EC) for an EU Directive on corporate due diligence and corporate accountability. Even if Belgium does not have a similar legislation currently, Belgian companies are not insulated from these broader trends, if only because a growing number of companies (also) operate in markets where stricter human rights regulation applies. Given the international commitments in the context of the UNGPs, as well as the international trend towards hard regulation, an assessment of where Belgian governments and Belgian companies are situated today with regards to the implementation of the UNGPs is fitting.

## 1.2 National Action Plan on business and human rights

Soon after the adoption of the UNGPs, the United Nations Human Rights Council (UN HRC) established the [UN Working Group \(UNWG\) on Business and Human Rights](#).<sup>17</sup> The UNWG recommends states to develop, implement and regularly update National Action Plans (NAPs) on Business and Human Rights. The UNWG also developed a [Guidance \(2016\)](#), which defines an NAP as an “*evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs)*.” The Guidance identified four essential criteria to implement effective NAPs:

- 1) The UNGPs are the main point of reference for NAPs. Hence, an NAP should reflect the state’s duties to protect against adverse business-related human rights impacts and to provide access to an effective remedy. It also needs to support businesses to respect human rights by carrying out HRDD and by implementing operational-level grievance mechanisms (OLGM).
- 2) NAPs need to be context-specific i.e., they should identify actual or potential business-related human rights abuses or adverse impacts that occur within their own jurisdiction, or that companies headquartered in their own jurisdiction cause in other jurisdictions.
- 3) NAPs should be developed and implemented through an inclusive and transparent process, which involves the participation of all relevant stakeholders.
- 4) NAPs are dynamic processes and states should review and update them regularly to tackle ever-changing realities and to incorporate new developments.

NAPs are not only common in the framework of the UNGPs but are also used to promote and protect human rights in general, to fight climate change or to develop and implement Agenda 2030 and its Sustainable Development Goals (SDGs). The [European Union](#), the [Council of Europe](#) (CoE) and the Organisation for Economic Cooperation and Development ([OECD](#)) actively support their members to develop, implement and update NAPs on business and human rights. As of December 2020, 25 countries had developed an NAP while another 17 countries were in the process of developing one.<sup>18</sup> The Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR) have developed a detailed [toolkit](#) on NAPs (DIHR & ICAR 2017) that explains the process in five steps (cf. figure 1).

In theory, the NAP design process should include an NBA to inform the content and scope of the NAP (step 2 in figure 1). However, only six of the 25 countries with an NAP opted to execute a National Baseline Assessment in the design phase of their first NAP. In the meantime, however, several countries have initiated or have stated their ambition to initiate an NBA process. Broadly speaking, their aim is to obtain a better understanding of the state of business and human rights within the country and/or to inform a review process of the NAP (between steps 4 and 5). This is also the case for Belgium, as the B-NAP proposed to undertake an NBA with the participation of the stakeholders. Its results and recommendations would feed the adoption of a new NAP (B-NAP 2017:17). The terms

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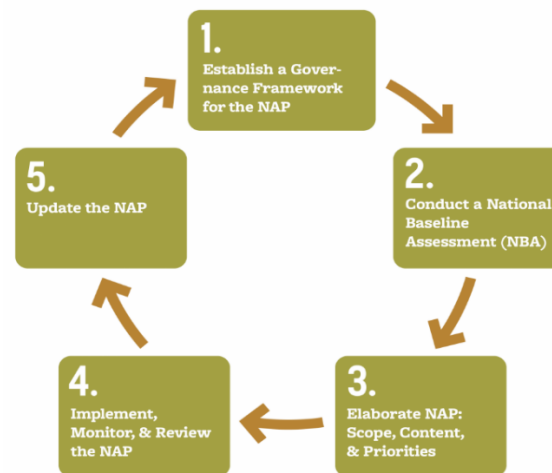
<sup>16</sup> Regulation (EU) 2017/821 of the EP and of the Council of 17/5/2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (OJ 19.5.2017).

<sup>17</sup> Cf. UN HRC, Resolution [17/4](#).

<sup>18</sup> For an overview of the state of NAPs in different countries see [www.globalnaps.org](http://www.globalnaps.org)

of reference for this NBA refer to a national stakeholder consultation (held on 23/5/2019) that reviewed the B-NAP and recommended the continuation of the preparations for a second NAP.<sup>19</sup>

Figure 1: Five step process of a NAP (Source: DIHR & ICAR, 2017<sup>20</sup>).



### 1.3 Belgian NAP on business and human rights: history and context

As early as 2013, the Belgian governments initiated a multi-stakeholder consultation process for the development of an NAP, facilitated by the IFDD/FIDO. Due to the complex institutional architecture of Belgium and the complex political context, the [consultation process](#) was perceived by many as difficult (Huysse & Verbrugge 2018). A first draft was circulated in 2014, but the NAP design process was halted by the upcoming elections. After the elections, the contours of the NAP had to be renegotiated. In this phase (2015), a [baseline mapping exercise](#) was executed by the ICSD. However, this mapping did not include either pillar II or pillar III. In June 2017, the government formally announced the publication of the B-NAP.

The B-NAP outlines 33 actions that mostly refer to pillar I. Remarkably, the B-NAP states that pillar II should not be addressed by a government-initiated action plan as it covers actions related to the role of companies. It covers actions by the Federal government as well as by the governments at the subnational level (Flanders, Wallonia, and Brussels). The B-NAP emphasises awareness-raising activities and voluntary action and aims to keep the administrative burden for companies as low as possible. In terms of monitoring activities, an annual review process is coordinated by the CSR working group of the ICSD. This is organised by the IFDD/FIDO. In May 2019, the IFDD/FIDO and the Ministry of Foreign Affairs organised a stakeholder dialogue in which government experts, businesses, civil society, and academics evaluated the B-NAP and proposed actions for its possible successor.

### 1.4 Business and human rights in Belgium

The business and human rights landscape in Belgium is shaped not only by Belgium's particular institutional architecture, but also by the structure of its economy. Throughout this report, relevant aspects of this institutional and economic context are discussed. At this stage, some key features are outlined:

**A complex institutional architecture:** Following successive rounds of institutional reform, Belgium has developed into a highly complex federal state consisting of three regions (Flanders, Wallonia, Brussels Capital Region) and three communities (Flemish-speaking, French-speaking, and German-speaking). To varying extents, these different levels of government all have a role to play in the domain of

<sup>19</sup> The terms of reference clarify this further: "In order to ensure a qualitative development process, added value and substantive relevance for a second NAP and to make sure that it is in line with the [UNGP] guidelines, a consensus was also reached on the need to carry out a National Baseline Assessment ('NBA') on business and human rights in Belgium." (ToR MP-OO/FIDO/2019//5:3).

<sup>20</sup> [DIHR & ICAR \(2017\)](#). National Action Plans on Business and Human Rights Toolkit: 2017 Edition.

business and human rights, which creates a fragmented distribution of competences that represents a major obstacle for rightsholders and stakeholders. In addition, several legal areas connected to the topic of business and human rights are a shared competence with the EU, e.g. in labour law, environmental law, consumer and data protection, and trade and investment. All this severely complicates the identification of the level of government responsible for protecting human rights in the context of economic activities.

**An open and export-oriented economy:** Belgium consistently ranks amongst the top-5 of the most open economies worldwide. In 2019, total export of goods in Belgium amounted to €397 billion, making it the 13<sup>th</sup> largest exporter worldwide. Belgian imports, meanwhile, amounted to €380 billion.<sup>21</sup> Due to this international orientation, many Belgian companies are tightly integrated into GVCs.

**An economy driven by small and medium-sized enterprises (SMEs):** According to EU figures, as of 2018, Belgium was home to over 600.000 SMEs, or 99,8% of the total number of companies (EC, 2019). Together, these SMEs employed nearly two million people (68,8% of the total number of employed people), and are responsible for 63,3% of the gross domestic product (GDP).

**High trade union density:** A distinct feature of Belgian labour relations is the high trade union density, which is not only higher than in other European countries, but has also remained remarkably stable.<sup>22</sup> A second feature relates to the longstanding tradition of social dialogue as a way to resolve labour disputes and, amongst others, to organise civil society's participation to the development of new socio-economic policies. These characteristics also play out in the area of business of human rights, e.g. in the actions brought forward in the B-NAP (e.g. related to global framework agreements (GFA), and support for ILO positions), and the role played by trade unions in pushing for a more ambitious agenda on business and human rights.

## 2 The Belgian NBA: design and implementation

### 2.1 Aims and objectives

An NBA is a formal step in the design and review of NAPs on business and human rights. The toolkit (cf. [DIHR & ICAR \(2017\)](#)) outlines the following six objectives for conducting an NBA:

- 1) To assess the level of implementation of the UNGPs at the legislative and policy level
- 2) To identify the main gaps in the implementation of the UNGPs
- 3) To map the most important adverse human rights impacts caused by companies headquartered in a country's jurisdiction, in order to identify the most salient human rights risks at stake.
- 4) To inform the most important actions that an NAP needs to adopt.
- 5) To assess whether the actions of previous NAPs have been implemented, and whether they have been beneficial for rightsholders.
- 6) To support stakeholders in order to make the NAP design and implementation a transparent and accountable process.

### 2.2 Principles and process

#### 2.2.1 Principles

Available international guidance on the [development of NAPs](#) and [NBAs](#) highlights the importance of adhering to a number of principles related to the inclusiveness, transparency and independence of the process.

**Inclusiveness:** The NBA team has attempted to involve relevant stakeholders throughout the NBA process, and has tried to proactively invite them to contribute information and to share their views.

- An information session was held on 18/2/2020 to present the methodology to relevant

<sup>21</sup> Trade statistics can be consulted at <https://www.abh-ace.be/en/statistics>

<sup>22</sup> See <https://www.eurofound.europa.eu/country/belgium#actors-and-institutions>

stakeholders, to raise awareness about the process, and to ask for feedback regarding critical issues to consider during the process. All stakeholders involved in the B-NAP design process (2013-2017) were invited to attend this session. The IFDD/FIDO also invited additional actors engaged with the business and human rights agenda since 2017. Many stakeholders were represented, including business associations, relevant ministries, export credit agencies, development cooperation agencies, the OECD National Contact Point (NCP), trade unions, academia, and non-governmental organisations (NGOs). Several stakeholders could not be reached at the time, such as representatives of SMEs, and stakeholders from third countries (governments, affected communities or workers, etc.).

- The NBA team launched a [website](#) to guarantee access to information about the NBA process, and to reach out to all possible stakeholders. The website provides targeted communication and the possibility of submitting information. Unfortunately, the resources of the NBA do not allow more proactive engagement with stakeholders and rightsholders in third countries. In an attempt to overcome this limitation, the website was shared with embassies, trade representatives, NGOs with a presence in third countries, etc. The website did not, however, generate additional interactions with stakeholders and rightsholders.
- Throughout the assessment process the NBA team organised interviews and focus group discussions with several stakeholders ranging from business federations to civil society organisations and government officials (see annex 1).
- On 29/10/2020, the NBA team shared tentative findings with stakeholders during the [annual SDG Forum](#).
- Based on the draft report, the IFDD/FIDO organised an (online) consultation for stakeholders and rightsholders on 10/2/2021. The NBA team presented the results of the assessment and requested feedback from the participants. The feedback of this consultation was incorporated in the final version of this report.
- Finally, a broad circulation of the NBA report and the dissemination of its findings to key stakeholders and rightsholders will be encouraged by the NBA team. The dissemination and communication programme will be organised by the IFDD/FIDO, with the participation of the NBA team, where required.

**Transparency:** Transparency was guaranteed in at least three ways. The final report provides full transparency of the sources from which conclusions are drawn. Furthermore, to examine the engagement of companies with human rights, the NBA team used the Corporate Human Rights Benchmark (CHRB) core UNGP indicator methodology (cf. chapter 3), which relies on publicly available information. Finally, shortlisted companies, government agencies, trade unions/NGOs, etc. were invited to suggest sources relevant for the NBA.

**Independence:** In line with existing international guidelines for NBAs, the commissioners of the Belgian NBA decided to launch a call for the implementation of the assignment by independent researchers/consultants. The modalities of the terms of reference were such that the research team could conduct the NBA in full independence regarding the choice of research methods, data collection activities, and stakeholders to be consulted.

### 2.2.2 Process

The NBA was carried out between December 2019 and March 2021 and was largely in line with the steps adapted to this NBA (cf. box 2). The main steps and corresponding timing for the Belgian NBA

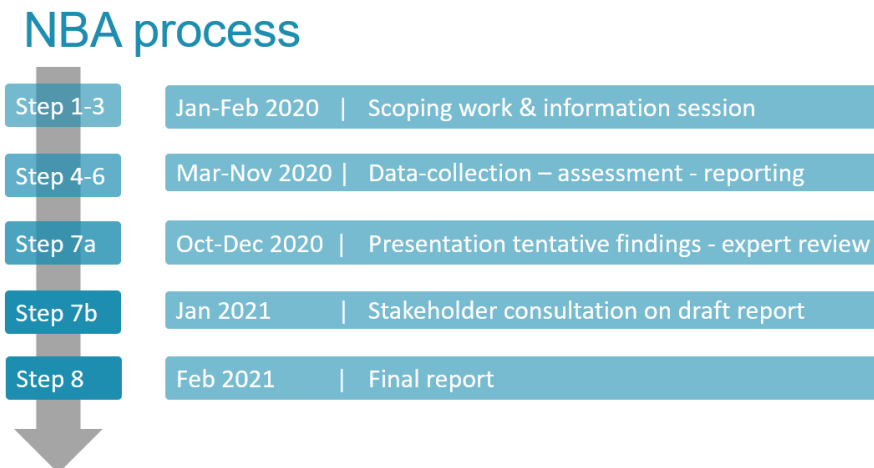
#### **Box 2: NBA process steps**

The process of an NBA usually covers the following steps (cf. [DIHR & ICAR \(2017\)](#)):

- Step 1: Constitution of the team
- Step 2: Stakeholder information
- Step 3: NBA scoping and definition of the methodology
- Step 4: Data collection
- Step 5: Data processing and assessment
- Step 6: Reporting
- Step 7: Stakeholder and expert consultation sessions on the report and recommendations
- Step 8: Incorporation of the feedback and dissemination of the NBA

are presented in figure 2.

Figure 2: Timing and steps of the NBA process



## 2.3 NBA methodology and implementation

### 2.3.1 Methodology

The overall methodology and the instruments for data collection were drawn from the NBA Toolkit (Cf. [DIHR & ICAR \(2017\)](#)), adapted to the Belgian context and to the modalities of the Terms of Reference released by the IFDD/FIDO. As each of the three pillars addresses diverse issues and focuses on several actors, the data collection strategy was adapted accordingly. Pillar I, on the state’s responsibility to protect human rights, covers four dimensions and the methodology has been adapted to the particularities of each section. Part A, the role of the state, has been designed according to the frameworks proposed by the toolkit ([DIHR & ICAR \(2017\)](#)) and the conceptual and methodological framework of indicators developed by the Office of the High Commissioner on Human Rights ([OHCHR](#)), adapted to the Belgian context. It adopts a macro perspective to assess the progress in the implementation of the UNGPs and evaluates gaps and best practices in the areas of relevance for business activities. Part B addresses the state business nexus and assesses how Belgian governments have implemented the UNGPs in their economic relations with businesses. The same sections also identifies salient issues in the Committee on Economic, Social and Cultural Rights ([CESCR](#)) General Comment (GC)24 (2017)<sup>23</sup>. Part C addresses the relationship between business and human rights in Conflict-Affected and High-Risk Areas (CAHRAs). Part D covers the topic of policy coherence across different government levels and in its relationship with business actors and multilateral institutions. Pillar II focuses on the corporate responsibility to respect human rights. It combines an assessment of the level of UNGP alignment of thirty companies based on the CHRB core UNGP indicator assessment, with an exploratory analysis of human rights abuses (allegedly) implicating Belgian companies, not lodged before a state-based remedy mechanism. In addition, it pays specific attention to CAHRAs, to the situation in the arms industry, to the responsibilities of SMEs, and to the role of sector federations and multi-stakeholder initiatives (MSIs). Pillar III, on access to remedy, covers both state-based mechanisms available to actual or potential victims of business-related human rights abuses and how Belgian authorities support the implementation of OLG. It assesses the progress in Belgium related to the availability of effective remedy mechanisms for victims when their human rights have been adversely impacted or violated by businesses in Belgium or abroad. It adopts a rightsholder/victim’s perspective and covers the main national procedures as well as the possibilities of lodging transnational claims.

The detailed methodology that was used for each pillar is described at the start of the chapters on pillar I, II and III. In addition to reviewing diverse information sources, the research team conducted

<sup>23</sup>Cf. CESCR [General comment \(GC\)24 \(2017\)](#) regarding state obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the context of business activities and other international standards.

a wide range of interviews, focus group discussions, and other types of consultations with various stakeholders. Annex 1 lists the stakeholders that were interviewed and consulted throughout the NBA process.

### 2.3.2 Implementation

The NBA was implemented by a consortium led by the research institutes [HIVA-KU Leuven](#) and the [Law and Development Research Group](#) (University of Antwerp). In addition, [IPIS Research](#) provided the NBA team with valuable expertise on conflict zones and arms trade. Aside from the overall coordination, HIVA-KU Leuven was responsible for pillars II (including the role of business in providing remedy) and Policy Coherence. UA was co-lead and responsible for pillars I and III (state-based access to remedy).

The NBA team received insightful feedback from the DIHR (notably from Daniel Morris), Margaret Wachenfeld (external consultant) and Deborah Casalin and Wouter Vandenhole (University of Antwerp). In addition, the [World Benchmarking Alliance](#) provided the researchers with training on how to use the CHRB core UNGP indicator approach and provided technical support during the execution of the assessment. The NBA research team also shared experiences on at least three different occasions with other research teams that have conducted assessments relying on the CHRB core UNGP indicator approach.

## 2.4 Challenges and limitations of the NBA

While the research team did not encounter structural obstacles that jeopardized the validity or completeness of the findings, it did face a number of challenges, both foreseen and unforeseen. Prime amongst these challenges is, obviously, the COVID-19 pandemic.

### 2.4.1 COVID-19

As is the case for any other societal process, the NBA process was inevitably affected by the unfolding COVID-19 crisis. The start of this crisis coincided with the start of the NBA process, in February 2020. Belgium moved into lockdown by the second half of March. In the first instance, the start of the pandemic and subsequent lockdown measures forced many companies into a crisis or even a survival mode. Of course, the impact of COVID-19 is highly uneven across companies and sectors. Still, the research team decided to temporarily pause all communication with companies and the government staff until the situation had normalised and companies resumed their activities (in June 2020). Yet even after that, there was never a return to business as usual and many companies did not have time or did not feel like engaging with the research team.

That said, it is important to note that the pandemic has not only exposed, but has in many cases exacerbated, human rights risks throughout GVCs. One sector in which this is particularly visible is the garments sector, where many brands unilaterally decided to cancel their orders, creating a ripple effect throughout their supply chains, up to the level of ordinary workers in Bangladeshi and Myanmar factories. More broadly, many workers and other vulnerable groups have been exposed not only to COVID-19, but also to deteriorating working conditions and even the termination of their contracts. Where possible, the NBA team has tried to pay attention to these new (or not so new) vulnerabilities arising as a result of the pandemic.

Process-wise, while COVID has resulted in delays in the data collection process, it ultimately did not derail the NBA process as such. Still, we had to make a number of adjustments. For instance, all meetings, interviews and focus groups had to be organised online. Furthermore, The NBA team had to give key stakeholders (notably companies and trade unions) and government officers more time to contribute relevant information.

### 2.4.2 Involvement of hard-to-reach stakeholders

While the research team was successful in reaching out to key stakeholders at the level of Belgian governments, companies, and civil society, attempts to involve other stakeholders were largely unsuccessful. For instance, our efforts to involve trade union representatives at the factory level

elicited only a limited response (see chapter 3).

The NBA team launched a [website](#) in June 2020 to obtain input from stakeholders and to overcome the difficulties of organising events with stakeholders due to the COVID crisis. The website was disseminated through the websites of the commissioners of the NBA and of the NBA team, as well as on social media. So far, however, no additional information or reactions were collected through the website.

### 2.4.3 The institutional and political context

The NBA team assessed several areas that are shared competences between the EU and member states, which complicated the definition of the scope of the mapping. The constitutional distribution of competences within Belgium, i.e. between the federal and subnational governments, also limited the possibilities to provide a holistic overview for the country.

When the NBA process started in December 2019, a caretaker government was in place at the federal level. In September 2020, sixteen months after the elections, a new federal government was appointed. This transitional period created some uncertainty amongst key informants within government on new policy developments and action plans vis-à-vis the issue of business and human rights. In addition, some contacted officials highlighted that the Covid-19 crisis also limited their availability.

### 2.4.4 Holistic vs. feasible

Notably when it comes to assessing the extent to which Belgian companies are aligning their policies and processes with the UNGPs (pillar II), questions could be asked with regards to the representativeness and hence the generalizability of our findings. These questions were addressed through a well-devised sampling strategy and a multi-pronged methodological approach. Still, it is important to admit that the research team was not in a position to map all dynamics and trends in the Belgian business and human rights landscape in a holistic way. For instance, doing empirical research on the ways in which SMEs deal with their responsibilities was not something we could do in the framework of this exercise. Instead, we had to rely on existing research. Likewise, for pillar III, there was no in-depth empirical inquiry of the concrete outcomes reported, nor of their effectiveness.



# Pillar I - The Role of the State

This section investigates how Belgium has adopted binding and non-binding rules and policy frameworks to implement Pillar I of the UNGPs. It also looks at the achievements of the [B-NAP](#) on business and human rights, and gaps in its implementation. The section is divided in 4 parts: **Part A** assesses concrete actions in terms of regulations, policies, and outcomes (gaps) in the legal areas of relevance for the implementation of the UNGPs from a macro-level perspective. **Part B** assesses actions in terms of regulations, policies and outcomes (gaps) regarding the state-business nexus in the framework of the UNGPs.<sup>24</sup> **Part C** assesses the extent to which Belgium's current practices, policies, legislation, regulations and enforcement measures effectively address the risk of business involvement in human rights abuses in CAHRAs. This section pays special attention to the role of the state in controlling and supporting the arms industry, which has the potential to contribute to human rights violations in CAHRAs. Finally, **part D** presents a macro-level assessment of policy coherence in the domain of business and human rights in Belgium.

The assessment of Pillar I (Parts a, b and c) has been designed according to the frameworks proposed by the toolkit [\(DIHR and ICAR \(2017\)\)](#) and the conceptual and methodological framework of indicators developed by the OHCHR, adapted to the Belgian context as follows:

- **Structural indicators:** *What has Belgium done to address its international human rights obligations (in the framework of the UNGPs).*
- **Process indicators:** *What has Belgium done to comply with the human rights' legal framework (related to the UNGPs).*
- **Outcome indicators:** *Which are the results (and gaps in the implementation) of those legislative and policy measures?*

The NBA focuses on progress since **2017**, when the B-NAP was adopted and committed to undertaking an NBA with the participation of the stakeholders, whose results and recommendations would feed the adoption of a new NAP (NAP 2017:17).

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<sup>24</sup> Pillar III addresses remedy mechanisms that mirror how actions and outcomes described in this section have been enforced by state-based mechanisms, with reference to reported cases in the areas described here. Pillar I assessment takes a macro perspective whereas Pillar III assessment reflects a rightsholder's (actual or potential victims) perspective. The role of stakeholders is also more visible in Pillar III.

## A The State duty to protect (UNGPs Principles 1-3)

### A.1 Key findings and recommendations

#### Pillar I – The State duty to protect

##### Overall findings

- While progress has been made in certain legal areas, significant gaps remain, and most relevant reforms were not aimed at enforcing corporate respect for human rights. Belgian governments need to consider a more structural human rights agenda that also covers leverage overseas on activities of companies headquartered in Belgium. The NHRI could play an essential role in setting human rights at the centre of the political agenda.
- Belgium has ratified relevant international treaties on humanitarian law and human rights. Since the NAP adoption, the Belgian State has raised awareness on supply chain due diligence, but only for the minerals and timber sectors was there a focus on heightened risks in conflict-affected areas. To date, there is no specific guidance to companies or any policy on the heightened risk of doing business in conflict-affected areas.
- Although the SDGs and CSR initiatives have dominated Belgian policies at all levels of government, the implementation of the UNGPs remains weak and is in some cases non-existent. Belgian governments need to adopt binding measures to increase the respect for human rights by companies headquartered in Belgium, as the voluntary scheme of compliance with human rights has not resulted in clear progress.
- The NBA team encountered difficulties when attempting to map the progress made in implementing the UNGPs due to gaps in state reporting practices and a lack of statistics. The governments should design a robust reporting system with reliable statistics that is accessible to all relevant stakeholders.

#### Section A. The state duty to protect

##### Enforce laws requiring Belgian companies and their partners to respect human rights (UNGP 1-3)

UNGP 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. UNGP 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. UNGP 3. States should: (a) Enforce laws (...) 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 (...) business enterprises do not constrain but enable the 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.

##### Implementation of a (mandatory) human rights due diligence (HRDD) in value chains (UNGP 1-3)

Status and gaps	Recommendations
<ul style="list-style-type: none"> <li>• The NBA team has not found publicly available information on structural reforms, policies or programmes requiring businesses to implement due diligence procedures and increase awareness in the value chains, except for the EU timber regulation.</li> <li>• Belgian governments have not taken public positions regarding the versions of the draft treaty being negotiated in the framework of the UN working group on business and human rights and the draft of the EU Directive on due diligence released by the EP.</li> </ul>	<ul style="list-style-type: none"> <li>• Belgian authorities need to assess the guidelines provided by The <a href="#">EP draft report</a> and their future development at the EU level to explore how national legislation and policies could be in line with the UNGPs, the CESC GC 24/2017, the OECD and ILO principles among other international standards.</li> <li>• Therefore, Belgian authorities need to start a broad dialogue with the stakeholders to assess which options for the implementation are the most adequate for the Belgian context (company size, relevant sectors, etc.) and to consider the situation of vulnerable communities.</li> <li>• Belgian governments are encouraged to assess the UN draft treaty and engage in its negotiation.</li> </ul>

##### Corporate responsibility and liability (UNGP 1-3)

<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• The bill that reforms tort law has been pending for approval since 2019.</li> <li>• Belgium has not regulated the option of covering human rights and environmental risks by directors and officers liability insurance ("D&amp;O").</li> <li>• The NBA team has not found publicly available information on concrete measures adopted to provide reinforced protection to vulnerable or marginalised groups affected by activities of value chains with Belgian companies.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• The Federal Parliament needs to approve the tort law reform. It could also assess whether a Royal Decree (RD) to develop this law could provide for mandatory due diligence procedures to complement this reform.</li> <li>• Belgian governments need to assess whether including human rights and environmental risks in D&amp;O policies could represent an improvement for victims of business-related human rights abuses.</li> <li>• Belgian authorities need to provide options to hold companies headquartered in Belgium accountable for abuses perpetrated in third countries before Belgian courts.</li> </ul>
<p><b>Corporate structures and governance (UNGP 1-3)</b></p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Belgium failed to include mandatory HRDD procedures in the reform of the Corporate Governance Code in response to action 15 of the B-NAP.</li> <li>• Although the Belgian Companies and Associations Code (BCAC) transposed the EU Directive on non-financial reporting, the NBA identified several gaps:</li> <li>• A Royal Decree (RD) should have been adopted to define the international standards companies should follow to submit the yearly non-financial report.</li> <li>• The implementation of the non-financial reporting duty has not produced the expected results and there is no guidance on how these reports should be published (cf. Corporate governance section).</li> <li>• Belgian companies mainly use CSR reporting schemes that focus on the analysis of materiality (risk for the company) and do not assess human rights at risk. The lack of assessment of salient human rights at risk has resulted in a lack of identification of actual or potential victims of business-related human rights impacts.</li> <li>• The instruments developed to raise awareness among businesses on the need to implement the UNGPs have not been actively disseminated and are not updated.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgian authorities are encouraged to find mechanisms to require companies headquartered in Belgium to conduct HRDD covering their value chains.</li> <li>• The RD that develops the BCAC should be adopted to define the content and scope of the yearly non-financial report in accordance with international standards.</li> <li>• This RD needs to explicitly consider the assessment of salient human rights at risk. The UNGPs reporting framework provides important guidance to be considered in complementing the CSR reporting schemes.</li> <li>• The reporting of salient human rights at risk would allow Belgian companies to identify actual or potential groups at risk of being victims of business-related human rights abuses related to the activities of their value chains.</li> <li>• The instruments developed to raise awareness among businesses on implementing the UNGPs need to be disseminated online and periodically updated in order to reach stakeholders inside and outside Belgium.</li> </ul>
<p><b>Labour protection and occupational health (UNGP 1-3)</b></p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Belgium has progressed in tackling undeclared work, but many challenges remain, particularly in protecting victims.</li> <li>• Belgian authorities have not adopted structural measures or policies to promote Global Framework Agreements (GFA) between companies and global union federations.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgian authorities need to adopt recommendations from Myria, GRECO and the EU regarding the protection of victims of undeclared work.</li> <li>• Belgian authorities need to promote the adoption of GFAs.</li> <li>• The Ministry of Foreign Affairs needs to establish</li> </ul>

<ul style="list-style-type: none"> <li>• The Ministry of Foreign Affairs committed to raising awareness on children’s rights in value chains, but no public information is available on how this has been done.</li> <li>• The right to strike remains unregulated in Belgium.</li> <li>• New contractual (and atypical) employment relationships (cf. labour and occupational health section) put workers at risk (e.g. precarious employment, lack of occupational safety, health protection, and occupational hygiene).</li> </ul>	<p>structural policies to raise awareness of children’s rights in the value chains, mainly through its embassies and consulates.</p> <ul style="list-style-type: none"> <li>• Belgian authorities need to agree on the legal status of the right to strike.</li> <li>• Belgian authorities need to make increased efforts to tackle new (atypical) employment relationships from a human rights perspective.</li> </ul>
<p><b>Trafficking in Human Beings (UNGP 1-3)</b></p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Belgium has not signed the UN Convention on the protection of the rights of all migrant workers and members of their families.</li> <li>• Belgium has not ratified the Convention against trafficking in human organs (CoE, CETS 216).</li> <li>• Belgium is one of the best performing countries in the EU in combatting THB, but Myria flags the following gaps: <ul style="list-style-type: none"> <li>• Victims do not receive systematic support to claim an effective remedy and in some cases the principle of non-criminalisation of victims is not recognised. The situation is worse for non-EU victims who leave the Belgian territory.</li> <li>• The possibility for Myria or other CSOs to represent workers and employers should be attributed by a RD that has not been adopted yet.</li> </ul> </li> <li>• The fight against THB and modern slavery in the value chains of EU companies operating outside the EU have only been tackled by few cooperation agreements.</li> <li>• Belgium lacks statistics on THB.</li> <li>• The increasing use of digital technologies by perpetrators of THB challenges the prosecution of the four stages of THB: recruitment, transportation, exploitation of victims, and management of illicit profits.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgium needs to ratify the UN Convention on the protection of the rights of all migrant workers and members of their families and the Convention against trafficking in human organs (CoE, CETS 216).</li> <li>• The Belgian governments need to enforce the principle of non-criminalisation of victims of THB and provide for effective remedy mechanisms.</li> <li>• Belgian authorities need to adopt the RD that allows Myria and other CSOs to represent workers and employers in THB cases.</li> <li>• The best practices highlighted by the EU and the CoE need to continue, particularly the signature of cooperation agreements with other countries where these chains operate</li> <li>• Belgian authorities need to create statistics on THB to improve the fight against it.</li> <li>• Belgian inspectorates need to be reinforced to tackle challenges related to new technologies used in all stages of THB.</li> </ul>
<p><b>Anti-discrimination (UNGP 1-3)</b></p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Discrimination in the labour and housing markets remains a structural problem. Vulnerable communities such as migrant women or people with disabilities are the most affected.</li> <li>• The NBA team has not found publicly available information regarding the fight against discrimination in the value chains of Belgian corporate groups.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgian authorities need to adopt structural measures to address discrimination in all economic sectors and with a coordinated approach from all levels of government.</li> <li>• The inclusion of discrimination as a salient human rights risk needs to be prioritised when assessing human rights risks of Belgian companies and their value chains.</li> </ul>

<b>Environmental protection (UNGP 1-3)</b>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Although Belgium has ratified most of the international conventions seeking to protect the environment, there are still some key conventions and protocols that have not been ratified (Cf. Pillar I, Part A, environmental protection)</li> <li>• Belgium will not meet its targets for the reduction of greenhouse gas emissions by 2030</li> <li>• Belgian policy to support large-scale production of agro-fuels by Belgian firms in third countries can affect local farmers.</li> <li>• Deep-sea mining represents a major challenge that has not been fully addressed by Belgium.</li> <li>• Belgium has not ensured that national rules allow all categories of persons mentioned by the EU Directive regarding prevention and remediation of environmental damage to be held liable.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgium needs to ratify key conventions and protocols seeking to protect the environment (Cf. Pillar I, Part A, environmental protection).</li> <li>• Belgium needs to continue efforts to identify and address risks of the most polluting industries, including nitrates from agricultural sources.</li> <li>• Belgian authorities need to require a human rights impact assessment (HRIA) from businesses involved in the production of agro-fuels in third countries to avoid negative impacts on the rights of local communities.</li> <li>• Belgium as sponsor state of companies active in deep-sea mining needs to require impact assessments to avoid adverse impacts on local communities and on the environment.</li> <li>• Belgium needs to guarantee that anyone who causes environmental damage can be held accountable before courts.</li> </ul>
<b>Trade and investment (UNGP 1-3)</b>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Belgium has not ratified ILO Convention 169 and abstained from supporting the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018), despite the recommendations of the EP.</li> <li>• Neither the EU nor Belgium have adopted any measure regarding the prohibition of land grabbing and the protection of biodiversity and food security in the trade and investment agreements of the EU.</li> <li>• The NBA team did not find any publicly available information on measures adopted to provide reinforced protection to vulnerable or marginalised groups in the framework of trade and investment activities in the Belgian value chains.</li> <li>• Belgium has supported investment protection of Belgian companies against countries without assessing the human rights impact on local communities</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgium should consider the ratification of ILO Convention 169 and support the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018)</li> <li>• Belgium needs to promote that EU trade and investment agreements clauses assess salient human rights at risk and prevent activities such as deforestation, land grabbing, and biopiracy. Therefore, Belgian authorities should support: <ul style="list-style-type: none"> <li>• The International Criminal Court (ICC) announcement (2016) that land grabbing and environmental destruction may precipitate charges of crimes against humanity (ecocide).</li> <li>• The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and to actively sign forest law enforcement, governance and trade voluntary partnership agreements (VPAs) to ensure compliance with Timber Regulation.</li> </ul> </li> <li>• Belgium needs to promote concrete measures to protect vulnerable populations that could be affected by trade and investment activities of its corporate groups.</li> <li>• Belgium needs to assess the impact on human rights when supporting actions of its companies against developing countries in international fora.</li> </ul>
<b>Measures against corruption and bribery (UNGP 1-3)</b>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• The UN, CoE and EU have flagged challenges for Belgium regarding the fight against corruption and bribery, particularly when the private</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgium needs to consider the recommendations of the UN, CoE and the EU, particularly with respect to fighting corruption in the private sector.</li> </ul>

<p>sector is involved.</p> <ul style="list-style-type: none"> <li>• The NBA team did not find any measure seeking to provide reinforced protection to victims of corruption and their defenders.</li> <li>• The B-NAP actions related to the fight against corruption were limited to releasing a booklet that has been published, but not as an online tool that can be regularly updated.</li> </ul>	<ul style="list-style-type: none"> <li>• Belgian authorities could pay increased attention to victims of corruption and to their defenders in the framework of the UNGPs.</li> <li>• Tools released to raise awareness among Belgian businesses about corruption need to be online tools that are regularly updated so that stakeholders have access to them.</li> </ul>
<b>Consumer protection (UNGP 1-3)</b>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• The NBA team did not find information about the protection of consumers affected by value chains of Belgian companies or about special attention paid to vulnerable or marginalised populations.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Consumers in third countries of products and services of EU companies need to be protected by EU and Belgian consumer protection measures, in line with measures to fight unfair competition.</li> <li>• Belgium should further raise awareness about responsible consumption.</li> </ul>

The NBA team checked structural measures and policies adopted in line with the UNGPs as well as progress in the implementation of the B-NAP. In general, there were structural and policy measures adopted, although the aim was not necessarily to implement the UNGPs, which corresponds to the operational Principle 3 of the UNGPs. The B-NAP did not include specific measures for each legal area of relevance for the UNGPs. Moreover, some actions were partially (or not) implemented. In general, there is no visible trend regarding the adoption of measures seeking to increase leverage in the value chains where Belgian companies participate. The following table summarises progress since 2017 in terms of binding rules, policies and processes adopted in line with the B-NAP as well as visualises whether Belgium has adopted measures to protect vulnerable population or to increase leverage in (Belgian) GVCs.

Table 1: Pillar I Part 1. Main findings related to the implementation of the UNGPs

Indicator	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the GVCs have been done
<b>Sector</b>					
Implementation of (a mandatory) due diligence	No	No	No	Partially	Partially
Corporate responsibility and liability	Partially	Yes	No	No	No
Corporate structures and governance	Partially	Yes	No	No	No
Labour, occupational health and safety	Yes	Yes	Yes	Yes	Partially
Protection against discrimination	Yes	Yes	No action	Yes	No
Environmental protection	Yes	Yes	No action	Yes	No
Trade and investment	No	Yes	Partially	No	No
Anti-bribery and corruption measures	Yes	Yes	Partially	No	No
Consumer protection	Yes	Yes	No action	Yes	Partially
Trafficking in human beings and modern slavery	Yes	Yes	No action	Partially	Yes

## A.2 Structure and research methods

Part A assesses the state duty to protect human rights. Therefore, it maps and assesses how Belgium has adopted structural reforms and policies within the relevant legal areas for the implementation of the UNGPs. It also maps and assesses how the B-NAP actions have been translated into concrete structural reforms or policies, measures adopted that target vulnerable or marginalised groups,<sup>25</sup> and measures seeking to address salient human rights risks in GVCs of Belgian corporate groups. From this mapping, the NBA identified concrete outcomes (gaps) and formulated general recommendations. The NBA contrasts progress in the implementation of the UNGPs by using international standards. It also checked alignment with the [EP Draft EU Directive](#),<sup>26</sup> (2020) and the [revised version of the draft treaty](#),<sup>27</sup> (2020) when relevant, in order to compare the current situation with the trends in the negotiations conducted at the EU level and in the framework of the UNWG.

The NBA team selected key areas relevant for the implementation of the UNGPs,<sup>28</sup> that correspond with the operational Principle 3 of the UNGPs: a) the adoption of due diligence processes that cover GVCs activities; b) corporate liability; c) corporate structures and governance; d) labour, occupational health and safety; e) trafficking in human beings (THB) and modern slavery; f) anti-discrimination; g) environmental protection; h) trade and investment (including portfolio investments); i) anti-bribery and corruption measures; j) consumer protection. The selected areas coincide more or less with the results from the empirical research from the [EU FRA \(2019\)](#) focus paper,<sup>29</sup> where the top three number of incidents reported against Europeans companies were environmental issues, working conditions and discrimination. In each selected area, the NBA team focused on, i) the relevance of the area in (for) Belgium, ii) the parameters to evaluate progress since the adoption of the NAP (2017), iii) reported progress, and iv) key outcomes or gaps for the implementation of the UNGPs.

**Research methods:** The mapping and assessment were conducted by using a) A legal, comparative, and conceptual analysis (desk research), complemented by expert and stakeholder inputs (communicated via the website). b) Qualitative empirical methods to inquire how competent entities have adopted and implemented policies, processes, and procedures. Most of the data were collected by written communication (emails) and in a few cases, by online semi-structured interviews with the main entities involved in the implementation of the [NAP \(2017\)](#).<sup>30</sup>

**The sources** mainly consisted of primary binding (laws, regulations, and related case law) and non-binding (guidelines, recommendations general comments, etc.) legal sources. The NBA team used secondary sources provided by the contacted officers, official statistics, existing survey, reports,<sup>31</sup> of public entities, intergovernmental organisations, CSOs, policy documents, academic journals, resource centres, and newspaper articles and available data on the monitoring processes of the implementation of the first [NAP \(2017\)](#). In addition, the NBA team considered the outcomes of the

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<sup>25</sup> The focus is on vulnerable groups or rightsholders and not on activities. The NBA focussed on salient issues such as trafficking in human beings (THB) and modern slavery related to labour exploitation. In the Belgian context, the NBA team identified the following as vulnerable rightsholders, children; women; racial, ethnic, religious, or other minorities; LGBTQI; persons living with disabilities; elderly persons; migrants; most impoverished communities; rural communities; and persons employed in the informal or gig economy.

<sup>26</sup> The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs. Cf. also [EP \(10/2020\)](#) Corporate due diligence and corporate accountability European added value assessment. C. Navarra; European Added Value Unit PE 654.191, and Council of the EU, [1/12/ 2020 13512/20 SOC 772 EMPL 542](#) Council Conclusions on Human Rights and Decent Work in Global Supply Chains.

<sup>27</sup> This is the last version of the draft of the international legally binding instrument to clarify the “*obligations of transnational corporations in the field of human rights, as well as of corporations in relation to states, and provide for the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable to prosecute effectively those companies*”, yearly discussed by the UNWG.

<sup>28</sup> The active participation of CSOs is not uniform in all areas and in some areas there are more reported cases than in others. [EU FRA \(12/2019\)](#) Business-related human rights abuse reported in the EU and available remedies. Focus paper.

<sup>30</sup> For part A, The NBA team conducted online semi-structured interviews with officers from the Ministry of Health and the Environment, the Ministry of Foreign Affairs and the IFDD/FIDO.

<sup>31</sup> According to the ToR of FIDO/IFDD, the NBA built further on the [Mapping “Business & Human Rights”](#) (2015); and the results of action 1 ([Toolbox Business & Human Rights](#)), 2, and 3 of the NAP (The report “[UNGP on Business and Human Rights in Belgium, with emphasis on Access to Remedy](#)” (Lizarazo-Rodríguez 2017).

stakeholder consultation and information sessions for the review of the NAP (05/2019 and of 02/2020).<sup>32</sup>

**Limitations:** The NBA team assessed some areas that are shared competences between the EU and member states, which complicated the definition of the scope of the mapping. The constitutional distribution of competence between the federal and subnational governments also limited the possibilities to provide a full overview for the country. In addition, some contacted officials highlighted that the Covid-19 crisis and the transition to a new Federal Government,<sup>33</sup> complicated their availability to respond. In addition, the scope of the NBA does not foresee an in-depth empirical inquiry of the concrete outcomes reported and linked to the effectiveness in practice.

## A.3 The implementation of (a mandatory) human rights (and value chain) due diligence

### A.3.1 Why this topic is relevant for Belgium

The UNGPs and the OECD have encouraged companies to assume their corporate responsibility to respect human rights by implementing HRDD processes to identify, assess and address actual or potential human rights risks that their activities can cause. However, increasingly, claims for a mandatory HRDD have emerged. The main argument is that voluntary CSR model has not been adapted to the UNGPs and victims of business-related human rights abuses struggle to get effective remedies. Therefore, the voluntary approach to pillar II (corporate responsibility to respect human rights) is being progressively transformed into a mandatory due diligence legal framework.<sup>34</sup>

The European Parliament (EP) requested the EU and member states to adopt a coherent framework on mandatory human rights due diligence for extraterritorial action of companies and investors that fall within its jurisdiction, to ensure that they can be held accountable and sanctioned and to ensure that the UNGPs are fully integrated into the NAPs of member states. Therefore, the EU and member states are expected to adopt mechanisms to hold businesses, including financial institutions, accountable for their impact on human rights and the environment, particularly on vulnerable communities, such as indigenous people women and children.<sup>35</sup> Several [NGOS](#),<sup>36</sup> have also supported the initiative for the implementation of a mandatory HRDD procedure.

In Belgium, a study funded by NGOs (Bright et al. 2020) addresses this topic and compares the same examples addressed at the EU level. The conclusions regarding how to integrate a mandatory HRDD are however, not clear. In 2021, a group of [Belgian companies](#) requested a mandatory legal framework

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<sup>32</sup> The NAP foresaw a yearly assessment of the *action plan's implementation by the ICSD Social Responsibility Working Group* (Cf. B-NAP 2017:17). However, the progress report has not been [published](#) yet.

<sup>33</sup> Responses from the Ministry of Foreign Affairs and from the Ministry of Justice. The Walloon region committed to send the relevant documents, but the NBA team has not received them yet. Flanders has not been contacted as the information on websites and on the plans are comprehensive.

<sup>34</sup> Many comparative studies point to the theoretical positive effects and shortcomings of the legislative developments mainly in the UK (Modern Slavery Act), France (*Loi du Devoir de Vigilance*) and The Netherlands (Child Labour Due Diligence Act). The most detailed assessment was conducted by Smit et al. (2020) as background study for the proposal of an EU Directive on a mandatory due diligence to be implemented by the member states. Other studies compare EU law (Directive on non-financial reporting, the timber and conflict minerals Regulations) with national proposals and classified the models in three categories: **a)** pure reporting obligations, **b)** the duty of authorities for the monitoring and enforcement of due diligence; **c)** concrete due diligence duties, by linking the implementation of a mandatory HRDD with legal corporate responsibility (Bueno and Bright 2020; Smit et al. 2020; Krajewski and Faracik 2020; Methven O'Brien and Martin-Ortega 2020).

<sup>35</sup> Cf. EP Resolution (P8 TA(2018)0382) of 7/10/2018 regarding the EU's input on a UN binding instrument on corporate respect for human rights (2018/2763(RSP)) and [EP Report](#) (2018) A8-0194/2018 29.5.2018 (2017/2206(INI)) Committee on Foreign Affairs. Rapporteur: F. Assis.

<sup>36</sup> Action Aid, Amnesty International, Anti-Slavery International, Clean Clothes Campaign, CIDSE, European Centre for Constitutional and Human Rights, European Coalition for Corporate Justice, FIDH, Friends of the Earth Europe, Global Witness, Oxfam.



for human rights and environmental due diligence mainly motivated by the fact that voluntary compliance with the UNGPs and CSR standards creates unfair competition at the cost of those who comply with international standards. From the many studies conducted about the models of HRDD, the background study for the proposal of an EU Directive on a mandatory due diligence (Smit et al. 2020:318) provides a good synthesis:

Table 2: Models for a mandatory human rights due diligence

- *Applying only to certain sector(s)*
- *Applying to companies across all sectors*
  - (a) *Applying to defined set of large companies only*
  - (b) *Applying to all companies regardless of size (including SMEs)*
  - (c) *General duty applying to all business plus specific additional obligations only applying to large companies*
- *Accompanied by oversight and/or enforcement*
  - (a) *Mechanisms for judicial and non-judicial remedies*
  - (b) *State-based oversight body and sanction for non-compliance*

Source: Smit et. al 2020: 281-289

For the Belgian context, many aspects need a careful assessment as most businesses are SMEs (cf. Pillar II). The major findings for SMEs in the background study for the proposal of an EU Directive on a mandatory due diligence (Smit et al. 2020:318) are relevant when assessing how to regulate a mandatory due diligence in Belgium.

Table 3: Study for the proposal of an EU Directive on a mandatory due diligence - Findings for SMEs

- 1) *The relative administrative burden of SMEs (per unit cost of compliance) is generally greater than for larger companies,*
- 2) *SMEs may have a competitive disadvantage vis-à-vis larger companies due to a lack of human resources,*
- 3) *SMEs may suffer from tighter contractual obligations imposed by their large corporate clients,*
- 4) *SMEs may not have the sufficient leverage to extract the necessary information from their supply chain partners, especially if their supply chain extends to foreign countries.*

Source: Smit et al. 2020:318.

### A.3.2 Progress since the adoption of the B-NAP

Belgium has not adopted any structural reform for promoting the implementation of HRDD by Belgian corporate groups nor has it required mandatory HRDD. The Belgian federal government committed to actively negotiating the treaty on business and human rights and to take a leading role in the development of the EU mandatory legislative framework on due diligence.<sup>37</sup> These two drafts delineate what could be established as state duties:

- The [EP draft report](#) on corporate due diligence and corporate accountability proposes a preliminary version of the EU Directive on due diligence.<sup>38</sup> The draft report requires member states to: **a)** establish a binding due diligence requirement to identify and address human rights, environmental and governance risks. Member states are free to design a sectorial due diligence applicable to all EU companies operating in the EU or importing products or services into the EU.<sup>39</sup> **b)** Define the duties of companies as making “reasonable efforts to identify subcontractors and suppliers in their entire value chain”, in a way that “is proportionate and commensurate to their specific circumstances, particularly their sector of activity, the size and length of their supply chain,

<sup>37</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#) page 76.

<sup>38</sup> The [EP 2020/2129\(INL\)](#) 11.9.2020 Draft Report with recommendations to the Commission on corporate due diligence and corporate accountability Committee on Legal Affairs. Cf. also [EP \(10/2020\)](#) Corporate due diligence and corporate accountability European added value assessment. C. Navarra; European Added Value Unit PE 654.191, and Council of the EU, [1/12/ 2020 13512/20 SOC 772 EMPL 542](#) Council Conclusions on Human Rights and Decent Work in Global Supply Chains.

<sup>39</sup> Member states may exempt micro-undertakings (Cf. Directive 2013/34/EU) from the obligations set up in the EU Directive.

*the size of the undertaking, its capacity, resources and leverage*".<sup>40</sup> **c)** Require companies to apply due diligence in their value chains by means of contractual clauses,<sup>41</sup> and the codes of conduct and establish a grievance mechanism, with the central role of workers' organisations. **d)** Create a supervisory mechanism that would provide for and enforce penalties applicable to infringements of the rules adopted in accordance with the EU Directive. **c)** Ensure that a repeated intentional (or resulting from serious negligence) infringement of national rules constitutes a criminal offence.

- The EU and member states are also expected to engage in constructive negotiations on a UN treaty on transnational companies that respect human rights and protect the environment.<sup>42</sup> The [revised version of the draft treaty](#) (2020) provides for duties of states parties (Art. 6), similar to the draft EU directive, but emphasising the following aspects: **a)** the draft treaty refers to the duty of businesses to conduct a HRDD in the value chains, by means of commercial contracts or financial contributions, proportionate to their size, risk of severe human rights impacts, nature and context of their operations, and considering environmental impacts. **b)** The HRDD should also integrate a gender perspective and consult stakeholders with particular attention to vulnerable communities (and to the right of indigenous communities to prior and informed consent), activities in conflict zones (CARHAs) and compliance by SMEs. **c)** States are also expected to punish noncompliance with a mandatory due diligence without prejudice to the provisions on criminal, civil and administrative liability.

The main **policies, programmes and processes** adopted in Belgium in line with the UNGPs are the following:

- Belgian authorities have conducted several actions regarding the implementation of the Timber Regulation (cf. Ministry of Health, Security in the Food Chain and the Environment [website](#)). In 2020, Belgian competent authorities launched an EU Timber Regulation information campaign and sent a letter to 1182 operators identified through customs data to provide information about the duties related to this Regulation and the role of the LIFE Legal Wood project (driven by NEPCon) in supporting companies in this implementation.<sup>43</sup>
- Belgian authorities have actively supported MSIs to tackle human rights risks in the value chains such as [Beyond chocolate](#), [Trustone](#), The Kimberly process ([KP](#)), the Extractive Industries Transparency Initiative ([EITI](#)), and [Fair ICT Flanders](#), among others.
- Belgium developed the [Toolbox for business and organisations](#) to provide the available options to implement mechanisms that would support businesses in identifying and addressing human rights risks.

### A.3.3 Key outcomes or gaps for the implementation of the UNGPs

- According to the assessment conducted in Pillar II:
  - Few Belgian companies have implemented an HRDD process with clear operational guidelines, including companies operating in CAHRAs.
  - Most of the companies that assess human rights risks, mainly implement third party audits

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<sup>40</sup> According to this draft, the EU would publish non-binding guidelines for businesses to guide the implementation of a due diligence procedure within 18 months after the entry into force of the EU Directive. They would define *how proportionality may be applied to due diligence obligations depending on size and sector of the undertaking*.

<sup>41</sup> Some studies propose the design of "sustainable or chain" contractual clauses (Mitkidis 2014; Bright et al. 2020), although compliance with these clauses is very challenging, even more in informal markets. Belgian authorities have not explored this option except for a timid reference in public procurement (Cf. the state-business nexus).

<sup>42</sup> The UNWG sent a [letter to the EU on 10/2020](#) on the proposal to legislate on a HRDD. The group recommended to adopt the UNGPs (Principles 15 to 21), actively involve stakeholders, cover all international human rights standards and all human rights impacts, with emphasis on the more severe impacts in the whole value chain, including the state-business nexus as another economic sector and monitor enforcement.

<sup>43</sup> [Briefing Note for the Competent Authorities](#) (CA) implementing the EU Timber Regulation June – September 2020.

that are not the same as a HRDD as they fail in identifying salient human rights at risk.

- The option of implementing an OLGGM has not been considered by Belgian corporate groups or by sector federations.
- Belgian authorities have not engaged in assessing whether and how to require companies to implement a mandatory due diligence procedure, that according to the draft EU Directive, would cover human rights, environmental and governance risks. The UN CESCR highlighted the adoption of the B-NAP but regretted that it only committed to voluntary initiatives, and recommended Belgium to consider the adoption of mandatory due diligence procedures to hold businesses accountable.<sup>44</sup>
- Belgian authorities need to assess the guidelines provided by the [EP draft report](#), the [revised version of the draft treaty](#) (2020) and their development at the EU and UNWG to explore how national legislation and policies could be in line with the UNGPs, the CESCR GC 24/2017, the OECD and ILO principles among other international standards. For this purpose, an extensive dialogue with the stakeholders is necessary to assess which options are most adequate in the Belgian context for the implementation of due diligence procedures.

## A.4 Corporate responsibility and liability

### A.4.1 Why is this a key issue for Belgium?

Corporate responsibility and liability are salient questions in business-related human rights abuses. The UN Accountability Remedy Project I (ARP I, 2016),<sup>45</sup> highlights that holding businesses accountable is a major challenge but even more challenging is establishing the liability of parent corporations (secondary liability) for abuses committed by their subsidiaries or by commercial partners (primary liability). The challenges relate to holding a business liable for human rights abuses perpetrated from a civil, administrative, or criminal perspective and to the structure of the corporate group (cf. corporate governance). Several studies have been conducted on the limitations of the Belgian Civil Code (1382-4) that consider case law and show that victims encounter multiple obstacles in demonstrating the constituent elements of tort law (the damage and the necessary causal link). Many options have been explored, such as the use of the vicarious liability for personnel, the theory of the organ, the theory of the abuse of rights, the possibilities of joint liability to hold parent companies accountable for the acts of subsidiaries, etc. However, until now, Belgian courts have not rendered judgements on transnational cases (cf. Pillar III) and demonstrating the causal link remains a major challenge even in national litigation (Vandenbussche 2018; Enneking et al. 2015; Demeyere 2015; Kruithof 2017; Gerner-Beuerle et al. 2013; Lizarazo Rodríguez 2018; Bright et al. 2020).

The [revised version of the draft treaty](#) (2020, Art. 8) requires state parties to:

**a.** Regulate legal liability for human rights abuses perpetrated by all businesses, domiciled or operating within their territory or jurisdiction, or under their control. State parties should provide for a preventive option (civil extracontractual responsibility), by establishing an effective tort law system and a mandatory HRDD whose implementation does not constitute a presumption of non-liability (Article 8.7.); and a remedial option (criminal or administrative offences), to ensure effective, proportionate, and dissuasive criminal and/or administrative sanctions when businesses caused or contributed to criminal offences or breached laws that resulted in human rights abuses.

**b.** Enact mandatory criminal and civil laws to hold businesses accountable when they fail to prevent commercial partners *from causing or contributing to human rights abuses, when they legally or factually control or supervise such partner or the activity, or have not foreseen risks of human rights*

<sup>44</sup> CESCR, Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

<sup>45</sup> UN GA ARP I Accountability and Remedy Project (2016) Improving accountability and access to remedy for victims of business-related human rights UN HRC A/HRC/32/19 and A/HRC/32/19/Add.1

*abuses or did not put adequate measures to prevent the abuse.*

c. Guarantee an effective remedy by requiring the responsible businesses to pay the compensation directly or by compensating victims directly and asking businesses for reimbursement, or to require businesses to guarantee a compensation (e.g. by means of insurances or bonds).

Table 4: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Actions 12, 15 and 16) committed to explore whether the Code of Corporate Governance could integrate the HRDD, and to promote the incorporation of a comprehensive CSR policy, with the emphasis on prevention rather than punishment (cf. corporate governance). Action 12 refers to Belgium's continued commitment and its pioneering role in terms of international human rights and action 16 refers to promotion of social relations, including human rights. However, the B-NAP did not commit to the adoption of a mandatory HRDD.

The **EP Draft EU Directive** (Arts. 19, 20) requires member states **a)** to provide for the application and enforcement of penalties applicable to infringements of the national rules adopted in accordance with this Directive. **b)** Not to absolve businesses of any civil liability that they may incur only by demonstrating that they carry out due diligence in compliance with the requirements of the EU Directive.

#### A.4.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in Belgium in line with the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- Law of 8/6/2017 reformed the Judicial Code, (book IV, chapter XXVI) on specific aspects of liability.<sup>46</sup> This reform sought to provide faster compensation to victims of major and complex disasters (environmental and rail disasters and gas explosions), or when several liable parties have to share the burden of compensation. Businesses operating these activities must have a compulsory liability insurance for personal injury and material damage caused to third parties (which is sometimes part of the environmental permit), which does not exclude the possibility of going to courts (Bruggeman and Faure 2019).<sup>47</sup>
- Law of 29/6/2014 created a state guarantee to cover operators of nuclear installations against a fee. The Royal Decree (RD) of 10/12/2017 created a guarantee program for legal liability in the area of nuclear energy compatible with EU law on state aid (Bruggeman and Faure 2019).
- Belgium has also created compensation or guarantee funds as an alternative to the difficult use of tort law procedures. Mainly employees, civil servants or vulnerable victims that lack an insurance or cannot identify the responsible duty bearer, get access to these funds. In principle, victims should be able to demonstrate a minimum causal link. The following reforms were adopted in this line: **a)** the structural reform (2017) of the Federal Agency for Professional Risks (FEDRIS) that covers occupational risks and victims of occupational diseases. **b)** The Law of 5/5/2019 aimed at improving the compensation for victims of asbestos mainly by including some related cancers on the list of occupational diseases, excluded before, and by regulating the prescription term for judicial actions.<sup>48</sup> **c)** The Law of 5/5/2019 provided for a lump sum for persons suffering from congenital malformations due to the ingestion of medicines containing thalidomide by their mothers during pregnancy. Compensation funds however do not always provide effective remedies as they may disincentive prevention (due diligence), or may discriminate, and sometimes the intervention of funds could block the possibilities of suing for full reparation before civil courts (Vanhooff 2020).

<sup>46</sup> Strict liabilities are special regimes seeking to provide special support to victims of harm caused by mines, transport of gas, toxic waste, fire or explosions in public buildings and nuclear accidents (Bruggeman and Faure 2019).

<sup>47</sup> On the scope of this reform vis à vis Law of 13/11/2011 on compensation for victims of technological accidents, cf. Bruggeman and Faure (2019).

<sup>48</sup> Asbestos has been a central issue in Belgium (cf. Pillar III) particularly because victims who claimed compensations before the Fund lost their possibilities to go to court.

- Law of 11/7/ 2018 amended the Criminal Code and the Preliminary Title of the Code of Criminal Procedure regarding criminal liability of legal persons. This is an important improvement as legal persons can be criminally liable for offences resulting from an intentional decision taken within the legal person or from negligence. Judges have discretion to decide if the link between the crime and the legal person is identified, i.e. when offences involve a moral element on the part of the legal person, judges should examine the decisions taken by its organs, the decision-making process, control mechanisms, etc. This law also abolishes *decumulation*, this is, the criminal liability of legal persons does not exclude the criminal liability of natural persons who committed or participated in the same acts. Therefore, the prosecutor and the trial judge can prosecute and convict natural and legal persons cumulatively, as co-authors or accomplices. In addition, state-owned companies (SOC) could now also be held criminally accountable (Lénelle and Pijcke 2019; Werding 2019).
- An important bill that could reform [tort law](#) of the Belgian Civil Code foresees several changes: **a)** an equivalent treatment of legal persons under private and public law. Moreover, the organ theory would no longer be the exclusive basis for the liability of legal persons, as they would be held liable directly based on a personal fault or on a fault committed by a person who is answerable for it (Cf. [expose de motives](#) (7)). **b)** The adoption of a general risk-based liability clause for specific dangerous activities, besides the general fault-based liability clause. Therefore, victims would not be affected when no fault is demonstrated (Cf. [expose de motives](#) (11-12)).<sup>49</sup> **c)** The regulation of proportional liability for causal uncertainty and the reference to a specific law for damage resulting from the infringement of a collective interest. **d)** When a rule of conduct imposes a certain behaviour (that could be a mandatory due diligence, if it is adopted as mandatory), a fault can be inferred from the violation of that rule (5.148). **f)** The reform of the damage regime would allow a claim to remedy the infringement of a collective interest and for future damage, full reparation and guarantees of non-repetition or aggravation. **g)** Objective liability for dangerous activities (5.190).<sup>50</sup> **h)** Product liability for persons considered as producers and importers within the EU are liable in the same way as the producer. Suppliers are considered as producers when producers from the EU cannot be identified. However, the burden of proof lies with the injured party.

#### A.4.3 Key outcomes or gaps for the implementation of the UNGPs

- The Belgian Companies and Associations Code (BCAC) (2019) (cf. corporate governance) allows limitations of directors' liability in function of the size of the company and independently of the number of employees. This limitation applies to the company and to third parties for contractual and extra-contractual liability. However, it excludes habitual minor faults, major faults that result from fraud or faults related to taxes and social security contributions (Houben and Meeusen 2020). Although the BCAC forbids limitations to the liability of directors, it allows parent companies controlling companies or shareholders to grant clauses that '*hold harmless*' (Houben and Meeusen 2020), which could be an important obstacle for the establishment of secondary liability in business-related human rights harms. The BCAC did not include a mandatory [directors and officers liability insurance](#) ("D&O") that would cover risks related to legal action for wrongful acts committed in the framework of their professional activities. In Belgium however, board members are increasingly involved in claims and sued to put pressure on the company. Although this policy is mainly used for bankruptcy or insolvency claims, it is also increasingly covering claims related to labour, health, environmental or discrimination related harms, or failures in supervising employees (Financier Worldwide 2015: 28-30; Gerner-Beuerle et al. 2013: 172; Pham 2017).<sup>51</sup>

<sup>49</sup> An RD should identify dangerous activities on which the law would apply and could also cover aggravated liability risks when the injured party does not find a guarantee of compensation by insurances. (Cf. [expose de motives](#) (11-12)). This could be an opportunity to link strict liability to a mandatory due diligence in specific transnational cases.

<sup>50</sup> An RD should define which activities could imply an objective liability.

<sup>51</sup> Cf. D&O Insurance in [Belgium](#).

- The NBA team has not found publicly available information about policies, programmes, or processes in crucial areas for the UNGPs to increase awareness or to hold businesses accountable for human rights abuses in Belgium or in their value chains.
- The bill that reforms tort law is pending for approval since 2019. An RD could foresee a mandatory due diligence to complement this reform.
- The NBA team has not found publicly available information on measures regarding corporate liability in the value chains.
- The NBA team has not found publicly available information on measures adopted to provide reinforced protection to vulnerable or marginalised groups either.

## A.5 Corporate structures and governance

### A.5.1 Why is this a key issue for Belgium?

From the perspective of the UNGPs, corporate structures and governance are crucial for the definition of their responsibility and for the possibilities of “piercing the corporate veil” to ensure that parent companies (secondary liability) are held responsible for human rights abuses caused in their value chains (primary liability). Limited liability of companies is the general rule,<sup>52</sup> and the demonstration of societal control of subsidiaries remains a major challenge. Therefore, the UNGPs seek that states design mechanisms to lift the corporate veil. In some legal areas such as EU competition law or accountancy,<sup>53</sup> the doctrine of corporate control,<sup>54</sup> is recognised but until now this is not the case for the liability derived from human rights harms. Another important issue is the choice between one-tier or two-tier board structures (cf. below). Two tier boards could provide more transparency regarding the interest of the company and of the shareholders, and could consider the interests of stakeholders (Enneking et al. 2015 and Gerner-Beuerle et al. 2013:21-4; quoted by Lizarazo Rodríguez 2017).<sup>55</sup> Before 2019, two-tier boards were only possible in some Belgian state owned companies (SOCs).

Table 5: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Actions 1, 4, 5, 15, and 19) committed to **a)** developing a human rights toolkit for organisations and disseminating it among Belgian missions abroad to raise awareness; **b)** integrating the principle of "due diligence" within the management bodies of the company, including human rights and **c)** promoting good practices of SMEs that adopt responsible value chain management mainly through CSR tools. Flanders committed to implement the “International sustainable entrepreneurship” and on [CSR](#) and Wallonia to promote existing qualitative initiatives relating to human rights and CSR (B-NAP, Actions 28, 31 and 32).

### A.5.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted (or in course) in Belgium. **The main structural reforms** (adopted or in course) are the following:

- Law of 23/3/2019 enacted the Belgian Companies and Associations Code (BCAC). This code modernised corporate law as the previous code was enacted more than a century ago and simplified the company types (from 15 to four). Several issues are in line with the UNGPs. Firstly, the BCAC defines the nationality of the company based on the statutory seat theory (i.e., where

<sup>52</sup> I.e. In principle, shareholders are only liable up to the amount of their investments.

<sup>53</sup> The consolidated balance of corporate groups may be a source of evidence regarding liability of parent companies.

<sup>54</sup> Cf. CJEU C508/11 P ENI SpA v EC and TFEU (Art. 101): the behaviour of a subsidiary (primary liability) can be attributed to its parent company (secondary liability) when “*the subsidiary does not independently chart its own conduct*” because it follows the instructions of its parent company. The CJEU held that the parent company can be fined without having to establish that it participated directly in the infringement when it owns all or almost all the subsidiary that infringed EU competition law, i.e. it is presumed that the parent company controlled its subsidiary (Lizarazo Rodríguez 2017).

<sup>55</sup> UNGPs on Business and Human Rights in Belgium. State-Based Judicial Mechanisms and State Based Non Judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy Measures. [Fido Project MP-OO/FIDO/2016/5](#) L. Lizarazo Rodríguez (2017)

the company is incorporated and has its headquarters) and abandoned the real seat theory (i.e. where the administration or the main office is situated). The aim was to ease cross-border corporate movement of headquarters and to guarantee legal certainty (Houben and Meeusen 2020).<sup>56</sup> The real seat theory was defended because it protected stakeholders (employees, minority shareholders, creditors or tort victims) from being affected by artificial incorporations of companies (Van de Looverbosch 2017). However, the Code of International Private Law (CPIL, Art.111) stipulates that the statutory seat only applies for company law issues in a strict sense (the establishment, organisation, functioning, and liquidation) (Houben and Meeusen 2020). Moreover, the BCAC (Art. 2: 56) amended the CPIL (Art.109) to preserve the jurisdiction of Belgian courts to hear claims relating to the liability of the directors of the company towards third persons for conducts carried out in the exercise of the administrative function, if the main seat is located in Belgium, independently of the registered office has been formally established outside the EU. Houben and Meeusen (2020) interpret this rule as an anti-abuse provision that constitutes an exception to the general provisions on statutory seat for cases of liability.

Secondly, the BCAC adopted three models of governance of public companies (NV/SA): the traditional one-tier board system, the two-tier board system (composed by a management body appointed by the supervisory board, and a supervisory board appointed by the general assembly) or a single director system. The supervisory board defines the general policy and strategy and oversees the management board, the board reports and the restructuring/conversion proposals. The management board has residual powers and does the operational management (Houben and Meeusen 2020). The two-tier board system is a positive development from the perspective of the UNGPs for the reasons explained above, but it will take time before Belgian companies adopt this governance form.

Thirdly, the BCAC (Art. 3.5 and 3.6) retained the rules that transposed the EU Directive on the duty of some companies to report non-financial information.<sup>57</sup> These companies should submit the corporate governance statement,<sup>58</sup> that contains the non-financial reporting of: **a)** the company's activities; **b)** the policies regarding these matters, including due diligence procedures; **c)** the results of these policies; **d)** the main related risks, including, *where relevant and proportionate*, the company's business relationships, products or services, and how the company manages them; and **e)** non-financial key performance indicators on the activities. Companies without this policy need to explain why in the non-financial statement. The board of the parent company can exceptionally omit information from the statement if its disclosure could seriously harm the commercial position of the company, and if the omission does not obstruct a fair and balanced understanding of the company activities. If the consolidated report of a corporate group submits the non-financial report in Belgium, subsidiaries are exempted from this obligation (Art. 3:30, § 2). Companies can also draft the non-financial statement in a separate report, but the annual report should include information on where stakeholders can find it.

- RD of 12/5/2019 amended the [Corporate Governance Code](#). The new Code does not include issues on HRDD, despite the B-NAP (Action 15) affirming that it would be included in the corporate management of companies. This Code reiterates some provisions of the BCAC: the possibility that companies adopt one-tier or two-tier boards; the duty of some companies to publish their corporate governance charter and to include the corporate governance statement in the annual

<sup>56</sup> In EU Law, the theory of incorporation is the general rule, supported by the CJEU.

<sup>57</sup> EU Directive 2014/95/ amending EU Directive 2013/34/ on the disclosure of non-financial and diversity information by large undertakings and groups [OJ 11/152014 L330].

<sup>58</sup> The corporate governance statement that listed companies should submit must include: **a)** the corporate governance code, and corporate governance practices and where this information is available; **b)** the composition and operation of the administrative bodies and their committees; **c)** the diversity policy (for members of the supervisory and management board, for executives and delegates for the daily management) and its objectives, implementation mechanisms and yearly results and when the company does not have a diversity policy, it should justify why; and **d)** the impact of its activities on social, environmental and personnel matters, **respect for human rights** and the fight against corruption.

reports. In addition, principle 2.2 requires the board to develop an inclusive approach that balances the legitimate interests and expectations of shareholders and other stakeholders and principle 3.3 requires the board to have a diversity policy attentive to skills, background, age, and gender perspectives.<sup>59</sup>

- Law of 28/4/2020 transposed EU Directive on shareholders rights II,<sup>60</sup> that creates new obligations for listed companies to strengthen the position of shareholders and to encourage their long-term engagement by involving them in the remuneration policy and by requiring stricter rules for transactions with related parties. Shareholders would have more leverage on board salaries and transactions of subsidiaries that are not necessarily listed companies. Listed companies must also identify their shareholders to allow direct communication between the company and its shareholders, with due protection of personal data. These measures increase transparency and engagement of shareholders in the corporate governance regarding financial and non-financial performance. This measure applies to institutional investors,<sup>61</sup> and asset managers.<sup>62</sup> Subsidiaries now need the approval of the administrative council of their listed parent company to engage with related parties.<sup>63</sup>

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- The Federal government and Flanders have actively promoted the implementation of CSR and indicators related to the SDGs, but not the implementation of the UNGPs. The Maatschappelijk Verantwoord Ondernemen (MVO) unit from Flanders has been active in promoting sustainable practices and has developed the [Sustatool](#), largely used among Flemish companies. This tool has a strong environmental component and addresses social issues to a lesser extent, but it does not consider the UNGPs as a framework. Subnational and local governments are increasingly establishing reporting schemes related to compliance with the SDGs (cf. Policy coherence).
- The Association of Belgian companies (VBO/FBE), together with the Federation of auditors and the Association of Belgian listed companies and a law firm (EUBELIUS) released the [guidelines for the reporting of non-financial information](#) that is available on the website of the Code of Corporate governance. The EC also released Guidelines on non-financial reporting ([C\(2017\) 4234 final](#)) and on reporting climate-related information ([2019/C 209/01](#)).

### A.5.3 Key outcomes or gaps for the implementation of the UNGPs

- Federal authorities and Flanders undertook punctual actions mainly aimed at encouraging voluntary CSR or SDG parameters (Cf. the state-business nexus) but they did not adopt systematic policies or processes to integrate a HRDD procedure in the corporate governance of Belgian companies, except for the transposition of the EU Directive on non-financial information,<sup>64</sup> and the implementation of the Timber Regulation.
- The IFDD/FIDO developed the B-NAP (Action 1) and released the [Toolbox human rights for business and organisations](#) in 2018; however, this tool has not been updated since its launch and no systematic plan exists to disseminate it or raise awareness. Some seminars were organised sporadically, but without a clear systematic policy orientation. The activity report of the ICSD

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<sup>59</sup> The Belgian Code of Economic Law ([Art. VI.100](#)) considers the following as an unfair commercial practice: making false claims regarding the adoption of a code of conduct, displaying a certificate, quality label or equivalent, claiming that a code of conduct has been approved by (a qualified) body; or misleading marketing. Stakeholders may ask for an injunction that would protect consumers and competitors but would not allow claims for human rights remedies.

<sup>60</sup> Directive (EU) 2017/828 of the EP and of the Council of 17/5/2017 OJ L 132, 20/5/2017.

<sup>61</sup>i.e. insurance companies and institutions for occupational retirement provision.

<sup>62</sup>i.e. credit institutions, investment firms, managers of Institutional alternative collective investment companies with variable number of units [AICBs](#) and management companies of collective investment businesses.

<sup>63</sup> Cf: 2018 Wolters Kluwer Belgium N.V.- [www.jura.be kl2415686 2/4](#) Date 25/06/2020.

<sup>64</sup> The NBA team did not find publicly available information of Wallonia or Brussels and the officers did not respond to the questions sent by the NBA team.



(2019) confirmed that no active online promotion of these instruments has been conducted.

- Although the BCAC stipulates that the non-financial statement shall rely on recognised European and international benchmarks and that the due diligence procedures that companies can implement will be defined by a RD, this decree has not been enacted yet. The [Toolbox human rights for business and organisations \(7\)](#) recommended the use of the [UNGPs Reporting Framework](#), focused on an analysis of salient human rights that put victims at the centre of the assessment. However, most of the standards recommended to Belgian businesses focus on CSR reporting schemes that assess materiality, which focus on the interests of the companies. The Belgian National Standards Body (NBN), which supervises the use of standards and facilitates control and reporting has not adopted any guidelines regarding non-financial reporting either. In Belgium, the Financial Services and Markets Authority (FSMA) has assessed compliance with the non-financial reporting requirements ([FSMA, 2019](#)). It found that few companies describe their activities in their statement of non-financial information and when they do, they refer to a limited number of aspects only. Moreover, policy statements in general do not include information about social issues, respect for human rights and the fight against corruption. The implementation of due diligence procedures is even rarer.<sup>65</sup> These findings did not differ from the ones reported in 2018 by the Autoriteit Financiële Markten (AFM).<sup>66</sup> In 2020, the EC reported many obstacles for users of non-financial information such as not being able to compare the reports or working with some information that was not reliable or was irrelevant.<sup>67</sup> Companies also encountered many challenges in reporting non-financial information because of the complexity and the volume of information to be reported. The EC also reported that stakeholders requested states to require companies to digitalise the report, use a common standard (simplified for SMEs) and audit compliance. They also requested for a non-financial information reporting requirement for other companies, such as: a) large companies not established in the EU but listed in EU regulated markets; b) listed companies established in the EU but listed outside the EU; c) large non-listed companies and all large public interest entities independently of the size and number of employers.
- The NBA team did not find publicly available information about measures adopted to provide reinforced protection to vulnerable or marginalised groups.
- Belgian authorities have adopted measures to improve transparency of corporate groups and their value chains but only within their territorial jurisdiction.

## A.6 Labour, occupational health and safety

### A.6.1 Why is this a key issue in Belgium?

Besides environmental protection, labour and occupational health are salient areas in the implementation of the UNGPs. Many important international standards such as the ILO's Decent Work agenda or other instruments from the CoE aim at reinforcing protection of labour rights, by fighting discrimination and undeclared work. In the EU, member states share competences with the EU,<sup>68</sup> and therefore, this section refers to EU law and to the periodical reports released by the EC on progress in achieving the objectives of EU treaties. An important pillar of EU labour laws is to guarantee gender

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<sup>65</sup> A study concluded that reporting in France is still immature, but the Duty of Vigilance Law have pushed companies to improve reporting (Langlois M. (12/2019).

<sup>66</sup> Autoriteit Financiële Markten, In Balans 2018 – deel A, Themaonderzoek niet-financiële informatie in bestuursverslagen 2017, 13 december 2018

<sup>67</sup> EC Report of the Public Consultation on the Review of the Non-Financial Reporting Directive (20/2/2020 – 11/6/2020).

<sup>68</sup> The Treaty on the Functioning of the EU (TFEU, Art. 153) stipulates that the EU support and complement member states competences in labour and healthy working conditions, employment for third-country nationals legally residing in the EU, and the integration of persons excluded from the labour market. The EU also deals with cooperation and harmonisation of labour laws of member states. Member states are competent to define fundamental principles of their social security systems and can introduce higher protective measures compatible with the EU treaties, regulate salaries, the right of association, the right to strike and the right to impose lockouts.

equality for equal work.<sup>69</sup>

### A.6.1.1 Labour rights

Table 6: Parameters to evaluate progress since the adoption of the NAP (2017)

The **B-NAP** (Actions 8, 24, 25 and 26) committed to promote the ratification, support, and promotion of a series of ILO conventions covering health and safety at work and women's rights, and to raise awareness on children's rights. The B-NAP also committed to actively promote GFAs.<sup>70</sup>

#### A.6.1.1.1 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- Belgium has ratified three ILO conventions, two of them before 2017, but they were included in the B-NAP as two concrete actions.

Table 7: Ratification of ILO conventions after the adoption of the B-NAP

Number	Topic	Ratification
C156	Workers with Family Responsibilities Convention, 1981.	10/4/2015
C175	Part-Time Work Convention, 1994	8/6/2016
P029	Protocol to the Forced Labour Convention, 1930	10/9/2019

- Belgium enacted several laws on workers from third countries: Law of 9/5/2018 and Law of 5/5/2019 regulate the repression of fraudulent work of a commercial or artisanal nature. Law of 12/11/2018 approved a cooperation agreement among the federal and subnational governments to coordinate policies for granting work and residence permits, and approved the standards relating to the employment and residence of foreign workers. Law of 12/6/2020 transposed Directive (EU) on the posting of workers in the framework of the provision of services, aiming at guaranteeing better wage conditions for posted workers, reducing wage competition between companies and fighting social dumping.<sup>71</sup> These measures, however, in the first instance seek to address unfair competition rather than protecting workers.<sup>72</sup>
- Law of 5/3/2017, added flexibility to the labour market by seeking to increase work opportunities for unemployed citizens, but it also represents a backlash on the protection of workers. It authorises voluntary overtime system, the increase of the internal limit for accumulated overtime, regulates floating hours etc. Law 26/3/2018, on strengthening economic growth and social cohesion, added further flexibility by changing the notice periods and by providing for a more gradual increase in the notice period to compensate the disappearance of the probationary period. This law eliminated the prohibition of the use of temporary agency work in certain sectors. Law 7/4/2019 on social provisions of the "jobsdeal" further relaxed the possibility for the employer to incorporate a tuition clause when financing the training of a worker in sectors with a shortage of labour force.

The main **policies, programmes and processes** adopted in line with the UNGPs are as follows:

- The Ministry of employment,<sup>73</sup> highlighted the efforts towards policy coordination among levels of government as its complexity hinders the effective implementation of policies. The Ministry also indicated that discrimination is a core topic in the agenda of the inter-ministerial commission

<sup>69</sup> Cf. TFEU (Art. 157).

<sup>70</sup> For a detailed list of framework agreements concluded by EU companies, cf. the website of [ILO](https://www.ilo.org/regiona/euro).

<sup>71</sup> Directive (EU) 2018/957 of the EP and of the Council of 28/6/2018. OJ L 173, 9/7/2018.

<sup>72</sup> Cf. CJEU 11/11/2018 C-356/15, Commission c. Belgique Morsa M. (2018) regarding social fraud and social dumping. Cf. also the European Social Rights Scoreboard (2018) and Pisiotis and Peschner (2020).

<sup>73</sup> Memorandum *du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024*.

involving Ministers of Employment, Education, Equal Opportunities and Migration, at federal and subnational levels, and that they seek to involve non-governmental actors and stakeholders in the policy making.

- Posted workers and undeclared work are central to the policy of the EU,<sup>74</sup> and of Belgium. In 2019 the EU implemented the [European Platform tackling undeclared work](#),<sup>75</sup> to enhance cooperation between national enforcement authorities (labour inspectorates, tax and social security authorities) and social partners in tackling undeclared work. An EU report,<sup>76</sup> highlights other initiatives such as the [#EU4FairWork campaign](#), seeking to provide information and awareness-raising and the conclusion of bilateral and multilateral cooperation agreements by member states (mostly with neighbouring countries) (Stefanov et al. 9/2019; Sanz de Miguel et al. 2017). The EU report also highlights that Belgium and France have the highest number of cooperation agreements with non-neighbouring member states. Furthermore, Belgium has implemented good practices to tackle undeclared work: **a)** it has raised popular awareness and has tackled fraudulent temporary work agencies (Stefanov R. et.al. 9/2019); **b)** it has concluded solidarity agreements between trade unions from Belgium, Bulgaria and Poland to protect unions when employed abroad; **c)** it has implemented the analytical tool [Mining Watch](#) that helps inspectors to choose inspection targets, and improve the success rate of inspections by 100% for construction, cleaning, and tourism sectors (cf. [Eurobarometer survey](#), and Stefanov R. et.al. (9/2019)).
- The Court of Justice of the EU (CJEU),<sup>77</sup> has upheld labour rights by deciding that stand-by time of a worker at home who is obliged to respond to calls from the employer within a short period, should be counted as ‘working time’ because it restricts a worker’s opportunities for other activities.

#### A.6.1.1.2 Key outcomes or gaps for the implementation of the UNGPs

- In this sector, the special attention for vulnerable populations is more visible. For instance, although reforms that add flexibility to the labour market can be considered as a backlash for labour rights, these measures also target unemployed people. However, most of these measures also seek to liberalise markets and the EU also pushes in this direction.
- Posted workers and undeclared work still remain a challenge, particularly in sectors such as construction, transport, agriculture, meat processing sectors, personal services (care and cleaning services), and tourism (food, drink, hotels, bars and restaurants) ([Eurobarometer survey](#), Stefanov R. et.al. 9/2019 and Williams and Horodnic 2020). The ILO also considers that agriculture is a challenge in the EU because 61.2% of the EU labour force is informally employed.<sup>78</sup> Measures targeting undeclared work also seek to fight unfair competition for European companies particularly in sectors with high employment of low- or medium-skilled labour. EU and Belgian measures mainly focus on corporate (fraudulent) constructions that employ workers from third countries (cf. trafficking in human beings (THB))<sup>79</sup>, but little attention is paid to victims. COVID-19 further affected the situation of undeclared workers and the EU member states have not been

<sup>74</sup> In 2019, the EU European Labour Authority (ELA) was created to promote enforcement of EU rules on labour mobility and social security coordination in the EU, giving the increasing number of EU citizens working in other member states. Cf. Decision (EU) 2016/344 of the EP and of the Council of 9 /3/ 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work. OJ L 65, 11/3/2016. Its main competences are on [mobility](#), [free movement](#) and [posted workers](#) and [social security coordination](#).

<sup>75</sup> Decision (EU) 2016/344 of the EP and of the Council of 9 /3/ 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work. OJ L 65, 11/3/2016.

<sup>76</sup> Cf. EC, COM(2020) 129 final of 2/4/2020 [Report](#) to the EP, the Council, the European Economic And Social Committee and the Committee of the Regions on the implementation of Decision (EU) 2016/344 .

<sup>77</sup> CJEU, judgement C-518/15. Preliminary ruling Ville de Nivelles v Rudy Matzak.

<sup>78</sup> cf. ELA website; [Special Eurobarometer Undeclared work in the EU, Belgium](#) September 2019. [European employment strategy. Undeclared work in European countries, Public employment services, European Employment Policy Observatory](#).

<sup>79</sup> Cf. LIMOSA data assessed by Memorandum du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024

able to respond to the Covid-19 impact.<sup>80</sup>

- The Ministry of employment,<sup>81</sup> acknowledges that new forms of work (on-call work, freelance work, etc.) created a generation of nomadic workers, with less social protection that challenges labour law. The Ministry of employment also acknowledges that globalisation, Europeanisation, individualisation, flexibilization and the judicialization of the employment relationship and new structures of corporate groups challenge the Belgian model of social consultation.
- Discrimination in the labour market remains a structural problem in Belgium in three areas: **a) migrants, particularly third country immigrants and their descendants:** the gaps between non-EU immigrants and native-born individuals are among the highest in the EU, particularly for women. Belgium has not adopted any systematic policy to promote diversity of origins in the public sector; Flanders discontinued the 'Equal Opportunities and Diversity Plan' and replaced it by the approach "Focus on Talent"; Wallonia has an action plan to combat work-related discrimination and relies on awareness raising and sectoral self-regulation. **b) (P)eople with disabilities:** 40.5% of people with disabilities are employed in Belgium, whereas in the EU they account for 48.1 % on average. **c) People with low and high educational levels:** subnational governments' policies target specific socio-economic groups, but the challenge remains.<sup>82</sup>
- The right to strike remains unregulated in Belgium. Social partners commit to optimising the "gentlemen's agreement" but recognise that the formalisation of the "customary" procedure (in line with Law of 19/8/1948) needs an update.<sup>83</sup> The CESCR was also concerned about the lack of explicit guarantee to the right to strike and recommended its legislative regulation.<sup>84</sup> The Ministry of Employment argued that as Belgium ratified the Revised European Social Charter ([RESC](#)), the right to strike is protected as a basic social right.
- The protection of gig workers or workers in the platform economy remains a major challenge. Companies argue that they are self-employed (freelance). Belgian authorities assumed that gig workers usually have a permanent job and that work in the gig economy is an extra job. However, evidence shows that platform workers are mainly non-European citizens, depending on this job and living in precarious situations. Labour auditors encounter multiple obstacles to tackle the situation via inspections.<sup>85</sup>
- The federal government has mainly promoted GFAs by a single event organised by the Federal Ministry of Employment and the IFDD/FIDO, but no structural policy has been implemented in that respect.<sup>86</sup>
- In the B-NAP, The Ministry of Foreign Affairs committed to raise awareness about children rights in the value chains, but no public information is available in this respect.

### Reported cases

On 07/2020, Knack published information on the indecent working conditions of many Romanian workers (mainly women) in two factories (Motexco and Siorom) that supply the Belgian army and police with work

<sup>80</sup> [NEWS 16/07/2020](#): What works when tackling undeclared work? Realities in Member States.

<sup>81</sup> Memorandum *du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024*.

<sup>82</sup> EC Staff Working Document [Country Report Belgium 2019](#). 2019 European Semester: Assessment of Progress on Structural Reforms, Prevention and Correction of Macroeconomic Imbalances, and Results of In-Depth Reviews Under Regulation (EU) No 1176/2011 {Com(2019) 150 Final}. P 33.

<sup>83</sup> Memorandum *du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024*. P15-6.

<sup>84</sup> Cf. UN GA Human Rights Council A/HRC/WG.6/24/BEL/3 of 6/11/2015, Working Group, 24<sup>th</sup> session 18-29/01/ 2016, and A/HRC/WG.6/24/BEL/2 of 23/11/ 2015.

<sup>85</sup> Memorandum *du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024*. P 28.

<sup>86</sup> For a detailed list of GFAs concluded by EU companies, cf. the website of the [ILO](#).

equipment and other uniforms The French speaking [green party](#) flagged the case in Belgium as well.

### A.6.1.2 Occupational Health

This sector seeks to guarantee remedies for workers mainly through preventive measures, but also to compensate them when labour accidents occur or when they are affected by unhealthy working conditions.

*Table 8: Parameters to evaluate progress since the adoption of the B-NAP*

The **B-NAP** did not commit to any action in this sector.

#### A.6.1.2.1 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in line with the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- Belgium has ratified five ILO conventions, although none of them were concrete actions of the B-NAP.

*Table 9: Ratification of ILO conventions after the adoption of the B-NAP*

Number	Topic	Ratification
C167	Safety and Health in Construction Convention, 1988	8/6/2016
C130	C130 - Medical Care and Sickness Benefits Convention, 1969	22/11/2017
C170	Chemicals Convention, 1990	14/6/2017
MLC	Maritime Labour Convention, 2006	14/6/2017
C187	Promotional Framework for Occupational Safety and Health Convention, 2006	31/5/2018

- The RD of 12/1/ 2020 amended the Code of wellbeing at work (Title 1, Book VI), regarding the list of maximum values for exposure to chemical agents, and Title 2 relating to carcinogenic, mutagenic and reprotoxic agents. This decree is in line with the European [roadmap on carcinogenic substances](#).
- RD 07/02/2018 determined the conditions of a pilot project for the prevention of burnout related to work. Belgium has included burn-out as one of its priorities of the psychosocial risks, in the context of new forms of work organisation and reintegration of workers with work incapacity.
- Compensation funds (cf. Liability) occupy an important place in occupational health as they compensate workers when they suffer an occupational accident or a disease, because workers cannot lodge civil claims against employers for occupational diseases, except for cases of wilful misconduct (Cf. Law for Occupational Diseases, Art. 51 and Vandenbussche (2018)).
- RD 23/11/2017 reformed the legislation on accidents at work and the legislation on occupational diseases in accordance to Law of 16/8/2016 (Art. 16) on the merger of the Fund for accidents at work and the Fund for occupational diseases. This reform allows victims to claim a compensation from FEDRIS if (s)he can demonstrate that the disease is referred to in the list and the exposure to an occupational hazard during his/her work (Law for Occupational Diseases Art. 30). If the disease is not on the list, (s)he can claim a compensation if it is clear and directly linked to the professional practice. However, victims have the burden of proof, as was the case with proving lung cancer derived from asbestos before the reform of 2019 (cf. liability) (Vandenbussche 2018).
- R.D. 09/12/2019 updated the list of occupational diseases giving rise to compensation and established the criteria to be met by exposure to occupational risk including asbestos.

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- The Federal strategy for well-being at work 2016-2020 emphasised the need to support workers

employed in SMEs because SMEs struggle with guaranteeing healthy and safe working conditions. However, the Ministry of Employment and the subnational governments have not been able to coordinate their competences.<sup>87</sup>

#### A.6.1.2.2 Key outcomes or gaps for the implementation of the UNGPs

- The Ministry of Employment acknowledges the challenges and the lack of targeted policies to tackle, from a health occupational perspective, new contractual (and atypical) employment relationships (e.g. new technologies and longer professional careers) that put workers at risk (e.g. precarious employment, lack of occupational safety, health protection, and occupational hygiene).
- The Ministry of Employment also acknowledges the challenges and lack of targeted policies to address occupational risks in the energy sector, particularly in the construction of offshore wind farms.<sup>88</sup>
- Regarding maritime workers, on 07/2020 the EC sent a formal notice to Belgium for failing to comply with the EU Directive on marine equipment related to common EU safety and environmental rules on equipment (life jackets, sewage cleaning systems and radars on board of EU-flagged ships).<sup>89</sup>
- Belgian authorities have not adopted any measure regarding compliance with occupational health in value chains where Belgian corporate groups are leading.

## A.7 Trafficking in human beings (THB) and modern slavery

### A.7.1 Why is this a key issue for Belgium?

Trafficking in human beings (THB) is one of the most salient business-related human rights abuses. It requires the action of the federal and subnational governments in Belgium. Within the context of THB, the most relevant topic for the purposes of the UNGPs is economic exploitation. The most sensitive sectors in Belgium are construction, tourism, agriculture, meat processing and personal services. As mentioned before, the EU has shared competences with member states in the fight against THB as cross border crime.<sup>90</sup> The EU Directive on preventing and combating THB and protecting its victims,<sup>91</sup> requires member states to implement mechanisms to identify, assist and support victims of THB, to prevent and prosecute THB, modern slavery and to prevent future abuses by e.g. promoting the consumption of products from businesses that ensure a slavery-free supply chain.<sup>92</sup> These mechanisms complemented the EU Directive on minimum standards on sanctions and measures against employers of illegally staying third-country nationals.<sup>93</sup>

In Belgium, the Interdepartmental Coordination Unit to Fight THB,<sup>94</sup> created by federal and subnational governments is in charge of fighting THB and protecting victims, together with the Reception Centres. Besides this unit, the Federal Migration Centre (Myria) fights THB, protects human rights of foreigners, and plays the role of independent National Rapporteur on THB (CoE/Greta 2016/23:5). [Myria](#) also acts as an independent human rights monitoring mechanism and coordinates

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<sup>87</sup> Memorandum du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024. P23.

<sup>88</sup> Memorandum du SPF Emploi, Travail et Concertation sociale au gouvernement fédéral concernant la politique de l'emploi pour la période 2019-2024. P35-7.

<sup>89</sup> Directive 2014/90/EU of the EP and the Council of 23/7/2014 OJ L 257, 28.8.2014

<sup>90</sup> The EU is competent to combat THB, particularly when women and children are affected (TFEU Art. 79).

<sup>91</sup> Directive 2011/36/EU of the EP and of the Council of 5/4/2011. OJ L 101, 15.4.2011

<sup>92</sup> EP Report on implementation of the Directive 2011/36/EU of 5/4/2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective: Committee on Women's Rights and Gender Equality Rapporteur: C. Bearder RR\1093484EN.doc PE576.788v03-00 (2015/2118(INI)).

<sup>93</sup> EU Directive 2009/52/EC of the EP and of the Council of 18/06/2009.

<sup>94</sup> [RD 21/07/ 2014](#).

the three Reception Centres for trafficking victims.

Table 10: Parameters to evaluate progress since the adoption of the B-NAP

**The B-NAP** (Action 24) committed to the ratification of the (P029) Protocol to the Forced Labour Convention, 1930 (Cf. Labour area).

### A.7.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- In 12/2018, Belgium adopted the UN Global Compact for Migration,<sup>95</sup> or the Marrakech Migration Pact. This non-binding instrument seeks cooperation on migration. Two of the 23 objectives relate to the fight against transnational THB in the context of migration.
- On 10/9/2019 Belgium ratified P029 Protocol to the ILO Forced Labour Convention that seeks to protect victims, to guarantee access to effective remedies, and to sanction perpetrators. Member states are expected to develop policies for the effective and sustained suppression of forced or compulsory labour in consultation with employers' and workers' organisations.
- Law of 25/4/2019 tackled trafficking in human organs and deals with the principle of the non-punishment of victims of THB. The Belgian Criminal Code already contained the principle of non-punishment of victims of THB which is also stipulated in the CoE Convention on Action against Trafficking in Human Beings (2005) and in the Directive (EU) on THB. The last report of Myria however, flags that the amendment of the Criminal Code (Art. 433 quinquies) on THB, does not explicitly include the principle of non-punishment as an absolute cause of excuse.
- Law of 31/7/2020 transposed the EU Directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.<sup>96</sup> Therefore, victims with a temporary residence permit of at least three months can have access to the labour market. Myria reported that this transposition was late but finally Belgium abolished work permit C, which was available to victims of THB.
- On 28/5/2019, the federal and subnational governments concluded the inter-departmental cooperation agreement on the coordination of policies granting work and residence permits, and on standards for the employment and residence of foreign workers (cf. Labour area).

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- In [11/2020](#) Belgium contributed with 2 million euros to the UN Voluntary Trust Fund for victims of THB, being the largest donor to the Trust Fund. The Ministry of Foreign Affairs aimed to support victims of THB in vulnerable conditions during the Covid-19 pandemic. The Ministry expects that NGOs could implement projects funded by the Trust Fund in Tunisia and Congo.
- Some municipalities have also launched the UN Blue Heart Campaign ([BHC](#)), which aims at fighting THB and its impact on society.
- The Greta/CoE [Recommendation CP\(2018\)4](#) on the implementation of the Convention on Action against THB by Belgium, mentions several good practices of Belgium: **a)** the Belgian legal framework has increased penalties and expanded the list of aggravating circumstances. **b)** Representatives of the three NGOs running specialised centres for victims participate in the Inter-departmental Unit for Action against THB. **c)** The role of MYRIA as national rapporteur and the detailed information of its yearly reports. **d)** The capacity building programmes and the efforts to achieve a consistent criminal policy response to THB. **e)** The progress in financial investigations, judicial sanctions and the strong engagement with international cooperation, cooperation

<sup>95</sup> Cf. The New York Declaration for Refugees and Migrants

<sup>96</sup> Directive 2014/66/EU of the EP and of the Council of 15/5/2014. OJ L 157, 27.5.2014

between public bodies and with non-state actors.

### A.7.3 Key outcomes or gaps for the implementation of the UNGPs

Despite the effectiveness of mechanisms implemented by Belgium, there are still many gaps:

- Belgium has not signed the UN Convention on the protection of the rights of all migrant workers and members of their families.
- Belgium has not ratified the Convention against trafficking in human organs (CoE, CETS 216).
- The EU Employers' Sanctions Directive on third-country national workers without legal residence,<sup>97</sup> recognises their right to recover payments of wages owed by their employer even by lodging a lawsuit. Myria flags that the possibility that Myria or other Civil Society Organisations (CSOs) represent workers and employers, should be attributed by a RD that has not been adopted yet<sup>98</sup>.
- Myria also flags that the amendment to the Social Criminal Code in 2016, punishes with administrative fines persons working illegally, which prevent them to recover wages and disregards the principle of non-criminalization of victims. Workers in irregular situations cannot lodge a complaint with the police or the social inspectorate because they fear arrest or detention. Unia and Myria recommend authorising migrants in an irregular situation to lodge a complaint as victims.<sup>99</sup>
- The EU and the national regulatory and policy framework are highly sophisticated and have positive results. However, THB and modern slavery in the value chains of EU businesses operating outside the EU have not received the same attention, except for the EU policies mentioned above and concrete cooperation agreements.
- The [Recommendation CP\(2018\)4](#) Greta/CoE recommended Belgium to develop solid statistics on crime and to pay attention to migrant children. It also recommended to better support victims by providing adequate guidance, economic support, and information to claim their rights. Some empirical research found that in Belgium, victims of labour exploitation could rarely seek compensation from a public organisation even if they are recognised as victims of THB.

## A.8 Anti-discrimination

### A.8.1 Why is this a key issue in Belgium?

Discrimination is a salient human rights risk in Belgium. Belgium has two centres specialised in the fight against discrimination: The Inter-Federal Centre for Equal Opportunities ([UNIA](#)), restructured in 2013, has competences at the federal and subnational level to combat discrimination. UNIA promotes and defends an equal-opportunities policy and non-discrimination in areas such as employment, housing, education, welfare, etc. The Gender Equality Institute only deals with the promotion of equality between women and men and combat gender discrimination, at the federal level. Both institutions actively promote the development of mechanisms to avoid future abuses by means of policy recommendations. Although discrimination is mainly linked to the labour sector, it is also a salient human rights risk in other sectors and victims are always vulnerable or marginalised communities.

*Table 11: Parameters to evaluate progress since the adoption of the B-NAP*

The <b>NAP</b> (2017) did not include any concrete action regarding the fight against discrimination.
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### A.8.2 Progress since the adoption of the B-NAP

<sup>97</sup> Consolidated text: Directive 2009/52/EC of the EP and of the Council of 18/6/ 2009 on minimum standards on sanctions and measures against employers of illegally staying third-country nationals. OJ L 168, 30.6.2009.

<sup>98</sup> [Myria: 2019](#) Annual report trafficking and smuggling of human beings.

<sup>99</sup> [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium.



This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or underway) are the following:

- Law of 5/5/2019 amended the Criminal Code seeking to promote alternative measures when dealing with crime inspired by racism or xenophobia and to better combat recidivism with regard to discrimination.
- Law of 15/01/2018 authorises social controllers to use "mystery" calls and situation tests (false CVs) to check that employers do not contravene the anti-discrimination law.

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- The programme of the federal government listed the guarantee of equal opportunities and the fight against discrimination as a central cross-cutting policy on diversity. It proposes to create an inter-federal plan of action against racism, intolerance, and all forms of discrimination with relevant stakeholders, according to anti-discrimination and anti-racism legislation. The federal government also committed to monitor diversity and discrimination by sector, to improve the existing discrimination tests conducted by the social inspectorate (based on a substantiated complaint, a datamining exercise or an objective index) and to ensure that UNIA continues as an independent institution responsible for combating discrimination.<sup>100</sup>
- In 2017, the **commission of experts** (Tulkens and Bossuyt 2017) assessed federal laws on anti-discrimination, racism and gender discrimination and released their [recommendations](#). A final report will be released in 2021. UNIA proposed its own [evaluation report on Law on anti-racism and anti-discrimination](#) and formulated 27 recommendations presented to the Parliament on 31/1/2018<sup>101</sup>.

### A.8.3 Key outcomes or gaps for the implementation of the UNGPs

- The CESCR highlighted the establishment of the Commission for the evaluation of federal anti-discrimination legislation but expressed concerns because the 33 recommendations of the first report have not been duly implemented.<sup>102</sup>
- Other UN treaty bodies have also raised concerns and recommended structural reforms to redress the situation,<sup>103</sup> **a)** The CESCR and the Committee on the elimination of discrimination against women flagged that Belgium needs to reduce the gender wage gap, to enforce policies for gender equality, to eliminate occupational segregation and discrimination based on pregnancy and motherhood. **b)** The Committee on the elimination of racial discrimination also pointed that Belgium should correct structural discrimination against migrants by implementing measures, investigating racial discrimination in employment and by guaranteeing remedy to victims. **c)** The Committee on the rights of persons with disabilities flagged that the government has not reached employment targets, which results in the non-protection of their right to employment.
- The [Monitoring socioéconomique 2019](#),<sup>104</sup> also reported that people of foreign origin are the most excluded from the Belgian labour market and that this gap would take decades to be filled. In 2020, the EU,<sup>105</sup> reported that discrimination based on origin is worse in Belgium than in

<sup>100</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#) page 72-3.

<sup>101</sup> *Chambre des représentants de Belgique, Evaluation des lois anti-discrimination du 10 mai 2007 – Rapport fait au nom des commissions réunie de la Justice et de la Santé Publique, de l'Environnement et du Renouveau de la Société, DOC 54) 2117/001, 2017-18.* Quoted by [UNIA and Myria \(2020\)](#) Parallel report to the fifth Periodic report of Belgium.

<sup>102</sup> CESCR Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

<sup>103</sup> Cf. UN GA Human Rights Council A/HRC/WG.6/24/BEL/3 of 6/11/2015, Working Group, 24<sup>th</sup> session 18-29/01/ 2016, and A/HRC/WG.6/24/BEL/2 of 23/11/ 2015.

<sup>104</sup> [Monitoring socioéconomique 2019](#): Marché du travail et origine. Service public fédéral Emploi, Travail et Concertation sociale et Unia

<sup>105</sup> EC staff working document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}

neighbouring countries.<sup>106</sup> It also reported that measures adopted in Flanders prevent integration of migrants in the labour market, as the newly arrived have to pay for the integration courses and their access to certain allowances or social housing is restricted. In contrast, Wallonia and Brussels support migrants by training programmes and other specific policies. The employment rate of people with disabilities also remains below the EU average.

- The Belgian Constitution (BC) still reserves employment in the public service to Belgians (BC Art.10) with an exception for EU citizens for employment not linked to public sovereignty,<sup>107</sup> which restricts the integration of migrants.<sup>108</sup>
- UNIA and MYRIA,<sup>109</sup> reported discrimination in the housing market, and that some policies, particularly in Brussels, do not comply with international standards.
- Belgian authorities need to tackle discrimination of marginalised groups, as the measures adopted have not resulted in clear improvements. In addition, the NBA team did not find publicly available information on the fights against discrimination in the Belgian value chains.

## A.9 Environmental protection

### A.9.1 Why is this a key issue in Belgium?

Although the UNGPs do not emphasise the relevance of environmental protection, both the revised draft treaty (2020) and the draft EU Directive (2020) provides for the obligation of states to respect and protect human rights and the environment. Environmental protection is also an area where the EU and member states share competences.<sup>110</sup> Although the EU mainly sought to prevent environmental damage that affects ecological, chemical, water resources,<sup>111</sup> land and human health, species and natural habitats,<sup>112</sup> and the deliberate release of genetically modified organisms,<sup>113</sup> the Green Deal is shaping a new agenda. The European Green Deal provides an [action plan](#) seeking efficient use of resources by strongly promoting a circular economy, preservation of biodiversity and reduction in pollution. The ambition to be climate neutral by 2050 has been formulated in the proposed [European Climate Law](#) in order to translate voluntary initiatives into binding norms. The distribution of competences among federal and subnational governments regarding the duty to protect the environment and actual or potential victims of environmental damage is highly complex in Belgium. The BC (Art.7) incorporated the principle of sustainable development as one of the main objectives of public policies at all levels of government.

Table 12: Parameters to evaluate progress since the adoption of the B-NAP

The <b>B-NAP</b> did not include any concrete action regarding environmental protection.
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<sup>106</sup> The cited EU report indicated that in 2018 the employment rate among non-EU born was higher than in 2017 (53.9%), particularly in Flanders (+5%points). However, non-EU born women are more affected as their employment rate accounts only for (44.9%), which is 23.8% points lower than that for EU born women. Native-born with foreign-born parents also face discrimination.

<sup>107</sup> Cf. TFEU Arts. 18 and 45.

<sup>108</sup> In 2018, the employment rate of people with disabilities (20-64) was 31.6%, ranging between 46% in Flanders and 31.1% in Brussels. Cf. EC staff working document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}.

<sup>109</sup> [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium

<sup>110</sup> The TFEU (Art. 114) requires the EU to assure a high level of protection to health, safety, environmental and consumer protection based on scientific facts. The EU charter protects the rights to a healthy environment.

<sup>111</sup> Cf. the Water Framework Directive (2000/60/EC) of the EP and of the Council on the framework for Community action in the field of water policy (OJ L327/1 of 23.10.20009). Directive 2008/105/EC of the EP and of the Council on environmental quality standards in the field of water policy (OJ L 348/84 of 24.12.2008). EU Directive 2006/118/ of the EP and of the Council on the protection of groundwater against pollution and deterioration (OJ L 372/19 of 27.12.2006).

<sup>112</sup> EU Directive 2009/147/ of the EP and of the Council of 30/11/2009 on the conservation of wild birds (OJ L 20, 26.1.2010).

<sup>113</sup> EU Directive 2001/18/ of the EP and of the Council of 12/3/2001 (OJ L 106 of 17/04/2001).

## A.9.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- Law of 30/6/2017 approved the Minamata Convention on Mercury.
- Law of 6/3/2018 approved the amendment of the Montreal Protocol on Substances that Deplete the Ozone Layer.
- A series of laws dealt with the management of the risks of nuclear power stations.<sup>114</sup>
- Law of 15/6/ 2018 contains the cooperation agreement between the federal state and the regions on the sharing of Belgian climate and energy objectives (2013-2020) and on the implementation of Regulation (EC) on the voluntary participation by organisations in a community eco-management and audit scheme (EMAS).<sup>115</sup>
- The EU Circular Economy Action Plan (2015) resulted in five EU Directives on the circular economy. Belgium has transposed two (EU Directives on waste,<sup>116</sup> transposed by Wallonia and Flanders, and on packaging and packaging waste,<sup>117</sup> transposed by the three regions). Belgium still has to transpose three Directives (EU Directive on batteries, accumulators and waste, and electrical and electronic equipment,<sup>118</sup> EU Directive on the landfill of waste,<sup>119</sup> and Directive on port reception facilities for the delivery of waste from ships<sup>120</sup>).

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- EU Country report of 2020,<sup>121</sup> highlighted that Belgium has launched several initiatives in green financing and adopted a wide range of tools that raise awareness, promote, and systematise green public procurement at the federal and regional levels.
- The federal government programme committed to fight ecocide.<sup>122</sup>
- Belgium has committed to phase out nuclear energy by 2025. On 03/2018, the Inter-federal Energy Pact set out a longer-term vision on Belgian energy transition to comply with the Regulation (EU)<sup>123</sup> on the governance of the energy Union and climate action. The EC recommended that the integrated national energy and climate plan guides investment on decarbonisation and energy.<sup>124</sup>
- The Flemish government plan 2019-2024, seeks to the Common Agricultural Policy (CAP) to promote circular agriculture and ecological programmes and commits to reduce nitrate and

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<sup>114</sup> Law of 19/4/2018, Law of 6/12/2018, Law of 5 /4/ 2019, Law of 22/4/2019 and Law of 5 /4/ 2019 aimed at protecting citizens and the environment against the dangers resulting from ionising radiation. Law of 3/10/2019 regulated competences of the Federal Agency for Nuclear Control and approved the Agreement between Belgium and Luxembourg on the management and final disposal of radioactive waste.

<sup>115</sup> Regulation (EC) No 1221/2009 of the EP and of the Council of 25/11/ 2009

<sup>116</sup> Directive (EU) 2018/851 of the EP and of the Council of 30/5/2018 OJ L 150, 14.6.2018

<sup>117</sup> Directive (EU) 2018/852 of the EP and of the Council of 30/5/2018 OJ L 150, 14.6.2018

<sup>118</sup> Directive (EU) 2018/849 of the EP and of the Council of 30/5/ 2018 OJ L 150, 14.6.2018

<sup>119</sup> Directive (EU) 2018/850 of the EP and of the Council of 30/5/ 2018 OJ L 150, 14.6.2018

<sup>120</sup> Directive (EU) 2019/883 of the EP and the Council of 17/4/2019 OJ L 151, 7/6/2019.

<sup>121</sup> EC staff working document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}

<sup>122</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#) page 78.

<sup>123</sup> Regulation (EU) 2018/1999 of the EP and of the Council of 11/12/ 2018 OJ L 328, 21.12.2018.

<sup>124</sup> EC staff working document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}

phosphate concentrations in ground waters and rivers.<sup>125</sup>

### A.9.3 Key outcomes or gaps for the implementation of the UNGPs

- Although Belgium has ratified most of the international conventions seeking to protect the environment, there are still some key conventions that have not been ratified:
  - Convention on civil liability for damage resulting from activities dangerous to the Environment (CoE ETS 150).
  - UNECE Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters to the Convention on the protection and use of transboundary watercourses and international lakes and to the Convention on the transboundary effects of industrial accidents.
  - Basel Protocol on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal.
  - The Protocol on strategic environmental assessment to the ESPOO Convention on environmental impact assessment in a transboundary context.
- In 2020, the CESCR welcomed the adoption of a national climate change adaptation plan. However, it flagged that Belgium would not reduce greenhouse gas emissions by 15% by 2020 and by 35% by 2030, compared to the levels of 2005.
- The CESCR celebrated that Belgium finances international funds (e.g. the Least Developed Countries Fund and the Adaptation Fund) and supports mitigation and adaptation activities in recipient countries. However, the CESCR flagged that Belgium has not reached the 0.7% target for official development assistance over gross national income.<sup>126</sup>
- The CESCR considered that Belgian policy that supports large-scale cultivation of agrofuels by Belgian firms in third countries can affect local farmers. It recommended Belgian authorities to conduct a human rights impact assessment (HRIA) to prevent negative impacts on the rights of local communities.<sup>127</sup> The [opinion](#) of the Advisory Council on Policy Coherence for Development considered that the European and Belgian policymaking on biofuels in transport, the Belgium's National Energy-Climate Plan 2021-2030 and the Directive on the promotion of the use of energy from renewable sources,<sup>128</sup> are not sustainable for third countries. In fact, biofuel production can have negative environmental and social impacts and affect the right to food.
- Deep-sea mining represents a major challenge. As Belgium is the sponsor state of the [Global Sea Mineral Resources](#), it is important to consider the Greenpeace report,<sup>129</sup> that advocates for the sustainable deep sea mining in line with the EP Resolution.<sup>130</sup>

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<sup>125</sup> COMMISSION STAFF WORKING DOCUMENT [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}

<sup>126</sup> CESCR Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

<sup>127</sup> Cf. UN GA Human Rights Council A/HRC/WG.6/24/BEL/3 of 6/11/2015, Working Group, 24<sup>th</sup> session 18-29/01/2016, and A/HRC/WG.6/24/BEL/2 of 23/11/2015.

<sup>128</sup> Directive (EU) 2018/2001 of the EP and of the Council of 11/12/2018. OJ L 328, 21.12.2018. R.D. of 4/5/2018 *set the target of 8.5% (energy) of sustainable biofuels in Belgian transport by 2020, with a ceiling of 7% for first-generation biofuels*, i.e. this represents an increase of 27% over the 2017 consumption level. Flanders and Wallonia have also transposed the directive.

<sup>129</sup> Greenpeace (2019) [IN DEEP WATER](#): The emerging threat of deep-sea mining.

<sup>130</sup> EP resolution of 16/1/2018 on international ocean governance: an agenda for the future of our oceans in the context of the 2030 SDGs (2017/2055(INI))

- EU Country report of 2020,<sup>131</sup> made the following observations:
  - Regarding circular economy, Belgium performs well as regards waste management, and has already reached the EU's 2020 municipal waste recycling target. However, Brussels region needs to improve waste management (43% in 2017 versus 70% in Flanders and Wallonia).
  - Regarding greenhouse gas emissions, Belgium needs to improve with respect to energy-intensive industries, the petrochemical industry around Antwerp, and traditional industries in Wallonia.
  - Belgium needs to improve in other sectors producing important non-emissions trade system (ETS) greenhouse emissions such as construction (30%) and transport (35%).
  - Belgium spends more on fossil fuel subsidies than on sustainable energy subsidies.
  - Land is under intense pressure in Belgium. It had the second most fragmented landscape in the EU in 2015. There is also a small Natura 2000 network. In addition, the Flemish Government Agreement 2019-24 did not continue with the “*betonstop*” initiative.<sup>132</sup>
- In 2019, the EC initiated infringements procedures and/or issued notices against Belgium for late transposition of EU Directives.<sup>133</sup> 10 out of the 22 new cases of infringements referred to environmental issues. In 2020, two infringements were reported:
  - In 7/2020, the EC, based on a judgement of the CJEU, required Belgium to ensure that national rules allow for the imposition of liability on all categories of persons mentioned in the EU Directive regarding prevention and remediation of environmental damage.<sup>134</sup>
  - On 2/7/2020, [The EC urged Belgium to comply with the EU's Directive](#)<sup>135</sup> on the protection of waters against pollution caused by nitrates from agricultural sources. It aims at protecting ground and surface waters and at promoting the use of good farming practices.<sup>136</sup> The EC flagged that average concentrations of phosphates in Belgian rivers are the highest in the EU.

## A.10 Trade and investment (including portfolio investments)

### A.10.1 Why is this a key issue in Belgium?

This area is also highly dependent on EU law and policies,<sup>137</sup> such as the decision to include human rights and sustainable development clauses in the trade and investment agreements and to conduct [sustainability impact assessments](#) of EU trade and investment agreements. Since 2017, the EU has concluded some trade and investment agreements with the following countries:

Singapore (in force since 22/7/2020). The CJEU held for the first time that sustainable development is an integral part of the common commercial policy of the EU.<sup>138</sup> Therefore, trade liberalisation is conditional on the compliance with international obligations concerning social and environmental

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<sup>131</sup> EC staff working document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final}

<sup>132</sup> Cf. [Flemish Government Agreement](#), p. 216 quoted by EC staff working document [Country Report Belgium 2020](#). Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final} p.71.

<sup>133</sup> EC Monitoring the Application of European Union Law [2019](#) Annual Report- Belgium.

<sup>134</sup> Directive 2004/35/CE of the EP and the Council of 21/4/2004 OJ L 143, 30.4.2004

<sup>135</sup> [Directive 91/676/EEC](#) of 12/12/1991 (OJ L 375, 31.12.1991).

<sup>136</sup> This Directive is part of the [Water Framework Directive](#). Cf. CJEU Case C-197/18 of 3/10/2019 (Preliminary ruling from the Verwaltungsgericht Wien — Austria) — Proceedings brought by Wasserleitungsverband Nördliches Burgenland, Robert Prandl, Gemeinde Zillingdorf

<sup>137</sup> The TFEU (Art. 207) stipulates that the common commercial policy covers commercial aspects of intellectual property rights (IPR), foreign direct investment (FDI) and are part of the EU external action.

<sup>138</sup> Cf. CJEU. [Opinion 2/15](#) of 16 /5/ 2017

protection. The CJEU also clarified that non-direct foreign investment ('portfolio' investments) and the dispute settlement between investors and states is a shared competence between the EU and the member states.

Vietnam (in force since 1/8/2020). This agreement also foresees sustainable development clauses that require Vietnam to comply with international environmental and labour standards and to apply CSR standards.

In contrast, the EU Interim Economic Partnership Agreement,<sup>139</sup> concluded by the EU with Ghana and Ivory Coast (both in force since 22/7/2020) does not foresee any human right or sustainable development clause. Development issues only refer to supporting productive sectors; improving business climate; financial and fiscal adjustment; implementing trade rules and customs procedure.<sup>140</sup>

Table 13: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Action 17) refers to the commitment of Belgium to advocate a stronger integration of sustainable development (including human rights) into free trade agreements.

### A.10.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- The EU Regulation on sustainability-related disclosures in the financial services sector requires asset managers and investment funds to disclose sustainable investments and sustainability risks.<sup>141</sup> This regulation is part of the EC [Action Plan for Sustainable Finance](#) aimed at integrating environmental, social and governance ("ESG") issues in its financial policy framework. The entities that provide investment management and advisory services to clients and asset managers, are the target of this regulation. The Regulation also added requirements for some *ESG-focused funds* (*ESG-labelled investment funds; Sustainable investment funds; and Carbon reduction investment funds*). Assets managers therefore must disclose this information on their website, in the pre-contractual disclosures and in the annual report.
- The EU Regulation<sup>142</sup> on the establishment of a framework to facilitate sustainable investment, the EU Taxonomy Regulation, established a list of environmentally sustainable economic activities and required minimum safeguards from economic actors to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UNGPs, and ILO core conventions and the International Bill of Human Rights.
- Belgium played a central role in the ratification of the Canada-EU trade agreement (CETA) in force since 27/7/2018. It requested the opinion of the CJEU on the compatibility of the dispute settlement mechanisms (DSM) with EU primary law. Wallonia considered that it affected the exclusive jurisdiction of the CJEU regarding the interpretation of EU law. The CJEU Opinion argued that the CETA DSM does not question the sovereignty of member states to protect the public order, public safety, public morals, health and life, food safety, the environment, welfare at work, product safety, consumer protection or fundamental rights.<sup>143</sup> Therefore, the CJEU held that CETA does not undermine the effectiveness of EU law.

The main **policies, programmes and processes** adopted in line with the UNGPs are as follows:

- The programme of the federal government committed to contribute to the creation of a multilateral investment tribunal that respects international environmental, social and human rights standards and includes clauses in trade and investment agreements that create

<sup>139</sup> They were concluded in the framework of the Cotonou agreements, awaiting the conclusion of a regional agreement with West Africa.

<sup>140</sup> Cf. EC (16/2/2017) Interim Economic Partnership Agreement between Ghana and the EU-Factsheet.

<sup>141</sup> Regulation (EU) 2019/2088 of The EP and of the Council of 27/11/ 2019 O.J. 317 of 9/12/2019.

<sup>142</sup> Regulation (EU) 2020/852 of the EP and of the Council of 18/6/2020, O.J. 198, 22/6/2020.

<sup>143</sup> CJEU 1/17 of 30/4/2019.

independent DSM in accordance with the rule of law. It also committed to actively negotiate the treaty on business and human rights and to undertake a leading role in the development of an EU mandatory legislative framework on due diligence and to put in place a national support framework for this purpose.<sup>144</sup>

- The development cooperation agency and the Trade for Development Centre (TDC) are implementing several programmes on fair trade in developing countries.
- The [EP Report](#) (2018),<sup>145</sup> on violation of the rights of indigenous peoples in the world, including land grabbing, sought to connect EU trade and investment activities with the protection of indigenous communities in third countries. The EP requested the EU, the member states and their partners, to recognise, protect and promote the rights of indigenous peoples, including their lands and to take the following actions:
  - To uphold the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
  - To ensure that trade and investment policies and agreements respect the human rights of indigenous peoples according to international human rights standards, particularly with the ILO Convention No. 169 that needs to be ratified by EU member states.
  - To support the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018) which protects food sovereignty and biodiversity and supports the fight against climate change.
  - To support the International Criminal Court (ICC) announcement (2016) that land grabbing and environmental destruction are the root causes of many human rights violations and may precipitate charges of crimes against humanity. Therefore, EU and member states should fight land grabbing in their trade and investment activities. The programme of the federal government committed to fight ecocide.<sup>146</sup>
  - To adopt and support the FAO [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#), and to actively sign forest law enforcement, governance and trade voluntary partnership agreements (VPAs) and to ensure compliance with the Timber Regulation to fight deforestation (cf. CAHRAs).
  - To fulfil its extraterritorial duties related to human rights and legislate to prevent and sanction extraterritorial violations of the rights of indigenous peoples and of local communities.
  - The EU external action needs to develop operational tools to provide guidance for staff in EU delegations to consider indigenous peoples' rights when negotiating trade, cooperation, and development agreements.
- In Belgium, investment abuses in former colonies have also been reported (Peemans 2014). In 2020, the Federal Parliament approved a proposal to set up a parliamentary commission to examine Belgium's colonial past, principally in Congo,<sup>147</sup> that would also cover economic activities in the former colonies.

### A.10.3 Concrete outcomes or gaps for the implementation of the UNGPs

- Belgium has not ratified the ILO Convention 169 as is the case with most of the EU member states. Despite the recommendation of the EP to support the adoption of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018), practically all EU member states (including Belgium) have [abstained](#).
- No concrete and systematic policies are publicly available with respect to the implementation of

<sup>144</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#) page. 76.

<sup>145</sup> The [EP Report](#) (2018) A8-0194/2018 29.5.2018 (2017/2206(INI)) Committee on Foreign Affairs. Rapporteur: F. Assis

<sup>146</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#) page. 78.

<sup>147</sup> Cf. The Brussels times ([17/6/2020](#)).

the B-NAP.<sup>148</sup>

- Some Belgian NGOs such as [FIAN Belgium](#) reported land grabbing activities of Belgian businesses in countries such as Sierra Leone or Indonesia. Neither the EU nor Belgium have adopted any measure regarding the prohibition of land grabbing in their trade and investment agreements.
- Other concerns relate to the protection of biodiversity, forests,<sup>149</sup> and food security threatened by IPR clauses incorporated into the trade and investment agreements of the EU.
- The NBA team has not found publicly available information on measures adopted to provide reinforced protection to vulnerable or marginalised groups in the framework of trade and investment.
- The NBA team has not found publicly available information on measures regarding the implementation of the UNGPs in the value chains where Belgian corporate groups are active.
- Belgium needs to conduct HRIA when supporting Belgian companies initiating formal claims against developing countries. These assessments are crucial to avoid that they lose their policy space to protect their citizens or the environment or that these lawsuits cause negative impacts. This is particularly the case of investor state dispute settlement processes. Since 1994, Belgian companies have triggered these mechanisms in 19 cases of which 13 were against developing countries and more specifically 7 against African countries<sup>150</sup>. Actions initiated in the framework of the WTO dispute settlement body also need an impact assessment when the claim involves developing countries, for the same reasons<sup>151</sup>.
- Since 19/2/2019 Belgium is among the 13 countries and regions that have been accepted at the board of governors meeting to become members of the Asian Infrastructure Investment Bank (AIIB). Some activities of this investment bank have been considered as not coherent with other commitments related to the UNGPs because the AIIB is not committed to making investment compatible with human rights or sustainable development.

## A.11 Anti-bribery and corruption measures

### A.11.1 Why is this a key issue in Belgium?

Anti-bribery and corruption are not regulated by international human rights standards, nor do they provide for concrete remedies. The relevance of this area for the implementation of the UNGPs relies on the fact that they are serious obstacles for the implementation of measures that protect human rights and for granting effective access to justice (Cf. Pillar III). Actions such as bribery, money-laundering and tax evasion, arrangements between private and public sectors in public procurement or export promotion activities, etc., obstruct the implementation of the UNGPs. Several international standards refer to the relation between fighting corruption and protecting human rights.<sup>152</sup> The UN High Commissioner for Human Rights,<sup>153</sup> and the UN Special Rapporteur on the independence of judges and lawyers,<sup>154</sup> reiterate that the UN Guidelines on the Role of Prosecutors and the UN Convention against Corruption are the main international frameworks to combat corruption and address its impact on human rights.

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<sup>148</sup> The Ministry of foreign affairs response to the NBA team question was that the government is committed to this action, but that there is no concrete activity in this respect.

<sup>149</sup> Cf. EP (4.7.2018), Report on transparent and accountable management of natural resources in developing countries the case of forests ([2018/2003\(INI\)](#)) Rapporteur: Heidi Hautala.

<sup>150</sup> Cf. UNCTAD [Investment Dispute Settlement Navigator](#).

<sup>151</sup> E.g. On 15/11/2019, the EU requested consultations with Colombia at the [WTO](#) regarding the anti-dumping duties imposed by Colombia on imports of potatoes, prepared or preserved, frozen originating in Belgium, the Netherlands and Germany. Colombia claims that the prices of these products are artificially below the prices on the market; these imports have strongly [affected peasants](#) who are obliged to give away their potatoes for free.

<sup>152</sup> Cf. UN Global compact, UNGPs, OECD guidelines, etc.

<sup>153</sup> Cf. UN GA Resolution A/HRC/44/27 of 21/4/ 2020

<sup>154</sup> UNGA A/HRC/44/47 of 23/3/2020 on Independence of judges and lawyers.



Belgium has ratified the relevant conventions,<sup>155</sup> and has adopted the main EU anti-corruption policies dealing with organised crime, tax deductibility of bribes, the regulation of public procurement, accounting and auditing, and external aid and assistance. The Transparency International's Corruption Perceptions Index (2020) reported that eight of the top ten most transparent countries are European. Belgium, however, appears in the 17<sup>th</sup> place out of 180 countries. In the indicators of the World Justice Project of 2020, Belgium is ranked 10<sup>th</sup> out of 24 in the region and 15<sup>th</sup> out of 37 among high-level income countries. The report of the World Justice Project on the rule of law (2020) assesses institutional aspects related to the implementation of the UNGPs,<sup>156</sup> and in general Belgium shows an average score among countries in the region and among high income countries.<sup>157</sup>

Table 14: Parameters to evaluate progress since the adoption of the B-NAP

**The B-NAP** (Action 27) committed, via the Ministry of Foreign Affairs, to raise awareness about corruption among Belgian companies and to strengthen Belgian commitments on corruption.

### A.11.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or in course) are the following:

- Law of 18/9/2017 transposed Directive (EU),<sup>158</sup> on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. Law of 5/5/2019 amended the Code of Criminal Procedure to improve the exchange and circulation of information among competent authorities for combating money laundering (e.g. the public prosecutor, financial institutions, and the National Bank of Belgium (NBB)). Law of 8/7/2018 regulated the organisation of a central [contact point](#) for financial accounts and contracts and extended access to the central file of notices of seizure, delegation, transfer, collective settlement of debts and recourse.
- Law of 15/7/ 2018 created a Federal Ethics Commission with a view to inserting the Code of Ethics for Public Officials.
- Law of 11/2/2019 regulated aspects on fiscal, anti-fraud and related financial provisions.
- Law of 8/5/2019 reformed the regime on reporting of a suspected breach of integrity within a federal administrative authority by a member of its staff.

The main **policies, programmes and processes** adopted in line with the UNGPs are as follows:

- The Belgian Financial Intelligence Processing Unit (CTIF-CFI) ([2019](#)) reported concrete results in the fight against social fraud with the cooperation of the Social Intelligence and Investigation Service [SIRS-SIOD]. The unit could also tackle high-risk business transactions or business partnerships, such as transactions between companies and government authorities or transactions involving third parties (agents/intermediaries) in the construction or infrastructure sectors.
- The Belgian OECD NCP and the Ministry of Justice released an [Anticorruption guide for Belgian businesses abroad](#) (2017).
- Belgium has also concluded cross border cooperation agreements, mainly in the framework of the CoE.<sup>159</sup>

<sup>155</sup> Cf. the OECD Anti-Bribery Convention (1997), the UN Convention against Corruption (2008), the Criminal Law Convention on Corruption (CoE ETS 173). The Civil Law Convention on Corruption (CoE ETS 174); and the additional Protocol to the Criminal Law Convention on Corruption (CoE ETS 191).

<sup>156</sup> E.g. constraint of government powers (i.e. how powers are bound by law), absence of corruption, openness of government (i.e. the level of information sharing, empowerment of people to hold the government accountable, and citizen participation in public policy deliberations), respect for fundamental rights (in accordance with the UN Universal Declaration of Human Rights), courts performance in civil and criminal matters.

<sup>157</sup> Cf. The [World Justice Project Rule of Law Index 2020](#).

<sup>158</sup> Directive (EU) 2015/849 of the EP and of the Council of 20/5/ 2015. OJ L 141, 5.6.2015

<sup>159</sup> Cf. [GLI: Global Legal Insights](#).

- In [2019, Belgium](#) and the UN Office on Drugs and Crime (UNODC) signed a funding agreement of two million euros to combat corruption and wildlife crime in Africa, with a focus on the DRC (Virunga Park), Uganda, Chad and Cameroon.

### A.11.3 Key outcomes or gaps for the implementation of the UNGPs

- Besides the booklet published by the OECD NCP and the Ministry of justice (the [Anticorruption guide for Belgian businesses abroad](#) (2017), the NBA team did not find other policy commitments to tackle corruption and bribery in the value chain. This booklet is not an online tool and therefore, it is not periodically updated.
- In 7/2020 the EC referred Belgium to the CJEU, with a request for financial sanctions, for failing to fully transpose the Anti-Money Laundering Directive into its national law. The incomplete transposition concerns the mechanisms under which the Financial Intelligence Units exchange documents and information.<sup>160</sup>
- The CoE GRECO report for Belgium (2019),<sup>161</sup> identified important gaps, **a)** integrity rules do not apply to senior political figures in the executive branch of government; **b)** No integrity policy or code of conduct apply to ministers either, and the recruitment and remuneration of members of their private offices/strategic bodies are entirely discretionary; **c)** No rules forbid incompatible activities, conflicts of interest and gifts in relations with third parties; **d)** Although Law 5/7/2018 adopted a Code of Ethics for Public Officials, it only applies at the federal level; **e)** The federal police departments responsible for preventing and combating corruption, lack resources, which affect the role of the central anti-corruption office that investigates corruption in public procurement, grants, permits and consent to third party transactions. The CoE GRECO considers that this office should release periodical reports to increase transparency.
- The UNODC (2017),<sup>162</sup> recognises the efforts of Belgium in fighting corruption and bribery but also pointed to some pending issues, **a)** the participation of the private sector in bribery is not tackled in the same way as the role of public officers; **b)** Trading influence is only partially criminalised because it excludes the private sector or the private sphere; **c)** Belgium has not tackled the existing anti-corruption framework on gifts for public offices, penalised trading influence in the private sector and illicit enrichment and removed the limitation of the scope of bribery in the private sector; **d)** Although Belgium ratified the Criminal Law Convention on Corruption (CoE ETS 173), it made a reservation on the duty to criminalise intentional active and passive bribery in the private sector during business activity and on trading in influence; **e)** Belgium needs to ensure transparency, predictability and proportionality when entering into plea bargains and out-of-court settlements in criminal matters.
- The [EC Flash Eurobarometer on business attitudes towards corruption 482/2019](#) showed that businesses found that corruption in Belgium is mainly visible in the following conducts: favouring friends and/or family members in business, and offering a gift or trip in exchange for a service. In general, Belgium scores clearly below average in the EU, except for concrete issues such as close links between business and politics. Most of the consulted companies did not participate in public tenders in Belgium and the non-participation increased from 2017 to 2019. When asked whether corruption prevented them from winning public tenders, 38% responded affirmatively. This percentage increased by 17 points between 2017 and 2019. Moreover, 48% of companies think that public procurement is tailor-made. They also consider that they would have 53% chance of not being prosecuted for corruption.

<sup>160</sup> Cf. [press release](#).

<sup>161</sup> Cf. [GrecoEval5Rep\(2019\)](#) 3 Fifth Evaluation Round: Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies Evaluation Report Belgium

<sup>162</sup> [UNDOC Country Review Report](#) (22/8/2017) of Belgium Review by Mexico and the Netherlands of the implementation by Belgium of articles 15 - 42 of Chapter III. "Criminalization and law enforcement" and articles 44 - 50 of Chapter IV. "International cooperation" of the UN Convention against Corruption for the review cycle 2010 - 2015

- The Rule of Law report of the EU (2020),<sup>163</sup> acknowledges that Belgium has the needed legal and institutional framework to fight corruption, but the coordination among all levels of the government is not clear and the fragmentation complicates action against corruption and bribery. Moreover, Belgium has not adopted concrete rules to protect whistle-blowers although freedom of expression and the press enjoy good levels of protection.
- The NBA team did not find any measures seeking to provide reinforced protection to vulnerable or marginalised groups of victims of corruption.

#### Reported cases:

- The Belgian Financial Intelligence Processing Unit (CTIF-CFI) (2019) reported the following actions of Belgian authorities:
  - a. An increasing number of files against Brazilian or Portuguese nationals that create companies in Belgium (mainly in the cleaning sector) and employ undeclared workers violating norms of the National Social Security Office and the Limosa register.
  - b. Identification of financial transactions of Belgian construction companies managed by Brazilians.
  - c. Prosecution of cross-border social fraud against Belgian companies with Turkish-Bulgarian networks in the sectors of agriculture, meat processing, transport, construction, and cleaning. They transfer money to subcontractors (Belgian companies managed by Turkish or Bulgarian nationals).
  - d. Reported cases in the diamond sector sent to judicial authorities because of serious indications of money laundering related to serious fiscal fraud.
- Lawsuits for fiscal fraud were initiated against [Socfin](#) in Belgium but the chamber of the court of appeal acquitted it in 2018.
- Belgian authorities are investigating whether senior executives at [Deme](#) paid bribes to secure a contract at a port on Russia's Arctic coastline, according to US court filings. The NBA team has not found recent outcomes of this file.

## A.12 Consumer protection

### A.12.1 Why is this a key issue in Belgium?

Consumer protection is also a shared competence between the EU and member states.<sup>164</sup> Therefore, part of the assessment relies on how Belgium complies with EU law. In the framework of the UNGPs, according to the Belgian Code of Economic Law ([Art. VI.97](#)), if companies announce policies on their website or in their reports that do not correspond to reality, it could be considered as a misleading commercial practice. However, injunctions available to protect consumers and competitors cannot be used to claim human rights remedies for other victims (cf. Pillar III).

Table 15: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not include any action with respect to consumer protection.

### A.12.2 Progress since the adoption of the NAP (2017)

This section presents the main structural reforms, policies (processes and programmes) adopted in crucial areas for the UNGPs. **The main structural reforms** (adopted or underway) are the following:

- A Directive (EU),<sup>165</sup> providing for the better enforcement and modernisation of EU consumer protection rules. This directive stipulates stringent sanctions for business activities that could affect consumers. This will result in more effective protection of consumers in the EU but not necessarily in non-EU countries (cf. Pillar III). Belgium should transpose this Directive by 2021.

<sup>163</sup> EC Staff [Working Document 2020](#) Rule of Law Report -Country Chapter on The Rule of Law Situation in Belgium *Accompanying the Document* Communication from the EC to The EP, The Council, The European Economic and Social Committee and the Committee of the Regions 2020 Rule of Law Report.

<sup>164</sup> The TFEU (Art. 169) protects consumer rights (health, safety, and economic interests) and their right to information, education and to organise themselves to safeguard their interests.

<sup>165</sup> Directive (EU) 2019/2161 of the EP and the Council of 27/11/ 2019. OJ L 328, 18.12.2019

- Belgium has also enacted public health laws seeking to protect citizens from tobacco consumption. Law of 20/1/2019 banned smoking in enclosed places accessible to the public, protected workers from tobacco smoke, and banned smoking in covered vehicles in the presence of minors under 16. Law of 12/7/2019 banned the sales of tobacco and similar products to minors. Law of 15/3/2020 limited the advertising of tobacco products.

The main **policies, programmes and processes** adopted in line with the UNGPs are as follows:

- Enabel (the Belgian Cooperation Agency), and more concretely, the Trade for Development Centre, focuses on promoting fair and sustainable trade. The centre focuses on three topics: supporting producers in developing countries, providing information, and raising awareness amongst consumers in Belgium. This initiative seeks to protect vulnerable or marginalised groups in the producer country (Cf. the state-business nexus).
- The Federal and subnational governments have supported multi-stakeholder initiatives (MSIs) that promote responsive consumption. Some examples of these initiatives are True Stone, Beyond Chocolate and ICT Flanders (cf. Pillar II).
- The Ministry of Economy released a website for businesses that place dangerous products or services in the market. Businesses are required to inform the Central Product Desk when their products or services pose risks for users, because they are incompatible with the general safety obligations or with orders issued in accordance to the Code of Economic Law (Art. IX.4, and IX.5). The website of the Ministry of Economy also provides information about products and services with specific regulations and defines the scope of safety of products and services regulations.<sup>166</sup>
- The Ministry of Economy released a booklet for consumers on the sanctions that can be imposed under the Code of Economic Law (Book XV). The scope of the sanctions depends on the seriousness of the infringement as follows: a warning, a report with settlement or a temporary confiscation of non-compliant products or fines that can be criminally prosecuted (Cf. Pillar III).
- In 2018, the federal government created the Commission for Consumer Safety (CSC), which is an advisory forum seeking to discuss consumer issues with users, producers, distributors, authorities, and specialised bodies.

### A.12.3 Key outcomes or gaps for the implementation of the UNGPs

- In general, the EU strongly protects EU consumers. A pending task is to protect consumers in third countries from activities or goods exported by EU companies. Although the Prior Informed Consent Regulation<sup>167</sup>, requires companies that export certain hazardous chemicals to non-EU countries to provide information to store, transport, use and dispose of these chemicals safely, recent reports from [Greenpeace](#) and from the [UN Special Rapporteur on toxics](#) raise concerns that European industries export banned toxic chemicals to poorer nations that are not able to control the risks. The [EU Chemicals Strategy for Sustainability](#) acknowledges that the zero pollution ambition for a toxic-free environment announced in the [European Green Deal](#) should include the prohibition on export of dangerous substances produced in the EU to third countries. [Belgium](#) appears as the seventh largest exporter of products forbidden in the EU.
- Regarding special regulations of biomedicine, Belgium has not ratified any of the following: the ETS 164 Convention for the protection of human rights and dignity with regard to the application of biology and medicine (Convention on Human Rights and Biomedicine); the ETS 168 Protocol on the prohibition of cloning human beings; the ETS 186 Protocol on access to equitable transplantation of organs and tissues of human origin; the CETS 195 Protocol on biomedical research to protecting human rights and dignity in particular of those participating in research; or

<sup>166</sup> Cf. [Website of the Ministry of Economy](#)

<sup>167</sup> C.f. [Regulation \(EU\) 649/2012](#) of the EP and of the Council of 4/7/2012 (OJ of 27/7/2012). It implements the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

the CETS 203 Protocol on genetic testing for health purposes.

- The CESCR acknowledged the introduction of nutritional information labelling on food packaging. However, it is concerned about the increasing incidence of overweight and obesity and the lack of structural reforms or public policies to reduce the consumption of sugary beverages and to restrict the advertising of foods generally incompatible with a healthy diet.<sup>168</sup>
- The NBA team did not find information about the protection of consumers affected by Belgian value chains or about any special attention to vulnerable or marginalised populations.

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<sup>168</sup>CESCR Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

## B State-business nexus

### B.1 Key findings and recommendations

#### Section B The state business-nexus

##### The state as an economic actor (UNGP 4 and 6)

UNGP 4. States should protect against human rights abuses by state-owned companies (SOCs), or by private organisations that receive economic support and services from the state by requiring (when appropriate) human rights due diligence. UNGP 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

##### Status and gaps

- The application of the sustainable public procurement (SPP) principles has not been a priority for Belgian governments
- The Law on SPP required the government to regulate the responsibilities of economic operators vis-à-vis their subcontractors, but the R.D. has a limited scope (social dumping in sectors sensitive to fraud).
- The social label, created by the FPS Social Integration to certify producers who comply with the eight core ILO conventions in all steps of production, remains a pending issue for the federal government. The NBA team questions the relevance of a new social label.
- In general, online tools on public procurement do not provide guidance on the systematic implementation of the principles of SPP according to the law.
- SOCs represent a key topic for the state-business nexus. Many SOCs are also part of value chains, but Belgian authorities have not adopted any targeted measures in line with the UNGPs.

##### Recommendations

- Further empirical analysis on how SPP is being implemented is important to assess the effectiveness of these measures.
- The federal government needs to systematically incorporate the principles of the state-business nexus of the UNGPs in public procurement activities and extend the regulation of subcontracting to all economic sectors, and not only those that are sensitive to social dumping in Belgium. It is important to require traceability mechanisms in the GVCs from economic operators.
- Instead of developing a new social label, the Belgian government should, in its procurement, only accept social labels and audits that comply with international environmental and social standards. This could be expanded over time to a requirement for companies who wish to provide services or goods to the state to have the necessary HRDD systems in place.
- The tools developed to support businesses that participate in tenders and public procurement procedures need a periodic update and should explicitly refer to the SPP principles.
- Belgian authorities need to address structural measures and targeted policies to promote SOCs' adoption of due diligence procedures in line with the UNGPs, in accordance with their size and sectors.

##### Services of general interest (UNGP 5)

UNGP 5. States should oversee that their international human rights obligations are respected when they contract with, or legislate for, businesses to provide services that may have an impact on human rights.

##### Status and gaps

- The NBA team did not find any publicly available information regarding the implementation of the UNGPs in the area of services of general interest.
- Ombudspersons competent to receive complaints against services of general interest of the corresponding level of government have mediated, but their competences are not framed in human rights terms.
- The distribution of competences regarding

##### Recommendations

- Belgian authorities need to adopt structural measures or policies to integrate the UNGPs together with the SDGs into the activities of services of general interest.
- Belgian authorities need to assess how value chains of services of general interest operate in order to adopt targeted measures to implement the UNGPs.
- Belgian authorities need to frame the competences of ombudspersons in human rights terms in order to allow them to hear complaints against services of

<p>services of general interest and social protection systems among federal and sub-national levels accounts for coordination problems.</p>	<p>general interest when they cause human rights harms.</p> <ul style="list-style-type: none"> <li>• Belgium needs to provide guidance for users of entities that provide services of general interest and social protection in order to make them more accessible to vulnerable communities.</li> </ul>
<p><b>Economic support to businesses and development cooperation linked to businesses (UNGP 4 and 6)</b></p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Agencies that economically support international businesses have been implicated more in the implementation of the UNGPs than agencies that support businesses in Belgium. Most of the screened entities have implemented some CSR policies or promoted the implementation of the SDGs, but none of them explicitly refers to the UNGPs, nor to the need to implement HRDD in the value chains.</li> <li>• Some entities conduct (environmental, social and governance) ESG screening when the projects are submitted for funding. However, they mainly focus on environmental compliance with legal standards, but none of them conducts systematic human rights impact assessments.</li> <li>• Only BIO has established an operational level grievance mechanism to hear claims related to the projects it supports, but its use is very limited.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Although many of these entities have adopted CSR and SDG monitoring schemes, Belgian authorities need to complement these schemes with the implementation and monitoring of the UNGPs.</li> <li>• The leverage of agencies supporting businesses is crucial in the implementation of the UNGPs, particularly in value chains involving Belgian companies. Therefore, Belgian authorities should adopt structural measures and policies to implement systematic due diligence and impact assessment procedures to identify and address human rights adverse impacts before granting economic support, and should oversee compliance with human rights during the execution of the projects.</li> <li>• Belgian entities that provide economic support to Belgian businesses need to implement an operational level grievance mechanism to allow victims and stakeholders to raise concerns of adverse effects caused by Belgian companies and their value chains.</li> </ul>

The NBA team found few structural reforms adopted in line with the UNGPs, and the policies did not completely address the actions of the B-NAP. The outcomes in this section dealing with the implementation of the UNGPs in the state-business nexus are rather modest. There were practically no structural reforms in line with the UNGPs, and when there were, as in the case of public procurement, the complete implementation is still pending. In general, while several of these agencies have implemented policies seeking to align with the SDGs, and some have promoted CSR schemes, the NBA team did not find clear policies seeking to implement the UNGPs. The state-business sector is relevant for nudging Belgian companies driving value chains. The following table summarises the progress made since 2017 in terms of binding rules, policies and processes adopted by Belgium in order to implement the B-NAP in line with the UNGPs. It also reports on actions adopted to protect vulnerable populations or to increase leverage in (Belgian) GVCs.

Table 16: Actions in line with UNGPs -Summary

Indicator					
Sector	New binding rules are in place	New policies and processes have been adopted	NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the GVCs have been done
The state as an economic actor					
Sustainable public procurement	Partially	Partially	Partially	Partially	Partially
State-owned companies (SOC)	Partially	No	No	No	No
Businesses providing services of general interest	Partially	No	No	Yes	No
Responsive financing/support for the internationalisation of businesses	No	No	Partially	No	Partially
Dev. cooperation linked to business	Yes	Partially	Partially	Partially	Yes

## B.2 Structure and research methods

This part assesses how the Belgian state (at all levels of government) has implemented the UNGPs in its economic relations with businesses (the state-business nexus). To achieve this, it follows the same methodology and guiding questions as section A. This section followed CESCR GC24 (2017),<sup>169</sup> to identify salient topics related to the state business nexus (cf. [Toolbox human rights for business and organisations \(4\)](#)). The relevant areas are, **a)** The state as economic actor, that covers sustainable public procurement processes (SPP) and state-owned companies (SOCs). Although public and private partnerships (PPP) could be an independent category, this is assessed within SPP, but also in services of general interest and development cooperation as in these three frameworks they operate with diverse modalities; **b)** Businesses providing services of general interest, which cover social services and public utilities (cf. Pillar II); **c)** Support for the internationalisation of businesses by federal and subnational governments; **d)** Development cooperation linked to businesses. Besides the UNGPs, and the B-NAP, the NBA indicates where relevant, how the [revised version of the draft treaty](#) (2020) has addressed the topic. In each selected area, the NBA team focused on, i) the relevance of the area in (for) Belgium; ii) the parameters to evaluate progress since the adoption of the B-NAP; iii) reported progress; and iv) key outcomes or gaps for the implementation of the UNGPs.

**Research methods:** The main mapping and assessment was conducted by using, **a.** A legal and conceptual analysis (desk research), complemented by expert and stakeholder inputs (to be organised); **b.** Qualitative empirical methods to inquire how competent entities have adopted and implemented policies, processes, and procedures. Most of the contacts were made via written (email) communication and in few cases via online semi-structured interviews with the main entities involved in the economic relations of the state. Participants contacted for this part were more responsive, as more than 50% of the contacted officers, from federal and subnational governments,<sup>170</sup> responded to the questions.

<sup>169</sup>Cf. CESCR [General comment \(GC\)24 \(2017\)](#) regarding state obligations under the ICESCR in the context of business activities and other international standards.

<sup>170</sup> The following entities were contacted for this part: Bio, Credendo, Flanders Investment and Trade (FIT), Agence wallonne à l'Exportation et aux Investissements (Awex), Sofinex, The Ministry of Foreign Affairs, Agentschap Innoveren & Ondernemen (VLAIO- Vlaanderen), hub.Brussels, Enabel, Belgian Corporation for International Investment (BMI-SBI), the Agentschap voor Buitenlandse Handel/Agence pour le Commerce Extérieur, Wallonie SPw and Finexpo. Cf. Annex 1.



## B.3 The state as an economic actor

The NBA assesses the state-business nexus in two areas: sustainable public procurement (SPP) and state-owned companies (SOCs) in Belgium (all levels of government).

### B.3.1 Sustainable public procurement (SPP)

#### B.3.1.1 Why is this a key issue for Belgium?

Public procurement is also a shared competence with the EU. SPP has been adopted in the EU since 2014.<sup>171</sup> SPP focuses on three pillars: environmental protection in public services, protection of dignified working conditions and green jobs, and promotion of competition rules. SPP principles should apply in the tender procedures, and throughout the supply chains of EU businesses. Contracting authorities are required to enforce SPP principles in several ways, **a)** by implementing mechanisms such as requiring labels or fair-trade origin products in transparent and equitable terms; **b)** By defining award criteria or contract performance conditions related to the SPP principles; **c)** By excluding businesses with demonstrated violations of environmental or social obligations, competition rules or IPR, or when they have been convicted by final judgment for child labour and other forms of THB;<sup>172</sup> **d)** By inquiring offers with abnormally low price or costs through labour or environmental inspections;<sup>173</sup> **e)** By holding subcontractors accountable for these obligations and for providing access to information on the subcontracting chain, with main contractor being the main duty-bearer;<sup>174</sup> and **f)** By regulating this joint liability of contractor-subcontractors.

*Table 17: Parameters to evaluate progress since the adoption of the B-NAP*

**The B-NAP** (Action 13 and 14) committed to strengthening and monitoring the respect for human rights in public procurement and proposed the evaluation of the Belgian label designed to promote socially responsible production.

#### B.3.1.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted (or underway) in Belgium in crucial areas for the UNGPs. **The main structural reforms** (adopted or underway) are as follows:

Law of 17/6/2016,<sup>175</sup> transposed the three EU Directives on public procurement applicable at the federal and subnational governments. Although it was enacted before the adoption of the B-NAP, it represents a landmark structural reform for the following reasons, **a)** Besides other evidences of compliance with the SPP principles, it authorises the use of labels or certifications in a transparent and non-discriminatory way; **b)** It requires the authorities to adopt active anti-discriminatory policies and

<sup>171</sup> Cf. EU Directive 2014/24/EU of the EP and of the Council of 26/02/2014 (OJ L 94, 28.3.2014). Directive 2014/25/EU of the EP and of the Council of 26/2/ 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (L 94/243 of 28/3/2014) and Directive 2014/26/EU of the EP and of the Council of 26/2/ 2014 on the award of concession contracts (L94/1 of 28/3/2021).

<sup>172</sup> This sanction is in line with TFEU (Art. 59) that prohibits to award concessions to businesses that, among others, have been condemned for THB.

<sup>173</sup> Cf. The EC [guidance](#) (2019): Brussels, 24/7/2019 C(2019) 5494 final Communication from the EC: Guidance on the participation of third country bidders and goods in the EU procurement market. This Guidance aims at ensuring fair competition and high quality of goods and services. It distinguishes between countries that concluded trade and investment agreements with the EU and those who have GSP. It focuses on sectors such as (the provision of) water, energy, transport and postal services or security. The Guidance recommends member states control whether participants offer prices that are too low to comply with the labour and environmental standards and the origin of their financial means.

<sup>174</sup> Cf. The EU Directive on SPP (Arts. 57 and 71.6)

<sup>175</sup> This law refers to the international framework in SPP: the eight ILO core conventions and for environmental protection: the Vienna Convention for the protection of the ozone layer, and its Montreal Protocol, the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal and the Basel Protocol on liability and compensation, the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade and the Stockholm Convention on persistent organic pollutants.

practices at work and to monitor and report on sustainable development practices, climate change policies and accomplishment of specific targets of the SDGs, circular economy or circular procurement;

**c)** It stipulates a mandatory exclusion of businesses (from procurement processes) that violate social, labour or environmental legal rules when such violation has been criminalised (child labour or THB, or employment of nationals of third countries with illegal status). It also stipulates a discretionary exclusion when the violation is not a criminal offense (Arts. 66-8). The Social Criminal Code clarifies that a simple administrative or judicial decision, or an executing notification, are sufficient. These requirements can be an award criterion or a condition for executing their contract (Art. 87 and 147); and **d)** The government must regulate the responsibilities of economic operators vis-à-vis their subcontractors (Art. 86). Belgium has adopted three R.D. of relevance:

R.D. 18.4.2017 - on the award of public procurement in the classical sectors defined the mandatory grounds for exclusion from public procurement processes. They refer to participation in criminal organisations, corruption, fraud to the EU financial interests, terrorist offences, money laundering, child labour, THB defined by the Criminal Code, occupation of illegally staying third-country nationals or contractors and subcontractors who have not paid their social security and fiscal duties. The R.D. (Art. 76§1) also clarifies that a substantial irregularity is the one that causes a discriminatory advantage to the contractor, with diverse connotations. One of these substantial irregularities is the non-compliance with environmental, social or labour law, if this non-compliance is punishable by law. When it is not a crime, the exclusion of the economic operator from the procurement process is discretionary. Contracting authorities can also require evidence on the technical capacities of economic operators to execute the contract (Art. 68.4). Of relevance is the indication of the supply chain management and monitoring systems, of the environmental management measures and of the part of the contract that the economic operator intends to subcontract, and the proposed subcontractors. The R.D. (Art.74) clarifies that this communication does not affect the operators' liability.

R.D. of 15.4.2018 – relating to the award of public procurement in specific sectors, also includes as a ground for exclusion the non-compliance with environmental, social or labour law, provided that such non-compliance is penalised.

R.D. of 22.6.2017 - on the general rules for the execution of public procurement and concessions, represents a progress but it is not explicitly aligned with the state-business nexus of the UNGPs. It requires a) the verification of the absence of grounds for exclusion for contractors and for the first subcontractors; b) the prohibition for a subcontractor to subcontract to another subcontractor the entire task; c) the limitation of the number of vertical links in subcontracting chains to two, three or exceptionally, four levels and, if it is necessary to add an additional link, it requires a prior written consent of the contracting authority, except for unforeseeable circumstances. These limitations in the number of links is not a transposition of EU Directive 2014/24 (Marique and Wauters 2018:72 and 85); d) subcontractors must comply with the regulations regarding the approval of contractors, at all stages of the subcontracting chains covered by this R.D. (Marique and Wauters 2018:71 and 83).

The main **policies, programmes and processes** adopted in line with the UNGPs are as follows:

- The IFDD/FIDO developed the [website “guide des achats publics/gids voor duurzame aankopen”](#). However, this website has been developed before the enactment of the law on SPP and does not refer to the Law. On the contrary, the website [e-procurement](#) is updated but without a specific reference to SPP beyond the regulatory framework.
- The federal government has released the *Guide to Combating Social Dumping in Public Contracts and Concessions* (in [FR](#) and [NL](#)). The guide refers to Article 7 of Law of 17.6.2016 that incorporates the duty of complying with social environmental and labour law in the award of public contracts. It emphasizes that noncompliance distorts competition.
- The ICSD ([2019](#)) reported participation in seminars in 2019, in capacity building with local communities in Flanders and in organisational procurement procedures in Ministries but not in the framework of the UNGPs.

- **Flanders** has a considerable amount of available information on social and environmental compliance. It also released the “*Plan Overheidsopdrachten 2016-2020*” to guide public entities to use procurement as a policy instrument for social inclusion and sustainable practices. The [Vereniging van Vlaamse Steden en Gemeenten vzw](#),<sup>176</sup> also promotes SPP, particularly labour rights in the garment value chains. However, the available information on the website refers to a policy of [2009 -2014](#), indicating the promotion of innovation and sustainability through public procurement processes as a target, aiming to reach 100% of SPP [by 2020](#). Flanders also supported the [Barometer Innovative Public Procurement in Belgium 2017](#). However, it does not refer to SPP.
- **Wallonia** adopted a Circular on 19/7/2018 on the obligation to include social clauses in regional public contracts, seeking to increase labour opportunities. The report on social responsibility from Wallonia ([2019](#)) does not contain any reference to SPP.
- The Ecolabel,<sup>177</sup> awarded by the Direction of the Environment of the Ministry of Health for products that are environmentally friendly for consumers, has been largely used in Belgium. The Ministry of Economy and the website [guide des achats publics/gids voor duurzame aankopen](#) promotes its use as well. However, the NBA team has not found publicly available information on the use of the Ecolabel by contracting authorities in procurement processes.<sup>178</sup>
- Some institutions have adopted a sustainability report, such as the Ministry of Economy. This Ministry also sought to increase the participation of [SMEs in public procurement procedures](#) and in 2018, released a charter composed of 13 principles on the legal framework of public procurement, but they do not refer to SPP.

### B.3.1.3 Key outcomes or gaps for the implementation of the UNGPs

- SPP has been an initiative from the EU. However, the available evaluation reports on public procurement do not refer to member states’ performance in the implementation of the SPP principles.
- The Law on SPP requires the government to regulate the responsibilities of economic operators vis-à-vis their subcontractors (Art. 86) Although the three R.D. listed above advance in line with some aspects of the UNGPs, R.D. of 22.6.2017 (Art.12) exonerates the contracting authority from liability for any adverse impact resulting from subcontracting, notwithstanding that for non-compulsory subcontracting the contracting authority’s authorisation is required.<sup>179</sup> This R.D. also has a limited scope. Firstly, it only applies to subcontracting activities that involve participation in works or provision of services. Several categories are excluded: a) the parties to a grouping of economic operators without legal personality, b) suppliers of goods, without incidental placement or installation work; c) institutions that carry out inspection or certification; d) temporary employment agencies, temporary work and the placing of workers at the disposal of users. Secondly, the R.D. mainly focus on the fight against social dumping and the need for transparency in the subcontracting chain, to prevent abusive practices that generate unfair competition at the cost of workers’ rights. This is, it only applies to the indicated activities realised in sectors defined as sensitive to fraud. They are mainly: certain transport activities, certain activities of guarding and/or surveillance; construction; electricity; furniture and wood processing industry; metal, mechanical and electrical construction; certain agricultural activities; certain cleaning activities; and certain activities in the food industry (Marique and Wauters 2018:71). The outcome is that a variety of GVCs with subcontractors outside the EU are not covered by this R.D. Thirdly, although

<sup>176</sup> Cf. The following resources: [City of Ghent \(Belgium\) guidance on Sustainable Procurement Profile](#); [Toolbox Sociaal Verantwoorde Werkkledij](#); [Praktijkgids over aankopen met sociale impact](#); [Informatie en modelclausules](#) om een voorbehoud voor de sociale economie te realiseren; [Praktijkgids sociaal aankopen voor lokale besturen](#).

<sup>177</sup> EU Regulation 66/2010 of the EP and of the Council of 25/11/2009 on the EU Ecolabel (OJ 30/1/2010 L 27/1).

<sup>178</sup> The EU has also released the guidance: [Buying Green!](#) - A Handbook on green public procurement (2016).

<sup>179</sup> The contract must also include the reference to Article 1798 of the Civil Code, on the norms on subcontracting in the construction sector.

the regulations also order contracting authorities to exclude economic operators that allegedly perpetrated environmental or labour crimes, other human rights are not mentioned. Fourthly, this analysis unveils that these regulations did not have the alignment with the UNGPs in mind, but rather the fight against unfair competition, which can have positive effects but which did not assess the risks from a human rights perspective. Fighting social dumping seeks primarily to guarantee the principle of fair competition, and therefore, the case law from the CJEU might have an impact on the competences of Belgian contracting authorities (Marique and Wauters 2018: 77-85).

- The social label, created by the FPS Social Integration to certify producers who comply with the eight core ILO conventions in all steps of the production, remains a pending issue for the federal government, despite having been included as a specific action in the B-NAP.
- The IFDD/FIDO requested an empirical study published in 2019 to investigate how public entities are using sustainability as a policy tool to address social and environmental risks in public procurement. The study concluded that this policy has not necessarily resulted in effective implementation as some obstacles remain: financial constraints and lack of knowledge or motivation. The study used text mining techniques to assess 140.000 Belgian public procurement notices published between 2011 and 2016 and found that sustainability measures are implemented less over time, with a preference for environmental issues (Grandia and Kruyen 2020). This study, however, did not capture the transposition of the EU directives on SPP in 2016.
- The [website “guide des achats publics/gids voor duurzame aankopen”](#), developed before the enactment of the law on SPP, does not have any updated information on the implementation of the SPP principles. The updates have been limited to listing standards, mainly related to environmental reporting, and technical guidance on environmental aspects for various economic sectors but without any reference to the UNGPs.
- The NBA team did not find additional information from any Belgian authority regarding progress in defining responsibilities of businesses that participate in SPP with respect to human rights compliance in their value chains.
- The NBA team did not find publicly available information about measures adopted to provide reinforced protection to vulnerable or marginalised groups in the framework of SPP. [State-owned companies \(SOCs\)](#)

### B.3.2.1 Why is this a key issue in Belgium?

The Belgian law on public procurement defines SOCs as those where public entities hold property rights or in which they participate financially and have decision making power in the management. The legal presumption is that the state has a dominant influence when: **a)** it holds the majority of the capital, **b)** the majority of votes linked to the shares, or **c)** it can appoint more than half of the board of directors, or the management of the company (c.f. [Toolbox human rights for business and organisations \(4\)](#)). In Belgium, all levels of government can create SOCs. In many cases, SOCs conclude a management contract with the federal or subnational governments to provide services of general interest such as social security, transport, financial or public services, ports and airports management, public audio-visual services, urban maintenance, social credit and housing, higher education, cultural activities or development cooperation. They can have the legal nature of associations or companies. Subnational governments can also create regional development companies, that can be PPPs, to carry out infrastructure works (e.g. industrial or scientific parks) (Noville 2016). Autonomous federal public companies are those created by Law of 21/3/1991, although some of them have followed privatisation processes.

SOCs are an important actor in the framework of the UNGPs particularly when the state is the main shareholder and they are expected to have higher standards of human rights compliance. The [OECD Guidelines on Corporate Governance of SOCs](#), (2015) further point to the concrete duties of SOCs

regarding the implementation of the UNGPs and the OECD guidelines.

An important concern with SOCs is the possibility that they invoke state immunity to avoid liability in cases of human rights harms. The European Convention on State Immunity,<sup>180</sup> ratified by Belgium, excludes the possibility that a state claims immunity from the jurisdiction of a court of another member state when SOCs are (total or partially) involved in a business-related human rights abuse.<sup>181</sup> The European Court of Human Rights (ECtHR) has held that state immunity cannot automatically restrict the right of victims to claim justice (Skinner et al. 2013:42; Pigrau Solé et al. 2016:61 quoted by Lizarazo Rodríguez 2017).

*Table 18: Parameters to evaluate progress since the adoption of the B-NAP*

<p><b>The B-NAP</b> (Action 20) committed to promote socially responsible public companies and to raise awareness by means of capacity building.</p>
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### B.3.2.2 Progress since the adoption of the B-NAP

No structural reforms were adopted since 2017 in this area. The NBA did not find publicly available information on policies or processes reported at any governmental level in line with the UNGPs, or any measure protecting vulnerable groups, nor any specific action regarding the value chains of SOCs.

### B.3.2.3 Concrete outcomes or gaps for the implementation of the UNGPs

The NBA team did not find any targeted measure adopted by Belgian authorities in line with the UNGPs. This is a remarkable gap as SOCs are key actors of the state-business nexus, and they should lead compliance with human rights in their value chains.

## B.4 Businesses providing services of general interest

### B.4.1 Why is this a key issue for Belgium?

This topic is also a shared competence with the EU. The TFEU (Art. 14) and Protocol 26 require member states to provide a high level of quality, safety, affordability, equal treatment, and universality regarding access to services of general interest and/or user rights. Therefore, Belgium must comply with the EU scheme on [services of general interest](#) that can be provided either by the state or by the private sector. The categories are, **a)** services of general economic interest, under the European internal market and competition rules, with concrete derogations to protect citizens' access to basic services; **b)** Non-economic services (e.g. the police or justice) under exclusive competence of states, i.e., when the EU law on internal market and competition does not apply; and **c)** Social services of general interest, implemented to support vulnerable citizens, based on the principles of solidarity and equal access (e.g. social security services, employment services and social housing). The EU Quality Framework for Services of General Interest (2011) described the services which are under the competence of EU law, although states should guarantee universal access to essential services and comply with public procurement and state aid rules.<sup>182</sup> This description visualises the difficulty to identify structural reforms, policies or outcomes related to the UNGPs. The Belgian structure adds complexity to this area because all Belgian levels of government are competent regarding services of general interest.

*Table 19: Services of general interest at the level of federal and regional governments*

<sup>180</sup> The 'Basel Convention' of 11/06/1976, CoE (C.E.T.S. 074).

<sup>181</sup> Some exceptions are explicit mutual agreement, or abuses committed by an office, agency or other establishment developing industrial, commercial, or financial activities, if all the parties of the process are states (art. 6-7).

<sup>182</sup> Commission Regulation (EU) 360/2012 of 25/4/ 2012, develops the TFEU (Art. 107-8) on the minimal aid granted to entities providing services of general economic interest OJ L 114, 26.4.2012. It has been recently amended for the Covid-19 pandemic. cf. also Caponetti and Demertzis 2016.

Table 3.4.1: Distribution of competences between government tiers - Funding

	Federal	Regional	Local
Economic affairs	*	*	
Defence	*		
Internal affairs (incl. Police)	*	*	*
Justice	*	*	
Finance/tax	*	*	
Environmental protection		*	*
Public utilities	*	*	*
Social welfare	*	*	*
Health	*	*	
R&D (incl. universities)	*	*	
Education		*	*
External affairs	*	*	*

Based on the note 'Public administration characteristics in Belgium', PPMI EY, 2018

The "Regional" level also covers Regions and Communities.

Source: European Commission

Source: EC Staff Working Document Country Report Belgium 2020<sup>183</sup>.

Table 20: Parameters to evaluate progress since the adoption of the B-NAP

The B-NAP (Action 9) committed to strengthening the cooperation between the public services and the various organisations active in the field of human rights and international entrepreneurship.

## B.4.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in Belgium as well as outcomes and gaps. The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

- Law of 26/1/2018 regarding the improvement of administrative transparency within the subsidiaries of the NMBS/SNCB and Infrabel. It defined the level of control of a subsidiary or shareholding link when all the public authorities hold, directly or indirectly, a controlling percentage of more than 50%.
- Law of 24/2/2019 amended the regime of granting the social tariff for gas and electricity and laid down the rules for determining the cost of the application of social tariffs for electricity companies and the rules of intervention for their payment. This reform is in line with EU Directive on procurement by entities operating in the water, energy, transport and postal services sectors.<sup>184</sup> In [2019](#), the federal Ombudsperson advocated for this reform to protect vulnerable users. However, the Ombudsperson has still reported obstacles in getting the social tariff.

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

- In 2019, the Ministry of Economy reported the conclusion of a '[governance agreement](#)' (2019-2021) seeking to integrate sustainable development in public services (which cover advisory boards, regulatory entities, the NBB, SOCs etc.). The aim is to monitor impact in the field of sustainable development, assess the social benefit that public services provide, and common value creation with stakeholders such as chambers of commerce.
- The new federal government committed to adopt a plan of action for universal accessibility to the public space and services. The government programme refers to physical and digital accessibility of the judicial system, public transportation, and public buildings and to an improvement of the reporting and the conformity with the definitions used by the UN to make public services more inclusive. It also committed to ensuring that the workforce reflects the diversity of society.<sup>185</sup>
- Regarding persons with disabilities, the EU highlighted that Belgium is in a transition from the

<sup>183</sup> EC 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM (2020) 150 final} p. 63.

<sup>184</sup> Directive 2014/25/EU of the EP and of the Council of 26/02/ 2014 [OJ L 94, 28.3.2014].

<sup>185</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#).

traditional disability-welfare approach towards a rights-based approach, so that persons with disabilities become active citizens with access to all community services. However, it also acknowledges that the distribution of competences among federal and subnational governments complicates the provision of these services in line with the UN Convention on the Rights of Persons with Disabilities.<sup>186</sup>

- Services of general interest in Belgium are strongly promoting digitalisation although this can be an additional obstacle for persons without the possibility to get unlimited access to online services,<sup>187</sup> or without technological skills.

#### B.4.3 Key outcomes or gaps for the implementation of the UNGPs

- The '[governance agreement](#)' (2019-2021) concluded by Ministry of Economy aiming at integrating sustainable development in public services, did not refer to the UNGPs or to MSIs in the top ten sustainable development topics,<sup>188</sup> and therefore, it did not refer to sustainable development in the value chains of services of general interest.
- Services of general interest and SOCs must have an ombudsperson competent to receive complaints against administrative authorities of the corresponding level of government, and if the complaint is justified, they should mediate before the authority concerned to correct the situation and/or to prevent recurring failures. However, the remedy in terms of human rights is limited because they focus on compliance with the legal framework of public services. In principle, victims of human rights abuses resulting from acts or omissions of SOCs or businesses providing services of general interest may request the intervention of ombudspersons, but they have a residual competence. In addition, ombudspersons have not been triggered to claim remedy for business-related human rights harms caused by these entities so far.
- The CESCR is concerned about the impact of energy costs on low-income households and about the practice of cutting off gas and electricity for non-payment of bills. It also flagged the increase in water bills in all regions of Belgium and of the same practice of cutting off water or limiting household water supply.<sup>189</sup>
- The country report of the EU of 2019 highlighted that the distribution of competences on social protection systems among federal and sub-national levels account for coordination problems.<sup>190</sup>

## B.5 Responsive financing/support for the internationalisation of businesses

### B.5.1 Why is this a key issue for Belgium?

Belgian authorities that financially support Belgian businesses are expected to implement the UNGPs when granting the support.<sup>191</sup> There is no clarity on the duties of the states in this respect, although

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<sup>186</sup> EC Staff Working Document [Country Report Belgium 2019](#). 2019 European Semester: Assessment of Progress on Structural Reforms, Prevention and Correction of Macroeconomic Imbalances, And Results Of In-Depth Reviews Under Regulation (EU) No 1176/2011 {Com(2019) 150 Final}

<sup>187</sup> EC Staff Working Document [Country Report Belgium 2020](#). 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM (2020) 150 final}

<sup>188</sup> They are the transition to a more sustainable energy system, security of energy supply, planned obsolescence of products, customer satisfaction, financing the low carbon transition, sustainable products and services, sustainable management of the Ministry of economy, regulation on consumer protection, staff welfare and a knowledge Centre for Sustainable Economy.

<sup>189</sup> CESCR Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).

<sup>190</sup> EC Staff Working Document [Country Report Belgium 2019](#). 2019 European Semester: Assessment of Progress on Structural Reforms, Prevention and Correction of Macroeconomic Imbalances, and Results of In-Depth Reviews Under Regulation (EU) No 1176/2011 {Com (2019) 150 Final}

<sup>191</sup> Cf. UN CESCR [GC 24/2017](#) on the state obligations under the ICESCR in the context of business activities, E/C.12/GC/24

some international and European binding rules refer to this issue: EU Regulation,<sup>192</sup> on the application of certain guidelines in the field of officially supported export credits;<sup>193</sup> the WTO [Agreement on Subsidies and Countervailing Measures](#) (SCM agreement) and the [OECD Convention on Combating Bribery](#) or Foreign Public Officials in International Business Transactions, both ratified by Belgium. In the framework of the UNGPs, this topic is central regarding the leverage that the state can have to increase responsible conduct of businesses that belong to GVCs that operate in developing countries. In addition, the EP has emphasised that the EU should withdraw any form of institutional or financial support when EU businesses cause human rights harms.<sup>194</sup>

The B-NAP included several actions related to this area.

Table 21: Parameters to evaluate progress since the adoption of the B-NAP

Nr.	Action
5	Distribute the toolkit and the brochure on remedy mechanisms among Belgian representatives abroad and raise their awareness about the issue
6	Belgian SDG Charter on the role of the private sector, civil society and the public sector in international development
7	Raise companies' awareness on human rights issues during economic missions abroad
9	Strengthen the cooperation between the public services and the various organisations active in the field of human rights and international entrepreneurship
11	Improve coordination between the Federal and regional authorities to integrate human rights and CSR criteria into state aid policy
22	Encourage responsible supply chain management using a sectoral approach

## B.5.2 Progress since the adoption of the B-NAP

In general, no **structural reforms** have been adopted regarding the implementation of the B-NAP or the UNGPs. For the first three actions, the main agencies responsible were the Ministry of Foreign Affairs and the three regions (Flanders, Wallonia, and Brussels) except for action 6 where the regions did not intervene. For action 11, the responsible actors were the Ministry of Economy, Finexpo and Credendo and for the last one, the OECD NCP. The NBA team revised the publicly available information and then contacted most of the federal and subnational entities (Cf. Annex 1) involved with the financing of businesses, to inquire whether they have adopted any concrete structural or policy measure regarding the B-NAP, and whether there were other measures adopted to implement the UNGPs, in particular when supporting businesses operating in third countries. The general observation is that most of the contacted agencies did not adopt any measure with respect to the B-NAP or the implementation of the UNGPs. Some of them did not respond,<sup>195</sup> whereas others indicated that they rather work with the frameworks of SDGs and CSR. The Ministry of Foreign Affairs has the leading role and refers to the UNGPs, and listed some activities mentioned below.

The main **policies, programmes and processes** adopted in line with the UNGPs are the following:

### B.5.2.1 Belgian Foreign Trade Agency

This entity organises joint economic missions in cooperation with regional foreign trade offices and the Ministry of Foreign Affairs. All Belgian companies from various sectors and of all sizes can participate. The Agency offers participating businesses opportunities to meet local players, networking possibilities, the possibility of concluding trade agreements, etc.

<sup>192</sup> Regulation (EU) 1233/2011 of the EP and the Council of 16/11/2011 on the application of certain guidelines in the field of officially supported export credits. OJ L 326 8.12.2011.

<sup>193</sup> Cf. EC Annual Review of Member States' Annual Activity Reports on Export Credits in accordance with point 3 of Annex I to Regulation (EU) No 1233/2011. Brussels, 7.3.2014 [COM\(2014\) 123 final](#)

<sup>194</sup> The [EP Report](#) (2018) A8-0194/2018 29.5.2018 (2017/2206(INI)) Committee on Foreign Affairs. Rapporteur: F. Assis

<sup>195</sup> The PPP [Société Belge d'Investissement International](#) (BMI-SBI), [Awex](#), and [Hub. Brussels](#) did not respond to the message sent by the NBA team, nor have they any related information available on the website.



### B.5.2.2 Progress since the adoption of the B-NAP

The NBA team contacted the Agency to ask for the implementation of the B-NAP or the UNGPs. They responded that the Agency is a SOC created in 2002 and the federal and subnational governments concluded an agreement for its establishment. They do not grant any economic support to businesses, and therefore, they do not conduct any kind of risk assessment of the participants in the economic missions they organise. The Ministry of Foreign Affairs and the regions select the countries where the economic missions are organised and the Agency's board of directors ratify the choice by consensus, whereby the regional government commissioners have a right of veto when they disagree with a particular choice. Since 2002, the veto has never been used because all the decisions are the result of a consensus.

The Ministry of Foreign Affairs was contacted regarding the implementation of these actions of the NAP (2017). In an interview, the NBA team was informed that since 2017, the Ministry has organised some seminars on Business and Human Rights in the context of the economic missions.<sup>196</sup> In addition, the Policy Briefing Policy Climate, Environment, Sustainable Development and the Green Deal,<sup>197</sup> of the Ministry on Sustainable Development, expressed the commitment to work on the implementation of the principles of business and human rights.

#### B.5.2.2.1 Concrete outcomes or gaps for the implementation of the UNGPs

- The agency does not have competences in this respect. Regarding the assessment of human rights compliance during the “princely economic missions”, they responded that this is an exclusive decision of the Ministry of Foreign Affairs and the Agency only facilitates the logistics without intervening in the content.
- The Ministry in turn, has organised some events but no policy has been adopted to implement the actions of the B-NAP. In addition, consulates and embassies do not play any role in providing support to Belgian companies operating in third countries in fulfilling their duties to respect human rights. The diplomatic service does not provide information to victims of human rights harms who allege against Belgian companies or their commercial partners either.

### B.5.2.3 Credendo

Credendo (Delcredere/Ducroire) is an SOC that provides public credit and insurance to businesses against political and commercial risks in international commercial relations and can conclude risk-sharing agreements with banks. Credendo covers political risks associated with FDI and directly finances limited commercial transactions. Credendo also offers instruments adapted to SMEs to promote investments abroad (cf. [SME desk](#)).

#### B.5.2.3.1 Progress since the adoption of the B-NAP

- Regarding the implementation of the actions of the B-NAP, Credendo responded that they have not played any role regarding the actions listed above. Although Credendo is mentioned in action 11, they replied that in their understanding this action is rather addressed to Finexpo, as Credendo has not taken any initiatives in that respect.
- The website provides information about its CSR policy and describes how they conduct [the impact assessment for environmental and social risks](#) of their clients. These assessments follow the [IFC's Environmental and Social Performance Standards](#) on businesses' responsibilities for managing their environmental and social risks. In addition, they consider external databases such as RepRisk, a global data science company for due diligence on material ESG risks.

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<sup>196</sup> Ivory Coast (10/ 2017) [on child labour](#), Argentina (6/2018) [on social dialogue social](#), Morocco (11/2018): [Womens rights and empowerment](#), Mexico (2/2019): on [Corruption](#) and [China](#) (11/2019) on gender equality and responsible business conduct. In addition, the Dutch Embassy in [Malaysia](#) (2019) organised a seminar on NAPs where the IFDD/FIDO participated.

<sup>197</sup> Cf. [DOC 55 1610/007](#)

- Credendo also assesses the political risk. The [country risk assessment model](#) contains a range of indicators to assess the risks of political violence that capture existing internal conflicts, political instability, the potential for new social conflicts (caused by unemployment, welfare shortages, environmental damage, etc.), and how countries democratically manage these issues. The risk assessment also looks at the quality and independence of the judicial system, the degree of corruption and the quality of public administration. Credendo replied that human rights violations are not directly included in the risk assessment as an indicator, but they consider the human rights related to indicators that capture the respect for civil liberties and political rights, the presence of social inequalities or social tensions. Therefore, the higher these risk indicators, the higher the actual risk of human rights violations in a country concerned, which can lead to a higher risk of political violence.

#### **B.5.2.3.2 Key outcomes or gaps for the implementation of the UNGPs**

- Credendo's environmental and social due diligence approach is aligned with the OECD Common Approaches. Credendo produces a newsletter (Risk Insight) regarding the country of destination of the economic missions, but it does not deal explicitly with the UNGPs.
- Although Credendo has released several CSR reports over time, the reporting tends to be irregular. Almost three years passed between the 2017 CSR report and the next report that was published in December 2020.
- The following compliance gaps can be observed in Credendo's environmental and social due diligence approach: (1) aside from a general description on the website, there is limited publicly available information regarding its policy framework and the corresponding application; (2) the publicly available information regarding the requirements to its clients to conduct due diligence or impact assessments in their own operations and value chains, is not aligned with the UNGPs; and (3) Credendo does not have an independent complaints and grievance mechanism that is aligned with the UNGPs.
- The list regarding the environmental and social impact assessments conducted by Credendo is available on the website. Only projects graded as A,<sup>198</sup> are assessed. Moreover, the list only refers to an environmental impact assessment, with no indication of the assessment of negative impacts on other human rights. Since 2017, Credendo has not refused the funding or the insurance to any of the A grade projects published on the website because of the impact assessment. A number of these projects are still in the study phase. Although the website mentions that impact assessments are conducted on value chains or on vulnerable communities, it is not clear if the actual impact assessment covers these aspects.

#### **Reported cases**

On [12/8/2020, the EC partially suspended Cambodia's EBA](#) (Everything But Arms) trade privileges because of human rights violations. Credendo was concerned about the extra burden for the management of value chains,<sup>199</sup> already affected by Covid-19 and announced that it would maintain its political risk classification as the risk relating to the partial suspension of EBA was considered in the MLT risks. It did not announce any human rights impact assessment to companies operating in Cambodia.

#### **B.5.2.4 Finexpo**

Finexpo is an inter-ministerial advisory committee managed by the Ministry of Foreign Affairs and co-chaired by the Ministry of Finance. In addition, a range of governmental agencies are represented in committee, including Enabel, Credendo, Fit, Awex and Hub.Brussels. According to the [Vademecum](#)

<sup>198</sup> They are classified in accordance to the [OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence](#).

<sup>199</sup> Credendo pointed out the impact on the garment, footwear, and sugar sectors that account for 20% of Cambodia's annual exports to the EU.

[Finexpo 8/2017](#), Finexpo identifies the following as the main stakeholders of its activities, **a)** Belgian exporters; **b)** developing countries that will benefit from the exports under the form of technical assistance and technological transfers,<sup>200</sup> and **c)** regional export agencies and industrial federations that request information on international regulations, export credits and development cooperation. Finexpo is mainly active in the field of tied aid and provides three instruments in particular, **a)** mixed credit that is mainly a state-to-state loan combined with a commercial loan, **b)** interest rate compensation with or without additional gift, and **c)** grants with a special attention to SMEs, in accordance to OECD rules.

#### **B.5.2.4.1 Progress since the adoption of the B-NAP**

- [The forms](#) that candidates need to submit when asking for economic support require mainly environmental compliance information, but information on how Finexpo evaluates these forms is not available.
- The NBA team contacted Finexpo to obtain information about the implementation of the relevant actions of the B-NAP. Regarding action 11, on the improvement of the coordination between federal and subnational governments to integrate human rights and CSR criteria into state aid policy, Finexpo commissioned a consultancy assignment to develop this action, which is expected to be completed in January 2021.
- There is no publicly available information regarding requirements to its clients to conduct due diligence or impact assessments in their own operations and value chains.
- Finexpo does not have an independent complaints and grievance mechanism that is aligned with the UNGPs.

#### **B.5.2.4.2 Concrete outcomes or gaps for the implementation of the UNGPs**

- Finexpo replied that they did not yet adopt any measure related to the B-NAP (Actions 5, 7, 9, 10).
- The criteria to allocate economic support are, the quality of the project, the relevance for the Belgian economy, the socio-economic and development relevance for the host country and the nature of the client (a public authority). Finexpo does not consider any criterion of allocation related to the UNGPs.
- No recent assessment on the role of Finexpo is available. Reports from [IPIS \(Cappelle 2008\)](#) requested more transparency in the way Finexpo and Credendo adjudicated projects and to consider international human rights and environmental conventions in the evaluation of the projects. The forms that Finexpo requires from candidates for the support refer only to environmental treaties. [SEOR \(2010\)](#) questioned the effectiveness of Finexpo mechanisms but no follow up of these studies is available.
- The Ministry of Foreign Affairs has not implemented any policy regarding the support of embassies and consulates to Belgian corporate groups and to actual or potential victims of human rights harms caused by supported activities funded with public resources.

Next sections refer to the export and investment promotion agencies from the subnational governments. The NBA team contacted four entities but Awex (from Wallonia) and Hub.Brussels (from Brussels Capital) did not respond and no publicly available information was found regarding their policies, processes and programmes adopted that are in line with the UNGPs.

#### **B.5.2.5 Flanders Investment and Trade (FIT)**

Flanders Investment & Trade (FIT) supports international activities of Flemish companies and seeks to attract foreign investors to Flanders. FIT, together with Awex, act as commercial representatives in

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<sup>200</sup> In 2017, Finexpo was mainly active in Vietnam, Kenya and Sri Lanka, Niger, Burkina Faso, Sudan, Ghana and Senegal.

the Belgian embassies worldwide.

#### **B.5.2.5.1 Progress since the adoption of the B-NAP**

- According to the responses sent by FIT to the questions formulated in terms of implementation of the NAP (2017), FIT mainly seeks to raise awareness on CSR among Flemish international entrepreneurs. Together with CIFAL Flanders,<sup>201</sup> they promote CSR standards such as ISO26000, the OECD Guidelines, the Global Compact, and the SDGs.
- Regarding the action of raising awareness among companies on human rights issues in the context of economic missions abroad, FIT adopted a yearly CSR plan to support Flemish international entrepreneurs seeking to limit risks and maximize values in their integral value chain by raising awareness. This plan focuses on how companies can embed the SDGs in an international business strategy. However, the only available tool is the handbook titled, 'Making International Business Sustainable - Getting Started with the UN Sustainable Development Goals to Strengthen Your Business Strategy' (2018). This handbook contains a chapter on human rights but mainly lists resources without making explicit references to the concrete duties of Belgium and its companies regarding human rights. FIT and CIFAL are looking for funding from European Social Fund via the Department of Work and Social Economy of the Flemish government to generate more effective impact on the field, by integrating the [Sustatool](#) (cf. above) in the approach and the elaboration of 'Making international entrepreneurship more sustainable'. As stated above, the [Sustatool](#) mainly addresses environmental compliance with EU standards but does not refer to the UNGPs.

#### **B.5.2.5.2 Key outcomes or gaps for the implementation of the UNGPs**

- FIT policies focus on anchoring the SDGs in international business strategies of Flemish companies. They developed sectoral and country manuals (but they are not publicly available) and some sporadic seminars or workshops. The reason given for not spreading the toolbox and the brochure among their representatives was the Covid-19 crisis.
- Regarding the criteria FIT employs when granting their financial support (e.g. [De Leeuw van de Export prize](#)), no public information is available, not even upon request.
- There is no publicly available information regarding requirements to its clients to conduct due diligence or impact assessments in their own operations and value chains.
- FIT does not have an independent complaints and grievance mechanism that is aligned with the UNGPs.

#### **Concrete cases**

In 2019 [the Green Party](#) asked for an explanation about the group business trip to Saudi Arabia organised by Flanders Investment & Trade (FIT). This was related to the dramatic human rights situation in Saudi Arabia which posed the questions why Flemish businesses aimed at doing business with the Saudi regime and why the Flemish Government supported this economic mission. The Flemish government requested FIT to review the decision and admitted that FIT did not conduct an ethical assessment (Cf. Pillar III, Council of State).

#### **B.5.2.6 The Agency for Innovation & Entrepreneurship (VLAIO)**

VLAIO is the Flemish agency that supports businesses in Flanders mainly by supporting the following activities, stimulation of growth and innovation; promotion of entrepreneurship; support to clusters (i.e. organisations that initiate cooperation and dynamism within a group of companies and knowledge institutions); and promotion of environmental factors (the development of business parks and the provision of adequate business accommodation).

#### **B.5.2.6.1 Progress since the adoption of the B-NAP**

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<sup>201</sup> Antwerp-based International Action Learning Centre for Sustainability Leadership affiliated with UNITAR.

No information regarding the UNGPs or CSR is available on the website. VLAIO's response to the questions was that it is not involved in the actions of the B-NAP and that human rights are not an explicit part of the assessment, although they are addressed implicitly through social impact/sustainability. They are bound to follow the Muyters Directive in connection with R&D projects with military or dual use.

#### **B.5.2.6.2 Key outcomes or gaps for the implementation of the UNGPs**

VLAIO responded that they do not play a role in international entrepreneurship, as this is a competence of FIT and that they did not participate in the B-NAP either. However, they could implement processes to promote corporate responsibility among Flemish businesses that ask for their economic support in Belgium.

## **B.6 Development cooperation linked to business - BIO**

ENABEL is the federal agency seeking to implement the Belgian governmental cooperation in the 14 partner countries, in accordance with the cooperation programmes defined by [The Directorate-General for Development Cooperation and Humanitarian Aid](#) (DGD), linked to the Ministry of Foreign Affairs. ENABEL has adopted climate change and a human rights-based approach to development cooperation as priorities. This is in line with the recent UN Report of the Independent Expert on human rights and international solidarity.<sup>202</sup>

### **B.6.1 Why is this a key issue in Belgium?**

Enabel provides support on sectors related to agriculture and rural development, education, digitalisation, gender, energy, governance health and water and sanitation. The beneficiaries are fragile states, 13 located in Africa and Jordan. Enabel funds approximately 200 projects aiming at improving public services and living conditions mainly in Africa. However, the most important institution for the implementation of the UNGPs is [BIO](#), a SOC incorporated by the Law of 3/11/2001, modified by Law of 20/11/ 2018, and governed by the management contract signed between BIO and the Belgian State. Its only shareholder is the Ministry for Development Cooperation and its main mission is to invest in development projects by providing long-term financial products to SMEs in emerging and developing countries that usually do not get this type of support in the local markets. BIO provides equity and quasi-equity, long-term loans, guarantees and grants to co-finance technical assistance, feasibility studies, and investment support for innovative SMEs. In 2020, BIO launched the SDG Frontier Fund seeking to *generate an attractive financial return combined with a high development impact*. Private investors participate in this SDG frontier fund that supports SMEs operating in many sectors in frontier markets in Africa and Asia.

*Table 22: Parameters to evaluate progress since the adoption of the B-NAP*

The B-NAP (Action 10) committed to adopt human rights and CSR criteria in the Belgian development cooperation strategy in support of the development of the local private sector.
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#### **B.6.1.1 Progress since the adoption of the B-NAP**

Besides the structural reform of BIO in 2018, no other reforms were adopted. Regarding policies, programs and processes, the NBA team contacted the Grievance office to inquire how projects funded are assessed from a human rights perspective.

- BIO conducts two types of assessment of projects before they are approved, **a)** Environmental and social impact assessment requested by investees of greenfield or expansion projects that need an environmental permit or when according to the IFC environmental and social PS1 requirement, an impact assessment is required; **b)** BIO conducts environmental and social due diligence as part of its due diligence process prior to adopting investment decisions. For higher

<sup>202</sup> Cf. UN GA A/HRC/44/44 of 1/4/ 2020.

environmental and social risk clients (A/B+ risks), the due diligence systematically covers a site visit by an external environmental and social consultancy and/or by an environmental and social officer of BIO. For medium risk clients, the due diligence can be conducted by local environmental and social consultant or by a BIO environmental and social officer, who decides whether a visit takes place, depending on the environmental and social risks at stake. The impact assessment conducted by the investees is controlled in this process as well. Both the impact assessment and the due diligence procedures control compliance with environmental and social laws and ILO core conventions, and follow the IFC environmental and social [Performance Standards](#) and EHS guidelines.

### B.6.1.2 Concrete outcomes or gaps for the implementation of the UNGPs

- BIO does not conduct specific HRDD but if the investment risks or of the sector/value chain are high, the due diligence is adapted to tackle these risks. These procedures are realised when the screening of the projects is conducted rather than at the end of the due diligence process except for cases where concrete complaints suggest that the beneficiary cannot or is not willing to mitigate the risks in the short term.
- BIO is the only entity that implemented a [grievance mechanism](#), in 2018. However, there are no concrete figures published. BIO responded that of the three complaints lodged in 2018, two were ineligible because they referred to financing requests and the third was related to a financial fraud not directly connected to human rights. In 2019, one grievance was received and declared eligible. It concerned the working conditions in a manufacturing company which was being examined by an investment fund (in which BIO invests) for participation in their capital. It resulted into mitigating actions being included in the Environmental and Social Action Plan, whose implementation is monitored on an ongoing basis and in any case, on a quarterly basis in meetings involving all relevant units at BIO (environmental and social, portfolio monitoring, and BIO's grievance mechanism). In 2020, no complaint has been received.

#### Reported cases

Human Rights Watch (2019) reported that European investment banks invested in Feronia, a Canadian company with activities in the RDC.<sup>203</sup> Feronia was accused of violating social and environmental standards. The investment banks released a [joint statement](#) explaining the difficult circumstances of the investment and the progress in terms of human rights. On [30/11/2020](#) the website of BIO announced that Feronia restructured after a bankruptcy and in the restructuring agreement included an updated plan for the implementation of a comprehensive environmental and social plan to contribute to the sustainable development of the local communities. Moreover, BIO informed that a mediation process is being conducted between the company and local communities by an independent complaints mechanism and is supporting the new owners and the investment development banks.

## B.7 Guidelines and best practices concerning state economic support to businesses

Although concrete practices are varied, considering the diversity of instruments, the following guidelines have been developed to increase awareness of state agencies that provide economic support to businesses. They can be considered as parameters to adopt structural reforms or policies in line with the UNGPs, particularly to nudge Belgian companies to adopt due diligence procedures in their value chains.

#### Some important international standards to consider

- The [EC's Action Plan on Financing Sustainable Growth](#) (2018),
- The [Final report of the High Level Expert Group on Sustainable Finance](#) (2018)

<sup>203</sup> Cf. [Human Rights Watch](#) (2019) "A Dirty Investment European Development Banks' Link to Abuses in the Democratic Republic of Congo's Palm Oil Industry".

- The [UN GA A/HRC/38/48](#) (2018) Report of the Working Group on economic diplomacy, i.e. on the duty of states to protect against human rights abuses by businesses to whom they provide support for trade and investment promotion,
- [The World Bank Environmental and Social Safeguard Policies](#) (2016),
- The [Performance Standards on Social & Environmental Sustainability](#) - (IFC, 2012),
- [UNEP Rethinking Impact to Finance The SDGs A Position Paper and Call to Action prepared by the Positive Impact Initiative](#) (2018),
- UN Global Compact [Scaling Finance for the SDGs](#) Foreign Direct Investment, Financial Intermediation and Public-Private Partnerships and the OECD,
- Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence [TAD/ECG \(2016\)3, \(07.04.2016\)](#),
- OECD, DAC Recommendation on Untying Official Development Assistance, [OECD/LEGAL/5015](#) (2020);
- [OECD Responsible business conduct in the financial sector](#) (2019)
- Arrangement on Officially Supported Export Credits (2020) [TAD/PG\(2020\)1](#)
- The [revised Recommendation of the Council on Bribery and Officially Supported Export Credits](#) ([OECD/LEGAL/0447](#)) in 2019 connected to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- [The Equator Principles](#).

## C Role of the Belgian State in relation to business conducted in conflict-affected areas

### C.1 Key findings and recommendations

#### State's role in relation to business conducted in CAHRAs (UNGP 7)

UNGP 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.

#### Status and gaps

- There is no public policy or guideline on business respect of human rights in CAHRAs.
- No systematic guidance through embassies is given to businesses about potential “red flags” in conflict settings.
- State support to sector federations on business conducted in CAHRAs is lacking.
- Economic interests are in certain cases unduly taken into account in the arms export control decision making process.
- In the arms trade sector, HRDD is most often left solely to the arms export control authority, instead of requiring the arms industry to co-conduct their own HRDD.

#### Recommendations

- Belgian authorities should systematically (e.g. through the establishment of policies and/or guidelines) ensure that businesses engage in conflict-sensitive heightened due diligence when operating in conflict-affected areas.
- Belgian authorities should support sector federations and companies on the issue of human rights risks in CAHRAs.
- Embassies in CAHRAs, BIO and Credendo should provide conflict-sensitive advisory services and tools to the private sector to assist them in respecting human rights in conflict-affected regions.
- Belgian authorities need to be made more aware of applicable international obligations & proven good practices in export assessment.
- Belgian authorities should assist companies to develop or improve their internal compliance programmes to comply with arms export control procedures.

### C.2 Introduction

The UNGPs recognise that business activities in CAHRAs,<sup>204</sup> increase the risks of enterprises fuelling conflict. According to UNGP (Principle 7), states should support business's respect for human rights in conflict-affected areas. More concrete guidance has been issued by a UNWG and Conflict-Affected Regions.<sup>205</sup> Due diligence in CAHRAs is built around a concept of proportionality: the higher the risk, the more rigorous the processes. Hence, “*because the risk of gross human rights abuses is heightened in conflict-affected areas*”, action by States and due diligence by business should be heightened

<sup>204</sup> This NBA uses the OECD definition of CAHRAs: Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence, or other risks of harm to people. Armed conflict may take various forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, the collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law.

<sup>205</sup> UN General Assembly (2020). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action. A/75/212.



accordingly.<sup>206</sup>

## C.3 Methodology

This part assesses the role of the Belgian state to support business' respect for human rights in CAHRAs (UNGPs, Principle 7). The NBA team have reviewed the extent to which Belgian's current practices, policies, legislation, regulations, and enforcement measures effectively address the risk of business's involvement in human rights abuses in CAHRAs. Belgium's engagement with companies is assessed, with the aim to help businesses to identify, prevent and mitigate the human rights-related risks.

This assessment is based on data that was gathered through a literature review of laws, regulations, policies, guidelines, NGO reports as well as initiatives at the sectoral level. Interviews were conducted with officers from the OECD NCP, The Ministry of Foreign Affairs, and several sector federations to collect additional information.

This section will pay special attention to the role of the state in controlling and supporting the arms industry sector, which has the potential to contribute to human rights violations in CAHRAs. The assessment includes the role of the Belgium state to avoid the contribution to human rights violations in CAHRAs through the export of arms.

## C.4 Structural reforms

### C.4.1 International treaties and instruments

Belgium has ratified the main international human rights treaties.<sup>207</sup> In addition, Belgium has ratified international humanitarian law treaties, which specifically regulate armed conflict, such as the Geneva Conventions of 1949 and their Additional Protocols.<sup>208</sup> Belgium communicated its support to the Montreux Document on Pertinent International Legal Obligations and Good Practices for states related to operations of private military and security companies during armed conflict in February 2012.<sup>209</sup>

Belgium has ratified various UN conventions and treaties which control the transfer of conventional weapons:

- 1) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997),
- 2) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Firearms Protocol) (2001),
- 3) Convention on Cluster Munitions (2008), and
- 4) Arms Trade Treaty (2013).

### C.4.2 Multilateral Initiatives

Belgium participates in several initiatives to combat the illicit arms trade. At the international level Belgium has signed up to the following United Nations initiatives:

- 1) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001) (PoA); With the PoA, governments agreed to improve national small arms laws, import/export controls, and stockpile management.
- 2) International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner,

<sup>206</sup> UN General Assembly (2020). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action. A/75/212.

<sup>207</sup> The European Court of Human Rights, which adjudicates based on the Convention, has in some limited circumstances, found European States responsible for violations committed outside their territory in conflict situations.

<sup>208</sup> Conventions ratified in 1952, Additional Protocol I and II in 1986, Additional Protocol III in 2015. See also: <https://ichr.be/nl>. For a full list of the international humanitarian law treaties ratified by Belgium see the [ICRC link](#).

<sup>209</sup> Participating States of the Montreux Document, see Swiss Federal Department of Foreign Affairs [FDFA link](#).

Illicit Small Arms and Light Weapons (2005), known as the International Tracing Instrument (ITI); The ITI requires states to ensure that weapons are properly marked and that records are kept, and it provides a framework for cooperation in weapons tracing.

Belgium is also member of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, a multilateral export control regime. The members of the Wassenaar Arrangement undertake, amongst other, to follow the elements, guidelines and best practices,<sup>210</sup> adopted by the Wassenaar Arrangement, and control the export of goods appearing on the military list and the dual-use list of the Agreement under their national legislation. Since the adoption of Council Regulation (EC) No 1334/2000 of 22/6/2000 setting up a Community regime for the control of exports of dual-use items and technology, the principles of export control and the list of controlled dual goods and technologies use, as defined by the Wassenaar Arrangement, is binding on all member states of the European Union. Council Regulation (EC) No 1334/2000 was repealed by adoption of Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as amended.

At the regional level Belgium takes the non-binding 'Arms Control Agreements' of the Organization for Security & Co-operation in Europe (OSCE) into consideration. These include:

- 1) [FSC.DEC/2/10](#), Decision on the OSCE Plan of Action on Small Arms and Light Weapons (2010),
- 2) FSC.DEC/11/08, Questionnaire on national practices related to preventing the spread of SALW through illicit air transport,
- 3) [FSC.DOC/1/03/Rev.1](#), OSCE Document on Stockpiles of Conventional Ammunition (2003, rev. 2011),
- 4) [FSC.DOC/1/00/Rev.1](#), OSCE Document on Small Arms and Light Weapons (2000, rev. 2012),
- 5) Information Exchange on the Control of Brokering of Small Arms and Light Weapons ([SALW](#)),
- 6) [FSC Decision No. 20/95](#), Questionnaire on Participating States' Policy and/or National Practices and Procedures for the Export of Conventional Arms and Related Technology,
- 7) [DOC.FSC/1/95](#), Code of Conduct on Politico-Military Aspects of Security (1994),
- 8) Information Exchange on the Code of Conduct on Politico-Military Aspects of Security,
- 9) [DOC.FSC/3/96](#), Principles Governing Conventional Arms Transfers (1993).

### C.4.3 European Regulations

At the European level, two binding instruments have been adopted which introduce human rights due diligence obligations, especially relevant in CAHRAs. The EU Regulation (995/2010) laying down the obligations of operators who place timber and timber products on the market and prohibiting the import of illegally harvested timber (The Timber Regulation). Traders have a traceability obligation and operators must implement a due diligence system. Belgium has implemented the EU Timber Regulation.<sup>211</sup>

The EU Regulation (2017/821) on Conflict Minerals lays down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The majority of the requirements of the regulation will take full effect in January 2021. Responsibility for implementation of the Regulation lies with Member States, in Belgium this is the Ministry of Economy and Trade. Contrary to other states,<sup>212</sup> Belgium has not yet published an implementation law, nor communicated on guidelines for implementation for businesses (cf. [Ministry website](#)).

Various EU Regulations and Directives on transfer of conventional weapons are incorporated into

<sup>210</sup> For an overview of all the Wassenaar elements, guidelines and best practices see "Best practices and guidelines" [link](#).

<sup>211</sup> European Commission (2016). *State of implementation of EU Timber Regulation in 28 MS*. Retrieved from [https://ec.europa.eu/environment/forests/pdf/EUTR\\_implementation\\_scoreboard\\_08\\_12\\_16.pdf](https://ec.europa.eu/environment/forests/pdf/EUTR_implementation_scoreboard_08_12_16.pdf)

<sup>212</sup> Germany has introduced an implementation law; Austria, the Netherlands, Luxembourg, and Finland are publicly informing companies on their implementation strategy.

Belgian law:

- 1) Council Directive 91/477/EEC of 18/6/ 1991 on control of the acquisition and possession of weapons; Amended by Directive 2008/51/EC of the EP and of the Council of 21/5/2008, and Directive (EU) 2017/853 of the EP and of the Council of 17/5/ 2017.
- 2) Council Common Position 2008/944/CFSP of 8/12/ 2008 defining common rules governing control of exports of military technology and equipment; Amended by Council Decision (CFSP) 2019/1560 of 16/9/2019.
- 3) Council Regulation (EC) No 428/2009 of 5/5/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as amended.
- 4) Directive 2009/43/EC of the EP and of the Council of 6/5/2009 simplifying terms and conditions of transfers of defence-related products within the Community.
- 5) Regulation (EU) No 258/2012 implementing Article 10 of the U.N. Firearms Protocol, and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition.
- 6) Regulation (EU) 2019/125 of the EP and of the Council of 16/1/ 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
- 7) Council Decision (CFSP) 2019/1560 of 16/9/2019 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.

#### C.4.4 Belgian legislation

##### C.4.4.1 Belgian Corporate Governance Code

The B-NAP (Action 15) committed to integrating **the principle of due diligence into the governing bodies of Belgian organisations. In 2018, the Belgian Corporate Governance Code was in a revision process, this included a consultation on the inclusion of due diligence in the Code.**<sup>213</sup> However, the revised Code on Corporate Governance 2020 does not include due diligence, nor does it contain heightened expectations for companies when operating in conflict-affected areas (Corporate Governance Committee 2020).

##### C.4.4.2 Arms export control

In 2003 arms export control became a regional competence for Belgium. Between 2003 and 2012/13 the federal law of 1991 (as amended) still applied. In 2012 regional legislation to control the export, import and transit of defence-related, law enforcement and dual-use goods was adopted, incorporating the human rights criteria of Council Common Position 2008/944/CFSP of 8/12/2008 defining common rules governing control of exports of military technology and equipment.

The human rights criteria in the Flemish legislation are more stringent than those in Council Common Position 2008/944/CFSP. Article 28 of the Flemish Government prohibits the export and transit of arms if the regular army of the recipient country uses child soldiers. This is considered a violation of the Optional Protocol on the Involvement of Children in Armed Conflict. Additional criteria on the basis of which an application for export or transit can be refused are: the attitude of the country of end use towards the death penalty, the prevalence of a high degree of death due to firearms violence in the country of end use and the prevalence of gender-based violence, in particular rape and other forms of sexual violence (Article 28 (Flemish) Decree of 15/6/2012, as amended). In addition, efforts are being made to assist Flemish companies in developing or improving their internal compliance programmes to comply with export control procedures.

In Belgium, NGOs can contest export licensing decisions before the Council of State. In recent rulings (Arrêt no 248.128 du 7 août 2020, Arrêt no 248.129 du 7 août 2020), against arms export decisions made by the Walloon Government for exports to Saudi Arabia, the Council of State evaluated if the

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<sup>213</sup> FIDO (2020). [Stand van Zaken van het NAP 'Bedrijven en Mensenrechten'](#).

Common Position criteria had been properly applied in the arms export risk assessment decisions, especially if the administration had properly considered the risk for violations of international humanitarian law and human rights (IPIS 2020). The licences for FN Herstal for exports to the Saudi Arabian National Guard were suspended: The Council ruled that *“taking into account the duty of care provided for in Article 14 of the Decree of 12th June 2012, for the second criterion relating to respect for human rights in the country of final destination and respect for international humanitarian law by that country, the contested acts are not adequately motivated by the manifest risk that the military technology or equipment whose export is contemplated will be used for internal repression or to commit serious violations of international humanitarian law in Yemen”* (Council of State Decision no 248.128 of 7/8/2020).

On the other hand, the Council ruled that the objections in relation to the licences granted to John Cockerill for exports intended to the Royal Guard were not serious and thus not suspended (Council of State Decision no 248.129 of 7/8/ 2020).

#### **Federal laws and regulations:**

- 1) (Federal) Law of 5/8/1991; Regulates transfers of surplus by federal police and armed forces; regulates arms brokering, as amended.
- 2) (Federal) Law of 8/6/2006; Regulates possession & domestic sale of firearms; Amended by (Federal) Law of 7 /1/2018.
- 3) Royal Decree of 29/12/2006; implementation of law of 8 June 2006.
- 4) (Federal) circular of 25/10/2011 on the application of the Law of 8 June 2006.
- 5) (Federal) circular of 28/2/2018 on magazines, the declaration period for firearms in 2018 and the certificate with a view to the neutralization or destruction of firearms.

#### **Regional legislation:**

- 1) (Flemish) Decree of 15/6/2012; Arms Trade Decree, regulates import, export, transit and transfer of defence-related materials, law enforcement equipment & civilian firearms in Flanders; Amended by Decree of 30/6/2017.
- 2) (Flemish) Decision of 20/7/2012; arms trade regulations.
- 3) (Walloon) Decree of 21/6/2012; regulates import, export transit and transfer of civil and defence-related materials in Wallonia.
- 4) (Walloon) Order of 23/5/2013; regulates transfer licences.
- 5) (Walloon) Order of 23/5/2013; regulates certification procedure.
- 6) (Brussels) Ordonnance of 20/6/2013; regulates import, export, transit and transfer of defence-related materials, law enforcement equipment & civilian firearms in Brussels Region.
- 7) (Brussels) Decision of 3/4/2014 implementing the Order of 20 June 2013 on the import, export, transit and transfer of defence-related materials, law enforcement equipment and civilian firearms in Brussels Region.

## C.5 Policies, programmes, and processes

### C.5.1 State efforts to address the risk of business involvement in human rights abuses in CAHRAs

In Belgium there is no specific guidance nor policy on the heightened risk of doing business in conflict-affected areas.<sup>214</sup> In the B-NAP there is no mention of business respect for human rights in CAHRAs,<sup>215</sup> except in the context of the OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from CAHRAs (B-NAP Action 22).

<sup>214</sup> E.g. Flanders Investment and Trade, 101 veelgestelde vragen over internationaal ondernemen, 9/2018 and MVO Vlaanderen, Duurzaam Internationaal Ondernemen ([MVO](#)).

<sup>215</sup> E.g. the [Swiss NAP](#) includes actions on business respect for human rights in CAHRAs, (pp 13-160).

Belgian sector federations assert that they receive no assistance from the state on how to improve enhanced due diligence in CAHRAs. Notwithstanding, several sector federations and the Chambers of Commerce and Industry have argued that they need this support to make companies aware of the risks and hence the importance to conduct enhanced due diligence in CAHRAs.<sup>216</sup> Representatives from sector federations mentioned the following shortcomings:<sup>217</sup>

- 1) Companies are not encouraged to conduct enhanced due diligence. There was a suggestion to make costs spent on more comprehensive human rights due diligence tax-deductible.
- 2) Sector federations are not informed by the Government of new developments regarding this subject (e.g. events to attend, new platforms and tools available, etc.).
- 3) Direct conversations on risks and needs between the relevant Ministries and Sector Federations is missing.

There is no public information available,<sup>218</sup> on the role of Belgian embassies in CAHRAs to promote the UNGPs under Belgian companies or to give country specific advice to companies.<sup>219</sup>

According to the B-NAP (Action 7), trade missions will integrate an activity on business and human rights sensitization. Indeed, the trade missions have included an activity on business and human rights during their missions in 2017, 2018 and 2019, but no CAHRA countries were visited during these years.<sup>220</sup>

With the adoption of the EU Common Position 2008/944/CFSP, Belgium is obliged to conduct human rights due diligence while assessing export licence applications. In Belgium NGOs can contest export licensing decisions before the Council of State. In recent rulings (RvS, 248128, 2020, RvS 248129, 2020) against arms export decisions made by the Walloon Government for exports to Saudi Arabia, the Council of State evaluated if the Common Position criteria had been properly applied in the arms export risk assessment decision, especially if the administration had properly considered the risk for violations of IHL and human rights.<sup>221</sup>

### C.5.2 Promotion of OECD Guidelines on Due Diligence in CAHRAs

Belgium supports the implementation of the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. It is also a member of the multi-stakeholder group that manages the implementation, dissemination, and continued development of the latter Guidance.

The B-NAP describes several tools of the OECD that the federal government seeks to promote. Action 20 aims at promoting socially responsible state businesses, and Action 22 encourages responsible supply chain management through a sector-wide approach. The OECD National Contact Point (NCP) organises awareness-raising events on the OECD Guidelines, for example, on Responsible Supply Chains of Minerals from CAHRAs in 2017 and a planned event in 2021. These actions do not go beyond awareness-raising. Moreover, NCP has not promoted the OECD Guidelines to Belgian embassies in conflict-affected countries where Belgian companies are active.<sup>222</sup>

The Advisory Council on Policy Coherence for Development identified strengthening human rights due diligence of businesses as one area where the Belgian NAP could be improved (ACPCD, 2019b). The

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<sup>216</sup> Online semi-structured interviews with representatives from sector federations AWDC and Agoria and Flanders' Chambers of Commerce and Industry VOKA.

<sup>217</sup> Online semi-structured interviews with representatives from sector federations AWDC and Agoria and Flanders' Chambers of Commerce and Industry VOKA.

<sup>218</sup> No public information found. Interview requests were sent to Belgian Embassies in DRC, CAR, Colombia, Peru, Indonesia and Afghanistan (via Pakistan) but remained unanswered.

<sup>219</sup> E.g. the [Swiss NAP](#), measurement 14.

<sup>220</sup> For a list of the Federal (Prinselijke) Trade Missions cf. the [FIDO link](#).

<sup>221</sup> IPIS (2020). *Arms Trade Bulletin September – October 2020*. Retrieved from <https://ipisresearch.be/weekly-briefing/arms-trade-bulletin-september-october-2020/>

<sup>222</sup> Belgian OECD NCP Annual Report 2017 and 2018

Advisory Council stresses that a duty to practice human rights due diligence is particularly important for corporations operating within global supply chains, where part of the production process takes place in countries with a weak record in human rights or labour rights areas (ACPCD, 2019b). CAHRAs are not specifically mentioned in this regard.

### C.5.3 Belgian public procurement policy to avoid conflict financing

Belgium has public procurement policies at the federal and regional level (cf. Pillar I). The B-NAP mentions the need to monitor human rights compliance in various sensitive sectors, of which (part of) the production takes place in so-called “risk countries” (NAP 2017: 33).

A 2018 Evaluation Report of the 2014 Federal Circular Note on public procurement stated that a specially formed team would be required to guarantee a structural implementation and monitoring of ethical business conduct in the entire supply chain. Additional FTEs will have to be released or recruited to perform these tasks.<sup>223</sup> It is not clear whether this indeed has happened. In a pilot project for a public contract for the purchase of ICT equipment, the Ministry of Defense and FIDO defined ethical criteria and innovative processes for supplier monitoring to strengthen human rights in the entire ICT supply chains. However, ultimately this pilot government assignment could not be carried out due to a lack of political support.<sup>224</sup>

### C.5.4 Belgian participation in relevant multi-stakeholder initiatives (MSIs)

The Kimberley Process (KP) is a binding agreement focusing on trade in rough diamonds. The Kimberley Process is government-led, uniting civil societies, industry, and governments. This tripartite political process seeks to halt the flow of conflict diamonds.<sup>225</sup> The EU represents Belgium in the KP. Because of its prominent role in the diamond sector,<sup>226</sup> Belgium is the most active member in the EU representation in the KP. In the KP, Belgium is leading by example as it has the most rigorous export and import controls on diamonds in the world. At the same time, despite multiple difficulties within the KP<sup>227</sup>, Belgium is publicly defending the effectiveness of the KP, as the stakes are high to keep a positive image of the global diamond industry.<sup>228</sup>

Belgium is a supporting state of the Extractive Industries Transparency Initiative (EITI). The EITI is a global standard for the good governance of oil, gas, and mineral resources. Contrary to some neighbouring countries,<sup>229</sup> Belgium is not an EITI implementing state. Implementing countries must give revenue transparency: governments should publish what they received from extractive industries businesses, and businesses must publish what they pay to governments.

Belgium is not a member of the multi-stakeholder initiative European Partnership for Responsible Minerals (EPRM).<sup>230</sup> The Ministry of Foreign Affairs has been approached on several occasions to join the initiative, but, despite an expressed interest, there have not been any concrete steps taken to date.

Belgium is not a member of the multi-stakeholder platform of the Voluntary Principles on Security and

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<sup>223</sup> FIDO (2018). *Evaluatie van de federale omzendbrief van 16 mei 2014*. Retrieved from [https://guidedesachatsdurables.be/sites/default/files/content/download/files/20180105\\_omzendbrief\\_evaluatie\\_nl\\_clean.pdf](https://guidedesachatsdurables.be/sites/default/files/content/download/files/20180105_omzendbrief_evaluatie_nl_clean.pdf)

<sup>224</sup> FIDO (2020). *Stand van Zaken van het NAP 'Bedrijven en Mensenrechten'*. Retrieved from [https://www.duurzameontwikkeling.be/sites/default/files/content/version\\_nl\\_overview\\_bhr\\_2020.pdf](https://www.duurzameontwikkeling.be/sites/default/files/content/version_nl_overview_bhr_2020.pdf)

<sup>225</sup> Conflict diamonds by the KP is defined as: “rough diamonds used by rebel movements to finance wars against legitimate governments.”

<sup>226</sup> 84% of all rough diamonds from around the world are traded through Antwerp, Belgium.

<sup>227</sup> E.g. KP Civil Society Coalition, Real Care is Rare: An on-the-ground perspective on blood diamonds and the fifth ‘C’, September 2019.

<sup>228</sup> Cf. E.g. Ministry of Foreign Affairs, *Belgium leading the fight against conflict diamonds*, 12 November 2018. Ministry of Foreign Affairs, *Quand les diamants seront-ils vraiment éthiques?*, 14/2/2020.

<sup>229</sup> <https://eiti.org/countries>

<sup>230</sup> <https://europeanpartnership-responsibleminerals.eu/cms/view/53243030/member-overview>. Germany, the United Kingdom and the Netherlands are EPRM members in the Government pillar.

Human Rights.<sup>231</sup> Especially relevant for business and human rights in conflict-affected areas, the Voluntary Principles help companies understand the environment they are operating in, identify security-related human rights risks, and take meaningful steps to address them.<sup>232</sup> Belgium is not a member of the International Code of Conduct for Private Security Service Providers' Association (ICoCA) either.<sup>233</sup>

### C.5.5 Financial institutions operating in CAHRAs supported by the State

Finexpo [grants public aid for projects](#) carried out in developing countries. For its tied aid programs, the application of the OECD Recommendations in environment, sustainable lending, bribery and corruption, and human rights are closely monitored. Credendo advises Finexpo on the commercial, economic and political risks of the beneficiary country in question.<sup>234</sup> There is no explicit mention of heightened human rights risks in CAHRAs.

Credendo protects companies, banks and insurance undertakings against credit and political risks or facilitates the financing of such transactions. In order to assess the political risks, Credendo uses a quantitative model, focusing on the evolution of the liquidity situation of the debtor/obligor countries and measuring the countries' solvency. To assess the political violence risk, Credendo looks at the actual levels of internal violence and external conflict with a country, and at the conflict potential that arises from lingering internal and external tensions, frustration, and dissatisfaction. Respect for human rights is included in these analyses. Credendo provides a rating for every country on [its website](#).

BIO contributes to socio-economic growth in developing countries by investing in SMEs, financial institutions, and infrastructure projects. Its purpose is to deploy long-term investment in some of the poorest and most challenged regions to bring about positive social, environmental, and economic change.<sup>235</sup>

To avoid contributing to human rights violations in CAHRAs, BIO is prohibited from investing, directly or indirectly, in enterprises established in countries that were rated "non-compliant" by the Global Forum for Transparency and Exchange of Information for Tax Purposes.<sup>236</sup> Additionally, BIO is prohibited from investing in regions with a no or low tax jurisdiction as per a Royal Decree list. There is no explicit mentioning of conflict financing<sup>237</sup>.<sup>238</sup> Conflict or respect for human rights is not among the criteria for exclusion. As a member of the European Development Finance Institution (EDFI), BIO also has to adhere to the [EDFI Principles for Responsible Financing](#). These principles do not contain any provisions of particular relevance to CAHRAs.

BIO recognizes that businesses have the responsibility to respect human rights alongside the state duty. A due diligence process by BIO includes assessing relevant human rights issues. In higher-risk contexts, BIO claims to give special attention to human rights.<sup>239</sup> On the basis of commercial confidentiality, the conducted due diligence assessments are however, not public, which hinders

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<sup>231</sup> <https://www.voluntaryprinciples.org/about/>

<sup>232</sup> <https://www.voluntaryprinciples.org>

<sup>233</sup> <https://www.icoca.ch/en/membership>

<sup>234</sup> Finexpo (2018). [Vademecum](#).

<sup>235</sup> BIO (2019). *Joint statement from CDC Group, BIO, DEG, and FMO in response to the Human Rights Watch Report on Feronia in DRC*. Retrieved from <https://www.cdcgroup.com/en/news-insight/news/a-joint-statement-from-cdc-group-bio-deg-and-fmo-on-the-long-term-role-of-development-finance-institutions-in-poverty-stricken-regions-of-the-world/>

<sup>236</sup> The countries that were rated "non-compliant" by the Global Forum for Transparency and Exchange of Information for Tax Purposes, except for the countries that appear on the OECD DAC list for ODA recipients, provided that such countries have been rated "non-compliant" by the Global Forum for a period of less than five years.

<sup>237</sup> BIO (2019). *Environmental and Social Policy*. Retrieved from [https://www.bio-invest.be/files/BIO-invest/Our-Impact/ES/BIO-ES-Policy\\_BOD-approved-27.11-2018\\_V2.pdf](https://www.bio-invest.be/files/BIO-invest/Our-Impact/ES/BIO-ES-Policy_BOD-approved-27.11-2018_V2.pdf)

<sup>238</sup> A no or low tax jurisdiction as per a list established by RD; a jurisdiction listed on the list of jurisdictions that refuse to negotiate an agreement for the automatic exchange; of information for tax purposes, as established by Royal Decree deliberated in the Council of Ministers.

<sup>239</sup> BIO (2019). [Environmental and Social Policy](#). and BIO (2019). [Joint statement from CDC Group, BIO, DEG, and FMO in response to the Human Rights Watch Report on Feronia in DRC](#).

oversight and monitoring by third parties.<sup>240</sup> Furthermore, it is not clear to what extent BIO is obliging businesses that receive funding to conduct heightened human rights due diligence and if BIO prioritizes investments involving businesses committed to responsible business conduct in conflict-affected areas.

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<sup>240</sup> Human Rights Watch, A Dirty Investment, November 2019, p. 64.



## D Policy coherence across state activity

This part assesses the policies and actions taken by Belgium to ensure policy coherence regarding business and human rights across various national and international policy domains.

### D.1 Key findings and recommendations

#### Section D Policy coherence

##### Policy coherence across state activity (UNGP 8-10)

1. *Horizontal and vertical policy coherence* | 2. *Policy coherence in state agreements with business enterprises* | 3. *State policy coherence in multilateral institutions*

UNGP 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. UNGP 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. UNGP 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.

##### Status and gaps

- Policy coherence is constrained by Belgium's complex institutional architecture, and gaps in the mandate and resources of (possible) intermediary actors.
- The B-NAP provides limited guidance in allocating specific roles and responsibilities to different state actors.
- At the international level, Belgium is committed to human rights and a proponent of multilateral collaboration in the domain of business and human rights
- The creation of the NHRI provides opportunities to drive the business and human rights agenda, but with its competencies constrained to the federal level, its potential contribution to policy coherence is likely to be limited to specific policy domains.
- In the governments' actions on the UN 2030 Agenda for Sustainable Development (SDGs), a systematic alignment with existing UNGPs commitments is missing.

##### Recommendations

- Although many of these entities have adopted CSR and SDG monitoring schemes, Belgian authorities need to complement these schemes with the implementation and monitoring of the UNGPs.
- A clear role division, mandate and sufficient resources for governmental agencies are required to support the implementation of the UNGPs across different government levels and policy domains.

### D.2 Horizontal and vertical policy coherence

Overall, the transition towards greater policy coherence in business and human rights is constrained by Belgium's complex institutional architecture, with its constitutional distribution of territorial competences (i.e. Federal, regional, communal). In an earlier study, Huyse and Verbrugge (2018: 45) attempted a more detailed mapping of the multiplicity of actors, government departments, and government levels directly or indirectly engaged with the issue of business and human rights. While

the recently created (May 2019) national human rights institute (NHRI) could bring more structure and continuity in the governments' actions, its potential contribution to policy coherence is likely to be constrained by the decision to limit its competencies to the federal level (cf. pillar III). In addition, little is known for now about its institutional capacity and exact modus operandi in the domain of business and human rights.

### D.2.1 NAP

Belgium's institutional complexity is also apparent where it concerns the governance of its National Action Plan on business and human rights. The main body in charge of coordinating the actions in the NAP across different government levels and -departments is the Social Responsibility Working Group of the ICSD, which comprises representatives from federal administrations and multiple regional entities (in the section on the SDGs below, it is argued that ICSD's efforts in merging the UNGP agenda with the SDGs were unsatisfactory). While the IFDD/FIDO has played a vital role in facilitating the B-NAP implementation its specific position under the Ministry of Sustainable Development and its limited mandate cannot drive the business and human rights agenda comprehensively. Aside from the IFDD/FIDO, the Ministry of Foreign Affairs has played a supporting role for several components of the NAP. Significantly, the concept of policy coherence does not feature explicitly in the B-NAP. Besides from a single reference to the Advisory Council on Policy Coherence, which was consulted in the drafting phase of the B-NAP, there is no mention of specific instruments and structures that are meant to guarantee policy coherence.

Taking a closer look at the B-NAP, while it does not explicitly use the terminology of policy coherence, several actions can be considered from a policy coherence perspective. The Belgian state has committed, for example, to various international binding treaties and non-binding principles and declarations related to business and human rights, including the ILO core conventions, the UNGPs, the SDGs and various OECD declarations on business and human rights (cf. pillar I). Aside from re-iterating these commitments, the B-NAP also committed to ratifying two additional ILO conventions (FIDO/IFDD, 2017).<sup>241</sup> The B-NAP also includes a number of communication activities that can raise awareness about the government's commitment to business and human rights amongst different government levels and -departments. Key examples include: the online [Toolbox human rights for business and organisations](#); a leaflet on the B-NAP; a booklet on access to remedy, dedicated sessions on business and human rights during the annual SDG Forum 2019-2020; the integration of a public session on business and human rights during international trade missions (2017-2019); and attention for human rights in training activities of the Brussels government on international trade<sup>242</sup>. While these activities can indeed raise awareness amongst different government actors and may even lead to the adoption of new instruments, e.g. in the field of public procurement (B-NAP action points 10, 11 and 13), several tools and outputs have not been updated nor made available online. They have, as such, not yet created a shared and in-depth understanding of how business and human rights policies should be implemented across different government actors (cf. pillar I). The B-NAP does not yet serve as a master plan with an underlying theory of change, i.e., with guiding strategies and targets to improve policy coherence on business and human rights. Consequently, overall awareness of recent international frameworks and commitments remains limited in ministries and departments that have not been engaging directly with this agenda.

### D.2.2 Advisory Council on Policy Coherence

Beyond the B-NAP and the specific business and human rights agenda, Belgium has initiated other initiatives to improve policy coherence for development (PCD). The establishment of the Advisory Council on Policy Coherence (in 2014) can be seen as the main effort to critically review Belgium's performance in the area of PCD. This Advisory Council was set up in response to policy developments

<sup>241</sup> Action 25 and 26 of the B-NAP

<sup>242</sup> [https://www.duurzameontwikkeling.be/sites/default/files/content/version\\_nl\\_overview\\_bhr\\_2020.pdf](https://www.duurzameontwikkeling.be/sites/default/files/content/version_nl_overview_bhr_2020.pdf)

at the European level, which recognised the importance of ensuring that policies in one policy area do not contradict or even undermine the gains made in other areas (ACPCD, 2019a). PCD is defined for the first time by the Belgian government in the development cooperation law of 2013. Initially, a comprehensive and ambitious system was to be established, consisting of an Inter-Ministerial Conference, and inter-departmental working group, a PCD unit in the Directorate-General for Development Cooperation, a PCD Advisory Council, and a regulatory impact assessment (RIA) test. In the end, only the Advisory Council and the RIA tests were activated (ACPCD, 2019a). Between 2014 and 2019, the Advisory Council issued 16 opinions, only 3 of which were requested by the government.<sup>243</sup> The ACPD initiated the remaining 13 opinions. Six opinions deal with business and human rights issues,<sup>244</sup> including one that deals explicitly with the question as to how Belgium can strengthen policies and actions in the field of HRDD (ACPCD, 2019a). The final report of the Council (ACPCD, 2019a) looks back at the Council's operations for the full period of its existence but does not refer to specific examples of how its advice has generated policy impacts. This apparent lack of policy impact may be related to the absence of clear structures at the political-administrative level with an explicit mandate and responsibility to engage with the Council's advice (APCD, 2019a). The PCD Advisory Council ended after a 5-year period when its mandate was transferred to the Advisory Council on Sustainable Development.<sup>245</sup> In parallel, in 2018, the Ministry of Foreign Affairs adopted the comprehensive approach, which aims 'to achieve a more coherent and effective foreign policy' (ACPCD, 2019a: 6). The comprehensive approach does not focus specifically on the issue of business and human rights, for example, with regards to Belgium's support to the private sector in developing countries (BIO, Enabel, Credendo) or in the context of tied aid (Finexpo, Credendo).

Like other OECD countries (OECD, 2019), Belgium has a comprehensive system for regulatory impact assessment (RIA), which is meant to screen new policies on a wide range of dimensions. The Belgian RIA system,<sup>246</sup> currently includes 21 thematic areas, with policy coherence being the last item on the list. Again, business and human rights does not feature explicitly as one of the dimensions, aside from a single reference to decent work as a sub-item of one of the 21 thematic areas that need to be considered.

### D.2.3 Alignment of SDG activities with UNGP commitments

This section critically assesses to what extent SDG actions initiated by Belgian governments are aligned with the various commitments related to the UNGPs.

The UNGPs are the key framework articulating the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for business-related human rights abuses. Complementary frameworks further articulate the concept of responsible business conduct in the framework of sustainable development, although not explicitly from a human rights perspective. The SDGs aim at guiding states and businesses in creating partnerships for sustainable development (SDG 17) (Morris et al 2019) and emphasizes the importance of decent work (SDG 8), but these SDGs can in no way replace existing duties and responsibilities under the UNGPs<sup>247</sup>. An assessment of Belgium's performance in achieving the SDG targets would therefore seem like a redundant exercise in the framework of this NBA. However, many activities and achievements

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<sup>243</sup> Two by the Ministry for Development Cooperation, and one by the Ministry for Energy, the Environment, and Sustainable Development.

<sup>244</sup> The National Action Plan (NAP) Business and Human Rights (14 January 2016); Public country-by-country reporting by large companies (10/5/2016); Public development aid as a lever to mobilise the private sector in developing countries (blending) (22/6/2017); Belgium's economic and trade relations with Israeli settlements in the occupied Palestinian territories (17/1/ 2018); Sale of weapons to Saudi Arabia (24/5/2018); More due diligence in the field of human rights (14/3/2019)

<sup>245</sup> This decision was reversed in the fall of 2020. In December 2020, preparations were being made to re-start the ACPCD.

<sup>246</sup> The Belgian RIA approach dates from 2014. More information can be found on <http://www.vereevoudiging.be/content/impactanalyse> (in Dutch or French)

<sup>247</sup> More information on the relationship between HRDD/UNGP and the SDGs can be found on this web platform from the [DIHR](#)

reported by Belgian entities refer to the SDGs. This includes the B-NAP, which explicitly connects its actions with the SDGs. Moreover, corporate efforts to contribute to the SDGs could be informed by HRDD processes, helping them identify priorities based on risks (see pillar II). Hence, this section summarises the main findings regarding Belgium’s achievements with respect to the SDGs and assesses the extent to which they are aligned with commitments made under the UNGP agenda.

According to the SDG index 2020 (Sachs et al. 2020),<sup>248</sup> Belgium is the 11<sup>th</sup> best country worldwide in achieving the SDG targets. That being said, Belgium has not fully realised any of the 17 SDGs, and still faces significant challenges. In 2020, Belgium showed clear positive trends in realising SDGs 5 (gender equality), 8 (decent work), 9 (industry, innovation and infrastructure), and 15 (life on land), but it also reported apparent shortcomings in SDG 13 (climate action).

Figure 3: Trends in the realisation of the SDGs in Belgium



Source: [Sustainable Development Report 2020](#)

The voluntary national reviews on the SDGs encourage member states to conduct regular and inclusive reviews of progress at the national and sub-national levels. Belgium did not [submit a voluntary report](#) to the UN in 2019. A detailed report by the Belgian Court of Audit (24/6/2020),<sup>249</sup> assessed how Belgian governments had implemented the SDGs at the national level. The Court of Audit noted that the ICSD,<sup>250</sup> has not been active since 2018,<sup>251</sup> and that the national strategy on the implementation of the SDGs (2017) focused on processes without setting quantifiable objectives. The Court of Audit (24/6/2020) flagged that although the Belgian Constitution (BC, Art. 7bis) and the Federal and subnational governments have binding rules on sustainable development, and have adopted concrete policies, these rules and policies have not been translated into official measurable objectives in a National Voluntary Report. The IFDD/FIDO launched an [SDG website](#) that provides guidance and lists several SDGs initiatives, but the Court of Audit (24/6/2020) found that: a) subnational governments do not participate in this initiative, and their information is not updated; and b) the federal government has not developed any specific plan to raise public awareness about the SDGs aside from the creation of a website, an SDG booklet, and communication via social media. However, the Court of Audit did not mention the annual SDG forum, which involves the participation of a diverse group of stakeholders. The IFDD/FIDO also launched two SDG Barometers in [2018](#) and [2020](#) (which corresponds to B-NAP Action 18)). The SDG Barometers are examples of B-NAP activities that do not address the implementation of the UNGPs in a systematic way. The B-NAP (Actions 4 and 6 ) further refers to the development of the Belgian SDG Charter on the role of the private sector, civil society and the public sector in international development; and to the promotion of initiatives relating to human rights and

<sup>248</sup> The *Sustainable Development Report* (formerly the SDG Index & Dashboards) is a worldwide study assessing country performance conducted by private experts.

<sup>249</sup> SDGs 2030 UN Agenda: Implementation, Monitoring and Reporting by the Belgian Authorities (Preparedness Review) Belgian Court of Audit ([Report](#) of 24/6/2020)

<sup>250</sup> It is the consultation body in charge of the national coordination of the sustainable development policy, conformed by all the public entities competent these policies at all government levels.

<sup>251</sup> This information contrasts with the last activity report from the ICSD (2019), which affirms that the Commission did meet in 2019. The ICSD report refers to activities of the Federal Ministries. No information is provided about the activities of subnational governments (i.e. Flanders, Wallonia, Brussels Capital, and the German Community).

CSR.

With regards to the region of Flanders, the Belgian Court of Audit (24/6/2020) observed that the third Flemish sustainable development strategy was integrated in the policy note *Visie 2050*, which commits to achieving all SDGs except climate action, at the sectoral level. The *Visie 2030 Stand Van Zaken Dashboardindicatoren* (11/2020) reported on 53 objectives and 111 indicators to measure progress in achieving of the SDGs. The Association of Flemish Provinces (Vereniging van Vlaamse Provincies – VVP) has also raised local authorities' awareness. The B-NAP (Action 28) refers to the execution of the Flemish "International sustainable entrepreneurship" Action Plan 2014-2015-2016, although the NBA team did not find further details about the realization of this action plan.

In the region of Wallonia, the regional government adopted an internal sustainable development report for the period 2016-2019, which focuses on how the administration adopts sustainable processes in its internal management. The Court of Audit (24/6/2020) flagged that Wallonia has only carried out punctual actions to raise awareness about sustainable development, and not always in connection with the SDGs. In the B-NAP on the other hand, Wallonia committed to a number of actions related to human rights (Actions 19, 29, 30, 31, and 32): to promote good practices of SMEs on responsible supply chain management (mainly through the CSR approach), to facilitate knowledge sharing in human rights, and to support businesses to respect human rights. However, the NBA team did not find publicly available information on the implementation of these actions, nor did the Walloon government respond to the concrete questions raised by the NBA team.

Finally, the Brussels-Capital Region has adopted a regional sustainable development plan (2018) and *Bruxelles Environnement* adopted a communication plan covering annual topics: Good Food (2016), Nature in the City (2017), Zero Waste (2018) and Sustainable Generation (2019).<sup>252</sup>

The Belgian Court of Audit (24/6/2020) concluded that Belgium currently lacks a coordinated policy seeking to fulfil their political commitments to the SDGs. The Federal Government has not renewed its sustainable development plan since 2008. Moreover, although the federal law requires reporting, the federal government has only mentioned actions or strategic measures without measurable indicators. This conclusion aligns with earlier findings in the report of the Federal Planning Bureau on sustainable development (2019),<sup>253</sup> which concluded that sustainable development could not be seen as a policy priority of the Federal Government, because the implementation of the commitments adopted in the Voluntary National Review (2017) were considered to be weak. In addition, coordination between different Belgian governments is also seen as weak, and a coordinated approach is lacking. The Planning Bureau concluded that Belgium would only meet 4 out of the 22 indicators with quantifiable objectives by 2030, and that the favourable results are higher for environmental and economic components (8 out of 16 environmental indicators, 3 out of 7 economic indicators) than for social indicators. These findings contrast with the results of the [Sustainable Development Report \(2020\)](#) (cf. supra).

When looking at the implementation of the B-NAP, available reports are an online [excel sheet](#) and a [booklet](#). There is a lack of a clear and structured periodical reporting format at the level of responsible entities. In addition, the reporting is limited to output-level indicators, which provide limited insight to what extent the B-NAP activities contribute, individually or collectively, to the stated goals in the NAP. The lack of a legal obligation to report on the NAP's achievements does not help either. The internal annual reporting process was complemented with a more public review process of the NAP in May 2019, when the IFDD/FIDO organised a [stakeholder event \(23/5/2019\)](#) to assess progress on its implementation (2017). The conclusions of this stakeholder event flagged that a second NAP would require more consultation, continuity, and coherence. It was also noted that the SDGs could be taken

<sup>252</sup> The Belgian Court of Audit (24/6/2020).

<sup>253</sup> Federal Planning Bureau ([Report of 6/2019](#)), Taskforce on Sustainable Development, Which priority for a sustainable development? Federal Report on sustainable development 2019, Analysis and assessment. The Bureau has the legal duty to draft this report (Law of 5/5/1997).

as an additional entry point to further strengthen the business and human rights agenda in Belgium.

The same report of the Belgian Court of Audit also noted that the challenges identified in 2019 are still there, including the need to create a multi-stakeholder Working Group to assess the feasibility of a mandatory HRDD, and a multi-stakeholder knowledge centre to support companies in identifying risks and to improve the social sustainability of their supply chains. Regarding Pillar III of the UNGPs, it was flagged that the [recommendations](#) that were formulated in 2017 were only released in 2019 and are now outdated.

In short, SDG and CSR initiatives have dominated Belgian policies at all levels of government with almost no reference to the UNGPs. While the reports from the Court of Audit and the Federal Planning Bureau, as well as the [Sustainable Development Report 2020](#), identify important gaps with respect to achieving the SDG targets, the limited scope of reporting about the implementation of the NAP is not reassuring.

### D.3 Policy coherence in state agreements with business enterprises

In the area of public procurement, Belgium's policies are guided by the EU framework Directive 2014/24/EU on public procurement, which was transposed in 2016 into the Belgian procurement law (Public Procurement Law (Law of 17/6/2016)). In line with the EU Directive, this law stimulates environmental and socially sustainable procurement, and provides the possibility of adding sustainability clauses to public procurement tenders and other mechanisms to include sustainability objectives in public procurement, although this is mostly on a voluntary basis. This is discussed further in section B.3.1 of pillar I.

Another area through which the Belgian state engages with companies is that of trade and investment agreements in which Belgium is a party. These aim to protect the interests of Belgian investors that invest in third countries e.g. through the protection of contractual rights and the inclusion of clauses to authorise international arbitration (Zachary et al., 2006). Over the last decades, arbitration clauses have become increasingly contested by civil society groups as they are perceived to transfer regulatory power from the governmental sphere to business. At the same time, over time international trade and investments treaties have come to pay more attention to human rights. Since the Lisbon Treaty of 2009, the competence to negotiate new trade and investment agreements with third countries has been transferred to the European level. In the annual progress report for the NAP for 2020<sup>254</sup>, the Ministry of Foreign Affairs highlights its efforts in 2018 in the context of negotiations in the CoE for a new 15-Point Plan<sup>255</sup>, to realise improved and enforceable trade and sustainability chapters in free trade agreements. Belgium is reported to have plead for an improved coordination, stronger cooperation with civil society actors, and more transparency. In 2019, Belgium continued to follow-up on the implementation of the 15-Point Plan. Table 23 provides an overview of a number of historical trends in the attention for sustainability clauses in trade and investment treaties (after 2009) to which Belgium is a party. This shows that references to labour standards on the one hand and statements that confirm that the parties to the treaty will not lower existing standards on the other hand, started emerging after 2004. The topic of corruption started emerging from 2012. More recently (2016) there is explicit attention for the OECD MNE Guidelines and OECD Due Diligence Guidance framework in the broader framework of corporate social responsibility.

<sup>254</sup> [https://www.duurzameontwikkeling.be/sites/default/files/content/version\\_nl\\_overview\\_bhr\\_2020.pdf](https://www.duurzameontwikkeling.be/sites/default/files/content/version_nl_overview_bhr_2020.pdf)

<sup>255</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1803>

Table 23: Overview of international investment treaties for Belgium (in force or signed; bilateral and EU; 1978-2019)  
(Source: International Investment Navigator, UNCTAD<sup>256</sup>)

Explicit clauses with explicit references to human rights-related subjects (any mentioning in the text, except preamble)	Number of investment treaties	Emerging first time in treaty
Total number of international investment treaties (in force or signed)	92	1978
Labour standards	27	2004
CSR(with references to OECD MNE Guidelines and OECD Due Diligence Guidance)	5	2016
Corruption	5	2012
Not lowering of standards (typically environment and/or labour standards)	25	2004

Returning to the B-NAP, aside from awareness-raising activities it also includes actions to support specific departments and agencies to improve the integration of human rights in their engagement with business actors. A first example is action 10, which pertains to the development finance institution BIO (cf. Pillar I, part B), and expects it to increase its attention for the screening and follow-up of human rights in its operations. Action 10 also includes other efforts by the Ministry of Development Cooperation to improve attention for human rights in its development cooperation programmes focused on the private sector. A second example is action 11, which focuses on the export credit agency Finexpo. Specifically, action 11 proposes a research project to improve the screening and monitoring of Finexpo’s projects with Belgian (and other) companies in the area of human rights. A third example (action 13) relates to sustainable purchasing, in which the Flemish government has developed a range of activities to pilot new approaches to include social clauses in public purchasing. Examples include a pilot programme with the city of Ghent, the IRBC Trustone and two funded projects implemented by external actors.<sup>257</sup> A final example (action 7) is the inclusion of business and human rights activities in foreign trade missions of the Ministry of Commerce.

## D.4 State policy coherence in multilateral institutions

Belgium is historically a strong proponent of multilateralism and international collaboration, including in the domain of business and human rights. For instance, in its NAP, the previous Federal Government (Michel I) expressed its support for an active involvement of the EU in the development of a UN binding treaty on Business and Human Rights; for the signing of global framework agreements (GFA) or enforceable brand agreements, like the Bangladesh Accord; and for the ratification of ILO conventions regarding labour rights of women (C175, C156 and C189) and other ILO conventions ensuring health and safety at work (ACPCD, 2019b).

During the fourth (and important) round of negotiations of the intergovernmental working group for a binding UN treaty, which were held in Geneva in October 2018, Belgium was one of the few EU member states that, in the absence of a clear negotiating mandate for the EU, participated in the negotiations and took to the stage. Still, civil society observers noted that Belgium could have shown more ambition, and that it should take a much more proactive stance towards a binding UN treaty in the future.<sup>258</sup> In its government agreement, the recently created Federal Government (De Croo I) expresses a strong commitment to “actively and constructively participate in negotiations on a future UN treaty”, but also to “playing a leading role in the development of a European legislative framework on HRDD”, and where possible, to “develop a supportive national legal framework”.<sup>259</sup> With this commitment, the Federal government moves away from the position taken by the previous federal government (Michel I), which was an active proponent of voluntary action in the domain of business

<sup>256</sup> <https://investmentpolicy.unctad.org/international-investment-agreements/ii-a-mapping>

<sup>257</sup> Fair ICT Flanders and the Sustainable Supply Chains project with KU Leuven and UZ Leuven.

<sup>258</sup> See e.g. <https://www.dewerldmorgen.be/artikel/2019/10/22/bedrijven-en-mensenrechten-belgie-moet-engagement-concreet-maken/>; See also, <https://www.fian.be/VN-verdrag-bedrijven-en-mensenrechten?lang=nl>.

<sup>259</sup> Magnette & De Croo, 2020: 76

and human rights. In addition, the new government also commits to “evaluating the landscape of different public equality- and human rights institutions and associated administrations”, and to “taking the necessary measures to improve collaboration and efficiency” (Ibid.: 73).

The new Federal Government’s commitment to supporting an EU Directive on business and human rights conceals differences between the regional governments in Belgium, be it only slight differences. More precisely, while the governments of Wallonia and Brussels have formally spoken out in favour of a binding UN treaty in their respective government agreements, the Flanders’ government agreement is more cautious, and talks about “cooperation in (*medewerking aan*) the international framework on business and human rights”.<sup>260</sup>

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<sup>260</sup> See e.g. <https://www.broederlijkdelen.be/nl/nieuws/bedrijven-en-mensenrechten-historische-kans>



# Pillar II - Corporate responsibility to respect human rights

## 1 Key findings and recommendations

<p><b>Overall findings</b></p> <ul style="list-style-type: none"> <li>• Our analysis reveals low levels of corporate alignment with the UNGPs in Belgium. Very few companies currently have systematic processes for carrying out human rights due diligence (HRDD). Much work remains for governments and other stakeholders (e.g. business federations) to raise awareness about the corporate responsibility to respect human rights, to support the development and diffusion of instruments that can help companies meet this responsibility, and to create a more conducive incentive system through a smart regulatory mix.</li> <li>• While smaller companies also have a responsibility to respect human rights, they face particular challenges when attempting to align their policies and processes with the UNGPs. Yet the means and processes through which they do so should be proportional to their size and type of activities (including the risks they face).</li> <li>• While sectoral and multi-stakeholder initiatives can help companies meet their responsibility to respect human rights, the extent to which different initiatives are oriented towards the UNGPs differs substantially. Support for Multi-Stakeholder Initiatives (MSIs) has been a key policy focus in Belgium, but it is important to prioritize those initiatives that emphasize corporate alignment with the UNGPs.</li> <li>• Bearing in mind the evolution at the international (EU) level, a growing number of stakeholders is growing accustomed to the idea of regulation that would make (aspects of) HRDD mandatory for companies. While civil society emphasizes the importance of having regulation that applies to all sectors and companies, and that is developed both at the national and at EU level; companies emphasize the importance of regulation that levels the playing field (notably with Eastern and Southern European companies), is developed at EU level, and takes into account the needs of smaller companies.</li> </ul>	
<p><b>Human rights policy commitment (UNGP 11-16)</b> 1. Human rights policy commitments   2. Management commitment and embedding of human rights into the company</p>	
<p>UNGPs 11-15 set out the general human rights responsibilities of companies, while UNGP 16 states that companies should express their commitment to meeting these responsibilities through a formal policy statement and outlines how such a statement should be issued and implemented.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Our assessment reveals that while many large companies (annual turnover &gt;€750m) have a formal policy commitment to respecting human rights, smaller companies (turnover below €750m) often do not.</li> <li>• Only few companies with a policy commitment move beyond a general commitment to human rights. Only a very small number of companies are committed to engaging with affected stakeholders, and no company could be found that explicitly commits to providing access to remedy.</li> <li>• No companies were found that have policies on how to deal with human rights in CAHRAs.</li> <li>• While several companies have a policy on conflict minerals, these policies rarely address broader human rights issues.</li> <li>• In the arms industry, commitments to respect</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Additional efforts should be made by governments to raise awareness about the need for formal commitments to respecting human rights, engaging with affected stakeholders, and providing access to remedy. Particular attention should be paid to the need to respect human rights in CAHRAs.</li> <li>• Business federations can play an important role as conduits for government policies but can also develop their own initiatives.</li> <li>• Companies should develop a policy commitment that is (1) approved at the senior level; (2) informed by relevant expertise; (3) stipulate clear expectations towards personnel and all business partners and other parties linked to its operations along the supply chain; (4) publicly available and communicated; and (5) translated into operational policies and procedures. This commitment should be coupled to a broader set of HRDD processes.</li> </ul>

<p>human rights rarely extend beyond a company's own workers.</p>	
<p><b>Human rights due diligence (UNGP 17-24)</b>  <i>1. Assessment of adverse human rights impacts   2. Integrating and acting upon findings and prioritising responses   3. Tracking responses and communicating action taken   4. Reporting adverse impacts on human rights.</i></p>	
<p>UNGP 17 states that companies should have Human Rights Due Diligence (HRDD) processes that include “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.” These four elements are subsequently elaborated in UNGPs 18-21.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• No companies that were analysed currently have systematic HRDD processes. This includes companies in the arms industry.</li> <li>• When companies take action, they mostly remain in ‘audit mode’. While social audits can play a role in HRDD processes, as a way to identify and monitor adverse human rights impacts, they face mounting criticism for their failure to capture all types of human rights challenges on the ground. In short, audits should be treated with caution, and should form part of a broader HRDD process.</li> <li>• Very few companies undertake efforts to communicate openly about their approach to identifying, assessing, and addressing human rights risks.</li> <li>• Companies with conflict minerals policies provide little information on how these policies are put into practice.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Large companies should integrate existing approaches that revolve around sustainable procurement and social audits into a broader and more systematic HRDD process.</li> <li>• Smaller companies also have a responsibility to respect human rights. Yet the means through which they meet this responsibility – which include but are not limited to HRDD-processes – should be proportional to their size and operating context.</li> <li>• Business federations and governments should raise awareness about the need to carry out HRDD and should support the development and diffusion of tools tailored to the particular needs of Belgian companies.</li> </ul>
<p><b>Access to remedy (UNGP 22, 29-31)</b>  <i>Mechanisms for effective remediation of adverse human rights impacts</i></p>	
<p>In cases where companies cause or contribute to adverse human rights impacts, they should provide for- or cooperate in their remediation (UNGP 22). To do so, they should establish or participate in effective mechanisms through which affected individuals and communities raise complaints and seek remedy (UNGP 29-31).</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• While many Belgian companies provide some sort of whistle-blower or complaints mechanism through which violations of codes of conduct can be raised, not all of these codes refer to human rights, and many of the procedures are only accessible to the company's own workers.</li> <li>• Few companies couple these whistle-blower and complaints procedures with transparent procedures for remedial action.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Companies should develop transparent grievance mechanisms that are independently managed and allow all stakeholders to raise complaints and concerns about human rights.</li> <li>• Companies should have a transparent approach for remedial action to respond to (alleged) adverse human rights impacts.</li> <li>• Companies should disclose practical data about the operation of their grievance mechanism and the approach taken to remedial action.</li> <li>• Business federations and governments should consider setting up new collective grievance mechanisms or supporting existing ones</li> </ul>

## 2 Introduction

Pillar II of the UNGPs articulates the corporate responsibility to respect human rights. Pillar II is composed of five foundational and nine operational principles. Together, they provide a blueprint for companies to conduct human rights due diligence, a process for companies to assess and address their human rights impacts, in their own activities and in their business relationships with other parties. Specifically, UNGP 15 states that companies should (1) formally commit to respecting human rights; (2) implement a human rights due diligence process to identify, prevent, mitigate and account for how companies address human rights impacts; and (3) implement processes to enable the remediation of adverse human rights impacts. While the UNGPs explicitly state that all companies have a responsibility to respect human rights, they recognize that the means through which a company responds to risks for adverse human rights impacts should be proportional to factors such as the size and operating context.

Overall, as already discussed in the analysis of pillar I, the Belgian National Action Plan on Business and Human Rights (2017) promotes voluntary action by companies, and does not provide indications that the Belgian government is considering more resolute actions to oblige companies to take action (see also Huyse & Verbrugge 2018). It is against this background that this section attempts to assess the extent to which Belgian companies are already aligning their policies and processes with the UNGPs. In other words, this section can be read as an attempt to assess the ‘UNGP-readiness’ of Belgian companies.

## 3 Methodology

To assess the level of alignment with the UNGPs by Belgian companies, the research team relied on a combination of methods:

- 1) A screening of thirty Belgian companies based on the Core UNGP Indicator Assessment that was developed by the Corporate Human Rights Benchmark (CHRB)<sup>261</sup>. CHRB describes this approach as a “stand alone methodology to assess how companies are approaching their responsibilities to respect human rights through the implementation of the UNGPs”. For six of the thirty companies, particular attention was paid to how they deal with their responsibilities in conflict-affected and high-risk areas (CAHRAs).
- 2) An assessment of the human rights policies of fifteen companies active in the arms industry.
- 3) An exploratory assessment of cases of human rights abuses (allegedly) involving Belgian companies.
- 4) A key stakeholder consultation on business and human rights in Belgium (for a full list of stakeholders, annex 1).

## 4 CHRB core UNGP indicator assessment

The [Corporate Human Rights Benchmark](#) (CHRB) is a not-for-profit, multi-stakeholder organization, that brings together investors and civil society organizations. In 2016, it launched a methodology to assess and benchmark corporate human rights performance, and since 2017 it has conducted annual assessments of the world’s largest companies. In addition to its full methodology, the CHRB developed a [core UNGP indicator assessment](#) that consists of thirteen non-sector-specific indicators divided into three themes (table 24). Theme A (governance and policy commitments) assesses a company’s formal policy commitments to respecting human rights, including the rights of workers, to engaging with (potentially) affected stakeholders, and to remedying adverse human rights impacts. Measurement theme B looks at the extent to which companies translate their commitments into human rights due diligence processes. Finally, measurement theme C focuses on the extent to which companies can/do

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<sup>261</sup> The Corporate Human Rights Benchmark (CHRB) has agreed to us using the Core UNGP Indicator approach, and throughout the assessment process we stayed in touch with the CHRB team, which provided us with valuable support and feedback.

provides for or cooperates in remedy for victims of adverse human rights impacts.

Compared to the full methodology, the Core UNGP Indicator Assessment does not seek to assess the actual human rights performance of companies. Instead, it tries to understand how companies align their policies and processes with the UNGPs. Specifically, measurement themes A, B, and C refer to the three obligations for companies outlined in UNGP 15: (1) formally commit to respecting human rights; (2) implement a human rights due diligence process to identify, prevent, mitigate and account for how companies address human rights impacts; and (3) implement processes to enable the remediation of adverse human rights impacts. Because transparency is one of the key principles underpinning the CHRB's approach, it relies exclusively on publicly available information, i.e., information made available on company websites, in financial and non-financial reports, and in other public documents and statements.

Table 24: UNGP Core Indicator Assessment - Measurement themes and indicators

Theme A. Governance and Policy commitments	
A.1.1	<b>Commitment</b> to respect human rights
A.1.2	<b>Commitment</b> to respect the human rights of workers
A.1.4	<b>Commitment</b> to engage with stakeholders
A.1.5	<b>Commitment</b> to remedy
Theme B. Embedding Respect and Human Rights Due Diligence	
B.2.1	<b>HRDD - Identifying:</b> Processes and triggers for identifying human rights risks and impacts
B.2.2	<b>HRDD - Assessing:</b> Assessment of risks and impacts identified (salient risks and key industry risks)
B.2.3	<b>HRDD - Integrating and Acting:</b> Integrating assessment findings internally and taking appropriate action
B.2.4	<b>HRDD - Tracking:</b> Monitoring and evaluating the effectiveness of actions to respond to human rights risks and impacts
B.2.5	<b>HRDD - Reporting:</b> Accounting for how human rights impacts are addressed
B.1.1	<b>Embedding</b> - Responsibility and resources for day-to-day human rights functions
Theme C. Remedies and Grievance Mechanisms	
C.1	Grievance channels/mechanisms to receive complaints or concerns <b>from workers</b>
C.2	Grievance channels/mechanisms to receive complaints or concerns <b>from external individuals and communities</b>
C.7	<b>Remediating adverse impacts</b> and incorporating lessons learned

The key strengths of the core indicator approach lie in its feasibility, replicability, and comparability. It can provide important insights into the 'UNGP-readiness' of Belgian companies and can help raise awareness about the UNGPs. It has been applied in several other countries<sup>262</sup>, which creates opportunities for comparison and peer learning. Throughout the screening process, the research team repeatedly interacted not only with the CHRB, but also with researchers in other countries.

However, the core indicator approach also has a number of potential shortcomings. First, its focus on formal management systems and processes might discriminate against certain companies, notably smaller companies with limited resources and capacity to implement such systems and processes. While strictly speaking there are no small- or medium sized enterprises (SMEs) in our sample of thirty companies, the average company size is considerably smaller than those included in similar assessments in other countries. Second, the CHRB approach's 'top-heavy' focus on systems and procedures at the level of the company fails to include the perspective of the 'rights holders', i.e., the

<sup>262</sup> Including Finland (FIANT Consulting & 3Bility Consulting, 2019), Ireland (Hogan et al., 2019), Germany (Winistörfer et al., 2019), and Denmark (Danish Institute for Business and Human Rights, 2020). Other assessments are underway in Scotland and the Netherlands.

workers and local communities whose rights are at stake (Maher 2020). Third, the CHRB deliberately maintains a very high standard, so that the scores obtained by companies tend to be quite low. For instance, the multinational companies included in the CHRB's [own assessment](#) obtain an average score of just 24%. While these low scores are perfectly understandable given the rigorous nature of the CHRB-methodology, they risk being incorrectly misinterpreted as evidence of corporate misconduct.

To mitigate these shortcomings, we decided to provide companies and trade union representatives with a right of reply to our assessment. In this way, we tried to obtain a better understanding of the context in which Belgian companies operate, and the challenges they might face. After careful consideration, the research team has decided not to publish the scores of individual companies, and to only present the results at an aggregated level. In doing so, we deviate from similar assessments conducted in other countries whereby researchers relied on the CHRB core UNGP indicator approach, and where individual company scores were published. This decision was not an easy one and followed a long series of deliberations. Eventually, our decision not to publish individual company results was mainly informed by the concern that publishing individual scores might draw attention away from the broader findings concerning the overall level of UNGP alignment by Belgian companies – which are more important considering the strategic objectives of the NBA. Moreover, given the nature of our sampling strategy, it is unlikely that other companies would perform better (or worse) than the thirty companies in our sample, and it would therefore not contribute meaningfully to the aims of the NBA to zoom in exclusively on the situation of these thirty companies.

#### 4.1 Sampling sectors and companies

In all the other countries where researchers have carried out assessments based on the CHRB core UNGP indicator methodology, the focus was on the twenty or thirty largest companies. Instead, we opted for a sampling strategy that would result in a more diverse sample in terms of sectoral background and company size. We started by selecting ten sectors that are sensitive to human rights risks (box 1). It is important to note that our final selection of sectors does not include two 'usual suspects' that have received a lot of attention from civil society for their (alleged) involvement in causing adverse human rights impacts: the financial sector and the arms industry. While the research team is aware of human rights risks in both sectors, the CHRB methodology is primarily equipped to analyse companies with more human rights risks that are situated in their own activities or in their supply chains. Still, throughout the report, references will be made to the role of both sectors. In particular, the arms industry is discussed in section 3.3.

##### **Box 1: Sectors selected for the CHRB assessment**

The selection of sectors was made together with the commissioners of this research and was informed by a qualitative assessment of human rights risks in different sectors based on earlier research and similar exercises in other countries<sup>263</sup>. Each of the ten sectors included in the final sample exhibits human rights risks, for instance due to a heavy reliance on specific raw materials, a dependence on labour-intensive production in low-income countries, or a heavy environmental footprint.

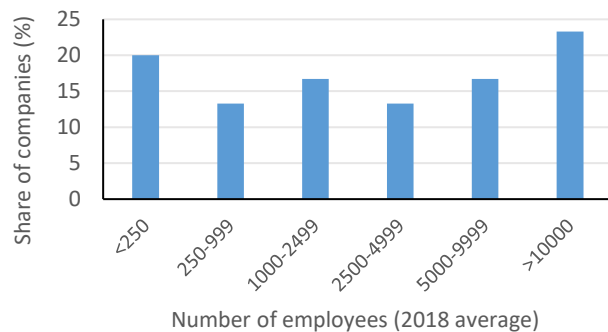
- 1) **Construction:** Risks in the supply chain of construction materials (e.g. labour issues during extraction and production) and during construction activities (e.g. rights of migrant workers).
- 2) **Diamonds and precious metals:** Risks during extraction (e.g. child labour in artisanal mines, 'conflict minerals', land rights in large mining projects) and to a lesser extent in the subsequent processing of minerals.
- 3) **Metals:** Risks during extraction (mining) and subsequent processing of metals.
- 4) **Retail:** Risks in various supply chains, both during production, transport, and inside the actual stores.
- 5) **Textiles:** Risks during cotton production (e.g. working conditions) and production of textiles (e.g. labour rights in South Asia).
- 6) **Agri-food:** Risks during production (labour rights in agriculture), processing, and packaging of agricultural

<sup>263</sup> See e.g. KPMG, 2014; Verbrugge & Huyse, 2019; but also the [Toolbox Human Rights](#) that was commissioned by the Belgian government.

- products.
- 7) **Public utilities:** Heterogeneous category involving companies active in energy, telecommunications, public transport, etc.
  - 8) **Electronics:** Risks during extraction of raw materials (see (precious) metals), component production, and product assembly (e.g. labour rights in Chinese factories).
  - 9) **Chemistry and pharma:** Risks during resource extraction (see (precious) metals), processing and transport, and production of chemical and pharmaceutical products.
  - 10) **Transport:** Risks mainly related to working conditions ‘on board’. Complex questions related to outsourcing and subcontracting within Europe.

Once we had identified ten sectors, three companies were selected per sector. Given that it concerns a *national* baseline assessment, we decided to focus exclusively on companies that are headquartered in Belgium. We started by selecting companies from the Bel 20 stock index (the leading Belgian stock index) that belong to one of the ten sectors, before filling in the remaining ‘slots’ with the highest-ranking companies from the Trends sectoral rankings (based on annual turnover)<sup>264</sup>. In cases where companies had already been assessed by CHRB, the company was replaced with the next company in the ranking<sup>265</sup>. Overall, the thirty companies in our sample vary substantially not only in terms of sectoral background, but also in terms of size. Their annual turnover (2018) ranges from €90 million to €12,5 billion (average of €1.6 billion), but over 70% of the companies has a turnover below €1 billion. The number of employees has an equally broad range, from just 15, to 29900 (average of 5345). 70% of the companies in our sample have more than 500 employees, and therefore must comply with the EU non-financial reporting directive. Yet as noted in Pillar I, corporate compliance with non-financial reporting obligations in Belgium is utterly limited, and typically does not discuss human rights risks. While the final sample is not representative for Belgian business as a whole, this diversity does allow us to identify a number of important trends with regards to corporate alignment with the UNGPs in Belgium.

Figure 4: Annual turnover, 2018 figures (source: trendstop.knack.be)



## 4.2 Timing and engagement process

In June 2020, the companies were informed about the assessment, and about the timing and methodology (figure 5). The research team subsequently assessed all publicly available information and filled out a scorecard for each company (annex 2). All companies were reviewed independently by two researchers. The draft assessments were sent to the companies, who were given two weeks to provide the researchers with missing information. Eight companies responded to this request (one in a particularly negative way<sup>266</sup>), while 22 companies did not respond. The final assessments were sent back to the company management and trade union representatives inside these companies. Only three companies eventually sent a management response, while five trade union representatives<sup>267</sup>

<sup>264</sup> Trends is a leading Belgian business journal, which publishes yearly rankings based on turnover, number of employees, etc.

<sup>265</sup> After an initial assessment of the human rights risks faced by the companies in the initial sample, one company was replaced because the research team felt that its risks were limited due to a strong reliance on local supply chains and automated production. A second company was replaced because it had previously been assessed by CHRB.

<sup>266</sup> The company in question dismissed the national baseline assessment as “irrelevant”, and even spoke of an infringement of its rights. It also described the researchers’ suggestion to be more transparent about its human rights policies as inappropriate.

<sup>267</sup> In line with the principle of stakeholder participation of both the NBA methodology and the CHRB methodology, the research team reached out to the three main trade unions in Belgium and invited them to solicit feedback on the company

shared their views about the score of their respective company.

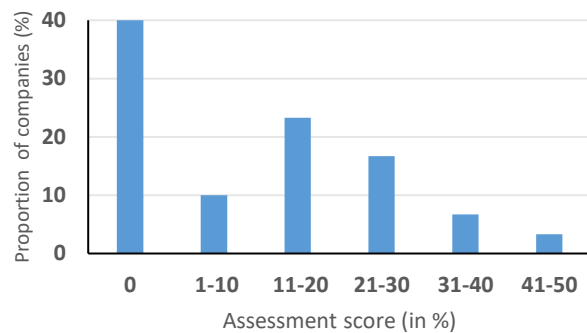
Figure 5: Engagement process with companies



### 4.3 Results

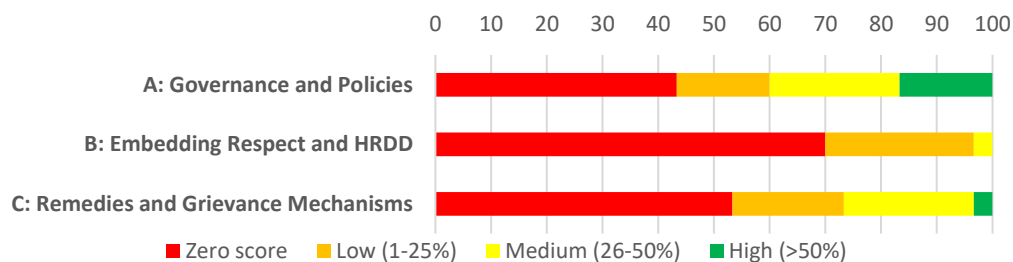
Overall, the thirty companies in our sample obtained very low scores. The average score is just 12.6%. Twelve of the thirty companies obtained a zero score, and even if we exclude these companies the average score remains very low, at 21%. Not one company obtains a score higher than fifty percent, with the maximum being 48.1%.

Figure 6: Assessment scores for 30 companies per score band



Taking a closer look at differences between measurement themes, scores for theme A (formal governance and policies) are substantially higher (average of 25.8%) than scores for measurement themes B (embedding respect and human rights due diligence, average of 3.1%) and C (remedies and grievance mechanisms, average of 15.3%). Figure 7 shows the proportion of companies that received a zero-, low-, medium- or high score for the different measurement themes. It indicates that in cases where companies do take efforts to more systematically address human rights risks, a formal policy commitment is typically the first (and in several cases the only) step taken by companies, followed by the implementation of grievance mechanisms and/or mechanisms to remedy human rights abuses. Interestingly, these findings are in line with those of the CHRB’s own assessments of multinational companies.

Figure 7: Proportion of companies with a zero/low/medium/high score per measurement theme



**Measurement theme A:** Slightly over half (56.6%) of the companies in our sample obtained a score above zero for measurement theme A, which implies that they have some sort of formal policy commitment to respecting human rights. In most cases, this commitment takes the form of one or several references to international guidelines (e.g. the UN Global Compact or the OECD-guidelines) or conventions (e.g. the ILO core labour conventions), typically in policy documents like an ethical code, a (supplier) code of conduct, a modern slavery statement, or a human rights statement. In two cases,

assessment scores from the company-level trade union representatives. While all three unions showed sympathy for the question, only one trade union managed to actually gather feedback. Part of the explanation for this lack of response is the fact that trade unions were busy preparing for the social elections in November 2020.

this commitment automatically followed from a company’s participation in sectoral- or multi-stakeholder initiatives (notably the Amfori BSCI). We return to the value of these initiatives in more detail in section 2.6. A smaller number of companies (those in the yellow and green part of the bar next to measurement theme A in figure 7) go further, by committing to an engagement with (potentially) affected stakeholders and/or by to provide remedy to affected stakeholders.

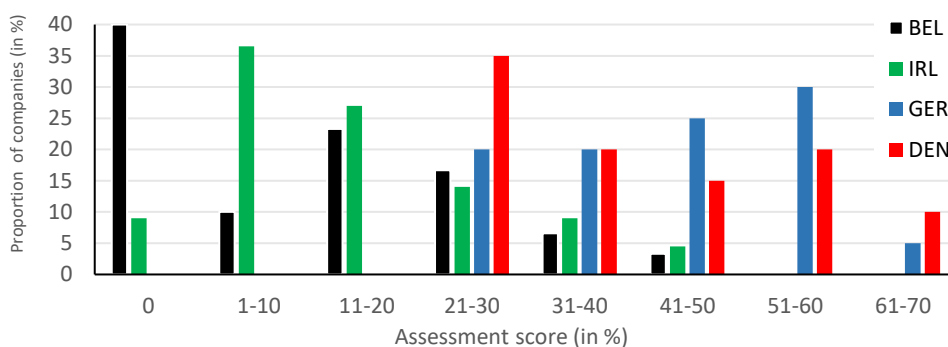
**Measurement theme B:** Only one third of the companies (those in the orange and yellow part of the bar) provided information on how they translate their commitments into human rights due diligence processes. In the majority of cases, these processes are limited to the identification of human rights risks, with only one company disposing of a more elaborate HRDD-process that also involved assessing and communicating about human rights risks.

**Measurement theme C:** Less than half of the companies have put in place a mechanism that allows workers or other (potentially) affected stakeholders to raise concerns about human rights issues, or to seek remedy for adverse human rights impacts. There exists substantial variation between these mechanisms in terms of their form, their accessibility to external stakeholders, and the extent to which they guarantee confidentiality. At one end of the spectrum (typically companies in the orange part of the bar) we find internal grievance mechanisms managed by the company, that are accessible only to the company’s own workers, and that only cover a company’s own (supplier) code of conduct. At the other end of the spectrum we find a limited number of companies that provide for a whistleblower system operated by an independent third party that is also accessible to external stakeholders and refer to human rights more broadly.

#### 4.4 Belgium lagging behind?

As mentioned earlier, CHRB assessments were previously undertaken in Germany, Ireland, Denmark, and Finland<sup>268</sup>. Overall, the scores obtained by Belgian companies (average of 12.6%) are slightly lower than those in Ireland (14%), and substantially lower than those in Denmark (40%) and Germany (42%)<sup>269</sup>. While 40% of the Belgian companies received a zero score, in Ireland this is just 9%, while in Germany and Denmark not a single company obtained a zero score. Figure 8 shows the proportion of companies per score band for each of the countries. Based on this figure, we can safely conclude that the baseline for corporate alignment with the UNGPs in Belgium is not only low in absolute but also in relative terms.

Figure 8: CHRB assessment scores in Belgium, Ireland, Germany, and Denmark



#### 4.5 Interpreting the results – accounting for the low level of UNGP alignment

In this section, we try to identify possible explanations for the low level of corporate alignment with the UNGPs. It should be emphasized that this overview of possible causal explanations is not

<sup>268</sup> Comparability between these countries is guaranteed by the researchers’ strict compliance with the CHRB-methodology, which is monitored by the CHRB-team. In cases where questions did arise about the assessment of a particular company, researchers are expected to consult the CHRB-team.

<sup>269</sup> In the case of Finland, the researchers decided not to stick with the CHRB’s scoring method, so that the results cannot be compared to those in other countries.



exhaustive. For instance, we did not look at internal characteristics of companies, like firm structure, or a company’s specific position within the value chain. Still, taken together, the explanations below go a long way in accounting for the lack of UNGP-alignment on the part of Belgian companies.

#### 4.5.1 Company size

A first possible explanation for the low scores obtained by Belgian companies is their size. As explained in section 1.2.1, we used a sampling strategy that resulted in greater variety in terms of sectoral background, and consequently also in company size. The average turnover of the companies in our sample (€1.6 billion) is considerably lower than that in Ireland (€6.8 billion), Denmark (€7.8 billion), and particularly Germany (€82.6 billion).

The graphs on the right suggest a positive relationship between company size and assessment scores. A statistical test confirms the existence of a moderately strong and significant correlation between turnover and assessment scores, and between number of employees and assessment scores<sup>270</sup>. At the same time, our results indicate the existence of a threshold for UNGP-alignment. For instance, while no company with a turnover higher than €750m obtained a zero score, companies with more than 10000 employees score substantially higher (averaging 29,4%) than companies with less than 10000 employees (7,9%). Once we move beyond this threshold, the relationship between company size and assessment score becomes much weaker, or even ceases to exist altogether<sup>271</sup>.

In short: company size matters, but only to a certain extent. In section 4, where we delve into the issue of SMEs and HRDD, we will identify a number of possible explanations as to why smaller companies may be less inclined to systematically address human rights issues. Still, it is important to emphasize that while the companies in our sample may be relatively smaller than those that were assessed in other countries, none of these companies qualifies as an SME according to European definitions<sup>272</sup>. This middle segment of companies that do not qualify as SMEs, but also fall short of being a large multinational company, plays an important role in the Belgian economy, and faces important UNGP alignment gaps. That said, even relatively larger companies with an annual turnover above €750m obtain an average score of just 23,4%.

Finally, it is worth paying attention to outliers: smaller companies with relatively higher scores and larger companies with relatively lower scores. These companies can further our understanding as to why some companies are more UNGP-aligned than others. In our sample, only one ‘smaller’ company

Figure 9: Company turnover and assessment scores (source: trendstop.knack.be)

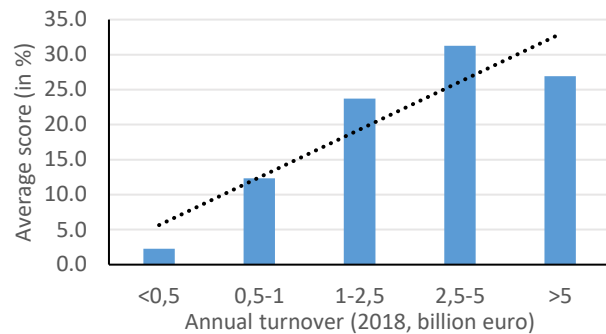
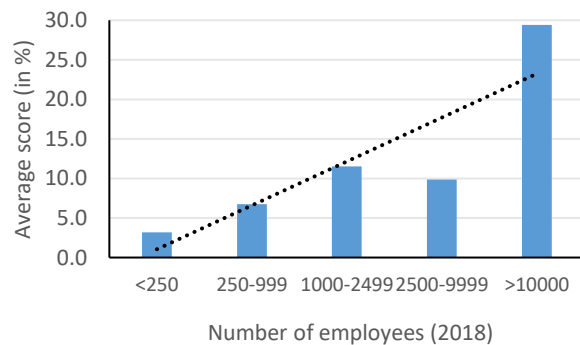


Figure 10: Number of employees and assessment scores (Source: trendstop.knack.be)



<sup>270</sup> Turnover and assessment results are correlated at  $r(28) = .59, p < .0006$ ; while number of employees and assessment results are correlated at  $r(28) = .58, p < .007$ .

<sup>271</sup> For companies with a turnover above €750 million, turnover and assessment results correlate at  $r(11) = .43, p < 0.14$ . For companies with over 10000 employees, there is no longer a correlation between number of employees and assessment scores.

<sup>272</sup> The [European Commission](#) defines SMEs as companies with less than 250 employees and either a turnover below €50 million, or a balance sheet total below €43m.

(i.e. with a turnover below €750m) obtained a score higher than 25%. In this particular case, this higher score can be explained by the fact that this company was in the process of implementing the responsible business conduct policies of its new multinational parent company. On the other side of the divide, we find only one company with an annual turnover above €750m that obtains a score below 10%. The company in question is active in international transport, and no obvious explanation could be found for its lower score.

#### 4.5.2 Institutional and socio-political context

A second important set of possible causal explanations relates to the institutional and political context in which companies operate. For obvious reasons, the regulatory environment can have a direct influence on the extent to which companies comply with the UNGPs. At EU level, the analysis of Pillar I has already highlighted the EU directive on non-financial reporting, and its failure (so far) to trigger meaningful changes in corporate reporting on human rights. In the absence of a comprehensive regulatory framework at EU level, the focus of the analysis turns to the national level. When we compare the situation in Belgium with that in Denmark and Germany (where companies obtain significantly higher assessment scores), we find that companies in these countries have more incentives to align their policies and processes with the UNGPs.

**Governmental mandate and capacity on business and human rights:** Alongside France and the UK, Germany has been at the forefront of the business and human rights debate in Europe for much of the last decade (Huysse et al. 2018). Substantial investments have been made in institutional structures and in new multi-stakeholder initiatives in the domain of business and human rights. In particular, an important role is played by the national Human Rights Institute and by GIZ, the German development cooperation agency. In Denmark, an inter-ministerial Working Group coordinates the ministries involved in the implementation of the [NAP](#): the Danish Business Authority (Ministry of Industry, Business and Financial Affairs), the Trade Council, and the Ministry of Foreign Affairs. A leading and norm-setting role is played by the DIHR, which has an impact on the business and human rights agenda far beyond Denmark's borders (EP 2017). It contributed amongst others to the development of NAPs in other countries, and to the design of various NBAs on business and human rights. As indicated in the section on policy coherence, Belgium currently lacks a strong intermediary actor with a clear mandate and the necessary resources to drive the business and human rights agenda, like a national human rights institute<sup>273</sup>. While the Federal Institute for Sustainable Development (FIDO) has to some extent stepped up to fill this important gap, it lacks the mandate, independence, and resources it needs to properly fulfil this task.

**Regulatory initiatives:** While neither Denmark, Germany, nor Belgium have adopted legislation that specifically targets the corporate responsibility to respect human rights, companies in Germany and Denmark have received clear signals that legislation might be coming their way. While the [German NAP](#) promotes voluntary action, it did so with the expectation that by 2020, half of all companies with over 500 employees would have integrated HRDD processes into their management practices. In case this target is not met, the government would consider new regulatory actions. In Denmark, three political parties submitted a parliamentary motion in January 2019 that calls for mandatory HRDD, a call supported by a large group of CSOs and companies. While elections were held later that year, and the issue was not picked up again in parliament, interest in regulation has not disappeared. In Belgium, until very recently, none of the leading parties had spoken out in favour of mandatory HRDD legislation. The new federal government has publicly announced (government declaration, September 2020) its support for the idea of mandatory legislation at the European level, and has indicated it would consider appropriate national regulatory initiatives 'wherever possible'.

**Societal debate and business sector responses:** Both Denmark and Germany (Huysse et al. 2018) have a vibrant CSO community that has long been pushing for corporate accountability and, more recently,

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<sup>273</sup> In April-May 2019, the federal government approved the creation of a federal human rights institute, which could over time fill-up this institutional gap in the area of business and human rights.

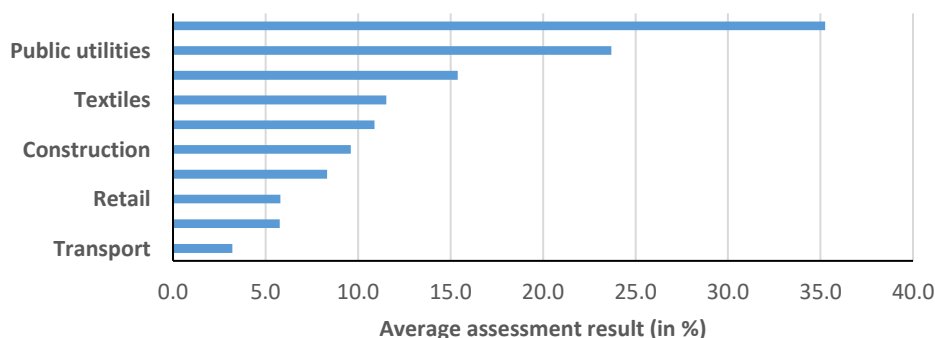
for binding legislation on business and human rights. In Germany, for instance, the NGO community has actively focused on the business and human rights agenda, for example in the context of multi-stakeholder initiatives, but also in their role as watchdog, and to trigger a public debate. The German government sees a role for trade unions in promoting HRDD through the existing mechanism of sectoral dialogues between business and trade unions. In Denmark, a broad societal debate is being held over the need for mandatory regulation. For instance, in September 2020, the DIHR and a range of other civil society organizations organized a [conference](#) on the matter, which was attended by a wide array of key stakeholders. This attention on the part of civil society is arguably making companies in these countries more sensitive to reputational damage related to adverse human rights impacts. In both countries, business federations are engaging with the human rights agenda, albeit to different extents in different sectors. While Belgian civil society seems to have ‘discovered’ the UNGPs a few years later than their counterparts e.g. in Germany, business and human rights issues now figure prominently on their agenda. This is illustrated by the establishment of a dedicated Working Group on Corporate Accountability in 2019 that covers the whole spectrum of trade unions and NGOs. The activities of this working group are strengthening civil society efforts and are bringing more coherence to a previously fragmented patchwork of sectoral and individual initiatives. This same group of civil society actors is now calling for binding (national and European) regulation.

#### 4.5.3 Sectoral background

Another important factor that might explain why some companies are more or less inclined to align their policies and processes with the UNGPs is sectoral background. More precisely, it can be hypothesized that companies from sectors that are more closely associated with human rights risks (e.g. due to public exposure) are more inclined to act in accordance with the UNGPs. While the ten sectors in our sample (public utilities is arguably an exception) were selected precisely because of the salience of human rights risks, some of these sectors have clearly received more attention than others. In particular, one would expect companies active in ‘precious metals’, ‘textiles’, and ‘retail’ to be frontrunners, because human rights issues have long figured prominently on their agenda.

Clearly, the limited number of companies per sector (three) does not allow us to make conclusive observations about the influence of sectoral background. Still, it is worthwhile to explore such a relationship. Figure 11 reveals that the six companies active in ‘Chemistry and Pharma’ and in ‘Public Utilities’ obtain significantly higher scores than companies in other sectors – although these companies are nowhere near achieving full alignment with the UNGPs. Yet it is worth noting that these six companies are also amongst the seven highest-ranking companies in terms of turnover, which again brings up the issue of company size. Beyond these two sectors, companies in all other sectors obtain low to very low scores. Particularly noteworthy is the fact that companies active in textiles (11,5%), and particularly in retail (5,8%) and precious metals (5,8%), obtain extremely low scores. This leads us to suggest that at least based on our own limited data at the level of different sectors, the explanatory power of sectoral background as a reason for corporate (non-)alignment is limited.

Figure 11: Average result per sector



## 4.6 Membership in sectoral and multi-stakeholder initiatives

A company’s participation in sectoral (involving collaboration with other companies) or multi-stakeholder (involving collaboration with other stakeholders, including civil society, academic institutions, and/or government) initiatives in the domain of corporate social responsibility can be expected to have a positive impact on UNGP alignment. 43% of companies in our sample reported participating in initiatives like the Roundtable on Sustainable Palm Oil (RSPO), the Business Social Compliance Initiative (BSCI), and the Belgian sustainability network The Shift. Our results indicate that these companies score relatively better (average score 21,5%) than companies that do not participate in such initiatives (average score 5,9%).

Yet important questions remain with regards to causality. Do companies score better because they participate in these initiatives, or do they participate in these initiatives because they were already more sensitive to human rights issues to begin with? Moreover, it is important to distinguish between different types of initiatives. Not all of these initiatives are equally oriented towards human rights, let alone towards realizing greater alignment with the UNGPs. While many (but certainly not all) of these initiatives are committed to human rights and/or to the UNGPs in writing, the UNGPs are not automatically and explicitly integrated in the actual functioning of the MSI. In table 25, we have grouped the different initiatives in which the companies in our sample participate into four groups. Group 1 involves initiatives in which business and human rights is only one (small) part of a broader focus on sustainability issues. The emphasis lies mainly on awareness raising, sharing good practices and voluntary participation. Group 2 involves a diverse set of industry-driven sectoral and cross-sectoral initiatives that use codes of conducts, social audits, training and awareness raising to work on sustainable supply chains. The third group involves civil society-driven (FWF) or government-facilitated (IRBC) initiatives that cover a wider range of obligations for participating companies, many related to the UNGPs. Group 4 covers global framework agreements (GFA), which are negotiated agreements between sectoral trade union federations and companies with the aim of addressing labour governance gaps across the different subsidiaries of a multinational company and, increasingly also in its global supply chains. GFAs are typically only found in multinational companies. At least for the thirty companies in our sample, participation in initiatives that fall under group 1 and 2 is far more common than participation in initiatives that fall under group 3 and 4.

Table 25: Qualitative assessment of UNGP alignment of MSIs

	Group 1	Group 2	Group 3	Group 4
	<i>Beyond Chocolate, SDG Charter, ...</i>	<i>BSCI, Sedex, JAC, RSPO, KP, Tfs, ...</i>	<i>Fair Wear Foundation, IRBC, ...</i>	<i>Global Framework Agreements</i>
<b>Commitments to human rights, stakeholder engagement, &amp; remedy</b>	Medium	Medium	High	High
<b>HRDD integration in procedures &amp; systems</b>	Low	Low-Medium	Medium-High	Medium-High
<b>Remedy and grievance mechanisms</b>	Low	Low-Medium	Medium-High	Medium-High
<b>MSI governance*</b>	Low	Low	Medium	Medium

\*Internal HRDD processes, state oversight, integrity management, methodological transparency

**Commitments to human rights, stakeholder engagement, and remedy:** This aspect is covered across the four groups, albeit to varying degrees. While initiatives that fall into group 1 and 2, may well make references to the UNGPs, essential commitments (e.g. to stakeholder engagement or -remedy) are often lacking. Initiatives in group 3 and 4 generally entail commitments to a broader set of UNGPs. Particularly noteworthy is the observation that companies that have concluded a Global Framework Agreement (GFA) with a global union federation score significantly higher on the CHRB assessment. The three companies with a GFA respectively rank first, second, and fourth, and obtained an average score of 36%. Importantly, for global framework agreements (GFA) there are substantial differences in the extent to which they focus on human rights outside the companies’ direct operations. The second generation of GFAs, which emerged mainly after 2009, tend to have a broader scope, by

including a company's subsidiaries, suppliers and subcontractors (Hadwiger 2018).

**HRDD integration in procedures/systems and remedy/grievance mechanisms:** Of the initiatives that are analysed here, explicit HRDD procedures and systems could only be identified for group 3 and 4 initiatives. The initiatives in these groups spell out quite strict HRDD-related conditions for companies that wish to participate in them, the binding nature of these commitments differentiate these initiatives from group 1 and 2. A prime example are the Dutch agreements on International Responsible Business Conduct (IRBC). In a recent [UNGP alignment assessment of the IRBC-agreement in the garment sector](#), the OECD Secretariat reported to find “very few points of non-alignment [...], meaning that most indicators of due diligence could be identified, even if they were not all fully aligned.” As there is quite some variation between sectors in the actual content of the IRBC agreements that are concluded, it is unclear if the same level of UNGP alignment is achieved across all IRBCs. One example of an IRBC that also involves Belgian (Flemish) companies, and that is supported by the Flemish government, is Trustone (box 2).

**MSI governance:** Many MSIs, particularly those in group 2 and 3, rely on private social auditing firms or certification bodies to cover essential parts of their HRDD processes. In this way, MSIs contribute to sustaining and even strengthening an already booming market for auditing and certification (see section 2.7). The involvement of these private actors raises questions about independence, transparency, and quality assurance. In addition, there are concerns about duplication, with dozens of social auditing and certification systems applying slightly diverging standards (e.g. Lebaron 2020). The important role played by private auditing bodies also opens the debate about the internal governance of MSIs, such as the way they integrate HRDD in their own operations, their integrity management, methodological transparency, and state oversight. While our analysis for this aspect is tentative, and did not include an in-depth assessment, the initiatives in group 1 and 2 score low, either because they do not explicitly aim to assess HRDD processes of their members (group 1), because there is limited transparency about their methods and findings, and/or because they are mainly business-driven and there is no governmental monitoring and oversight (group 2).

#### **Box 2: Good practice? The case of Trustone**

The natural stone industry faces important human rights challenges. Numerous reports indicate that in India, the world's primary producer, forced labour and child labour persist in natural stone quarries. In 2015, Belgian newspaper [De Standaard published an article](#) that traced the cobblestones in the city of Ghent to illegal quarries in Northern India. In 2016, the Flemish and Dutch governments entered into negotiations with Febenat (the Belgian sector federation for natural stone) and with Dutch (Arisa) and Belgian (WSM) NGOs. Three years later, the Trustone covenant entered into force. While participation in the covenant is voluntary, companies commit themselves to a gradual but full-blown human rights due diligence process.

In the first months of 2020, we conducted an assessment of the Trustone covenant<sup>274</sup>. While it is too early to make conclusive observations about Trustone and its impact on the ground, we were able to make some more general observations about its strengths and shortcomings. Clearly, the covenant succeeded in mobilizing a large number of companies that would otherwise be left to their own devices and might not have paid much attention to human rights. Moreover, while Trustone is a learning process for the actors involved, the involvement of civil society is clearly a step up from other industry initiatives, which are dominated by the private sector.

Yet like many other multi-stakeholder initiatives, Trustone also faces a number of challenges. First, there are concerns with regards to the equal involvement of the different stakeholders. In addition to the varying engagements of Flemish and Dutch companies, there are clear challenges where it comes to involving local (Indian) companies, who are sometimes blatantly unaware of Trustone and its objectives. Similarly, questions were raised with regards to the participation of rights-holders, i.e., the workers and local communities, who have hitherto been represented mainly by Belgian and Dutch civil society organizations.

Second, questions can be raised about the longer-term viability of the covenant. So far, Trustone has received

<sup>274</sup> This assessment was based on document analysis, key informant interviews, and field research (3 weeks). It was conducted in the framework of an internship of a postgraduate student (Tom Merlevede) that was jointly supervised by HIVA-KU Leuven and Beltrami, one of the companies involved in Trustone.

financial (government subsidies) and logistical (secretariat organized by the Dutch socio-economic secretariat) support from the Flemish and Dutch government. Over time, the covenant is meant to become self-supporting. However, it remains to be seen if all companies are willing to make such an investment.

Third, and finally, it is unclear how Trustone will succeed in monitoring the situation on the ground. While it is to be expected that social audits will play an important part in this, the ‘auditing industry’ has faced staunch criticism in recent years. Notably, the rigid and top-down character of social audits results in an inability to capture local complexities, notably where it comes to more complex labour issues such as freedom of association or informal work. In short, like other multi-stakeholder initiatives, Trustone will have to find a way to recognize and deal with the shortcomings of existing verification mechanisms.

#### 4.7 Looking beyond UNGP alignment

Based on the above, one might conclude that human rights are not a priority for many Belgian companies. Indeed, only few of the companies in our sample explicitly identify human rights as a ‘material risk’. Still, it is important to remember that having a low assessment score does not automatically imply that companies contribute to human rights abuses. It does mean, however, that they do not address risks for adverse human rights impacts through systematic HRDD processes, or at least that they do not communicate openly about these processes (as is expected by the UNGPs). When we look beyond formal alignment with the UNGPs, there are several other ways through which companies may be addressing human rights – be it in less direct and less systematic ways.

Two companies responded to their assessment by pointing out that they had to comply with codes of conduct, and in some cases with full-blown HRDD-processes, of larger clients (typically multinational companies). However, because this type of process is often considered confidential, companies fail to report publicly about it, so that this information cannot be considered as part of the assessment. At the same time, complying with a client’s demands clearly falls short of having a genuine commitment to human rights yourself.

In addition, several companies in our sample (roughly half) are taking actions in the domain of sustainable sourcing/procurement. While these actions do not automatically translate in a higher assessment score, they may still contribute to addressing human rights risks. Particularly noteworthy is the widespread reliance on social audits, which are meant to ensure compliance with a code of conduct, either within a company and/or in its supply chain. In most cases, these audits are carried out by specialized companies like TÜV Nord and Bureau Veritas. While there are still companies that audit compliance with their own code of conduct, recent years have witnessed a proliferation of initiatives that combine a code of conduct with a system of collective auditing, either at a sectoral (e.g. the Joint Audit Cooperation in the telecommunications sector) or at a cross-sectoral level (e.g. the Business Social Compliance Initiative). Two critical reflections should be made here. Firstly, the content of codes of conduct, and consequently what is being audited, can vary widely. While some codes of conduct explicitly refer to human rights and other key conventions (e.g. the ILO’s core labour conventions), others are much more minimalistic. Secondly, the ‘auditing industry’ has faced growing criticism for its failure to identify, let alone address, adverse human rights impacts in a timely manner (see e.g. Clean Clothes Campaign 2019; Lebaron 2020). The independence of auditing companies, which are often paid by the companies that they are expected to audit, has also been called into question. Ultimately, while social audits can serve as a valuable tool to identify and monitor adverse human rights impacts, they should be embedded in a broader HRDD process that is aimed at identifying, assessing, addressing, and communicating about adverse human rights impacts. For this reason, even an elaborate audit system does not automatically translate into a higher assessment score.

Aside from social audits, it is also noteworthy that a number of companies rely on the services of [EcoVadis](#), a French company that has created a platform through which companies can assess the sustainability performance of (prospective) suppliers. Rather than relying on social audits, the ‘EcoVadis method’ relies primarily on information provided by suppliers, triangulated with other sources. Here, the key question is whether this focus on self-reporting by suppliers and other written

evidence adequately captures the situation on the ground.

Ultimately, while a growing number of Belgian companies are indeed taking initiatives that broadly target social sustainability challenges in their own operations and/or in their supply chains, a 2019 study has pointed out that for most companies, human rights remain a ‘blind spot’ (Verbrugge & Huyse, 2020). Insofar as initiatives are taken, they mostly remain within the now familiar domain of sustainable procurement and a social audit model that seems to be in the midst of an existential crisis.

A final remark relates to the relationship between the UNGPs on the one hand, and Agenda 2030 and the Sustainable Development Goals on the other. The latter has become the framework of choice for companies that decide to take efforts in the broad domain of sustainability. This is also evident in the ever-growing number of multi-stakeholder initiatives (e.g. the SDG charter of the Shift), events (e.g. the SDG Forum), and monitoring frameworks (e.g. the SDG barometer). To date, however, there exists a tendency to treat Agenda 2030 and the UNGPs (insofar as these are addressed at all) as separate things. In some cases, well-meant efforts by companies to achieve particular SDGs may inadvertently contribute to adverse human rights impacts, e.g. when investments in cleaner technologies lead to job losses. There is thus an obvious need to align corporate engagement with Agenda 2030 with the UNGP. Specifically, the decision (not) to contribute to the achievement of certain SDGs, and actions in this regard, need to be informed by a HRDD process that can help companies understand the human rights impacts of their actions (for more information on marrying Agenda 2030 and the UNGPs, see Danish Institute for Human Rights 2019).

## 5 Human Rights in Conflict-Affected and High-Risk Areas (CAHRAs)

### 5.1 Corporate responsibility in CAHRAs

Some of the worst human rights abuses take place in conflict-affected and high-risk areas (CAHRAs). In these areas, the UNGPs state that business should respect the standards of international humanitarian law, which applies concurrently with human rights law in armed conflict in a complementary manner, and may contain more context-specific standards on certain issues (UNGP 12)<sup>275</sup>. While the UNGPs do not mention different HRDD requirements for CAHRAs, the notion of proportionality (increased risk requires a more sophisticated HRDD process (UNGP 7)) indicates a greater need for HRDD<sup>276</sup> where state structures are often weak or non-existent, where business relationships may become integrated into the broader conflict economy, or where there is an overall increased risk for human rights violations.<sup>277</sup> The UN Working Group on human rights and transnational corporations and other business enterprises emphasizes that companies are not neutral actors: *“Even if business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics.”* Therefore, it argues that in CAHRAs, HRDD needs to be complemented with a conflict-sensitive approach.<sup>278</sup>

Because the UNGPs expect companies to carry out HRDD across their entire supply chain (UNGP 13), even companies that do not have activities in CAHRAs but have business relationships with companies operating in CAHRAs are expected to avoid causing or contributing to adverse human rights impacts (UNGP 13). Despite the heightened risks in CAHRAs, and consequently the need for enhanced HRDD, it is important to stress that the aim of the UNGPs and other frameworks and guidelines (notably the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from CAHRAs) is *not* to discourage business activities in CAHRAs, but rather to promote more responsible private sector

<sup>275</sup> For more information on HR law and IHL in CAHRAs, see: Human Rights Committee General Comment 31, para. 11.

<sup>276</sup> UN GA, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action. July 2020, A/75/212, p. 4-5.

<sup>277</sup> UN GA, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action. July 2020, A/75/212, p. 9.

<sup>278</sup> UN GA, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Business, human rights and conflict-affected regions: towards heightened action. July 2020, A/75/212, p. 10.

engagement in these areas.

The Belgian National Action Plan on business and human rights mentions the heightened risk in CAHRAs in the context of the OECD Guidance. Specifically, Action Point 22 encourages responsible supply chain management through a sector-wide approach and specifically mentions the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. This is the only Action Point in the B-NAP that mentions the heightened risks of human rights abuses in CAHRAs by businesses (for a more elaborate discussion, see Pillar I).

In the following sections, we will first assess the availability and content of any policies on human rights in CAHRAs for six companies included in the CHRB sample. After that, we will look at the situation in one specific sector that was not included in the CHRB analysis but bears direct relevance for human rights in CAHRAs: the arms industry.

## 5.2 Belgian Companies and CAHRAs: an exploratory assessment

While none of the companies in the CHRB sample currently has activities in CAHRAs, six companies are (potentially) sourcing from CAHRAs: two diamond companies and four companies active in metals and/or electronics. For each of these companies, we looked at the availability and content of human rights policies. In line with the CHRB analysis, results are only discussed at an aggregated level.

A review of information that is made publicly available by the two diamond companies suggests that these companies are well aware of human rights risks in their supply chains. They publicly state that they avoid buying conflict diamonds, yet how this is achieved remains unclear. One of the companies does have a process to ensure respect for human rights in CAHRAs, but the description of this process remains very limited. For instance, it is unclear how risk assessments are conducted, and results of these assessments are not publicly available.

All four companies active in metals and/or electronics have specific policies and processes on sourcing minerals from CAHRAs and have based their policies on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from CAHRAs. The companies publicly report on their supply chain due diligence processes and controls, yet the level of detail in the reporting on both the procedures and the outcomes of the processes varies widely. Only one company explicitly discusses heightened human rights risks in CAHRAs.

Based on this admittedly very small sample of six companies, two issues stand out. First, companies seem to have a narrow geographical understanding of CAHRAs, notably the DRC and neighbouring countries. This narrow definition is a direct result of American legislation: the [Dodd Frank Act](#).<sup>279</sup> Instead, the new European Regulation on conflict minerals, which is due to enter into force in January 2021, will oblige companies importing tin, tantalum, tungsten and gold (3TGs) from *all* CAHRAs<sup>280</sup> to carry out due diligence. Secondly, while the OECD guidance emphasizes the importance of responsible business conduct in CAHRAs, the companies seem to adopt a policy of risk avoidance, by simply refraining from purchasing minerals from the DRC or from artisanal mines. This 'de facto embargo' on Congolese and/or artisanally mined minerals can have important consequences for small suppliers in developing countries, who may see their access to global markets constrained. In this way, embargoes on conflict minerals may inadvertently create other adverse human rights impacts.

## 5.3 The arms industry

Because of its specific nature (production of goods with ability to inflict direct harm) and relevance to human rights (direct adverse effect on human rights when the goods are used) in CAHRAs, the arms industry is examined in more detail. Under the UNGPs the arms industry has the responsibility to prevent negative impacts on human rights not only due to the company's own operations, but also due to the use of the company's products or services (UNGP 13). Thus, arms companies must address

<sup>279</sup> Dodd-Frank Act Section 1502 imposes legal obligations with regard to due diligence measures by companies that trade on US Exchanges and are implicated in the supply chains of tin, tantalum, tungsten and gold (3TG).

<sup>280</sup> The indicative and non-exhaustive list of CAHRAs will reportedly be published by the EC before the end of 2020.



the risk in how their weapons are being used and/or are likely to be used by the client.

The human rights criteria introduced by the Flemish government into its arms export control legislation are more stringent than those in Council Common Position 2008/944/CFSP. In addition, efforts are being made to assist Flemish companies in developing or improving their internal compliance programmes to comply with arms export control procedures. In the National Action Plan, Action Point 33, the Flemish government announced to provide a broad legal basis that would allow for all transit of arms to be subject to licensing. These amendments were introduced into law by the adoption of the Decree of 30 June 2017.

The research team reviewed fifteen Belgian companies involved in the export of defence-related products, i.e., goods included in the Common Military List of the European Union and any other materials for military use. The assessment results of this sector are discussed at an aggregated level, but the assessment of individual companies can be found in annex 3<sup>281</sup>.

None of the companies in our sample referred explicitly to HRDD policies and procedures. Instead, HRDD is left to the arms control export authority. The responsibilities of the defence company are reduced to compliance with laws and regulations. Only two companies in our sample referred to compliance procedures. None of the companies indicated publicly they would take an action which would go beyond these laws and regulations: e.g. refrain from a business deal if it would have a negative impact on human rights, meaning not submitting an export license application. Nor did any of the fifteen companies provide public information about any follow-up procedures once the products or services have been delivered.

Of the fifteen companies, eight companies publicly refer to compliance with arms embargoes, arms export laws and regulations (FN Herstal, Forges de Zeebrugge, Mecar, OIP Land Systems, OIP Sensor Systems, PB Clermont, iDirect, and Sioen). Of these eight companies, only two companies explicitly discuss, albeit in a very general manner, compliance procedures (Forges de Zeebrugge and iDirect). Any reference to human rights made by the companies is typically in relation to working conditions of employees, either within the company and/or in its supply chain. Eight companies have a zero-tolerance policy towards slavery, human trafficking and child labour (FN Herstal, Forges de Zeebrugge, Mecar, OIP Land Systems, OIP Sensor Systems, PB Clermont, iDirect, Sioen Ballistics). Discussions of ethical business practices mostly relate to anti-corruption and anti-bribery laws, regulations and policies, and compliance with tax laws (FN Herstal, Forges de Zeebrugge, Mecar, OIP Land Systems, OIP Sensor Systems, PB Clermont, iDirect, Sioen Ballistics).

## 6 The UNGPs and smaller companies

Within the framework of this NBA, there was no space to conduct empirical research on whether or not, and how, small and medium-sized enterprises (SMEs) are implementing the UNGPs. However, existing research, both at the European (European Commission 2020a) and at the Belgian level (Moratis 2018), suggests that SMEs are less likely than larger companies to take systematic action in the field of corporate social responsibility. In section 3.5.1, it was suggested that the same might be true for UNGP alignment. Importantly, the catch-all terms ‘small company’ and SME capture a wide variety of companies, both in terms of size<sup>282</sup>, the extent to which they operate in- or source from third countries, etc. Yet, smaller companies can face a number of common challenges when aligning their policies and processes with the UNGPs. Firstly, they often have lower levels of managerial knowledge and expertise and have limited access to capital and technology (Walters et al. 2018).

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<sup>281</sup> The reason we disclose data about individual companies (thereby deviating from the approach taken in section 3) is due to two main reasons. First, because human rights risks in the sector are even more obvious than in many other sectors, thus increasing the expectations on companies involved in it. Second, our bigger sample of fifteen companies (as opposed to three companies per sector in section 3) means that it includes the most important companies.

<sup>282</sup> According to EU definitions, SMEs range from micro-sized enterprises with no employees, to mid-sized companies with up to 250 employees and an annual turnover of up to €50m, see [https://ec.europa.eu/growth/smes/sme-definition\\_en](https://ec.europa.eu/growth/smes/sme-definition_en)

Secondly, and partly for the same reason, smaller companies often tend towards informal and trust-based styles of management, embodied by the figure of the ‘owner-manager’ (Brien & Hamburg, 2014). Thirdly, smaller companies often have limited leverage over other companies, and may instead be forced to follow the lead of larger companies (Ciliberti et al. 2010). Significantly, all of the sector federations that were consulted for this assessment underlined the need to take into account these challenges facing smaller companies. At the same time, there is a growing awareness of the opportunities that smaller companies have, e.g. due to their more intimate relationship with their suppliers.

It is crucial to note that despite these challenges, having a smaller size can never be an excuse for not taking action, and smaller companies can still cause massive adverse human rights impacts. UNGP 14 clearly states that the responsibility to respect human rights “*applies to all enterprises regardless of their size, sector, operational context, ownership and structure*”. At the same time, it also underlines that “*The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size*”. It is important to note that available studies indicate not only that SMEs can carry out HRDD in a cost-effective way, but also that it can be highly advantageous for these SMEs, because it can provide them with vital insights into the operations of their supply chains (European Commission 2020b).

Based on the above, there is a clear need to take into account the challenges facing smaller companies. Under Action Point 19 In the National Action Plan, the Belgian government committed to “Promoting SMEs’ good practices in the domain of responsible supply chain management.” (Action point 19), and to supporting “sectoral stakeholder initiatives”, which are seen as “more accessible to SMEs due to their “pragmatic nature and sectoral specificity” (Action points 4 and 22) (Interdepartmental Commission on Sustainable Development, 2017). This increased attention for multi-stakeholder initiatives is firmly in line with international trends and will be discussed in section 7. Overall, most stakeholders shared the view that the Belgian government can and should do more to support SMEs, notably by providing them with hands-on tools and guidance.

## 7 What role for business federations?

As the primary interest organizations of Belgian companies, sector federations can play an important role in encouraging and supporting corporate alignment with UNGPs. They can inform the government about the realities and needs in Belgian companies. Vice versa, they can inform companies about the changing regulatory context, and serve as a conduit for instruments and initiatives that assist companies with assuming their responsibility to respect human rights. Sector federations can also take initiatives to promote the UNGPs themselves, or they can participate in multi-stakeholder initiatives.

As part of the NBA, the research team reached out to eight sector federations. Five of them eventually participated in a 1-2 hour long interview (AWDC, Agoria, Fedustria, Comeos, Essenscia). One federation (Fevia) responded that it did not have in-house expertise on human rights. Finally, two federations (Confederatie Bouw, Febetra) did not respond to our request. In addition to the sector federations, we consulted VBO/FEB, the umbrella organization for sector federations in Belgium.

Of the four consulted federations, the Antwerp World Diamond Council (AWDC) is clearly the frontrunner in terms of attention for human rights. This is due not only to the importance of the diamond sector for the Belgian economy<sup>283</sup>, but also due to the attention that human rights issues in the sector receive at a global level (notably in relation to ‘conflict diamonds’). On behalf of its members, AWDC participates in international initiatives and networks like the Kimberley Process: a government-led but tripartite political process that seeks to halt the flow of conflict diamonds. The AWDC also provides its members with up-to date information and tools related to human rights and assists them with their due diligence through toolkits and workshops. For instance, it [informs](#)

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<sup>283</sup> 84% of all rough diamonds across the globe are traded through Antwerp, and the diamond industry provides 32,600 jobs in the country, for more information see <https://www.awdc.be/en/diamond-trade-and-industry>

[members](#) on the enhanced vigilance requirements for the import of rough diamonds from Kimberley Process non-compliant zones, currently only a few regions in the Central African Republic. However, the emphasis lies one-sidedly on the risks of conflict financing, and not on human rights risks per se.

Following the announcement of upcoming EU Regulation on conflict minerals<sup>284</sup>, Agoria, the sector federation for the Belgian technology sector, gradually started to pay more attention to this issue. According to Agoria, larger companies are generally aware of their risks and responsibilities. Yet for SMEs, which constitute the majority of Agoria's members, this is not (yet) an issue of concern. It is particularly for these companies that Agoria organizes yearly workshops with the aim of informing its members on the potential risks of sourcing minerals from CAHRAs<sup>285</sup>. However, in line with the situation in the diamond industry, the focus lies one-sidedly on conflict financing. Significantly, Agoria also has several partner organizations that are active in the arms industry, notably the [Flemish Aerospace Group \(FLAG\)](#) and the [Belgian Security and Defence Industry \(BSDI\)](#). Neither of these organizations references human rights on its website.

The two remaining sector federations, Fedustria (the Belgian federation for the textile, wood and furniture industry) and Comeos (commerce and services, including retail), take a more minimalistic approach to human rights. While providing members with basic information about regulatory changes (e.g. the OECD due diligence guidance, EU timber regulation), they ultimately see human rights as the responsibility of individual companies, and do not take specific initiatives to raise awareness about or to encourage alignment with the UNGPs. In both cases, sector federations suggested that with notable exceptions, human rights is not an issue that is high on the agenda of the majority of their members, who are instead focused on a more 'traditional' sustainable procurement agenda. They are looking at the umbrella organisation VBO/FBO to support the sector federations and individual companies in this area.

In short, none of the sector federations consulted in the framework of this NBA currently has a systematic approach to encouraging greater compliance with the UNGPs. Insofar as human rights are addressed, they are mostly narrowed down to the issue of conflict minerals. The different sector federations unanimously agreed that the needs of SMEs deserve particular attention, and that the government could do more to raise awareness about the corporate responsibility to respect human rights, and to support companies in meeting this responsibility.

In recent years, VBO/FEB (the umbrella for Belgian sector federations) has significantly strengthened its in-house expertise on human rights. It recognizes that companies have an important role to play in respecting human rights. At the same time, it emphasizes that this is a shared responsibility, and that local authorities in third countries must also play a role (see also [this statement](#)). Recognizing the international trend towards binding legislation on business and human rights, VBO/FEB is in favour of having sector-specific regulation, because it frets that cross-sectoral due diligence obligations would lead to nothing more than a box ticking exercise. Above all, it wishes to avoid policy incoherence, and is therefore a strong proponent of European (rather than national-level) regulation. Still, it thinks the Belgian government can play a much more proactive role in informing companies about their human rights obligations, and in helping them undertake their due diligence obligations, e.g. by developing tools for risk analysis, or by more systematically involving Belgian embassies and consulates. Like the individual sector federations, VBO/FEB also underlines the need to pay specific attention to the position of SMEs.

## 8 Cases of (alleged) human rights abuses involving Belgian companies

While the preceding sections have provided us with insights into the extent to which companies are

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<sup>284</sup> Most commonly known conflict minerals are tin, tungsten, tantalum and gold (3TG).

<sup>285</sup> Interview Agoria, 9 September 2020.

acting in line with what is expected from them under the UNGPs, we still know very little about the possible involvement of Belgian companies in actual human rights abuses. In this section, we bring together empirical evidence on cases of (alleged) human rights abuses involving Belgian companies. Relying on a combination of desk research<sup>286</sup> and stakeholder consultations<sup>287</sup>, the NBA team was able to identify nineteen companies that have been connected with one or more instances of human rights abuses (see annex 4).

Before proceeding, it is important to make a few general remarks about the aims of this analysis, as well as its limitations. First, it is not our intention to single out particular cases or companies. Rather, the aim is to see whether a number of general observations can be made about the types of Belgian companies that are (allegedly) involved in human rights abuses, about the form taken by these abuses, and about how the companies have responded to the allegations. Secondly, while we have tried to capture the most prominent cases, the list of companies and cases included in annex 4 is certainly not exhaustive. For instance, it does not include cases that have been lodged before judicial or non-judicial mechanisms, as these are discussed in the analysis of pillar III. Thirdly, while all cases are based on evidence gathered by third parties, the type of evidence, and consequently its quality, may vary. While some cases are described in elaborate reports by UN fact finding missions, in academic reports, or in articles in peer-reviewed international journals; others are only documented in NGO-reports or in news articles. While we have only retained cases for which we felt that the evidence was sufficiently strong, we refrain from making conclusive judgements about the validity of this evidence. Therefore, the cases should be treated with caution.

**Types of human rights abuses:** Adverse human rights impacts can take different forms. At least six cases involve the violation of labour rights. Several other cases involve abuses of local community rights, e.g. through forced evictions or environmental degradation. Five cases involved the sourcing of ‘conflict minerals’ or illegally harvested tropical wood, which may directly or indirectly harm the civilian population.

**Type and extent of involvement:** A company’s involvement in adverse human rights impacts can be more or less direct. Direct involvement can occur either through a company’s own activities or through the activities of a subsidiary. One of the most prominent cases, which also gained international attention, is that of Kardiam. Kardiam is the Belgian affiliate of BADICA, a diamond company from the Central African Republic. In August 2015, the UN Security Council sanctioned Badica/Kardiam for “providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, as well as wildlife and wildlife products, in the Central African Republic”.<sup>288</sup> Indirect involvement typically refers to cases where adverse human rights impacts are caused by a company’s supplier. Finally, we have a large number of cases where adverse human rights impacts are not caused directly by the company or by its suppliers, but by clients (notably in the arms industry) or by beneficiaries of portfolio investments (in the financial sector and in the case of BIO/Feronia).

**Sectoral background:** There exists substantial variation in terms of the sectoral background of companies involved in (alleged) human rights abuses. Four companies are active in the arms industry. Precious metals and/or diamonds, tropical hardwood, and construction (broadly defined) are each represented by three companies. Two companies are active in the financial sector, and two other companies are active in the production of clothing. Finally, one company is active in the agri-food business, and one company is a public sector entity that has been indirectly linked to human rights

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<sup>286</sup> This desk research focused on academic reports, reports from civil society organizations and international organizations, and specialized data portals like the Business and Human Rights Resource Centre.

<sup>287</sup> Consulted stakeholders include NGOs, trade unions, and sector federations.

<sup>288</sup> UN Security Council (2015). *Bureau d’achat de diamant en Centrafrique/Kardiam*. Retrieved from <https://www.un.org/securitycouncil/sanctions/2127/materials/summaries/entity/bureau-d%27achat-de-diamant-en-centrafrique/kardiam>

abuses through investment activities.

**Geographical scope:** In terms of geographical scope, with few notable exceptions, all human rights abuses have occurred in low- and middle-income countries.

**Conflict-Affected and High-Risk Areas (CAHRAs):** Ten companies have (allegedly) caused or contributed to human rights abuses in CAHRAs<sup>289</sup>. Belgian arms companies in particular have been implicated in all sorts of problematic exports. The most visible, for obvious reasons, are companies manufacturing conventional weapons and ammunition, like Mecar. Since the 1950s, weapons, ammunition and technological know-how have been sold to dictatorships (e.g. Argentina, Uruguay, Paraguay) and to countries and regions marred by (internal) conflict (e.g. Indonesia, Nepal, the Middle East, and Sub-Saharan Africa). Decades later, many of these weapons are still circulating. For instance, when in 2007 Jean Pierre Bemba relinquished MLC's stockpile of arms and ammunition to the UN Mission in the DRC, ammunition from Mecar and PRB was found (Monuc 2007). FAL rifles sold to and/or manufactured in Argentina between 1950s-1980s were diverted to the Yugoslavian civil war in 1990s (Danssaert 2003). At present, the arms and ammunition of at least three companies have allegedly been used in Yemen by the Saudi-led coalition to commit possible human rights violations. These include small arms and light weapons from FN Herstal, turrets from John Cockerill, and ammunition from Mecar (Vlaams Vredesinstituut 2011, Amnesty International 2020, Vredesactie, 2019). Less visible are high-tech companies providing components for large military platforms like aircrafts, naval vessels, and armoured vehicles. These platforms are often assembled in Belgium's neighbouring countries, where the foreign arms export control authority will be responsible for the risk assessment of the export application. One example involves components manufactured in Belgium that were used in the Eurofighter Typhoon aircraft, which was subsequently sold by the UK to Saudi Arabia. It is alleged that Typhoon components from Advionics have been used in Yemen by the Saudi-led coalition to commit violations of human rights and international humanitarian law (Vlaams Vredesinstituut 2011, Amnesty International 2020, Vredesactie, 2019).

**Operational-level grievance mechanisms and remedial action:** A final albeit very important observation is that no evidence could be found of functioning operational-level grievance mechanisms managed by the companies, that have allowed victims of human rights to raise complaints or to seek remedy for the human rights abuses. What is more, only a handful of companies has admitted that problems might have occurred (Seyntex, Besix, Newtec, BIO). While this may be understandable for cases where evidence is weak, it is worrying that this observation also applies to cases where evidence about corporate involvement in human rights abuses is much stronger (e.g. Kardiam, the arms industry), particularly because transparency and accountability are key elements underpinning the UNGPs.

So what does this exploratory analysis tell us about the (alleged) involvement of Belgian companies in human rights abuses. One observation that is particularly pressing in the case of Belgium is the highly problematic character of the arms industry, which represents a key economic sector notably in Wallonia. Yet when we look beyond the arms industry, no clear patterns emerge. Instead, we see heterogeneity in terms of the types of adverse human impacts, where they occur, the degree of direct involvement by Belgian companies, and the sector and type of activities in which they are involved. A second important observation is that no evidence could be found of cases that have been addressed through operational-level grievance mechanisms.

## 9 Conclusion

Our analysis of pillar II has revealed that Belgian companies still have a long way to go before they achieve even partial compliance with the UNGPs. While some companies take initial steps towards addressing social sustainability challenges in their activities and in their supply chains, their efforts

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<sup>289</sup> We only included these countries that were among the first 20 countries of the fragile state index, depending upon the year the allegation was made (see [fragilestatesindex.org](http://fragilestatesindex.org))

mostly fall within the now familiar domain of sustainable procurement and social auditing. 40% of the surveyed companies do not express a basic commitment to upholding human rights, and only a handful of companies are carrying out even aspects of HRDD processes. These are worrying observations, not only because of the multiplicity of human rights risks in global supply chains, but also in light of the growing likelihood of legislation at the Belgian and/or EU level. This analysis of pillar II has clearly shown that Belgian companies are currently not ready for this type of legislation, particularly where it would oblige companies to carry out more substantive HRDD processes.

Our analysis also contains a several valuable lessons for Belgian policy-makers. First, there is still an obvious need for more awareness-raising about the corporate responsibility to respect human rights. While the B-NAP contained various actions that aim to do precisely that, these actions have not yet materialized or have not reached their intended effects. Second, particular attention should be paid to understanding and addressing the needs of smaller companies, which face specific challenges when complying with the UNGPs. This observation applies to both SMEs and to a middle segment of companies that fall between SMEs and large multinational companies. Third, there is a need to pay specific attention to how Belgian companies deal with the heightened human rights risks in CAHRAs. The Belgian arms industry, in particular, plays a very questionable role in this regard. Fourth, while MSIs (and thus government support for these MSIs) can help companies align their policies and processes with the UNGPs, not all MSIs are equally oriented towards this objective. It is important to prioritize those MSIs that engage with the UNGPs.

Overall, our analysis results suggest that in the current regulatory context, Belgian companies are not incentivized to align their policies and processes with the UNGPs. This raises doubts about the efficacy of a policy approach (epitomized by the B-NAP) that mainly promotes voluntary action by companies and seeks to avoid a more compelling government approach. If greater corporate alignment with the UNGPs is indeed seen as a priority, then more resolute government action in the form of legislation might be necessary.

# Pillar III- Access to remedy

## 1 Key findings and recommendations

Overall findings	
<ul style="list-style-type: none"> <li>• Belgian governments need to include the implementation of Pillar III of the UNGPs in the political agenda by creating concrete ways to enforce respect for human rights by companies. Some recommendations are tailored to the specific mechanisms (cf. below).</li> <li>• Access to information, including systematic access to case law and to statistics on court activities, is crucial to guarantee access to an effective remedy. While non-judicial mechanisms can be a valid option for actual or potential victims of business-related human rights abuses, according to the empirical analysis of the EU FRA (2019), more than 70% of reported abuses against companies are lodged before judicial authorities.</li> <li>• Belgian authorities need to assess how to adopt structural reforms and policies to allow transnational claims in the framework of the UNGPs, to promote and support the implementation of OLGs by companies, and to reinforce cooperation between judiciaries and the diplomatic service, to increase the possibilities for rightsholders to obtain effective remedy when Belgian companies and their partners worldwide cause adverse impacts or harms.</li> <li>• Belgian authorities need to implement permanent and tailored capacity building of diplomatic, judicial and administrative officers in the three pillars of the of UNGPs.</li> </ul>	
The minimum conditions to get access to effective remedy (UNGP 25-26)	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP 26. States should ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, by reducing legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>	
Status and gaps	Recommendations
<ul style="list-style-type: none"> <li>• Belgium has not ratified important instruments from the CoE: the Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS 179); the Convention on Access to Official Documents (CETS 205); Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS 214) that allows the highest courts and tribunals of a High Contracting Party, to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR .</li> <li>• Several international and national organisations point to the persistent obstacles that victims encounter in Belgium to get access to legal aid and assistance, despite the legal reforms and the extra resources allocated. Victims from third countries only have the right to access legal aid and assistance in exceptional cases</li> <li>• The right to access to information is mainly enforced in environmental cases, but this needs more attention in other areas. The tools released by the government are usually not online nor periodically updated.</li> </ul>	<ul style="list-style-type: none"> <li>• Belgium needs to ratify important instruments from the CoE: the Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS 179); the Convention on Access to Official Documents (CETS 205); Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS 214) that allows the highest courts and tribunals of a High Contracting Party, to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR.</li> <li>• Belgium needs to enlarge the coverage of legal aid and assistance to allow vulnerable populations to claim their rights. This includes access to additional services such as interpreters and social support during the process.</li> <li>• Belgian authorities need to increase their efforts to provide appropriate access to information and to require businesses to report on the risks their activities may cause. The tools created to provide useful information need to be online to reach actual or potential victims in third countries and need to be periodically updated.</li> <li>• Belgium needs to adopt regulatory and policy measures to protect human rights defenders that</li> </ul>

<ul style="list-style-type: none"> <li>Belgium has not taken concrete measures to protect human rights defenders in Belgium and in third countries, particularly from threats of cybercrime, strategic lawsuits against public participation (SLAPPs) or when they denounce corruption.</li> </ul>	<p>support victims in the EU and in third countries.</p>
<p><b>State-based non-judicial mechanisms (SBN-JM) (UNGP 27 and 31)</b></p>	
<p>UNGP 27. States should provide effective and appropriate non-judicial grievance mechanisms, for the remedy of business-related human rights abuse. UNGP 31. Effective non-judicial grievance mechanisms, need to be legitimate, accessible, predictable equitable and transparent.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>The creation of the NHRI is an important point of progress in Belgium. However, its limited territorial scope and the lack of a complaint mechanism reduce its capacity to enforce human rights law.</li> <li>The Optional Protocol to the Convention against Torture also requires the implementation of an independent monitoring system to oversee human rights compliance but Belgium is one of the four EU countries that has not ratified this Optional Protocol.</li> <li>The OECD NCP has heard transnational claims against Belgian businesses, but its capacity is limited. In addition, it only applies the OECD Guidelines, which are not exclusively centred on human rights protection.</li> <li>Belgium (as part of the EU) has improved state-based mechanisms to protect specific rights, such as privacy, equality, environmental or consumers' rights. However, other human rights are not enforced in an effective way.</li> <li>Belgium has not ratified the UN Convention on International Settlement Agreements Resulting from Mediation (The Singapore convention) of 20/12/2018, which is necessary to improve direct enforcement of transnational mediation agreements.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>Belgian authorities need to progressively enlarge the competences of the NHRI to the level of a category A institute according to international standards and provide for a human rights complaint mechanism.</li> <li>Belgian authorities need to ratify the Optional Protocol to the Convention against Torture that requires the implementation of an independent monitoring system to oversee human rights compliance, that could be the NHRI.</li> <li>The OECD NCP is an important forum to deal with transnational claims and, therefore, Belgium needs to reinforce its capacity and allow it to apply the ILO Tripartite Declaration and the UNGPs.</li> <li>SBN-JM should guarantee that victims do not lose their right to submit lawsuits when they trigger SBN-JM first. These mechanisms should also provide for effective injunctions.</li> <li>Belgian authorities need to analyse the convenience of ratifying the UN Convention on International Settlement Agreements Resulting from Mediation (The Singapore convention) of 20/12/2018, to improve direct enforcement of transnational mediation agreements.</li> </ul>
<p><b>State-based judicial mechanisms (SBJM) (UNGP 25-26)</b></p>	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP 26. States should ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, by reducing legal, practical and other relevant barriers that could lead to a denial of access to remedy.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>Belgian authorities did not include any action in the B-NAP to improve judicial mechanisms in order to guarantee effective access to justice for victims. This is a serious gap, as this is the most important state-based remedy for business-related human rights abuses.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>Belgian authorities should continue improving the institutional capacity of the judiciary, and adopt reforms and policies to facilitate the use of the judiciary by victims of business-related human rights abuses, such as providing for reasonable prescription terms and accepting collective claims.</li> </ul>



<ul style="list-style-type: none"> <li>• The EU Directive on victims’ rights has been only partially transposed in Belgium, and victims still encounter multiple obstacles to trigger state-based remedy mechanisms.</li> <li>• The reform of public interest litigation is an important point of progress, but it does not allow collective claims to obtain remedy for human rights or environmental harms.</li> </ul>	<ul style="list-style-type: none"> <li>• Belgian authorities need to assess whether all the requirements of the EU Directive on victims’ rights have been implemented.</li> <li>• Belgian authorities need to enlarge the possibilities in public interest litigation to allow victims to lodge complaints against companies responsible for human rights harms or environmental damage, and to claim redress or compensation.</li> </ul>
<b>Complementary mechanisms directly related to Pillar III (UNGP 25-31)</b>	
<p>UNGP 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when abuses occurred within their territory and/or jurisdiction, victims have access to effective remedy. UNGP28. States facilitate access to effective operational grievance mechanisms (OLGM) dealing with business-related human rights harms.</p>	
<p><b>Status and gaps</b></p> <ul style="list-style-type: none"> <li>• Belgian authorities have not contemplated the possibility of allowing transnational human rights claims against Belgian businesses in the draft bill setting up the Brussels International Business Court</li> <li>• The NBA team has not found any publicly available information regarding the assessment of the measures proposed by the report on access to remedy<sup>290</sup> (2017), by the revised version of the draft treaty (2020), or by the multiple international analyses mentioned in Pillar I on the reform of the regime of private international law.</li> <li>• Belgium has not considered to allow courts to accept jurisdiction on human rights abuses when the company has its assets in Belgium, which has been claimed by many stakeholders.</li> <li>• The NBA team has only found two initiatives to promote the implementation of OLGGM by Belgian authorities.</li> <li>• Belgium has not signed the <a href="#">Convention of 2/7/2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters</a>.</li> <li>• The NBA team did not find information on the conclusion of bilateral cooperation agreements with countries where Belgian companies have serious risks of violating human rights.</li> <li>• The NBA team has not found publicly available information regarding capacity building of the judiciary or the diplomatic staff on the main issues of access to remedy in cross-border human rights abuses perpetrated by companies headquartered in Belgium.</li> </ul>	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Belgian authorities should consider if transnational business-related human rights claims could be heard by the Brussels International Business Court (when it is created).</li> <li>• Belgian authorities need to assess the best way to allow victims from third countries to lodge lawsuits before Belgian courts when Belgian companies and their commercial partners are involved in human rights harms. They also need to consider if Belgian courts could accept jurisdiction on human rights abuses against companies with assets in Belgium.</li> <li>• Belgian governments need to implement policies that support the implementation of OLGGM by business associations, MSIs, SOCs, credit and export promotion agencies.</li> <li>• Belgium needs to ratify the <a href="#">Convention of 2/7/2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters</a>.</li> <li>• Belgian authorities need to conclude bilateral cooperation agreements with countries where Belgian companies have serious risks of violating human rights.</li> <li>• Belgian authorities need to systematically organise permanent and tailored capacity building of the administrative, judiciary and diplomatic staff on the main issues of access to remedy in cross-border human rights abuses perpetrated by companies headquartered in Belgium.</li> </ul>

Several important findings arose from the analysis. Firstly, the B-NAP did not include specific actions to implement Pillar III. It only referred to the creation of a NHRI, and to some specific actions by the

<sup>290</sup> [UNGPs on Business and Human Rights in Belgium](#). State-Based Judicial Mechanisms and State Based Non judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy. L. Lizarazo Rodríguez (2017)

OECD NCP. In general, this corroborates the findings of assessments of NAPs from other countries, which also found a lack of attention for Pillar III<sup>291</sup>. Since 2017, few structural reforms were implemented in line with the UNGPs. Other reforms sought to increase the efficiency of state-based mechanisms in general, and benefit actual or potential victims of adverse impacts or abuses committed by companies. In general, the state-based mechanisms in Belgium are not framed in human rights terms and therefore claims related to human rights are not frequent. This finding coincides with the observation by the CESCR that the applicability of the ICESCR has been rarely invoked before the courts in Belgium.<sup>292</sup> In fact, the reforms reported in Pillar III did not refer to the enforcement of human rights and even less to the implementation of the UNGPs. The following table summarises the findings of the analysis presented below.

Table 26: Actions in line with UNGPs -Summary

Area	Indicator	New binding rules are in place	New policies and processes have been adopted	B-NAP actions implemented	Actions to protect vulnerable communities have been taken	Actions to increase leverage on the GVCs have been done
<b>Minimum conditions to get a remedy</b>						
	Legal aid and assistance	Yes	Yes	No action	Yes	No
	Access to information	No	No	No action	No	No
	Collection of evidence	Yes	No	No action	Yes	No
	Human rights defenders	No	Partially	No action	Partially	No
<b>State-based non-judicial mechanisms (SBN-JM)</b>						
	National Human Rights Institute (NHRI)	Yes	Yes	Partially	Yes	No
	Mediation of the OECD NCP	No	Yes	Partially	No	Partially
	Alternative dispute resolution (ADR): Mediation	Yes	No	No action	No	No
	Consumer Protection Claims	Yes	Yes	No action	Yes	No
	SBN-JM to fight discrimination	No	Yes	No action	Yes	No
<b>Inspections</b>						
	Environmental protection	Partially	No	No action	Yes	Partially
	Protection of personal data	Yes	Yes	No action	Yes	No
	Labour and occupational health protection	No	No	No action	Yes	Partially
<b>State-based judicial mechanisms (SBJM)</b>						
	Civil tort disputes	Partially	No	No action	No	Partially
	Class Actions	Yes	No	No action	Yes	Partially
	Criminal Claims	Yes	Yes	No action	Yes	No
	Labour claims	No	No	No action	Yes	No
<b>SBJM addressed against the state</b>						
	Council of State	No	No	No action	Yes	Partially
	Constitutional mechanisms	No	No	No action	Yes	Partially
<b>Transnational claims</b>						
	Transnational litigation	No	yes	No action	No	NO
	Interstate cooperation	Partially	yes	No action	No	Partially
	Active support of Belgium for OLG. M.	No	Partially	No action	No	Partially

<sup>291</sup>Cf. ICAR, ECCJ, DEJUSTICIA. A critical assessment of NAPs on Business and Human Rights (update) 23/8/2017.

<sup>292</sup> Cf. CESCR, Concluding observations on the fifth periodic report of Belgium E/C.12/BEL/CO/5 of 22/3/2020.

## 2 Introduction

Several international instruments recognise the human right to access to justice (and to an effective remedy)<sup>293</sup>. The TEU (Art. 19) also requires member states to grant effective judicial protection. The ECtHR and the Court of Justice of the European Union (CJEU) have also upheld the right to equality before courts and tribunals and to a fair trial (EU FRA and CoE 2016).

### 2.1 Scope

The NBA team assessed Pillar III by considering these international standards and structured the analysis of progress on the implementation of the UNGPs in Belgium according to the [Van Boven Bassiouni Principles](#)<sup>294</sup> (Zerk 2014, Lizarazo Rodríguez 2017; Sandoval 2018). They are the most comprehensive international principles that identify the procedural and substantial elements of the right to access to an effective remedy. They also cover the main issues of Pillar III of the UNGPs: **a) basic conditions to guarantee access to an effective remedy: access to courts, to information and to evidence and the possibilities to enforce judgments; b) equal and effective access to justice; and c) adequate, effective and prompt reparation for harm suffered.**

The [revised version of the draft treaty](#) (2020) also addresses the right of victims to an 'adequate, timely and effective remedy'. This involves: **a)** access to information by means of international cooperation, adequate and effective legal assistance; **b)** *The right to be heard in all stages of proceedings* with a gender sensitive protection; **c)** reasonable costs or delays; **d)** facilitation of transnational litigation, if necessary with the support of embassies or consulates; and **e)** effective legal standing (by individual or collective claims) without any *unlawful interference, intimidation, retaliation, and re-victimisation*.

Based on the previous guidelines, the NBA team focuses on the following aspects of Pillar III:

Table 27: Topics addressed by Pillar III

- The minimum conditions to get access to effective remedy, i.e. how Belgium guarantees access to justice (the procedural aspects of Pillar III).
- The possibilities victims have to trigger available SBN-JM) and to get (from a regulatory level) 'effective' remedies.
- The possibilities victims have to trigger available SBJM, whether they can be used for human rights claims and whether victims could get (from a regulatory level) an effective remedy.
- Complementary mechanisms related to Pillar III of the UNGPs, this is, transnational litigation, active state support to OLG and inter-state cooperation.

**Selection of the mechanisms that can guarantee access to justice:** The NBA assessed the state based mechanisms selected from [the report on access to remedy \(2017\)](#)<sup>295</sup>. This report applied three criteria to select them: **a)** whether they can protect and/or enforce human rights; **b)** whether victims and in some cases, interested persons, can use them, without major obstacles; and **c)** whether the outcome can be considered as a remedy, according to the [Van Boven Bassiouni Principles](#). The NBA team also

<sup>293</sup> Cf. UNDH (Art. 7 and 8), the UNCCPR (Art. 2, 14), the ECHR (Art. 6(1), 13, 35, 46), the EU Charter (Art. 47, 51 and 52.3) and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Cf. also UN Committee on Civil and Political Rights (CCPR) [GC 32](#), the General Recommendation CEDAW/C/GC/33 of 23/7/ 2015 on women's access to justice, and the EC Notice on access to justice in environmental matters (2017/C 275/01).

<sup>294</sup> UNGA *on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Rights Law and Serious Violations of International Humanitarian Law*, Res.60/147: [U.N. Doc. A/RES/60/147](#) (16/12/2005).

<sup>295</sup> UNGPs on Business and Human Rights in Belgium. State-Based Judicial Mechanisms and State Based Non judicial Grievance Mechanisms, with Special Emphasis on the Barriers to Access to Remedy Measures. [Fido Project MP-OO/FIDO/2016/5](#) L. Lizarazo Rodríguez (2017)

considered the EU Directive<sup>296</sup> on victim’s rights, and its [guidance](#), the EU Strategy on victims’ rights (2020-2025) and the Convention on the Compensation of Victims of Violent Crimes (CETS 116) to identify the main aspects of the analysis. The NBA did not assess remedy mechanisms provided by international courts or bodies, as their effectiveness is beyond the sphere of competence of Belgium except for its support by adhering to them.

**Scope of the term remedy (or reparation):** According to international standards, an effective remedy is the one that is potentially proportional to the gravity of the violation of human rights and the harm suffered by the direct or indirect victims (Skinner et al. 2013:17; the [Maastricht Principles](#)<sup>297</sup>(38)). The NBA sought to identify whether the mechanisms assessed are adequate to obtain an effective remedy. This assessment builds on the findings of [the report on access to remedy \(2017\)](#), which identified them based on the [Van Boven Bassiouni Principles](#) and international standards. However, the categorisation of a remedy as effective in general terms is unfeasible because it depends on the particular circumstances. Therefore, the remedies considered are the ones granted by state-based mechanisms that imply a restitution or **redress, compensations, injunctions, sanctions and guarantees of non-repetition**. The [revised version of the draft treaty](#) (2020) listed these remedies but added **environmental remediation, and ecological restoration**, which correspond to the mechanisms identified in Belgium by [the report on access to remedy \(2017\)](#). The NBA further used as guidelines the following documents to focus on the key issues of access to justice (and to an effective remedy) related to the UNGPs:

Table 28: International guiding standards to assess Pillar III

Document	Date
UNGPs Reporting Framework	2016
UN HRC Accountability and Remedy Project: ARP I SBJM <sup>298</sup>	2016
UN HRC Accountability and Remedy Project:, ARP II SBN-JM <sup>299</sup>	2018
UN HRC Accountability and Remedy Project: ARP III OLG <sup>300</sup>	2020
Recommendation <a href="#">CoE CM/Rec(2016)3</a> on access to remedy	2016
<a href="#">EU FRA Opinion</a> on "Improving access to remedy in BHR at the EU level"	2017
The <a href="#">GC 24</a> on state obligations under the (ICESCR) in the context of business activities	2017
<a href="#">EU FRA Business-related human rights</a> abuse reported in the EU and available remedies	2019
<a href="#">EP Study</a> Implementation of the UNGPs	2017
Commission Notice on access to justice in environmental matters (2017/C 275/01)	2017
The <a href="#">second revised version of the draft treaty</a>	2020

## 2.2 Methodology

The conceptual framework is similar to Pillar I; it builds on the [toolkit on NAPs](#) (2017) and the (adapted) conceptual and methodological framework of indicators developed by the [OHCHR](#). Therefore, the assessment of the four components of pillar III follows these parameters (adapted to the UNGPs):

- a. Structural indicators:** *What has Belgium done to address its international human rights obligations* (in the framework of the UNGPs).
- b. Process indicators:** *What has Belgium done to comply with the human rights legal framework* (related to the UNGPs).

<sup>296</sup> Directive 2012/29/EU of the EP and of the Council of 25/10/ 2012 *OJ L 315, 14.11.2012*.

<sup>297</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

<sup>298</sup> UN GA ARP I Accountability and Remedy Project (2016) Improving accountability and access to remedy for victims of business-related human rights [UN HRC A/HRC/32/19](#) and A/HRC/32/19/Add.1

<sup>299</sup> UN GA APII Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms. [A/HRC/38/20 GA 14/5/2018](#)

<sup>300</sup> UN GA ARP I Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms [A/HRC/44/32 19/5/2020](#)

**c. Outcome indicators: Which are the results<sup>301</sup> of those legislative and policy measures?**

Source: ([OHCHR](#))

**Research methods:** Pillar III is mainly assessed based on legal, comparative, and conceptual analysis (desk research). These methods are complemented with expert and stakeholder inputs. Qualitative empirical research methods employed for Pillar I (semi-structured interviews with the main entities involved in the Pillar III implementation) were only possible with the OECD NCP. Other entities provided a written response to some questions.<sup>302</sup> This part also assesses landmark case law on business-related human rights abuses in Belgium with particular attention to transnational cases in order to identify which authorities and jurisdiction victims or stakeholders are triggering, and whether there are patterns in the outcomes.

**Sources:** The assessment builds on the report [the report on access to remedy \(2017\)](#), the formulated [recommendations](#), the [Booklet “Access to Remedy in Belgium”](#) (2017), which sought to develop the B-NAP (Actions 2 and 3), and on more recent assessments of Pillar III. Other sources were recent policy documents, country or specialised reports of enforcement agencies, recommendations, and other official reports and publications (reports from CSOs, surveys, academic journals, and resource centres and newspapers).

**Limitations: a)** The NBA team aimed at assessing the situation of vulnerable or marginalised groups in the Belgian context and in salient value chains where Belgian corporate groups are active. However, the team did not conduct a systematic empirical assessment of the outcomes of procedures initiated in all the jurisdictions, nor was it able to assess the effectiveness of concrete remedies granted as this requires a case-by-case analysis. **b)** The NBA team was not able to contact victims or victim’s associations. The launching of the website aimed at creating communication channels for stakeholders, but the NBA team was not contacted. **c)** The NBA team is aware that most of the mechanisms assessed are not exclusive for business-related human rights remedies. However, this is not problematic as only few mechanisms are exclusive for business-related human rights abuses and for this reason, it considered the documents referred to above, to focus on issues connected to the implementation of the UNGPs.

### 3 Minimum conditions to obtain remedy

This section deals with the minimum procedural conditions to get access to justice and to an effective remedy as states are expected to guarantee access to state-based mechanisms by removing “*practical and financial obstacles*”<sup>303</sup> for victims (Zerk 2014). The NBA team followed the international standards listed above, to check progress by looking at the [recommendations](#) formulated to Belgium in 2017 and to the B-NAP.

#### 3.1 Legal aid and assistance

##### 3.1.1 Why is this a key issue in Belgium?

Legal aid and assistance aims at covering the cost of litigation for claimants lacking financial means. National law and practice define litigations costs (lawyer’s fees, expert fees, bailiffs’<sup>304</sup> fees, translation<sup>305</sup> and legalisation, etc.). Although the effectiveness of this aid needs to be assessed in a case per case situation, some objective parameters such as the means allocated by states (e.g.

<sup>301</sup> The NBA focuses on the gaps in the implementation of the UNGPs.

<sup>302</sup> The entities contacted were the OECD NCP, the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Health and the Environment and the Ministry of Social Affairs. Entities with enough publicly available information were not contacted.

<sup>303</sup> E.g. the lack of deficient legal aid, corruption, the lack of guarantees for victims, obstacles to access to relevant information to file a claim, or obstacles to enforce judgments.

<sup>304</sup> *Gerechtsdeurwaarder/Huissier de Justice*

<sup>305</sup> Cf. Law of 28/10/2016 on the right to have an interpreter and translator in criminal proceedings and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013).

subsidies, delegation of competences to private operators, or NGOs etc.) can be evaluated in general (EU FRA and CoE 2016:58-61). Legal aid and assistance seek to guarantee *equality of arms*, i.e. allow parties of a legal dispute to intervene without a “*substantial disadvantage vis-à-vis the adversary*” considering the relevance and complexity of the case for the parties and their background (EU FRA and CoE 2016:63-5; FRA 2017:39-40 quoted by Lizarazo Rodríguez 2017). The [revised version of the draft treaty](#) (2020, Art. 4.f) stipulates that victims have the right to *be guaranteed access to information and legal aid relevant to pursue effective remedy*. It also provides for the creation of an international fund for victims to cover legal and financial aid to victims.

In Belgium, victims of business-related human rights abuses could get access to the ‘front-line legal aid’<sup>306</sup> available to all, independently of their income level and of the interest in the case. ‘Second-line legal aid’ can be claimed by persons who can demonstrate a legal interest in the case and a lack of financial resources<sup>307</sup> for judicial, administrative or mediation procedures. The EU regulates legal aid for transnational (cross-border) disputes<sup>308</sup> that covers the ‘front-line legal aid’ for claimants seeking the pre-judicial settlement of disputes and legal assistance and representation for SBJM. However, this support is only available for third country residents in exceptional cases<sup>309</sup>. Belgian cross-border legal aid is also available in exceptional cases such as in THB, criminal, civil, labour or immigration/asylum proceedings.

Table 29: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Actions 2 and 3) committed to formulate recommendations to improve access to state-based remedy mechanisms.

The [recommendations](#) (2017) were to remove structural barriers and extend legal aid and assistance to third country residents, particularly because vulnerable groups are mostly from non-EU countries.

### 3.1.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in Belgium as well as concrete outcomes (organised as findings and gaps). The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

- In 2016, the government amended the second-line legal aid and updated the nomenclature for pro bono lawyers' services<sup>310</sup>, which resulted in additional obstacles to get the second line legal aid. Law of 19/3/ 2017 established a budget fund for second line legal aid, upheld by the Belgian Constitutional Court (BCC)<sup>311</sup>. After several complaints from organisations that support users of the system, Law of 31/7/2020 increased the income ceilings applicable in this area, in order to improve access to second-line legal aid and legal assistance.
- Law of 14/10/2018 amended courts fees. It shifted the payment of the court fees to the end of

<sup>306</sup> In Belgium, several instances from all levels of government provide this service: Lawyer’s Bars, Justice houses, local administrations, peace tribunals, social services entities or entities responsible for protecting specific human rights.

<sup>307</sup> Court fees/cost are not included in lawyer’s fees. Cf. Judicial Code (1018; 1022) and R.D. of 26/10/2007 on the duty of payment of the losing party.

<sup>308</sup> The main European legal framework consists of: **a)** the EU Charter (Art. 52.1). **b)** the Council Directive 2003/8/EC of 27 /1/ 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid (OJ L 026, 31.1.2003). **c)** Directive (EU) 2016/1919 of the EP and of the Council of 26/10/ 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016). **d)** European Agreement on the Transmission of Applications for Legal Aid, CETS 92, 1977. The ECtHR has also established financial and merits tests (EU FRA and CoE 2016:57-60). Cf. EU procedure to apply for [financial support](#).

<sup>309</sup> Cf. EU Directive 2012/29/EU of the EP and of the Council of 25/10/2012 on the minimum standards of the rights, support and protection of victims of crime (OJ L 315/57).

<sup>310</sup> Belgium transposed Directive (EU) [2016/1919](#) of the EP and the Council of 26/10/2016 (OJ L 297, 4.11.2016, pp. 1-8) on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. The Ministerial Decree of 19/7/2016 established the nomenclature of points for services provided by lawyers charged with providing second-line legal aid free of charge in whole or in part.

<sup>311</sup> Cf. BCC, Judgment no. 80/2020 of 4/6/2020.

the procedure, and linked them to the level of the court concerned. This reform sought to eliminate the obstacle these costs represented when they were a requirement to start a lawsuit.

- Law 22/4/2019 amended the rules on the legal expenses insurance to make them more accessible.
- Law of 19/4/2017 established a national register of court experts and of sworn translators and interpreters for civil and criminal cases, and requires interpreters and translators to have a legal training.

### The policies, processes and programmes adopted to implement the UNGPs

- The [Ministry of Justice](#)<sup>312</sup> reported an increase in the allocation of resources for paying fees to pro bono lawyers from €81 million (paid in 2015) to €103 million (paid in 2018). The [EU Scoreboard](#) (2020:5) highlighted the reforms on legal aid and reported that the budget of Belgian courts is the fourth best of the EU member states<sup>313</sup>. However, it also flagged that state prosecutors lack adequate resources and expertise to investigate.
- The Ministry of Justice updated the [website](#), which provides a detailed explanation about who can get access to legal aid and assistance.

#### 3.1.3 Key outcomes or gaps for the implementation of the UNGPs

- Belgium has not ratified the Protocol to the European Agreement on the Transmission of Applications for Legal Aid (CoE ETS 179). This Protocol seeks to improve the operation of the Agreement (CoE ETS 92), which enables persons having their habitual residence in the territory of a Party to apply for legal aid in civil, commercial or administrative matters in the territory of another Party, in particular in cooperation aspects.
- The CESCR report of 19/2/2020 pointed out the difficulties of access to justice in Belgium<sup>314</sup>. The Parallel Report from UNIA and Myria to the Belgian report to the UN HRC<sup>315</sup> further pointed that the 2016 legal aid reform affected people in precarious circumstances (mainly disabled persons and foreigners) because it eliminated the automatic access to second-line legal aid to certain categories of beneficiaries (e.g. persons who receive a replacement income or an integration income from the state). The reform also increased the administrative burden because they had to demonstrate a lack of resources. Belgium reported on 10/2019 to the UN Human Rights Council that second-line legal aid increased, but UNIA and Myria explained that the increase was explained by the duty of lawyers to file a new application when they need to appeal a judgement, whereas, before the reform, the same application was valid for the two instances. The result was that many people were prevented from getting access to legal aid because of a shortage of evidence of their financial situation.
- Myria and UNIA parallel report<sup>316</sup> considered that the reforms on digitalisation of the judiciary further increased the litigation fees, and the law on the insurance for legal assistance does not favour people not able to pay the insurance policy. The insurance also has exclusion periods (sometimes 3 to 5 years before the problem started in court) to initiate the coverage.
- Myria and UNIA parallel report<sup>317</sup> denounced obstacles to receive legal assistance as several appeals have been obstructed by a shortage of specialised lawyers. Recent reforms of the judiciary and of legal aid in Belgium are transforming legal practice and lawyers are struggling to adapt to the new circumstances (Gibens et al 2020).
- Besides the need for translations for foreign claimants, the clarity of the legal language is another

<sup>312</sup> [Justitie in Transitie](#): *Stand van zaken na vierenhalf jaar hervormen Minister of Justice* K.Gens 26/4/2019.

<sup>313</sup> In EUR per inhabitant in 2010. Cf. The [EU Scoreboard](#) (2020:5-12-3).

<sup>314</sup> Cf. CCPR 127ème Session / Examen du rapport de la Belgique.

<sup>315</sup> [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium

<sup>316</sup> [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium.

<sup>317</sup> [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium.

concern. Only private initiatives exist in that respect, but these services are not free<sup>318</sup>.

### Concrete reported cases

The ECtHR [Beuze v. Belgium](#) judgment (9/10/2018) condemned Belgium for not granting adequate access to legal aid and assistance in criminal proceedings (although this does not refer to a victim of a business related human rights abuse).

## 3.2 Access to information

### 3.2.1 Why is this a key issue in Belgium?

The [revised version of the draft treaty](#) (2020) recognised access to information as a victim's right and required states to ensure access to information in general and on their specific claims lodged. The BC (Art.28) recognises the right to ask for information, to consult documents by addressing petitions, or a copy, except for cases and conditions stipulated by laws or by constitutional rules (Art. 32 and 134). Law of 1/4/1994 further regulates the right to consult administrative documents. Law of 1/4/1994 further regulates the right to consult administrative documents.

Table 30: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Actions 2 and 21) committed to develop a booklet on state-based remedy mechanisms and to provide better information to the general public and relevant organisations in Belgium to raise awareness.

The [recommendations](#) (2017) indicated:

- Victims and stakeholders are not aware about existing mechanisms in the framework of business and human rights and recommended to promote existing remedy mechanisms.
- The requirement for competent judges to send judgments on the topic to the competent administrative institutions (e.g. UNIA, Myria and the Data Protection Authority) is a good practice that needs to be implemented for other areas such as environmental law, labour law, consumer protection etc. to increase access to case law databases for the available judicial mechanisms.
- Most of the state-based mechanisms are not framed in a human rights language and recommended to integrate human rights issues to raise awareness.

### 3.2.2 Progress since the adoption of the B-NAP

The NBA team did not find structural reforms seeking to reinforce the right to access to information. The main **policies, programmes and processes** adopted in Belgium in line with the UNGPs, are the following:

- FIDO/IFDD released the [Booklet "Access to Remedy in Belgium"](#) (2017), which sought to develop the B-NAP (Action 2). This booklet mainly included the mechanisms that *a priori* can be used by victims of business-related human rights abuses. The EU FRA (2019)<sup>319</sup> noted that this booklet is a good practice regarding the provision of information to rightholders, only implemented by Belgium in the EU.

### 3.2.3 Key outcomes or gaps for the implementation of the UNGPs

- Belgium has not ratified the Convention on Access to Official Documents (CoE CETS 205) in force since 2020. This Convention is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities that guarantees transparency essential to the self-development of people and to the exercise of fundamental human rights. This Convention only permit limitations on this right to protect certain interests like national security, defence, or privacy.
- Belgium has not ratified Protocol No. 16 to the Convention for the Protection of Human Rights

<sup>318</sup> Cf. [Helder Recht Legal Info /Droits Quotidiens Legal Design](#) and access to law in force. [Droits Quotidiens Legal Tech](#)

<sup>319</sup> [EU FRA \(2019\) Business-related human rights](#) abuse reported in the EU and available remedies



and Fundamental Freedoms ([CoE CETS 214](#)) that allows the highest courts and tribunals of a High Contracting Party, to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR or the protocols thereto. This mechanisms will increase the awareness about human rights enforcement by national courts.

- The EU Directive on victim’s rights highlights that access to information is a necessary condition to guarantee effective access to remedy. However, the EC reported that many EU countries, including Belgium, have not implemented the necessary measures to guarantee this right.<sup>320</sup>
- In Belgium, access to information is mainly granted in environmental issues, thanks to the Aarhus convention.<sup>321</sup> However, for other legal areas this right is almost unknown.
- The booklet “Access to Remedy in Belgium” (2017) has not been updated since its release in 2017, and many mechanisms have already been reformed.

### 3.3 Collection of evidence

#### 3.3.1 Why is this a key issue in Belgium?

Collection of evidence has been a critical issue for victims of business-related human rights abuses. The [revised version of the draft treaty](#) (2020) requires states to support the collection of evidence even by means of mutual legal assistance (cf. below). In Belgium, victims, stakeholders or the judiciary may request Bailiffs (Judicial Code (Art. 519) to perform material ascertainment to gather evidence with an authentic character for a future procedure. However, there is no evidence on whether this option has been used in practice for business-related human rights abuses. Reporting non-financial information is also a way to collect evidence (cf. Pillars I and II).

Table 31: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not contain any commitment about this issue.

The [recommendations](#) (2017) pointed out the need to revise the possibilities to shift the burden of proof in civil tort cases when victims are not able to demonstrate the causal link between the business conduct/omission and the damage. It also recommended increasing the margin of appreciation of courts in defining whether there is a causal link between the business action/omission and the damage caused.

#### 3.3.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in line with the UNGPs. The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

Law of 13/4/2019 reformed the Civil Code (Book 8), on responsibility and collection of evidence. This reform provided for more accessible and clearer rules on evidence, and added flexibility to the legal evidence regime in civil matters. The reform clarified the rules on the burden of proof in line with established case law. From the perspective of Pillar III, judges now have a larger margin of appreciation regarding the burden of proof in exceptional cases and can lower the burden of proof for facts that cannot be demonstrated with certainty.<sup>322</sup> Judges must motivate why, in certain circumstances, they deviate from the legal rules and reverse the burden of the proof. However, these results are justified when the factual difficulties to find evidence alter the equality of arms among the parties. Regarding the rules of evidence some aspects are of relevance: **a)** the degree of proof that is allowed, i.e. it is not necessary to demonstrate 100% certainty but to provide a conviction that excludes all reasonable doubt. **b)** Freedom of evidence applies to companies with legal exceptions, even with regard to signed

<sup>320</sup> Cf. EC [Report on the implementation of the Victims’ Rights Directive](#) (1/5/2020).

<sup>321</sup> The UNECE [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#).

<sup>322</sup> This improvement generates worries because of the risk of arbitrariness that would violate the ECHR (Art. 6).

documents. The law allows the collection of evidence by witnesses and contains presumptions regarding the content of a document. This freedom of proof applies irrespective of the position of the company in the proceedings (plaintiff or defendant) and, irrespective of the competent court where the proceedings have been brought. However, the freedom of evidence applies only to acts performed by a company. Acts performed by natural persons who constitute companies but who are outside their economic activity remain subject to the rules of civil evidence. **c)** Third parties can demonstrate the existence of a legal act by any means of proof when they did not participate in the drawing up of the act and do not have an original copy.<sup>323</sup>

The NBA team did not find evidence of **policies, programmes and processes adopted by Belgian authorities in line with the UNGPs.**

### 3.3.3 Key outcomes or gaps for the implementation of the UNGPs

- The reform of the Civil Code represents an important progress, but it is still early to assess if this will remove the reported obstacles victims of business-related human rights abuses encounter regarding the collection of evidence. For transnational claims, the barriers in terms of jurisdiction and applicable law have not changed (cf. below).
- The collection of evidence via the non-financial reporting does not seem effective, according to the first assessments of the legal reform that transposed the EU Directive (cf. Pillar I and II).

## 3.4 Human rights defenders

### 3.4.1 Why is this a key issue in Belgium?

Protection of human rights defenders is a crucial condition for the implementation of Pillar III, because they help victims in documenting violations, initiating procedures to hold businesses or states accountable for human rights harms, and raising awareness of human rights at national, regional and international levels. Consequently, they have also been targets of attacks and threats. At the international level, the UN Declaration on Human Rights Defenders addresses the need to protect them. The EU FRA (2019) empirical report<sup>324</sup> found that human rights defenders and state agencies represent victims in about half of the incidents identified in business-related human rights abuses. The role of human rights defenders is even more relevant in states with weak state institutions. Moreover, human rights defenders play a central role in the fight against corruption, which frequently results in becoming targets of violence.<sup>325</sup> The [revised version of the draft treaty](#) (2020, Art 5) stipulates the duty of states to *protect victims, their representatives, families and witnesses from any unlawful interference with their human rights and fundamental freedoms, during the proceedings*. Therefore, states should implement measures to guarantee victims and human rights and environmental defendants to exercise their *human rights free from any threat, intimidation, violence or insecurity*.

Table 32: Parameters to evaluate progress since the adoption of the B-NAP

The B-NAP did not contain any information about this issue.

The [recommendations](#) (2017) highlighted the important role that NGOs, associations of victims (and other human rights defenders) have played in areas such as environmental, social and consumer matters and the need to promote their active implication in other areas.

The [EP Draft EU Directive](#) (2020, Art. 5) requires member states to ensure that businesses provide effective protection mechanisms and measures for affected or potentially affected stakeholders when they participate in stakeholder consultations. Moreover, consultations with indigenous peoples need to *respect international human rights standards, including the standard of free, prior and informed consent and respecting indigenous*

<sup>323</sup> Cf. Chambre des Représentants de Belgique *Belgische/ Kamer van Volksvertegenwoordigers Wetsontwerp Projet de Loi portant insertion du Livre 8 "La preuve" dans le nouveau Code civil* [Doc 54 3349/001 of 31/10/2018](#).

<sup>324</sup> [EU FRA \(2019\) Business-related human rights](#) abuse reported in the EU and available remedies.

<sup>325</sup> UNGA A/HRC/44/47 of 23/3/2020 on Independence of judges and lawyers.

*peoples' right to self-determination.*

### 3.4.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in line with the UNGPs. The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

- The Directive<sup>326</sup> on the protection of persons who report breaches of EU law relates to issues of relevance for the UNGPs: public procurement; financial services, prevention of money laundering; product safety and compliance; transport safety; protection of the environment; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems. Belgium needs to transpose this EU Directive by 2021.

Regarding **policies, programmes and processes** adopted in line with the UNGPs, the NBA team only found initiatives from the EU:

- In 2016 the EU, within the context of the [common foreign and security policy \(CFSP\)](#), released the [EU guidelines on Human Rights Defenders](#), which defines the EU's approach to supporting and protecting human rights defenders in non-EU countries. These guidelines request EU diplomats to meet regularly with human rights defenders, visit detained activists, monitor their trials and advocate for their protection. It further requires the [Council Working Party on Human Rights \(COHOM\)](#) to identify when the EU can intervene based on reports from EU heads of missions, the UN, the CoE or NGOs. The EU also requests high-ranking EU officials visiting non-EU countries to meet human rights defenders and to schedule in the political agenda the discussion of their situation. Furthermore, the [European Instrument for Democracy and Human Rights \(EIDHR\)](#) provides financial assistance to organisations supporting human rights activists<sup>327</sup> and capacity building programmes seeking to strengthen the business and human rights dimension in EU support for human rights defenders<sup>328</sup>.

### 3.4.3 Key outcomes or gaps for the implementation of the UNGPs

- The EP report on indigenous rights<sup>329</sup> emphasises that the EU external action and member states should include the situation of indigenous rights and of their defenders in bilateral and multilateral negotiations and diplomatic communications, and should ensure that third countries protect indigenous communities and defenders, and lodge formal complaints against perpetrators of crimes against them. The NBA team has not found any publicly available information on measures adopted by Belgium in this respect.
- The CoE<sup>330</sup> reported that the rights of human rights defenders suffer increasingly technology-related harms and threats such as intercepted communications, surveillance, artificial intelligence and that they lack the resources to prevent and respond adequately. Human rights defenders are also increasingly targets of digital surveillance and attacks, for the purpose of infiltration, monitoring and intimidation. The NBA team has not found any publicly available information on measures adopted by Belgium to protect human rights defenders in this respect.

<sup>326</sup> Directive (EU) 2019/1937 of the EP and the Council of 23/10/ 2019 OJ L 305, 26.11.2019

<sup>327</sup> Cf. [Ensuring protection – European Union Guidelines on Human Rights Defenders](#), Council of the EU (Foreign Affairs) and Regulation (EU) No [235/2014](#) of the EP and the Council of 11/3/2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014).

<sup>328</sup> Cf. [https://ec.europa.eu/international-partnerships/topics/human-rights\\_en](https://ec.europa.eu/international-partnerships/topics/human-rights_en)

<sup>329</sup> The [EP Report](#) (2018) A8-0194/2018 29.5.2018 (2017/2206(INI)) Committee on Foreign Affairs. Rapporteur: F. Assis

<sup>330</sup> Cf. *Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions Round-Table with human rights defenders (12/2018)* the Office of the Council of Europe Commissioner for Human Rights Helsinki, Finland.

- The country report of UNODOC<sup>331</sup> recommended Belgium to take measures to provide protection for “any person” who reports to the competent authorities, and not only civil servants. The NBA team has not found any publicly available information on measures adopted by Belgium in this respect.
- A recent report from Greenpeace<sup>332</sup> raised concerns for recent defamation lawsuits against Belgian NGOs that denounced issues of land grabbing in Africa by the [agro-industrial multinational SOCFIN](#).
- The European Federation of Journalists, Free Press Unlimited and Whistleblowing International Network raised [concerns](#) on the new EU Directive on the protection of persons who report breaches of EU law, because the ambiguity of the language used could hinder the protection. They formulated a list of recommendations for member states when transposing the Directive.

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<sup>331</sup> [UNDOC Country Review Report](#) (22/8/2017) of Belgium Review by Mexico and the Netherlands of the implementation by Belgium of articles 15 - 42 of Chapter III. “Criminalization and law enforcement” and articles 44 - 50 of Chapter IV. “International cooperation” of the UN Convention against Corruption for the review cycle 2010 - 2015

<sup>332</sup> [Greenpeace \(07/2020\)](#) *Sued to Silence: How the rich and powerful use legal tactics to shut critics up SLAPPs – Strategic Lawsuits Against Public Participation*.

## 4 State-based non-judicial mechanisms (SBN-JM)

### 4.1 How was the situation in Belgium until 2017?

The NBA team assessed first the SBN-JM and then the SBJM, as the latter is frequently used as last resort when victims cannot obtain remedy by more expedite and effective ways, and frequently, victims or stakeholders can ask for collective remedy. It builds on the report on “[Access to Remedy](#)” (2017), its [recommendations](#) (2017), the [Booklet “Access to Remedy in Belgium”](#) (2017). The NBA selected the mechanisms from the sources mentioned, which coincide with the mechanisms identified by the UN Accountability Remedy Project (ARP II, 2018) and the EU FRA Opinion (2017)<sup>333</sup>.

The report on “[Access to Remedy](#)” (2017) also assessed existing gaps or obstacles victims encounter to use these mechanisms (at the regulatory level but not in practice). The assessment was based on the effectiveness criteria proposed by the UNGPs (Principles 27 and 31), case law parameters from the ECtHR and the CJEU (EU FRA and CoE 2016:48-9) and recommendations of the EU FRA on the effectiveness of SBN-JM (FRA: 2017:54). Next table summarises these criteria considered to assess Belgian SBN-JM:

Table 33: Effectiveness criteria defined by the CoE and the EU FRA to assess SBNJ-M

<ul style="list-style-type: none"> <li>↻ They do not obstruct the possibility to trigger courts if the arrangement violates human rights law.</li> <li>↻ They do not cause unjustified delay when a legal action is necessary;</li> <li>↻ They suspend the prescription term of legal actions during the settlement procedure;</li> <li>↻ They are a cost free or low-cost mechanism for parties;</li> <li>↻ They can be conducted by electronic means<sup>334</sup> or by personal negotiation</li> <li>↻ They provide for interim measures in exceptional cases.</li> <li>↻ They are legitimate as their use still allow to go to court and they are supervised by courts.</li> </ul>
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**Source:** The report on “[Access to Remedy](#)” (2017:70), based on FRA and CoE (2016:54) and FRA:2017:54.

Next table visualises the results of applying the previous effectiveness criteria to existing SBN-JM, selected and updated for this NBA.

Table 34: Effective access to justice through available SBN-JM in Belgium

Criteria	Possibility to obtain remedy enforceable in courts	Possibility to go to court if the proposed remedy is not effective/ settled	Opportune solution: no unjustified delay	Suspension of the prescription term for a lawsuit	Cost: free or low-cost	Interim measures
<b>Mechanism</b>						
Civil and commercial mediation	X	X	X			
National Institute for Human Rights						
OECD NCP		X	X		X	
UNIA		X	X		X	
The Gender Equality Institute		X	X		X	
Data Protection Authority	X	X	X	X	X	X
Consumer protection	X	X	X	X	X	X
Social inspection (including THB)	X	X	X		X	X
Environmental protection	X	X	X		X	x

<sup>333</sup> The NBA assessed the role of ombudspersons in the state-business-nexus. Arbitration is not included because it has not been used in Belgium for business-related human rights claims.

<sup>334</sup> Most of the websites of the institutions providing SBN-JM give the basic information on the corresponding mechanisms but few foresee online applications.

**Source:** Table adapted from the report on “[Access to Remedy](#)” (2017 p71).

The fragmentation and, in some cases, overlapping competences (that reflect the complex distribution of competences among the federal and subnational governments) have been justified by the preference for a model of specialised agencies. However, fragmentation obstructs access to effective remedy, as victims (and stakeholders) do not always understand or identify the competent authorities. Although the expectation was that the NIHR would address this fragmentation, it has a residual competence, which does not solve this fragmentation, even less because it only has federal competencies and lacks of a complaint mechanism.

Some of these mechanisms (e.g. ombudspersons, not listed above) are not formulated in human rights terms, which increases, even more, the difficulties to rightsholders to identify them as valid mechanisms to seek an effective remedy. In the framework of transnational business-related human rights abuses, the OECD NCP mediation does not generate binding commitments, and therefore, it has similar possibilities of free compliance as OLG. M.

Most of the SBN-JM in Belgium allow triggering courts when the SBN-JM remedy is not legal/effective, and they are opportune and cost-free (or at an affordable cost). However, the assessment does not say anything about their possibility to guarantee an effective remedy. The reason is that each SBN-JM can protect more than one human right, i.e. the same mechanism may be triggered for several negative impacts or violations. Each can also provide for diverse types of remedies depending on the seriousness of the infringement.<sup>335</sup> Therefore, an accurate assessment of its effectiveness needs to consider each particular case.

Decisions adopted in consumer or data protection claims as well as in the framework of inspections can result in binding settlement enforceable before courts. However, only claims related to consumer and data protection have the capacity of suspending the prescription term of judicial actions. This means that even if these mechanisms do not prevent victims from going to court when no satisfactory remedy is reached, in practice, victims could be confronted with short prescription terms that can result in a denial of the right to an effective remedy for procedural reasons. Rightsholders need to be aware that triggering many SBN-JM can be an expedite option, but it has the risk of losing the opportunity of triggering courts for the occurrence of prescription.

The next table shows whether the identified SBN-JM could provide remedies for business-related human rights abuses.

Table 35: Possible remedies provided by non-judicial mechanisms in Belgium

Mechanism	Remedy				
	Redress	Compensation	Injunction	Sanction <sup>336</sup>	Guarantee of non-repetition <sup>337</sup>
Civil and commercial mediation	X	X			
National Institute for Human Rights					
OECD NCP	X	X		R	
UNIA	X			R	
The Gender Equality Institute	X			R	
Data Protection Authority	X		X	FGR	X

<sup>335</sup> Altwickler-Hamori et al., (2016) and Lizarazo Rodríguez (2018) pointed out that the nature of the right at stake has implications for the type of remedy and therefore, assessing their effectiveness depends on the concrete circumstances, which complicates an *ex ante* and abstract evaluation.

<sup>336</sup> There are various types of sanctions. **F** indicates a fine. **G** a guarantee of non-repetition, e.g. by preventing future abusive behaviour, and **R** indicates whether the sanction can affect the reputation of the company.

<sup>337</sup> They refer to structural measures that can be taken to avoid future abuses, which is different from sanctions that imply a guarantee of non-repetition.

Environmental sanctions, licences/EIA <sup>338</sup>	X			F G R	X
Social inspection (and THB)	X		X	F R	
Consumer protection	X			R	

**Source:** Table adapted from report on “[Access to Remedy](#)” (2017 p79).

This table visualises the types of remedies that the selected SBN-JM can provide (on books). Some important conclusions can be drawn: Firstly, most of the SBN-JM could provide a redress, although the harm caused cannot always be redressed, or it is irreparable. Secondly, only a limited number of SBN-JM provide for compensation, but its payment relies in practice on the will of the perpetrator, mostly when they are not enforceable before courts. The nature of the human right at stake and the harm would determine whether the compensation can be considered an effective remedy.

Thirdly, sanctions can persuade perpetrators or grant non-repetition and avoid future victims, and simultaneously, they can have a reputational character. However, sanctions do not provide an effective remedy for victims because they do not compensate for the damage and the plausibility, frequency and intensity of the sanctions is unknown.

Fourthly, interim measures can provide for injunctions that seek to cease the abuse or avoid more severe damage. However, most of these mechanisms cannot provide an injunction, diminishing their effectiveness from the victims’ perspective.

The NBA team assessed progress since the adoption of the NAP (2017) for the following mechanisms:

## 4.2 National Human Rights Institute (NHRI)

### 4.2.1 Why is this a key mechanism in Belgium?

Although in Belgium most of the SBN-JM coincide with those mapped in the ARP II (2018) and the FRA Opinion (2017), the conclusions of the report on access to remedy (2017) pointed to the fact that some of them do not frame their interventions in human rights terms. Moreover, victims also encounter difficulties identifying the competent entity to handle their claims among the diverse levels of government. In some areas, various levels of government can hear the claims, such as in environmental, labour or discrimination negative impacts or harms. The international standards (the Paris Principles<sup>339</sup>) seek that NHRIs interact with international human rights monitoring mechanisms, formulate legislative and policy reforms, represent victims or stakeholders, monitor and assess existing remedies, and conduct preliminary inquiries for reported violations (FRA 2017:57; Lagoutte et al. 2016). Although the establishment of the NHRI in Belgium represents an important step that could remove obstacles for victims of human rights harms, its implementation is still uncertain.

*Table 36: Parameters to evaluate progress since the adoption of the B-NAP*

The **B-NAP** did not include any concrete action but it mentioned the commitment to create a NHRI based on the Paris Principles, in accordance with international commitments and with the federal government agreement of 9/10/2014.

The [recommendations](#) (2017) pointed to the need of creating a NHRI as a way to provide a single contact point for human rights issues in Belgium with quasi-judicial competences. This would increase awareness about the possibilities of claiming human rights.

### 4.2.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in line with the UNGPs. The main **structural reform** (adopted or in course) are the following:

- Law of 12/5/2019 established the Federal Institute for the Protection and Promotion of Human Rights. Initially, the NHRI will focus on advising the federal authorities on human rights issues,

<sup>338</sup> Environment impact assessments.

<sup>339</sup> Cf. UN GA (1993) Resolution A/RES/48/134.

monitor compliance with international human rights obligations, promote the ratification of new international human rights instruments and raise public awareness on human rights issues. The NIHR would refer cases to the Council of State and the BCC for a judicial review control when they violate fundamental rights but only within the limits of its residual federal competences<sup>340</sup>.

Regarding **policies, programmes and processes** adopted in line with the UNGPs,

- The board of directors has already been appointed (12 members from the academic world, the judiciary, civil society and the social partners). The board will facilitate the work of the sectoral bodies and ensure a coordinated approach to human rights issues. The ambition is to create a complaints mechanism, but this has not been defined yet. The president (UC Louvain) and vice-president (UGent) are two human rights professors. The board of directors is currently defining the internal procedures to start functioning.
- The federal and subnational governments are negotiating an agreement to enlarge the competences of the NIHR to the whole state.
- The federal government is also committed to revising the landscape of public bodies to promote equality and human rights to strengthen cooperation and effectiveness.<sup>341</sup>

#### 4.2.3 Key outcomes or gaps for the implementation of the UNGPs

- The EU FRA report on NHRI in the EU<sup>342</sup> expressed concerns because, in Belgium, awareness about the role of the NHRI is very low, which can be explained by its nonexistence. UNIA has played the role of NHRI, although it only deals with issues of discrimination, which is not a unique example within the EU.
- The Optional Protocol to the Convention against Torture also requires the implementation of an independent monitoring system to oversee human rights compliance, but Belgium is one of the four EU countries that has not ratified this Optional Protocol.
- The main challenge for the NHRI is whether the regions will accept a cooperation agreement with the federal level. UNIA and Myria parallel report flagged that the limited competences of the NHRI are an obstacle to adopt a transversal approach to human rights.<sup>343</sup>
- It is uncertain whether the NHRI will play a role in holding Belgian companies accountable for the respect for human rights in value chains where they are active and whether victims from third countries would be able to lodge claims of harms that occurred outside Belgian jurisdiction.<sup>344</sup>
- The EU FRA report and the CESCR celebrated the creation of the NHRI but pointed to the need of creating complaint mechanisms at the head of the NHRI<sup>345</sup> and the need of enlarging its jurisdiction over the whole territory to be considered as an institute of category A.

### 4.3 Mediation of the National Contact Point (NCP) for the OECD Guidelines for MNEs

#### 4.3.1 Why is this a key issue in Belgium?

The OECD NCP has a tripartite composition with the participation of employer and employee representatives, and representatives from federal and subnational governments. It is part of the Ministry of Economy and seeks to implement the [OECD Guidelines](#). The NCP is an important mechanism because, **a)** it mediates among businesses, trade unions, NGOs or other stakeholders to settle a conflict that can have a transnational character. **b)** The NCP final statement may provide for a remedy although it does not have a binding character. **c)** The complaint can be lodged by anyone

<sup>340</sup> Cf. [Legal World, Wolters Kluwer](#)

<sup>341</sup> [Rapport des formateurs – Verslag van de formateurs – Paul Magnette & Alexander De Croo – 30/09/2020](#).

<sup>342</sup> [EU FRA \(2020\) Report](#): Strong and Effective National Human Rights Institutions Challenges, Promising Practices and Opportunities.

<sup>343</sup> Cf. [UNIA and Myria \(2020\)](#) Parallel report to the 5th Periodic report of Belgium.

<sup>344</sup> Cf. [The Edinburgh Declaration](#) that tackled the role of NHRI in addressing Business and Human Rights.

<sup>345</sup> CESCR Concluding observations on the fifth periodic report of Belgium [E/C.12/BEL/CO/5 of 22/3/2020](#).



against any business headquartered in Belgium, independently of the place where the human rights harm occurred and, **d)** the mediation has a reasonable cost and without the formalities of judicial procedures.

Table 37: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** (Action 22 and 23) is committed to strengthening the OECD NCP. It also mentioned the role of the OECD NCP in encouraging responsible supply chain management by using a sectoral approach.

The **recommendations** (2017) highlighted: **a)** the crucial role of the OECD NCP particularly for transnational claims, **b)** the need for admitting more human rights complaints, and to provide faster and public recommendations to increase accountability of Belgian companies, **c)** the possibility to have as legal framework not only the OECD guidelines, but also the ILO tripartite declaration, **d)** the possibility to consider outcomes of the OECD NCP interventions as a criterion to award contracts, subsidies or insurances to Belgian companies.

#### 4.3.2 Progress since the adoption of the B-NAP

Belgium has not adopted any **structural reforms** with respect to the strengthening of the NCP or a responsible supply chain management by using a sectoral approach. Regarding **policies, programmes and processes**, in line with the UNGPs,

- The NCP reported several events on sectoral awareness on the OECD guidelines on due diligence<sup>346</sup>.
- The NCP was contacted by the NBA team and highlighted that the staff dedicated to the OECD NCP has been reinforced.
- The OECD NCP has released two booklets: **a)** A booklet to support SMEs against corruption ([A Trustworthy SME Rejects Corruption: Why? How?](#) (2017) focusing on doing business in third countries. **b)** A booklet on the role of the OECD NCP (2020).

#### 4.3.3 Key outcomes or gaps for the implementation of the UNGPs

- The mechanism, however, has serious reported limitations regarding cases brought to the NCPs and the outcomes in terms of human rights remedies (Daniel et al. 2015: 19; Ruggie and Nelson 2015:20-1). The OECD Watch report of 2019<sup>347</sup> pointed to the increasing rate of rejection of cases and the existence of conflict of interests.
- The possibility of integrating the ILO tripartite declaration to the NCP legal framework has been discussed between the Ministry of Economy and the Ministry of Employment but, despite the existing synergies, no decision has been taken.

The OECD NCP has heard important cases, which, in some cases, concluded with a statement of agreement. However, none of them reported concrete compensations.

#### Reported cases

- 2012: The Ministry of Economy requested an inquiry about which Belgian companies were involved in the Rana Plaza fire.
- 2013: [Greenpeace](#) filed a complaint against Jan De Nul NV referring to the Sabetta project in Russia.
- 2017: A complaint filed against a subsidiary of the Etex Group by the trade union of BWI (Building and Wood Workers' International) in Argentina and Belgium concluded with a final report from the OECD on

<sup>346</sup> These activities are the following: Roundtable on due diligence in the agricultural sector (05/2016) - Roundtable on due diligence in the mining and extractive sector (10/2016) - Anti-corruption conference (12/2016) - Roundtable on due diligence in the financial sector (10/2017) - Anti-corruption conference targeting SMEs (12/2017) - Roundtable on due diligence in the textile sector (March 2019). Cf. Joint Communication of the Special Procedures of 12 /9/2019 Response of the Kingdom of Belgium. Ref : [Al Bel 3/2019](#)

<sup>347</sup> OECD Watch [BRIEFING PAPER June 2020](#) The State of Remedy under the OECD Guidelines Understanding NCP cases concluded in 2019 through the lens of remedy

the mediation.

- 2017: A complaint against Ab-Inbev by the trade union IUF for activities in India (settlement reached in Nov 2020).
- 2017: A complaint filed by Adimed / ES-KO International against the Group Kilo. The OECD NCP closed the case because the company was not headquartered in Belgium.
- 2018: A complaint filed by Centre pour le développement (Cameroun), the Fondation Camerounaise d'Actions Rationalisées et Formations sur l'Environnement, Sherpa (France) and Misereor (Germany) against the Groupe Bolloré SA (France), and Financière du Champ de Mars (Belgium) for actions of the subsidiary SOCAPALM in Cameroun. The Belgian and French NCP finalized the mediation in 2018 without results.
- 2019: OECD Watch<sup>348</sup> reported that a complaint lodged before the Belgian NCP's by Open Secrets & CALS against KBL and KBC (Belgium, Luxembourg) was rejected. The conflict of interests of a business federation involving the targeted bank was also criticised by the [UN Independent Expert](#) on human rights and foreign debt, an amicus to the complaint. Belgium officially responded to this communication<sup>349</sup> on 12/9/2019.

## 4.4 Alternative dispute resolution (ADR): Mediation

### 4.4.1 Why is this a key mechanism in Belgium?

Mediation is a voluntary and confidential mechanism seeking to solve a dispute without the intervention of courts or during a judicial process. The EC requests member states to actively promote ADR and provide incentives for their use<sup>350</sup>. In Belgium, mediation can deal with economic disputes on civil, commercial, or criminal cases. On the contrary, mediation is excluded from employment law or in cases where the state's liability for acts or omissions in the exercise of state authority (*acta iure imperii*) is discussed (Nigmatullina 2019). In environmental license issues, the Flemish Environmental Administrative Court can also act as a mediator.<sup>351</sup> Mediation can result in an agreement, financial compensation, redress or removal of the acts that constitute the abuse. In [criminal cases](#), mediation is only possible to seek the reparation of moral and material damages before the Public Prosecutor. If victims or stakeholders can demonstrate an interest, they can request mediation to ask for remedy if they have standing in the corresponding judicial procedures. The result can be a non-judicial settlement (including economic compensation for criminal offences), which can be enforceable if a judge approves it. EU Regulation<sup>352</sup> on intra-EU enforcement in civil and commercial matters requires that mediated settlement agreements that become judgement or decisions or authentic instruments adopted in a member state could be enforced in other member states, only by controlling their respect for international public policy of member states (Nigmatullina 2019:10).

Table 38: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP did** not include any concrete action on mediation.

The [recommendations](#) (2017) did not include any recommendation on mediation.

### 4.4.2 Progress since the adoption of the B-NAP

The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

- Law of 18/6/ 2018 (chapter 9) reformed the ADR mechanisms regulated by the Judicial Code (Art.

<sup>348</sup> OECD Watch [BRIEFING PAPER, 06/2020](#) The state of remedy under the OECD Guidelines: Understanding NCP cases concluded in 2019 through the lens of remedy.

<sup>349</sup> Joint Communication of the Special Procedures of 12 /9/2019 Response of the Kingdom of Belgium Ref: [Al Bel 3/2019](#)

<sup>350</sup> The EU scoreboard assesses whether legal aid covers ADR costs, refunds court fees, whether a lawyer is required for ADR procedures, whether the judge can act as a mediator, whether the ADR/mediation is coordinated in courts.

<sup>351</sup> Cf. Milieuhandhavingscollege ([MHHC](#)).

<sup>352</sup> Regulation (EU) No 1215/2012 of the EP and of the Council of 12/12/ 2012 OJ L 351, 20.12.2012

1739). Several changes are relevant as they might represent a way to solve business-related human rights claims: **a)** mediators need to be accredited and the collaborative negotiation (with the intervention of lawyers) has been incorporated into the Judicial Code. **b)** Bars and lawyers are obliged to inform about the possibilities of mediation and judges can require the parties to first resort to mediation, and **c)** the Federal Mediation Commission has been restructured and strengthened.

Regarding **policies, programmes and processes** in line with the UNGPs,

- The government is restructuring the Federal Mediation Commission, and the bars are implementing the rules and training lawyers to adapt them to the new law. The aim is to shift the approach to disputes and systematically adopt a collaborative approach to benefit citizens who are willing to solve the conflict instead of going to courts. The BCC<sup>353</sup> endorsed the figure of the collaborative lawyer. This change is vital as empirical studies show that lawyers have been an obstacle to promote mediation (Filler 2012, quoted by Nigmatullina 2019).
- The [EU Scoreboard \(2019\)](#) highlighted progress in access to justice in Belgium mainly by reforms in promotion of ADR methods, legal aid, ICT development, public prosecution court fees, judges and the legal profession.
- The EP has requested the EC to assess the obstacles to the free circulation of foreign mediation agreements in the EU and the options to promote the use of mediation in cross-border disputes in the EU<sup>354</sup>.
- The EC for the Efficiency of Justice (CEPEJ) released a Mediation Development Toolkit to ensure implementation of the CEPEJ Guidelines on mediation and launched a Mediation Awareness Programme for Judges.<sup>355</sup>

#### 4.4.3 Key outcomes or gaps for the implementation of the UNGPs

- Although mediation could be a mechanism to avoid the obstacles of the judiciary, in civil, commercial and consumer disputes, the [EU Justice Scoreboard \(2015\)](#) reported a very low use. The NBA team did not find whether it has been used for business-related human rights abuses.
- Some scholars also point to the lack of effectiveness of this mechanism (Gibens et al. 2020, Rozie and Dewulf 2019). The reform could be an option to shift the mind-set of legal practitioners and collaborate to settle disputes outside courts.
- The UN Convention on International Settlement Agreements Resulting from Mediation (The Singapore convention) of 20/12/2018, in force since 2020, seeks to ensure the direct enforcement of mediation agreements in the country of enforcement without review in the country of origin, with some exceptions. This could represent important progress for extraterritorial human rights abuses. Although it refers to commercial relations, the exclusions would suggest that disputes of a civil nature other than family or labour disputes or consumer rights could be implemented by this mechanism. However, none of the EU member states has signed it yet.

## 4.5 Consumer Protection

### 4.5.1 Why is this a key mechanism in Belgium?

The EU has also played a central role in creating mechanisms to provide a remedy to EU consumers by promoting collaboration among member states in cross border complaints to protect ‘collective interests of consumers’ above and beyond their economic interests, particularly when other human

<sup>353</sup> Cf. (BCC) judgment 116/2020 of 24/9/2020

<sup>354</sup> EP Resolution P8 TA (2017)0321 of 12/9/2017 Implementation of the Mediation Directive (2016/2066(INI)) [OJEO20/9/2018]. (2018/C 337/01)

<sup>355</sup> Cf. [\(GEMME\) adopted at the 33rd Plenary meeting of the CEPEJ Strasbourg, 5-6/12/ 2019](#), a document developed jointly with the [Council of Bars and Law Societies of Europe \(CCBE\)](#).

rights are at stake. Belgium regulates consumer protection claims in the Code of Economic Law (CEL), which established a mediation service as a first step (before going to courts) to solve disputes on violations of consumer rights. These centres also provide information to consumers and follow-up complaints, and propose a settlement. Consumers also have the option to request injunctions to cease activities that could cause harm. This mechanism suspends the prescription deadline to sue the business before courts until this settlement or until no agreement is reached. Consumers or stakeholders who defend their rights can lodge complaints, and businesses, which often argue violations to consumer's rights as an unfair competition practice.

The [Federal Agency for the Safety of the Food Chain](#) in turn, ensures the safety and quality of the food chain. Its monitoring mission extends from farm to plate. Belgium has a very sophisticated legal system in this respect, depending on the related topics<sup>356</sup>.

Table 39: Parameters to evaluate progress since the adoption of the B-NAP

The <b>B-NAP</b> did not include any concrete action regarding SBN-JM that protect consumers
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#### 4.5.2 Progress since the adoption of the B-NAP

This section presents the main structural reforms, policies (processes and programmes) adopted in Belgium, and concrete outcomes (organised as findings and gaps). The main **structural reforms** (adopted or in course) in crucial areas for the UNGPs are the following:

- Regulation (EU)<sup>357</sup> on cooperation between national authorities responsible for the enforcement of consumer protection laws provide mechanisms in cases of evidence of “an intra-Community infringement” and impose fines or order compensations in case of non-compliance with the decision. This mechanism can only be used if no judicial procedure has started.<sup>358</sup> This Regulation foresees as possible remedies for harmed consumers: **a)** interim measures to avoid the risk of serious harm to consumers’ collective interests. **b)** A settlement with compensatory measures proposed by the business, and if this is not satisfactory, the authorities can support consumers to trigger courts. **c)** Injunctions to cease infringements covered by the Regulation such as to remove content or to restrict access to an online interface etc., and **d)** penalties, such as fines or periodic penalty payments, for infringements covered by this Regulation or for failure to comply with any decision, order, interim measure, commitment etc. The fines are expected to be dissuasive and proportionate to the gravity and duration of the infringement.
- Directive (EU)<sup>359</sup> provides for better enforcement and modernisation of EU law on consumer protection and establishes uniform criteria for applying sanctions. Member states should transpose this directive and impose hefty fines for cross-border infringements. Businesses should appoint a legal representative for service providers operating in the EU to respond to the request for evidence in criminal proceedings. Targeted providers are electronic communications services, information society services, social networks, online marketplaces and other hosting service providers, and providers of names and numbering services for the internet<sup>360</sup>.

**Regarding policies, programmes and processes**, in line with the UNGPs,

- The Ministry of Economy coordinates state competences on consumer protection and has taken

<sup>356</sup> E.g. Chemical and microbiological contaminants, irradiation, labelling, pesticide residues, GMOs etc. Cf. [Annual report 2019](#).

<sup>357</sup> Regulation (EU) 2017/2394 of the EP and the Council of 12/12/2017 OJ L 345, 27.12.2017.

<sup>358</sup> This EU Regulation created mutual assistance mechanisms, including the exchange of information (even with third countries as far as data protection is guaranteed), requests for enforcement or orders of cessation or prohibition.

<sup>359</sup> Directive (EU) 2019/2161 of the EP and of the Council of 27/11/2019 OJ L 328, 18.12.2019.

<sup>360</sup> Cf. Strasbourg, 17.4.2018 COM(2018) 226 final 2018/0107 (COD) Proposal for a Directive of the EP and of the Council to harmonise rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings {SWD(2018) 118 final} - {SWD(2018) 119 final}. Cf. Also Nieuws - 19/12/2019 Laure Lemmens © 2018 Wolters Kluwer Belgium N.V.- www.jura.be kl2377947 ½ Datum 25/06/2020.

several initiatives in this respect. It has developed two booklets<sup>361</sup> to inform companies and consumers about consumer rights and the possibility to complain about consumer rights harms.

- The [Federal Agency for the Safety of the Food Chain](#) ensures the safety and quality of the food chain from farm to plate. The Agency assesses and manages risks to the health of consumers animals and plants and carries out food safety inspections throughout the food chain to fight fraud. The FASFC takes care of the prevention, detection and repression of fraud and the fight against certain illegal practices of economic interest and the use of certain prohibited substances (hormones, etc.). The Agency has a complaint mechanism and multiple policies seeking to guarantee the security of the food chain.

#### 4.5.3 Concrete outcomes or gaps for the implementation of the UNGPs

- Consumer rights are one of the most protected human rights within the EU. The new measures are expected to increase the level of protection. These measures, however, seem to deal more with privacy-related issues.
- The EU has experienced external pressure, such as on 7/2019 when the [US and fifteen other countries attacked the EU pesticide policy](#) at the WTO because these measures restricted trade and requested that a risk assessment approach be used for import limitations. However, this request goes against the EU green deal<sup>362</sup>.
- In contrast, EU member states, including Belgium, have not taken concrete measures to protect consumers of EU value chains located in third countries (cf. Pillar I, consumer protection).
- Consumers from third countries are not targeted by these SBN-JM that benefit European consumers.

## 4.6 SBN-JM to fight discrimination

### 4.6.1 Why is this a key mechanism in Belgium?

UNIA<sup>363</sup> and the Gender Equality Institute offer remedies for business-related human rights abuses based on discrimination. UNIA has been recognised as the Belgian NHRI category B and has shown important results in the fight against discrimination. It has competences in the whole territory since 2013 when the federal and subnational governments agreed to fight discrimination. UNIA provides information to victims about their rights and mediates to find a non-judicial settlement of the discrimination conflict. When the settlement is not satisfactory, UNIA supports victims in lodging lawsuits and can represent them in court, in serious cases or in cases with societal relevance. UNIA also has an important databank on case law as, since 2013<sup>364</sup>, courts and employment tribunals must inform UNIA about all the pending and concluded cases related to discrimination and hate crime. UNIA and Myria have also played an important role in indicating the gaps of the Belgian reports to the UN and CoE mechanisms by releasing the yearly parallel reports on human rights. The Gender Equality Institute, on the contrary, has only competence at the federal level to combat gender discrimination. Both institutions formulate policy recommendations to fight discrimination.

Although these centres do not embed their activities in the framework of the UNGPs, they are salient instruments to fight discrimination, which is one of the most severe violations of human rights in diverse areas (cf. Pillar I). UNIA's databank provides detailed information on the settlement of conflicts and case law (cf. judicial mechanisms) from diverse jurisdictions. UNIA has already brought important cases to courts and provides important support to victims and stakeholders. It also provides important

<sup>361</sup> [Booklet A request for consumer mediation for companies](#), [Booklet B A consumer dispute for consumers](#).

<sup>362</sup> Cf. [Corporate Europe Observatory](#) 16/2/2020.

<sup>363</sup> UNIA covers several areas where discrimination affect human rights and where businesses are involved: '[racial criteria](#)', [religious or ideological beliefs](#), [disability](#), [age](#) and [sexual orientation](#), [health](#), [wealth](#), [physical characteristics](#), [civil status](#), [political beliefs](#), [trade union beliefs](#), [birth](#), [social background](#).

<sup>364</sup> Board of Procurators-General (COL 13/2013).

[statistical information](#); e.g. it reported that in 2019 the number of lodged cases of discrimination and hate increased: 8,478 complaints, which represented an increase of 13.2% compared to 2018, and 46.7% compared to the average of the last five years. UNIA opened 2,343 new files (6.9% more than in 2018) that concern mainly discrimination in the labour market (28% of all cases), in goods & services (27.4%), media (14.8%) and education (13.1%).

Table 40: Parameters to evaluate progress since the adoption of the B-NAP

The B-NAP did not commit to fight discrimination.

The [recommendations](#) (2017) mainly pointed to the important role of institutions such as UNIA or Myria with competences to promote judicial actions because it increases the relevance of these mechanisms.

#### 4.6.2 Progress since the adoption of the B-NAP

No **structural measures** in line with the UNGPs were taken since 2017. Regarding **policies, programmes or processes** in line with the UNGPs,

- UNIA and the Equal Opportunities Team from the Ministry of Justice initiated a new project, "Improving equality data collection in Belgium" ([IEDCB](#)), co-funded by the EC's Rights, Equality and Citizenship (REC) programme. It aims at improving the collection and processing of equality data in Belgium. By 2021, the outcome will be a report on official data (census, administrative database), surveys, victimisation surveys, complaints or reports, discrimination testing, diversity monitoring and qualitative surveys.
- The Gender Equality Institute also releases a [yearly report](#) on the wage gap between women and men in collaboration with the Ministry of Employment, DG Statistics Belgium and the Federal Planning Bureau.<sup>365</sup>
- UNIA reports many relevant cases solved by mediation. Although they do not involve transnational claims, some of these cases protected vulnerable communities such as migrants, members of the LGBT community and ill persons.

#### Reported cases

- 16/7/ 2020 [Discrimination at work because of sexual orientation](#)
- 25/3/2020 [Discrimination in the insurance sector for reasons of health condition](#)
- 9/3/ 2020 [Work bullying](#)
- 4/3/2020 [Discrimination at work because of sexual orientation](#)
- 24/1/ 2020 [Discrimination in the labour market because of mother tongue](#)
- 12/8/ 2019 [Discrimination in the labour market for country of origin](#)
- 4/4/ 2019 [Discrimination in the labour market in favour of Belgian citizens](#)

#### 4.6.3 Concrete outcomes or gaps for the implementation of the UNGPs

- Despite the efforts, discrimination remains a serious risk in Belgium.
- These institutes, however, do not have a mandate to support victims of discrimination in the value chains where Belgian companies participate and have not been actively involved in the implementation of the UNGPs. The Gender Equality Institute explicitly excludes any complaint related to facts occurred outside Belgium.

### 4.7 Environmental protection

#### 4.7.1 Why is this a key mechanism in Belgium?

Belgium has a diverse mechanism to tackle environmental risks and damages, although they are not necessarily linked to human rights and even less to the implementation of the UNGPs. Businesses are

<sup>365</sup> In 2017, e.g. it reported that women earned on average 9.6% less than men. The biggest wage gap was reported in the air transport sector (45.5%) and then in the industrial sector.

expected to take preventive measures when environmental damage is an imminent threat. In case of damage, businesses should inform the authorities, manage the situation and prevent additional damage and threats to human health, and provide an appropriate remedy.<sup>366</sup> The federal and subnational governments have a very complex system of SBN-JM to control compliance with environmental law and to impose sanctions in cases of non-compliance or when ecological damage is caused. They also assess the environmental impact of new economic activities and grant environmental permits. Victims can also request compensation of damages before the Council of State (if an administrative act is related to the injury) or civil courts (tort liability). Rightsholders can also request the suspension or the annulment of environmental permits<sup>367</sup>, or in some cases, they can request injunctions. However, subnational authorities cannot grant any compensation, nor can they modify the content of the decision challenged.

Table 41: Parameters to evaluate progress since the adoption of the B-NAP

The B-NAP did not include any action regarding environmental SBN-JM
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#### 4.7.2 Progress since the adoption of the B-NAP

The following **structural measures** were adopted in line with the UNGPs.

- On 16/2/2016, the Federal and subnational governments concluded a cooperation agreement on the control of major accident hazards involving dangerous substances that transposed the Seveso-III EU Directive<sup>368</sup>. This way, citizens now have stringent rights to access information and justice<sup>369</sup>. Seveso III Directive applies criminal sanctions but does not have a due diligence mechanism. Seveso III requires public authorities to inform the public on the causes and consequences of the accident and the measures to be adopted when an accident occurs. Moreover, it requires public consultation in the settlement of new Seveso establishments, significant modifications to existing establishments, or developments near such establishments. In Belgium, every region and the federal government have inspectorates operating and cooperating in this respect.

Regarding **policies, programmes or processes** in line with the UNGPs,

- the Ministry of the Environment conducts periodical inspections in its areas of competence and impose sanctions<sup>370</sup>.

#### 4.7.3 Key outcomes or gaps for the implementation of the UNGPs

- Despite the transposition of the Seveso-III EU Directive and the existence of federal and regional inspectorates, some studies point to the need for increased transparency and public openness on inspection results and businesses required improving safety. Access to information is limited in Belgium as it does not record incidents or violations of Seveso laws (Swuste and Reniers 2017).

#### Reported cases

- |  |
|--|
| <ul style="list-style-type: none"> <li>• Seven wagons of a freight train derailed, bursting into flames and releasing the toxic substance acrylonitrile<sup>371</sup> in Wetteren (2013). The Prosecutor (from Dendermonde) concluded that the train accident and explosion was the result of human error, and therefore no one was prosecuted because the only responsible died.</li> <li>• Flanders granted an environmental permit in 2019 to the British chemical group Ineos for the preparatory</li> </ul> |
|--|

<sup>366</sup> Cf. Report of the EU Commission on environmental liability (COM (2016) 204 final 14.4.2016) and EU Commission Staff Working Document REFIT (SWD (2016) 121 final, 14.4.2016).

<sup>367</sup> Cf. <http://dbr.be/131-wat-gebeurt-er-als-de-raad-de-bestreden-beslissing-vernietigt>

<sup>368</sup> Directive 2012/18/EU of the EP and of the Council of 4/7/2012 OJ L 197, 24.7.2012,

<sup>369</sup> In 2016, there were 386 Seveso companies in Belgium. 280 of these Seveso companies are situated in Flanders, 102 in Wallonia, and 4 in Brussels (FOD WASO, 2016 quoted by Swuste and Reniers 2017: 72-73).

<sup>370</sup> Cf. [Troisième Rapport Federal en Matière D'environnement 2014-2018 Partie 2: Les Autres Politiques Federales Environnementales](#).

<sup>371</sup> Cf. Flanders' Today [16/10/2016](#).

works for a chemical project in the port of Antwerp. ClientEarth, together with other associations<sup>372</sup>, filed an injunction to stop the construction of new refineries, and The Flemish Council for Permit Disputes suspended the environmental permit because the environmental impact assessment did not foresee all the potential negative impacts such as deforestation.<sup>373</sup>

## 4.8 Protection of personal data

### 4.8.1 Why is this a key mechanism in Belgium?

The right to privacy is one of the better protected human rights in Belgium. The Data Protection Authority has as primary competence to raise awareness on the protection of personal data. The right to privacy and the protection of personal data is one of the best protected right in the EU, but also the technological progress has created new challenges for authorities such as cybercrime. The CoE has already raised concerns about the threats of technology for human rights.

Table 42: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not include any action regarding SBN-JM to protect personal data

### 4.8.2 Progress since the adoption of the B-NAP

- The EU reinforced the protection of personal data through the EU Regulation<sup>374</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, in force since 25/5/2018. EU Directive<sup>375</sup> on the protection of natural persons with regard to the processing of personal data for purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, created the possibility to conduct inspections and impose fines, or initiate criminal procedures.
- Law of 3/12/ 2017 established the Data Protection Authority (DPA), which acts as a mediator, trying to reconcile the parties with a view to finding a solution that complies with the Law on Data Protection. The DPA receives complaints and can carry out inspections when there are serious indications of infringements. Inspectors can conduct written investigation to on-site examination and the hearing of persons. They can also seize property (e.g. information material) or seal it and impose provisional measures and provide injunctive orders to redress the harm. This Law clearly increased the effectiveness of the protection of personal data.
- The Flemish Decree of 8/6/2018 adapted regional norms to the General Data Protection Regulation<sup>376</sup>.

Regarding **policies, programmes or processes** in line with the UNGPs,

- The DPA has launched projects to support SMEs in the implementation of the data protection rules<sup>377</sup>.
- In 2019, the DPA secured funding from the EC to raise awareness on data protection. The aim of the [maitrisermesdonnees.be](http://maitrisermesdonnees.be) campaign was to inform citizens about their privacy rights and to make them question the information they share about themselves. The DPA also created the Front Line Service to provide information to rightsholders.
- The DPA also provides policy advice to Belgian authorities

<sup>372</sup> Klimaatzaak, Greenpeace Belgium, Staten Generaal, Bond Beter Leefmilieu (BBL) and WWFCouncil.

<sup>373</sup> Cf. [VRT. BE](http://VRT.be) and [De morgen](http://DeMorgen.be).

<sup>374</sup> EU Regulation 2016/679 of the EP and of the Council of 27/4/2016 (OJ of 4/5/2016 L119).

<sup>375</sup> EU Directive 2016/680 of the EP and of the Council of 27/4/2016 (OJ of 4/5/2016 L119)

<sup>376</sup> Regulation (EU) 2016/679 of the EP and of the Council of 27/4/2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

<sup>377</sup> Autorité de protection des données - [Rapport Annuel 2019](http://RapportAnnuel2019.be)



### 4.8.3 Key outcomes or gaps for the implementation of the UNGPs

- The reinforcement of the competences of the DPA as well as the awareness raised among citizens has transformed the protection of personal data. The DPA has imposed severe sanctions that have discouraged the violation of the right to privacy but even there are serious challenges such as cybercrime.

## 4.9 Labour and inspections

### 4.9.1 Why is this a key mechanism in Belgium?

Labour inspections have been effective in tackling the violation of labour rights. It has also a crucial role in tackling THB for labour exploitation. Labour inspections in Belgium are one of the most efficient in Europe.

Table 43: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not commit to any action related to inspections.

The [recommendations](#) (2017) pointed to the effectiveness of inspections organised by interdepartmental approaches (i.e. involving all competent authorities from diverse levels of government) to tackle complex problems such as labour protection, discrimination, and THB.

### 4.9.2 Progress since the adoption of the B-NAP

- Since 2017, the Thematic Directorate for Trafficking in Human Beings NSSO Inspection Services deals with the activities of the Social Inspectorate's ECOSOC in the fight against THB. It targets illegal employment of foreign workers by focusing on defined risk sectors and on situations of THB described in the Criminal Code ( [Van Hauwermeiren and Schulze](#) 2019:86).
- In 2018, the Belgian Financial Intelligence Processing Unit (CTIF-CFI) of the Ministry of Justice released a booklet on *La traite et le trafic des êtres humaines”, informations pour le secteur bancaire /Mensenhandel & Mensensmokkel, Informatie voor de bankensector* that published indicators related to banking operations potentially related to THB.
- In 2020 the EC<sup>378</sup> reported that France and Belgium count the highest number of prosecutions for THB in the EU, and France, Belgium and other EU countries also register a high number of convictions for THB. The EU has also implemented policies targeting THB in value chains outside the EU, such as the Global Strategy for the EU Foreign and Security Policy, the Action Plan on Human Rights and Democracy 2020-2024, the Joint Communication ‘Towards a comprehensive strategy with Africa’, the EU Western Balkans strategy. Belgium has also participated in EC funded projects coordinated by the Association of Law Enforcement Forensic Accountants (ALEFA) (2016 -2018) and by the EUCPN (European Crime Prevention Network) that focus on capacity building and victims’ rights.

### 4.9.3 Key outcomes or gaps for the implementation of the UNGPs

- The increasing use of digital technologies complicates the prosecution of THB. States should identify the four stages of THB: recruitment, transportation, exploitation of victims, and illicit profits management (Aronowitz 2009; Raets and Janssens 2019; Leman and Janssens 2017).

## Reported cases

Myria annually reports several cases addressed by labour inspections in Belgium. In 2018 cases of labour exploitation mainly concerned activities in garages, the tourism, construction and agriculture sectors and the victims were mainly nationals from Afghanistan, Poland, China and Morocco.<sup>379</sup>

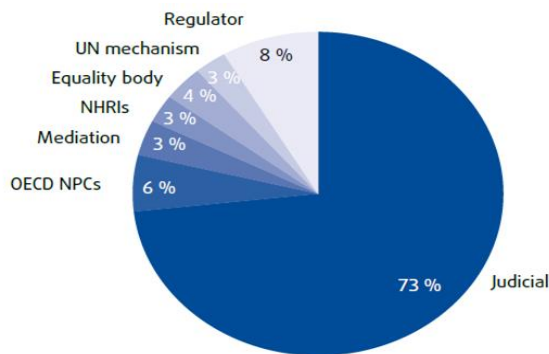
<sup>378</sup> EC Brussels, Third report to the EP and the Council on the progress made in the fight against trafficking in human beings (2020) as required under Art. 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims {SWD(2020) 226 final}. 20.10.2020 COM(2020) 661 final.

<sup>379</sup> Cf. Myria [Jaarlijks evaluatieverslag 2019](#) - Mensenhandel en mensensmokkel

## 5 State-based judicial mechanisms (SBJM)

State-based judicial mechanisms are a core aspect in Pillar III as they are expected to provide for an effective and definitive remedy for victims of business-related human rights abuses. Despite the multiple obstacles that victims and stakeholders encounter to trigger them, the EU FRA's<sup>380</sup> empirical assessment (2019) shows that they are still the most used.

Figure 12: Distribution of incidents identified in the research, by type of complaint mechanism used



**Source:** [EU FRA \(2019:14\) Business-related human rights](#) abuse reported in the EU and available remedies.

### 5.1 How was the situation in Belgium until 2017?

The NBA builds on the report on “[Access to Remedy](#)” (2017), its [recommendations](#) (2017), and the [Booklet “Access to Remedy in Belgium”](#) (2017). The NBA team selected the mechanisms assessed from the ones identified in that study, which coincide with the mechanisms identified by the UN Accountability Remedy Project (ARP I, 2016).

The UNGPs (Principle 26) establish the criteria SBJM should have to guarantee adequate access to justice: they should be impartial, independent, and non-corrupt. Independence is linked to the structure of the court, and impartiality relates to the judges, which requires a case per case assessment. The ECtHR and the CJEU set out independence criteria to assess the neutrality of the judiciary: mechanisms to appoint justices, terms of office, and not external pressure (EU FRA and CoE 2016:34 -9). The NBA did not assess these criteria directly but relied on recent reports that assess judicial systems: The CEPEJ Evaluation Report on European judicial systems [2020 \(2018 data\)](#) and the World Justice Project Global Insights on Access to Justice (2019), and the [EU Scoreboard](#).

The UNGPs (Principle 26) further require that judiciaries offer a due process and provide means to enforce judgments effectively. These criteria are also mentioned by the human rights literature in general (ECtHR and CJEU 2016 Lizarazo Rodriguez 2017), and by the business and human rights literature in particular (EU FRA<sup>381</sup>; Zerk 2014; Skinner et.al 2013; Enneking et al. 2015; Pigrau Solé et al.2016; Weber and Baisch 2016). The **due process** relates to multiple indicators identified by the [EU Justice Scoreboard](#)<sup>382</sup>: the efficiency of proceedings (length, clearance rate<sup>383</sup>, pending cases); the quality of justice systems (training, court activities, surveys, budget, human resources; legal aid and

<sup>380</sup> [EU FRA \(2019\) Business-related human rights](#) abuse reported in the EU and available remedies.

<sup>381</sup> EU - FRA- (2017) *Improving access to remedy in the area of business and human rights at the EU level*. Opinion of the EU Agency for Fundamental Rights, FRA Opinion – 1/2017 [B&HR].

<sup>382</sup> This study evaluated the effectiveness of the EU justice systems of member states, with a focus on civil, commercial and administrative jurisdictions.

<sup>383</sup> This is the ratio of the number of resolved cases over the number of incoming cases.

gender balance in the judiciary (cf. below)); and the independence of the judiciary.<sup>384</sup> Although Belgian court delays have been a persistent concern (Bielen et al. 2015; Hoge Raad voor de Justitie (2018)<sup>385</sup>), incentives for encouraging faster judicial decisions can also affect the quality of judicial decisions (Bielen et al. 2016). The [EU Scoreboard](#) (2020) reported that caseload in civil and commercial courts is lower than in administrative courts. However, Belgium is one of the few EU countries that does not systematically report data for many jurisdictions during the period 2012-2018. The [EU Scoreboard](#) (2020) further found that Belgium is among the seven worst EU countries regarding online access to published judgments by the general public; in addition, civil and criminal courts have the discretion to decide when and which decisions to publish.

Regarding the availability of resources, the [EU Scoreboard](#) (2020) reports that Belgium has the 7th highest expenditure in the EU measured as total general government expenditure on law courts (in EUR per inhabitant). Still, if this expenditure is measured as a GDP percentage, it represents around 0,25% and is the 7<sup>th</sup> lowest expenditure in the EU. Regarding the availability of training in communication for judges and gender-sensitive practices in judicial proceedings, Belgium did not conduct the survey in 2018.

The NBA team looked at the most important judicial mechanisms that victims of business-related human rights abuses can trigger to claim for a remedy against companies or the state (when it acts as an economic actor, or when it regulates or oversees (*acta iure imperii*) economic activities that can result in adverse impacts on human rights). It also checked whether victims could lodge collective claims. This is crucial in Pillar III, because stakeholders such as NGOs or trade unions play an important role and need standing to bring judicial claims on behalf of victims (ARP I 2016; CoE 2016:39; FRA 2017:36). The NBA departed from the conclusions of the report on "[Access to Remedy](#)" (2017) that assessed whether SBJM could grant a fair trial, according to the criteria defined by the CoE and the EU FRA (2016) and allow the possibility to lodge collective claims (ARP I, 2016).

Table 44: Criteria to assess effectiveness of SBJM in line with the UNGPs

<ul style="list-style-type: none"> <li>↻ Equality of arms.</li> <li>↻ Reasoned judgments</li> <li>↻ The right to adversarial proceeding</li> <li>↻ Possibility to lodge collective actions</li> </ul>
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**Source:** report on "[Access to Remedy](#)" (2017), based on FRA and CoE (2016:54); ARP (I, 2016) and CoE (2016).

The next table shows the results of applying these criteria to the Belgian SBJM. The analysis was based on existing laws and regulations, but it does not provide information on whether these mechanisms grant an effective remedy in practice, which needs a case per case assessment. The analysis shows that, in principle, Belgium allows a fair trial. The weak point is the possibility to lodge collective complaints. Although many proceedings allow cumulating claims, this does not mean that collective actions are permitted.

Table 45: Criteria to assess whether SBJM can guarantee fair trial and allow collective actions.

<sup>384</sup> This criterion has been assessed by international indicators such as the Global Competitiveness Report of the World Economic Forum (WEF), or the World Justice Project of the World Bank, and the EC relies on these indicators. However, the NBA team did not assess this as the length of procedures depends on the complexity and relevance of the claim, the parties' conduct and domestic authorities (EU FRA and CoE 2016:139-40). Even the EU Scoreboard is not able to provide accurate data for each jurisdiction.

<sup>385</sup> Hoge Raad voor de Justitie/Conseil supérieur de la Justice (Belgian High Council of Justice), 'Avis d'office : Avant-projet de loi instaurant la Brussels International Business Court' (2018)

Mechanism	Effectiveness criteria			
	Equality of arms	Reasoned judgments	The right to adversarial proceeding	Collective actions
Civil tort	X	X	X	
Class action	X	X	X	X
Criminal action	X	X	X	
Labour claim	X	X	X	
Interlocutory proceedings and injunctive relief	X	X	X	x <sup>386</sup>
Council of State (Annulment and compensation)	X	X	X	
Judicial Review Constitutional Court	x	x	x	x

**Source:** Table adapted from **Source:** report on “[Access to Remedy](#)” (2017: 81-82).

Regarding the remedies that these SBJM could in principle provide, the report on “[Access to Remedy](#)” (2017), based on the legal framework in force, and the available international standards (listed above), found that:

- Redress is theoretically possible in all the selected SBJM, although in reality, the damage is not always irreversible.
- Compensation could be an effective remedy when it represents a just satisfaction for victims in terms of the ECHR (Art. 41). However, this depends on the probability to obtain a favourable judicial decision, the scope of the granted compensation, and the possibilities of enforcing the judgment, which can only be assessed on a case per case basis.
- Courts, in general, cannot impose fines but rather confirm sanctions imposed by governmental agencies, except for criminal courts. However, courts can impose sanctions that imply a guarantee of non-repetition such as dissolution, withdrawal of licenses or economic support, and in general, condemnatory judgments can be considered as a reputational sanction for the sued company.
- Guarantees of non-repetition can result from the annulment of structural reform.

Table 46: Remedies that SBJM can provide against businesses and/or the state

Mechanism	Remedy					
	Redress	Compensation	injunction	Sanctions <sup>387</sup>	Guarantee of non-repetition	Interim measures
Civil tort actions	X	X		GR		
Class actions	X	X		R		X
Criminal actions	X	X	X	FGR	X	X
Labour claims	X	X		FGR		
Interlocutory proceedings and injunctive relief	X		X	R		X
Council of State	X	x	x	x <sup>388</sup>	X	x
Constitutional Court	x				x	

**Source:** Table adapted from Report on “[Access to Remedy](#)” (2017) Page 81-2

<sup>386</sup> For environmental claims. However, the Commission Notice on access to justice in environmental matters (2017/C 275/01) clarified that environmental claims are not *per se* collective claims.

<sup>387</sup> **F** refers to fines, **G** refers to guarantee of non-repetition if they obstruct further abusive behaviour, or **R** refers to sanctions that can affect reputation of the company.

<sup>388</sup> It does not impose new sanctions but confirms and enforce an administrative act that sanctions a business.

Lawsuits addressed exclusively against the state have not always been identified with business-related human rights abuses. However, they can provide for effective remedies such as sanctions, compensations or guarantees of non-repetition. The state can also order injunctions and interim measures to cease the abuse or avoid new or further damages. Actions against the state lodged at the Council of State may also provide for compensation in a strict sense and with the possibility to obtain just satisfaction.

After having assessed the main criteria of effectiveness indicated by the UNGPs, the NBA focused on the progress related to the following SBJM:

## 5.2 Civil tort disputes

### 5.2.1 Why is this a key mechanism in Belgium?

This mechanism is considered the main SBJM used to claim an effective remedy in line with Pillar III. In Belgium, as in many other countries, the possibility to effectively obtain remedy by triggering civil courts is low and almost unfeasible for transnational litigation. The challenges refer to the demonstration of the liability of the business (or of the corporate group) (cf. Pillar I).

*Table 47: Parameters to evaluate progress since the adoption of the B- NAP*

**The B-NAP** did not refer to SBJM.

The [recommendations](#) (2017) pointed to the need to consider the possibility to introduce interlocutory proceedings in ordinary courts (civil, criminal and labour) as well as in administrative cases to help victims to ask for the (urgent) cease of harmful or risky activities.

### 5.2.2 Progress since the adoption of the B-NAP

The main **structural reforms** (adopted or in course) are the following:

- Law of 6/7/2017 modernised and digitalised civil law and civil procedure and it was upheld by the BCC<sup>389</sup>. This reform represents an advance in the transparency of the judiciary, although it has also increased the court fees (cf. Legal aid and assistance).
- Law [C – 2018/15683] of 21/12/2018 amended the Judicial Code (Art. 17) and special laws on actions in the public interest. It allows legal persons that seek to protect human rights or fundamental freedoms recognised in the Constitution and in binding international instruments, to lodge lawsuits. Legal persons should have a clear corporate object of a particular nature, distinct from the pursuit of the general interest and they can only claim the protection of a collective interest. This is an important improvement (de Stexhe and Romainville 2019), although this action cannot be used to claim specific remedies for victims.

The NBA team has not found concrete **policies, programmes or procedures** adopted by Belgian authorities in line with the UNGPs

### 5.2.3 Key outcomes or gaps for the implementation of the UNGPs

- Belgian authorities have reformed some important aspects of civil procedure such as the rules of evidence, but they have not addressed any procedural reform to improve the efficiency of civil courts for business-related human rights abuses.
- The reforms to the judiciary have not included the possibility that civil courts render injunctions and interdictions besides holding the defendant liable, to avoid a major damage or its repetition (preventive action).

## Reported cases

<sup>389</sup> BCC judgment 52/2020 of 23/4/ 2020 <https://www.const-court.be/public/f/2020/2020-052f.pdf>

- The NGO “L’affaire climat (de Klimaatzaak)”<sup>390</sup> sued Belgian authorities in 2015 before the civil court of Brussels. The court has taken decision on procedural issues, but not yet on the merits (hearing scheduled in Spring 2021).
- Regarding compensation for damages suffered from asbestos production, on 28/11/ 2011, the Court of first instance of Brussels awarded a sum of € 250.000 to the family members for economic and non-economic losses.<sup>391</sup> On 29/3/ 2017, the Court of Appeal of Brussels confirmed this judgement, but reduced the amount of compensation to € 25 000.
- In 2019, the court of appeal of Liège confirmed the judgment of the court of first Instance of Namur that condemned Wallonia for having granted arms licences to FN Herstal - for a contract to deliver arms to the Libyan State. It orders the Wallonia to compensate La Ligue des Droits de l’Homme for the harm it had suffered. The Ligue, the Coordination Nationale d’Action pour la Paix et la Démocratie (CNAPD) as well as Amnesty International requested Wallonia to reform the arms decree.
- In [2020](#) The court of appeal of Brussels ordered a municipality to compensate citizens because it breached the ECHR by failing to provide a healthy environment from 2004- 2011.

### 5.3 Class (collective) Actions

#### 5.3.1 Why is this a key mechanism in Belgium?

Until 2017, class actions were reserved in Belgium for consumer claims. Consumers can lodge class actions to ask for compensation for damages caused by businesses before the Brussels commercial court when they can demonstrate that this mechanism is more effective than civil actions. Consumers can be part of the collective action by ‘opting-in’, which needs the victims’ active participation, or ‘opting out’ when the exclusion should be asked, but this option is not valid for claims seeking compensation for physical or moral damages. The remedy for victims is established in an agreement of reparation that defines the damage and fixes the corresponding compensation, but it does not serve as evidence for demonstrating the liability of the business (CEL, XVII.45-60).

The [revised version of the draft treaty](#) (2020, Art. 4) requires states to recognise the right of victims to submit claims, including by a representative or when it is necessary, through class actions.

*Figure 13: Parameters to evaluate progress since the adoption of the B-NAP*

The B-NAP did not contain any commitment about this issue.

The [recommendations](#) (2017) on this topic mainly pointed to relevance of increasing the possibilities to lodge collective actions for business related human rights claims.

#### 5.3.2 Progress since the adoption of the B-NAP

The only **structural reform** adopted in crucial areas for the UNGPs is the following:

- Law of 30/3/ 2018 authorises micro and SMEs, which individually are injured by a common cause, to lodge [class actions](#) to claim reparation. The groups of claimants can seek compensation for individual damage when they have a common cause suffered by the members of a group due to a breach of contractual obligations or rules protecting consumers. The Code of Economic Law requires parties to negotiate compensation for the joint damage before the litigation phase that would be submitted to the commercial court for approval.

The NBA has not found concrete **policies, programmes or projects** adopted in line with the UNGPs.

#### 5.3.3 Concrete outcomes or gaps for the implementation of the UNGPs

<sup>390</sup> <http://www.klimaatzaak.eu/fr/le-proces/#klimaatzaak>

<sup>391</sup> Rb. Brussel 28/11/ 2011, Amén. 2012, 192 = Juristenkrant 2011, afl. 239, 3 = MER 2012, 166, noot K. DECOCK & S. RONSE = RABG 2012, 1064, noot = TMR 2012, 167. Quoted by Vandenbusche 2018.

- The reform represents an improvement but with a very limited scope.
- So far, class actions are not identified in Belgium with business-related human rights harms.

### Reported cases

The association of consumers test achats/test aankoop has already filed several class actions, which have raised awareness on human rights. The main complaints lodged are:

- 2019: Class action against **Facebook** as a result of the leak of Cambridge Analytica. 42.950 consumers joined the claim and the decision is pending.
- 2017: Class action was lodged against **Volkswagen**, the dieselpgate, which is in the phase of negotiation of the compensation.

## 5.4 Criminal Claims

### 5.4.1 Why is this a key mechanism in Belgium?

Business-related human rights harm that constitutes a crime can be submitted to criminal courts. The EU has competences to adopt criminal legislation<sup>392</sup> regarding the minimum conditions to define criminal offences and sanctions for serious crimes with a cross-border dimension or crucial for EU policy (Skinner et al 2013:32-3). This competence has been used to regulate THB or environmental crimes. In addition, criminal judgments of EU member states' courts have the same legal effects as the ones of Belgian courts.

In transnational criminal law, the jurisdiction of Belgian courts is more restricted than in civil or commercial cases. The Criminal Code (Art. 4) has as a general rule that Belgian criminal courts hear crimes perpetrated in Belgian territory. Belgian criminal courts can also adjudicate in minimal cases against non-European businesses where they have close connections with Belgian companies or when it is not possible for the victims to present the claim in another jurisdiction in a reasonable way. This event could refer to human rights abuses perpetrated by foreign subsidiaries or contractors of Belgian corporations<sup>393</sup>, or in cases of international crimes, in accordance with the Code of Criminal Procedure (Art. 6-10) on extraterritorial competence of Belgian courts. However, the abuse should be a crime in the host country and in Belgium. Additionally, only the prosecutor can start the criminal procedure when non-Belgian victims or their relatives lodge the claim, or when the public authorities of the state where the crime was perpetrated sent an official communication, and the Belgian accused is in Belgium.<sup>394</sup>

Table 48: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not contain any commitment about this issue.

The [recommendations](#) (2017) nor the [revised version of the draft treaty](#) (2020) refer to criminal procedures

### 5.4.2 Progress since the adoption of the B-NAP

- Law of 5/5/ 2019 amended the Code of Criminal Procedure and the Judicial Code on the publication of judgments and decisions from 2020 onward. However, the modalities of publication remain a discretionary competence of the judiciary (e.g. anonymisation method, search tools).<sup>395</sup>
- Law of 22/7/2018 regulates *regrets optants*, who, in exchange for a reduction of sentence, modalities in the execution of a sentence or an adapted regime in prison, provide relevant

<sup>392</sup> Cf. TFEU Arts. 67.3 and 82-9.

<sup>393</sup> Cf. CJEU judgment T-194/06 SNIA SpA v EC, [16/06/2011], (62).

<sup>394</sup> Cf. CoE/Greta 2016/23:61.

<sup>395</sup> EC Staff Working Document [Country Report Belgium 2020](#). European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2020) 150 final} (65).

information on offences perpetrated by co-offenders and/or accomplices. The aim is to capture serious criminals and collect evidence against them. The reform, however, generates criticism because although it targets organised crime, it can also clear up crimes. *Regrets optants* are only allowed in very serious cases that affect human life or dignity. The benefit granted to the regrets optants must be proportional to the crimes committed, and they are expected to provide full confession and compensate for the damage.

- Laws of 15/1/2019 and of 3/2/2019 strengthened the support given by the Commission for financial support of victims of crime, by reducing the requirements and the time victims need to obtain access to financial support, and by covering occasional rescuers and victims of cold cases. The laws partially enforced the EU Directive on victim's rights.

Regarding **policies, programmes or processes adopted** in line with the UNGPs,

- The collection of cross-border electronic evidence is one of the main challenges and priorities of the EU (Franssen et al. 2019). The EC proposed on 5/2/2019 to start international negotiations on cross-border access to electronic evidence, necessary to track down dangerous criminals and terrorists. As a result of the European Council conclusions from [10/2018](#), the EC proposed two sets of negotiating directives, one with the United States and for the Second Additional Protocol to the Council of Europe "Budapest" Convention on Cybercrime. These proposals seek to reinforce protection of privacy, personal data and privacy safeguards.

#### 5.4.3 Key outcomes or gaps for the implementation of the UNGPs

- Although universal jurisdiction for the violation of international humanitarian law exists in Belgium,<sup>396</sup> the reform of 2003 requires a clear connection between Belgium, the case, and the parties involved. This limitation has made universal jurisdiction less relevant for business-related human rights harms that do not constitute a violation of international humanitarian law. The most salient case has been the criminal claim filed by four refugees from Myanmar against TotalFinalElf (Total)<sup>397</sup>.
- The report on the transposition of the EU Directive on victim's rights (2020) still raises serious concerns, particularly regarding the adoption of measures to protect victims lacking awareness of their rights and the adoption of a gender-based policy. Vulnerable victims, such as victims of THB, encounter serious difficulties in understanding the information and need more robust support from the state. The EU further requires member states to adopt adequate measures treating victims with respect and dignity and granting them protection per their specific needs<sup>398</sup>. Belgium has been one of the member states to which the EC initiated infringement procedures in 2016 for not implementing the victim's right directive in a due way. However, in the last years, the EC has not communicated further infringements.<sup>399</sup>

#### Reported cases

In 2018, criminal cases related to THB amount to 161 cases of labour exploitation. In 2016 and 2017, the figures were similar.<sup>400</sup> The reported sectors were agriculture, tourism, and construction related activities. The main offences reported were low wages or none at all; abnormally long working hours; squalid housing conditions; abuse of the vulnerable situation; use of threats / violence; limitation of freedom of movement and contact with the outside world.

<sup>396</sup> Criminal Procedural Law (preliminary Title) and Criminal Code (Book I Title Ibis).

<sup>397</sup> Cf. BCC judgments C-520/09, 29/09/2011, (37-52) *Arkema*. T-548/08, 30/09/2013, *Total* (33); T-566/08, *Total Raffinage Marketing*, 13/09/2013, (492).

<sup>398</sup> Cf. Study [European Parliamentary Research Service \(2017\)](#).

<sup>399</sup> Brussels, 11.5.2020 [COM\(2020\) 188 final](#) REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2012/29/EU of victims' rights

<sup>400</sup>Cf. Myria [Jaarlijks evaluatieverslag 2019](#) - Mensenhandel en mensensmokkel



## 5.5 Labour claims

### 5.5.1 Why is this a key mechanism in Belgium?

Labour courts are competent to hear claims related to employment, accidents at work, occupational illness, social security, the right to equality and non-discrimination at work, and the application of administrative sanctions that result from inspections when they do not amount to a crime. Claims of compensation for damages caused by work accidents, professional illness, industrial and agricultural accidents and asbestos exposure must be filed before this jurisdiction (Judicial Code Art. 728). As tort law is not applicable, insurance law and compensation funds play a central role (Cf. Pillar I). Labour courts, however, do not hear cases that occurred outside Belgium. Workers can lodge a complaint, but trade unions or other stakeholders can also represent them.

Table 49: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not contain any commitment about this issue.

The **recommendations (2017)** pointed to the important role of institutions such as UNIA or Myria with competence to promote judicial actions.

### 5.5.2 Progress since the adoption of the B-NAP

Belgium has not adopted concrete reforms of this jurisdiction and the NBA did not find concrete policies, programmes or processes for this jurisdiction either.

### 5.5.3 Concrete outcomes or gaps for the implementation of the UNGPs

- The main gap in this jurisdiction is that it does not hear cases of business-related human rights harms perpetrated by Belgian corporate groups outside Belgium.

#### Reported cases

- UNIA has supported victims of discrimination in the labour market. Several judgments have protected victims. Two of these decisions have been reported by the Business and Human Rights Resource Center because the two companies were condemned for discrimination based on [age](#) and for [maternity reasons](#).
- UNIA has also lodged labour injunctions to cease discriminatory actions on the basis of [disability](#). This year more judgments have further protected victims of discrimination in the labour market<sup>401</sup>:
  - [Labour Court of Ghent, 12/10/ 2020 and Labour Court of Antwerp 16/11/2020](#).
  - [Labour Court of Ghent, 12/10/ 2020 and Labour Court of Antwerp 16/11/2020](#).
- Another important case was lodged by labour authorities against [Deliveroo](#) regarding the labour situation of Gig workers.
- The EC considered in 2014 that the regulation of dock work in Belgium infringed the freedom of establishment (Article 49 TFEU). A RD adapted the law to the EU parameters. However, Katoen Natie Bulk Terminals and General Services Antwerp (C-407/19), requested the Council of State to annul that RD because it limited the freedom to engage dockers from other member states. In addition, Middlegate Europe (C-471/19) was fined because it employed an unrecognised docker. This company lodged a judicial review procedure before the Belgian Constitutional Court (BCC) because the law violated the freedom of trade and industry. The Council of State and the BCC referred the cases to the CJEU for a preliminary ruling. The CJEU held that Belgium should respect the freedom of establishment and the freedom to provide services (TFEU Art. 49 and 56). However, it also held that limitations can be justified in the public interest (*ensuring safety in port areas and preventing workplace accidents*) and should not discriminate. However, the CJEU considered that the RD restricts the freedom of movement for workers (TFEU, Art. 45) from other member states. The CJEU required the BCC and the Council of State to revise whether national legislation respects the transparency and impartiality in the appointment of dock

<sup>401</sup> More judgments can be found on the website of UNIA.

workers<sup>402</sup>.

## 5.6 SBJM addressed against the state as regulator or as controller (exercise of state authority - *acta iure imperii*)

### 5.6.1 Why is this a key mechanism in Belgium?

The most important mechanisms related to the UNGPs are the ones that request the state to take measures as a consequence of a human right abuse based on a law or an administrative act. Victims can also ask for compensation if the wrongful administrative acts are among the causes of the abuse. Rightsholders or stakeholders can also use judicial review to strike down a law or an administrative act that can be the legal basis of human rights harms. If these legislative or administrative acts are struck down or annulled, victims can also file a lawsuit to seek compensation when the acts were among the causes of the damage.

*Table 50: Parameters to evaluate progress since the adoption of the B-NAP*

The **B-NAP** did not refer to SBJM

The [recommendations](#) (2017) pointed mainly to the annulment actions (with compensation) lodged before the Council of State. It recommended three main points:

- A reform to authorise the Council of State to modify administrative sanctions and not just confirm or reject them. Stakeholders need to be allowed to support the sanction or to ask a stronger sanction.
- The prescription term of the action should be extended (beyond the current deadline: 1 year) to allow victims to gather relevant evidence and to obtain legal assistance.
- The discretionary competences of the Council of State regarding the definition of the compensation should be limited to increase the possibilities of victims to get just satisfaction.

### 5.6.2 Progress since the adoption of the B-NAP

#### 5.6.2.1 Council of State

State liability for tort cases can be claimed before civil courts based on the Civil Code. Since 2014, the BC (Art. 144) and the Law of the Council of State (Art. 11) allow rightsholders to lodge tort claims before the Council of State based on an illegal administrative act or omission<sup>403</sup>. Victims can ask for setting aside the administrative act, and, sometimes, they can ask for compensation for caused damages if they can demonstrate that these damages are a consequence of the administrative acts, considering the public interest. This option is faster than the civil procedure, but the prescription term is shorter (one year instead of five years for civil courts); it does not have a second instance, and the compensation not necessarily covers the damage in an integral way. The Council of State may order provisional, preventive or corrective measures, which is impossible when the lawsuit is lodged before civil courts. Injunctions are also an option, and if granted, the rightsholder should address this decision to the competent administrative authority to ask for the execution of the injunction.

The Belgian government has not adopted any structural reform, and the NBA team did not find publicly available information regarding policies or programmes in line with the UNGPs. However, the gaps indicated in the access report to remedy (2017) persist.

#### Reported cases

- The Council of State has been active by requesting preliminary rulings to the CJEU regarding the protection of the environment or social rights<sup>404</sup>.

<sup>402</sup> CJEU press release [No 15/21](#) Luxembourg, 11/2/ 2021.

<sup>403</sup> It is possible to ask for the annulment of the administrative act, a regulation or an implicit decision.

<sup>404</sup> Although the Council of State has not always accepted the claims Cf. Council of State, Chamber XIII judgment 248.355 of 24/9/ 2020 ).

- CJEU Case C-407/19: Reference for a preliminary ruling from the Council of State (Belgium) lodged on 24/5/ 2019 - Katoen Natie Bulk Terminals NV, General Services Antwerp NV v Belgian State, regarding port workers (cf. Labour jurisdiction).
- The Council of State has also rejected claims asking for the annulment of fines imposed by administrative authorities.<sup>405</sup>
  - Council of State, Chamber XIII judgment 247.715 of 4/6/2020, Council of State, Chamber XIII judgment 247.979 of 30/6/ 2020 (Ryanair against Brussels).
- In 2018 the Council of State suspended export licences granted by Wallonia to Herstal with the aim to export arms to Saudi Arabia after a claim lodged by la *Ligue des Droits de l'Homme*, the *Coordination Nationale d'Action pour la Paix et la Démocratie* (CNA PD) and Amnesty International. The reason was that the Walloon government did not conduct a human rights impact assessment of these exports. This also responds to calls from the UN, the EU, the Federal government, and NGOs, for an embargo regarding Saudi Arabia<sup>406</sup>.

### 5.6.2.2 Constitutional mechanisms of human rights protection

There are no constitutional actions in Belgium to claim the protection of fundamental rights, as is the case in many other countries. However, the BCC has the competence to redress human rights abuses through judicial review and preliminary rulings. Judicial review before the BCC is the way to control if legislation respects constitutional rights and freedoms.<sup>407</sup> It can be used to ask for the review of legislative acts adopted by the federal parliament (statutes), by the parliaments of the communities and regions (decrees and ordinances), and to challenge these acts when they violate fundamental constitutional rights, including rights of non-citizens (Art. 191). Judicial review does not give the BCC competence to review legislative acts directly under international treaties (Alen and Verrijdt 2016: 2-3), nor does this mechanism provide for direct compensation to victims. Challenging legal acts can be an important way of granting non-repetition when the business activities are based on legal acts annulled by the BCC. It would have a larger scope than suing business abuses individually.

Preliminary rulings seek to control for compliance of legislation with human rights and can also be conducted by ordinary courts (diffuse constitutional review)<sup>408</sup> (Alen and Verrijdt 2016:3), who can request the BCC to render preliminary rulings in human rights issues. Preliminary rulings can also be used by the BCC or the Council of State to request the CJEU to assess whether national rules respect EU Law, including the EU Charter. The ruling of the CJEU does not decide the case, as national courts keep the competence to adjudicate. However, when the CJEU rules that the national statute violates EU law, the BCC or the Council of State should strike down the challenged statute. Preliminary rulings have been used by several NGOs seeking environmental or consumer protection, access to justice or fighting discrimination.

The Belgian authorities have not adopted any related structural reform and the NBA team did not find publicly available information on policies or programmes adopted in line with the UNGPs. However, the BCC has rendered important decisions in several areas related to the UNGPs, including the following relevant decisions:

#### Reported cases

- BCC [Judgment 78/2020](#) of 28/5/2020: Preliminary ruling of “Programme” Law of 27/12/2006, requested by the Labour Court of Antwerp that struck down the law because it violated the right to equality and

<sup>405</sup> Cf. Council of State, Chamber XIII judgment 247.715 of 4/6/2020, Council of State, Chamber XIII judgment 247.979 of 30/6/ 2020 (Ryanair against Brussels) although the Council of State has not always accepted the claims Cf. Council of State, Chamber XIII judgment 248.355 of 24/9/ 2020 ).

<sup>406</sup> [https://www.liguedh.be/wp-content/uploads/2020/01/EDH\\_2019web-final.pdf](https://www.liguedh.be/wp-content/uploads/2020/01/EDH_2019web-final.pdf)

<sup>407</sup> Law 9/03/2003.

<sup>408</sup> Cf. Special Majority Act on the BCC.

granted compensation to the partner of the victim of asbestos.

- BCC [Judgement 73/2020](#) of 28/5/2020 regarding environmental protection.
- BCC [Judgment 69/2020](#) of 14/5/2020 upheld the reform to the criminal responsibility of legal persons.
- BCC [Judgement. 34/2020](#) of 5/3/2020 required authorities to conduct an impact assessment of the Law of 28/6/2015 that extended the gradual phasing-out of nuclear energy for industrial electricity production purposes in order to guarantee security of supply in terms of energy. This judgment is an important improvement as the CJEU<sup>409</sup> preliminary ruling balanced between protecting biodiversity and the environment versus the need to guarantee energy for Belgium and held that the second prevails.
- BCC [Judgement 1/2020](#) of 16/1/2020 on labour rights.

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<sup>409</sup> CJEU C-411/17 Inter- Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres

## 6 Instruments directly related to transnational claims

### 6.1 Transnational claims

#### 6.1.1 Why is this a key issue for Belgium?

Although EU private international law is applicable in Belgium for contractual and extracontractual disputes that involve member states, Belgium has competences to define the jurisdiction and the applicable law for disputes between Belgian companies and persons from third countries. At the European level, although many studies on business and human rights have pointed to the obstacles for victims of activities developed by companies located in the EU or their commercial partners (Cf. Ennkind et al. 2015, Bright et al 2020; Smets et al. 2020; Lizarazo Rodriguez 2017; Grimheden 2018; Cassel 2020), no initiative exists to amend the existing EU law.

The DIHR developed a website on [extraterritorial jurisdiction](#) seeking to provide clarity about the situation when states extend their jurisdiction beyond their territory. Although this is the main challenge for the implementation of the UNGPs, it also represents a crucial area for granting access to remedy to victims. The [revised version of the draft treaty](#) (2020) stipulates important guidelines for states regarding transnational claims:

Regarding jurisdiction<sup>410</sup>, states are required to exclude the forum *non-conveniens* and adjudicate jurisdiction for business-related human rights claims where **a.** the human rights abuse occurred; **b.** an act or omission contributing to the human rights abuse occurred, or **c.** the company is headquartered.

Regarding the domicile for legal persons, states should accept jurisdiction where legal persons have been incorporated or have their statutory seat, central administration or principal place in their territory. Moreover, national courts should have jurisdiction over claims against persons not domiciled in the state, if the claim is closely connected with a claim against a person domiciled in the state or if it is the only forum that guarantees a fair trial and with a close connection to the state party concerned.

Regarding applicable law, besides the law of the competent court, victims could request the application of the law of the state where: **a)** the acts or omissions occurred; **b)** the defendant is domiciled.

Table 51: Parameters to evaluate progress since the adoption of the B-NAP

The **B-NAP** did not include any action regarding the improvement of the effectiveness of SBJM for transnational claims.

The [recommendations](#) (2017) pointed to the following elements:

- The Code of Private International Law (CPII) should guarantee jurisdiction to Belgian courts regarding complaints against Belgian companies with their main assets located in Belgium for abuses committed in the context of their cross-border activities or by their business partners.
- The Universal Jurisdiction could be revisited and include gross human rights abuses perpetrated by Belgian businesses, as a way to give victims from third countries access to Belgian jurisdiction.

#### 6.1.2 Progress since the adoption of the B-NAP

Only one **structural reform** has been adopted with impact on the implementation of the UNGPs.

- The BCAC adopted the statutory seat as a criterion to define the nationality of Belgian companies. It also amended the CPIL (Art.109) to preserve the jurisdiction of Belgian courts to hear claims related to the liability of the directors of the legal person (BCAC Art. 2: 56) *towards persons other*

<sup>410</sup> The draft treaty only refers to international jurisdiction (Art.18) to settle disputes among state parties about the interpretation or application of the treaty: (a) the International Court of Justice (ICJ); (b) arbitration, having prevalence the first one in case they accept both.

*than the legal person or its associates or shareholders or members, for conduct in the exercise of the administrative function, if the principal place of business of the legal person is located in Belgium, whereas the registered office of the legal person is established in a state located outside the EU and the legal person has only a formal link with that state.* This norm is interpreted as an exception to the general provisions on the statutory seat for liability cases (Houben and Meeusen 2020) (Cf. Pillar I).

### 6.1.3 Concrete outcomes or gaps for the implementation of the UNGPs

- The draft bill setting-up the Brussels International Business Court was approved by the Parliamentary Justice Commission but has not been approved by the Parliament yet. This court would deal with conflicts among businesses of which at least one should be Belgian. UNCITRAL is the Reference Framework and English the official language (Kramer and Sorabji 2019; Peetermans and Lambrecht 2019). Although it would deal with business disputes, Belgium could evaluate the possibility of enlarging its jurisdiction to business-related human rights abuses perpetrated by Belgian businesses in third countries.
- The difficulties of EU private international law and those of the CIPL have not been addressed. Although this has mainly been discussed in the business and human rights fora, together with the options to adopt mandatory human rights due diligence, the NBA team has not found any publicly available information regarding actions from Belgian authorities in that respect.

## 6.2 Active support of Belgium to operational-level grievance mechanisms (OLGM)

### 6.2.1 Why is this a key issue in Belgium?

The UNGPs recommend companies to implement an OLGM to allow rightsholders and stakeholders to raise concerns about the adverse impacts on human rights their economic activities can cause. OLGM also aim at hearing claims for a remedy if the adverse effect has been caused. OLGM are part of HRDD because they seem effective for identifying adverse human rights impacts with local communities and stakeholders' participation and designing tailored decisions to address them. The nature and structure may vary, as any organisation can create its own OLGM or join collaborative initiatives of a specific sector such as business federations or MSIs<sup>411</sup>. OLGM represent an essential option for rightsholders because they are not overburdened by legal formalities, although their effectiveness depends on the possibility of granting an effective remedy. At the international level, all the global and regional investment banks have created OLGM, such as the World Bank Inspection Panel or the European Investment Bank complaint mechanism. The parties involved can also appoint an external expert or mediation body such as the OECD NCP (Cf. [Toolbox human rights for business and organisations](#) (9)).

The [Accountability and Remedy Project III \(2020\)](#)<sup>412</sup> released recommendations for implementing OLGM by companies, sector federations or MSIs or by development finance institutions. The UNGPs also request states to facilitate access to effective OLGM as there is no policy coherence in their approaches to OLGM. Therefore, the ARP III requires states to create policies to support OLGM in a way that they can serve to identify human rights risks in an opportune way and that the state protects users. States are also expected to look for international cooperation in order to guarantee OLGM.

### 6.2.2 Progress since the adoption of the B-NAP

The B-NAP did not include any action related to the implementation of OLGM. No structural reform was adopted either. Two processes were adopted in line with the UNGPs.

<sup>411</sup> For an assessment of the role of trade unions in MSIs cf Martens et al (2018).

<sup>412</sup> Cf. ARP III Non-State-based grievance mechanisms: Enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse. Consultation Draft of ARP III Recommendations 17 /2/2020 [A/HRC/44/32: ARP III Main Report](#), 19/5/2020.

- BIO implemented an OLGGM that has already heard complaints related to businesses that receive economic support from BIO (Cf. state business nexus).
- FIDO/IFDD developed the [Toolbox human rights for business and organisations](#). Tool 9 explains the nature of this mechanism and provides guidance for its implementation, in the framework of a HRDD or in an independent manner.

### 6.2.3 Key outcomes or gaps for the implementation of the UNGPs

- Although the EU has been requested to set up a grievance mechanism<sup>413</sup> to allow indigenous and local communities to lodge complaints against EU-based business activities, regardless of the country where the violations and abuses occurred, the EP insisted that this has not been done yet.<sup>414</sup>
- The NBA team consulted some stakeholders, but no publicly available information was found about the implementation of concrete policies seeking to support the implementation of OLGGM.

## 6.3 Interstate cooperation

### 6.3.1 Why is this a key issue for Belgium?

In transnational complaints against companies for human rights abuses that occurred in third countries, mutual legal assistance (MLA), judicial and diplomatic cooperation<sup>415</sup> are crucial to overcoming obstacles related to the diversity of approaches among jurisdictions. National enforcement bodies usually struggle with addressing cross-border cases, and in many cases, there are several interpretations regarding the law in force.<sup>416</sup> The [revised version of the draft treaty](#) (2020) promotes MLA and international judicial and diplomatic cooperation to tackle cross-border business-related human rights abuses. It also promotes a larger international technical cooperation and capacity-building among policymakers, NHRI, operators, and users of OLGGM. One central aspect of judicial cooperation is the recognition and enforcement of judgments, necessary to guarantee effective remedies recognised by judgments. In that respect, Belgium mostly relies on EU law. Decisions rendered within the EU are recognised in other member states.

However, when judgments are rendered outside the EU, the execution is more complex, and the procedures can be an obstacle for victims (e.g. formal requirements (authentic instrument, translation, legalisation, apostille). Belgium has also concluded the Lugano Convention (2007) and other bilateral conventions to facilitate the enforcement of judgments in transnational cases. If there are no conventions in force, the CIPL applies, together with the rules of the Judicial Code and the Consular Code. The recognition of judicial decisions occurs mainly *de plano*, without the need for any judicial procedure. However, the *exequatur*<sup>417</sup> may be denied when it is contrary to the public order, it violates the right to defence of the defendant, it contradicts a Belgian decision, a decision is still pending in Belgium, or Belgian courts had the exclusive jurisdiction, etc. (Kruger 2015).

Complementary activities such as capacity building of members of the judiciary, the police and mediators, particularly of the ones involved in transnational cases, is necessary to increase awareness about the duty of the state to provide for effective remedies.

*Table 52: Parameters to evaluate progress since the adoption of the B-NAP*

**The B-NAP** did not include any action regarding judicial or administrative mutual assistance or cooperation.

<sup>413</sup> Cf. CR 2013/369/EU of 11/6/2013.

<sup>414</sup> The [EP Report](#) (2018) A8-0194/2018 29.5.2018 (2017/2206(INI)) Committee on Foreign Affairs. Rapporteur: F.Assis

<sup>415</sup> Mutual legal assistance (MLA) supports domestic law application in cross border cases, and international judicial cooperation coordinates exchanges among national judiciaries.

<sup>416</sup> The TFEU requires member states to implement mutual legal assistance, judicial cooperation in civil and criminal cases, the principle of mutual recognition of judgments and decisions in extrajudicial cases and promotes the permanent training of the judiciary.

<sup>417</sup> The procedure to request the enforcement of foreign judgments rendered outside the EU.

The **recommendations** formulated in 2017, pointed to the following elements:

- Judicial cooperation by means of international agreements in THB could be replicated for other business-related human rights abuses.
- Negotiation and conclusion of bilateral or regional judicial cooperation agreements, particularly with countries where violations of human rights by Belgian companies are more likely to occur.
- Training of judges and lawyers on the possibility and necessity to support victims of business-related human rights abuses.

### 6.3.2 Progress since the adoption of the NAP (2017)

Only **structural reforms** at the EU level have been adopted in line with the UNGPs.

- Regulation (EU)<sup>418</sup> on cross border cooperation in criminal matters.
- Regulation (EU) on the mutual recognition of freezing orders and confiscation orders<sup>419</sup>. This mechanism can be triggered for 30 crimes, many of them relevant for business related human rights abuses: THB; corruption; laundering of the proceeds of crime; computer-related crime; environmental crime; racism and xenophobia; counterfeiting and piracy of products; crimes within the jurisdiction of the International Criminal Court.

Regarding **policies, programmes or processes** adopted in line with the UNGPs,

- EU funds has supported judicial training, although not in business and human rights. The EC highlighted that Belgium has an exchange programme (Aiakos95 of the EJTN)<sup>420</sup> whose participation is mandatory in Belgium for newly appointed magistrates.

### 6.3.3 Concrete outcomes or gaps for the implementation of the UNGPs (2017)

- Belgium has not signed the [Convention of 2/7/2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters](#). The NBA team did not find more information regarding the conclusion of bilateral cooperation agreements on the mutual recognition of treaties since 2017 nor on extradition.
- Belgium has not considered allowing courts to accept jurisdiction on human rights abuses based on the argument that the company has its assets in Belgium, which has been claimed by many stakeholders.
- The NBA team has not found publicly available information regarding capacity building of the judiciary or the diplomatic staff on the main issues of access to remedy in cross-border human rights abuses perpetrated by companies headquartered in Belgium.
- The Belgian diplomatic staff do not have any competence regarding the support of companies in their duty to respect human rights and the support of victims when they seek for a remedy.

<sup>418</sup> Regulation (EU) 2018/1727 of the EP and of the Council of 14/11/ 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust) for cross border cooperation

<sup>419</sup> Regulation (EU) 2018/1805 of the EP and of the Council of 14/11/ 2018.

<sup>420</sup> The AIAKOS is an exchange programme aiming at bringing together future or newly appointed judges from different EU member states, in order to foster mutual understanding of different European judicial cultures and systems and to raise their awareness about the European dimension of their (future) work.



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# Annex 1: List of consulted stakeholders

## a) Stakeholders consulted for Pillars I and III

Name of organization	Date of 1st email contact	Type of consultation (response/ semi-structured interview(SI) /no response)
Bio	23/09/2020	several communications
Credendo	23/09/2020	several communications
Flanders Investment and trade	23/09/2020	several communications
Awex	24/09/2020	No response
Federal Ministry of Foreign Affairs	23/09/2020	several communications (SI 26/11/2020)
OECD National Contact Point (NCP)	16/09/2020	several communications (SI 21/09/2020)
National Bank of Belgium (NBB)	2/10/2020	No response
Financial Services and Markets Authority (FSMA)	2/10/2020	2/10/2020
Federal Ministry of Justice	19/10/2020	19/10/2020
Federal Institute for Sustainable Development (IFDD/FIDO)	14/10/2020	several communications (SI 7/10/2020)
VLAIO Vlaanderen	23/10/2020	6/nov/2020
hub.Brussels	23/09/2020	No response
Enabel	23/09/2020	No response
BMI-SBI	23/09/2020	No response
Belgian Foreign Trade Agency	23/10/2020	26/10/2020
Wallonie SPw	23/10/2020	No response
Finexpo	23/10/2020	27/10/2020
Federal Ministry of Environment	27/10/2020	(SI28/10/2020)
Federal Ministry of the Environment and Public Health	23/10/2020	several communications
Amfori	17/11/2020	18/11/2020
Belgian Embassy in Democratic Republic of the Congo	19/10/2020	No response
Honorary Consulate of Belgium in Bangui (Central African Republic)	19/10/2020	No response
Belgian Embassy in Colombia	19/10/2020	No response
Belgian Embassy in Peru	19/10/2020	No response
Belgian Embassy in Indonesia	19/10/2020	No response
Belgian Embassy in Afghanistan (via Pakistan)	19/10/2020	No response

## b) Stakeholders consulted for pillar II

Name of organization	Date	Type of consultation (response/ semi-structured interview(SI) / no response)
AWDC	29/06/2020	Interview
Fedustria	3/07/2020	Interview
VBO	30/09/2020	Interview
Agoria	11/09/2020	Interview
Comeos	4/09/2020	Interview
Fevia	Different dates	Written communication
Essenscia	23/02/2021	Interview

Civil society Working Group on Corporate Accountability	22/09/2020	Focus Group Discussion
Fairfin	28/09/2020	Interview
Agoria	9/09/2020	Interview
Voka	5/06/2020	Interview
Febetra		No response
Confederatie bouw		No response

## Annex 2: Company assessment form

<b>A1.1</b>	<b>Commitment to respect HR</b>	<b>0</b>
<b>Score 1</b>	The Company has a publicly available statement of policy committing it to respect human rights <b>OR</b> the ten principles of the UN Global Compact (as principles 1 and 2 include a commitment to respect human rights) <b>OR</b> the rights under the Universal Declaration of Human Rights (UDHR) <b>OR</b> the International Bill of Human Rights.	0
<b>Score 2</b>	The Company's publicly available statement of policy also commits it to: the UN Guiding Principles on Business and Human Rights <b>OR</b> the OECD Guidelines for Multinational Enterprises	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0
<b>A1.2</b>	<b>Commitment to respect HR of workers</b>	<b>0</b>
<b>Score 1</b>	The Company has a publicly available statement of policy committing it to respecting the human rights that the ILO has declared to be fundamental rights at work (ILO Core Labour Standards) <b>OR</b> the Company has a publicly available statement of policy committing it to respecting the ten principles of the UN Global Compact (principles 3 to 6 are based on the ILO Declaration on Fundamental Principles and Rights at Work). <b>AND</b> in addition to one of the above, the Company's policy commitment(s) also states that it expects its suppliers to commit to respecting each of the ILO core labour standards and explicitly lists them in that commitment.	0
<b>Score 2</b>	The Company's policy statement on the ILO Core Labour Standards includes explicit commitments to respect: freedom of association and the right to collective bargaining and the rights not to be subject to forced labour, child labour or discrimination in respect of employment and occupation. <b>AND</b> the Company's publicly available statement of policy also commits it to respecting the ILO conventions on labour standards on working hours and the health and safety of its workers <b>AND</b> the Company's policy commitment(s) also states that it expects its suppliers to commit to respecting the ILO conventions on labour standards on working hours and the health and safety of their workers.	0
<b>A1.4</b>	<b>Commitment to engage with stakeholders</b>	<b>0</b>
<b>Score 1</b>	The Company has a publicly available statement of policy committing it to engage with its potentially and actually affected stakeholders, including in local communities where relevant <b>OR</b> there is evidence that the Company regularly engages with potentially and actually affected stakeholders and/or their legitimate representatives	0
<b>Score 2</b>	The Company's publicly available statement of policy also commits it to engaging with affected stakeholders and/or their legitimate representatives in the development or monitoring of its human rights approach <b>OR</b> there is evidence that the Company regularly engages with potentially and actually affected stakeholders and/or their legitimate representatives in the development or monitoring of its human rights approach.	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0
<b>A1.5</b>	<b>Commitment to remedy</b>	<b>0</b>
<b>Score 1</b>	The Company has a publicly available statement of policy committing it to remedy the adverse impacts on individuals, workers and communities that it has caused or contributed to.	0
<b>Score 2</b>	The Policy commitment also includes a commitment to the following: Working with its suppliers to remedy adverse impacts which are directly linked to its operations, products or services through the suppliers' own mechanisms or through collaborating with its suppliers on the development of third party non-judicial remedies <b>AND</b> The Company's policy commitment recognises its approach to remedy should not obstruct access to other remedies, or it includes commitments to collaborating in initiatives that provide access to remedy.	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0

<b>B1.1</b>	<b>Responsibility and resources for day-to-day human rights functions</b>	<b>0</b>
<b>Score 1</b>	The Company indicates the senior manager role(s) responsible for relevant human rights issues within the Company (i.e. responsibility for human rights is assigned to a senior manager(s)) and this includes responsibility for the ILO core labour standards at a minimum.	0
<b>Score 2</b>	The Company also describes how day-to-day responsibility is allocated across the range of relevant functions of the Company. <b>AND</b> The Company describes how day-to-day responsibility for managing human rights issues within its supply chain is allocated.	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0
<b>B2.1</b>	<b>Identifying: Processes and triggers for identifying human rights risks and impacts</b>	<b>0</b>
<b>Score 1</b>	The Company describes the process(es) to identify its human rights risks and impacts: in specific locations or activities, covering its own operations (i.e. impacts that it may cause or contribute to) <b>AND</b> Through relevant business relationships, including its supply chain.	0
<b>Score 2</b>	The company describes the global systems it has in place to identify its human rights risks and impacts on a regular basis across its activities, in consultation with affected or potentially affected stakeholders and internal or independent external human rights experts. This includes how the systems are triggered by new country operations, new business relationships or changes in the human rights context in particular locations. <b>AND</b> The Company's description includes an explanation of when human rights impact assessments (HRIAs) or environmental and social impact assessments (ESIAs) covering human rights are/will be carried out.	0
<b>B2.2</b>	<b>Assessing: Assessment of risks and impacts identified (salient risks and key industry risks)</b>	<b>0</b>
<b>Score 1</b>	The Company describes its process(es) for assessing its human rights risks and impacts and what it considers to be its salient human rights issues including how relevant factors are taken into account, such as geographical, economic, social and other factors <b>OR</b> The Company publicly discloses the results of the assessments, which may be aggregated across its operations and locations.	0
<b>Score 2</b>	The Company meets both of the requirements under Score 1.	0
*	<i>Bonus for Company meeting one of the requirements under Score 1???</i>	0
<b>B2.3</b>	<b>Integrating and Acting: Integrating assessment findings internally and taking appropriate action</b>	<b>0</b>
<b>Score 1</b>	The Company describes its global system to take action to prevent, mitigate or remediate its salient human rights issues, <b>AND</b> this includes a description of how its global system applies to its supply chain <b>OR</b> The Company provides an example of the specific conclusions reached and actions taken or to be taken on at least one of its salient human rights issues as a result of assessment processes in at least one of its activities/operations.	0
<b>Score 2</b>	The Company meets both of the requirements under Score 1.	0
<b>B2.4</b>	<b>Tracking: Monitoring and evaluating the effectiveness of actions to respond to human rights risks and impacts</b>	<b>0</b>
<b>Score 1</b>	The Company describes the system(s) for tracking the actions taken in response to human rights risks and impacts assessed and for evaluating whether the actions have been effective or have missed key issues or not produced the desired results. <b>OR</b> It provides an example of the lessons learned while tracking the effectiveness of its actions on at least one of its salient human rights issues as a result of the due diligence process.	0
<b>Score 2</b>	The Company meets both of the requirements under Score 1.	0
*	<i>Bonus for Company meeting one of the requirements under Score 1???</i>	0
<b>B2.5</b>	<b>Communicating: Accounting for how human rights impacts are addressed</b>	<b>0</b>
<b>Score 1</b>	The Company describes or demonstrates how it communicates externally about its human rights impacts and how effective it has been in addressing those impacts (i.e. through the steps described in B.2.1 to B.2.4) <b>AND</b> The description includes communications covering human rights impacts involving the Company's supply chain.	0

<b>Score 2</b>	The Company also describes how it has responded to specific human rights concerns raised by, or on behalf of, affected stakeholders <b>AND</b> The Company also describes how it ensures that the affected or potentially affected stakeholders and their legitimate representatives are able to access these communications.	0
<b>C1.1</b>	<b>Grievance channel(s)/mechanism(s) to receive complaints or concerns from workers</b>	<b>0</b>
<b>Score 1</b>	The Company indicates that it has one or more channel(s)/mechanism(s), or participates in a shared mechanism, accessible to all workers to raise complaints or concerns related to the Company. <i>Note: An explicit reference to human rights is not required, but a channel/mechanism that is specifically designed to cover other topics (e.g. a corruption hotline) will need to make clear to stakeholders that it can be used for human rights concerns as well.</i>	0
<b>Score 2</b>	The Company also discloses data about the practical operation of the channel(s)/mechanism(s), including the number of grievances about human rights issues filed, addressed or resolved. <b>AND</b> The company indicates that the channel(s)/mechanism(s) is available in all appropriate languages. <b>AND</b> The workers in its supply chain have access to either: the Company's own channel(s)/mechanism(s) to raise complaints or concerns about human rights issues at the Company's suppliers or the Company expects its suppliers to establish a channel/mechanism for their workers to raise such complaints or concerns and to convey the same expectation on access to grievance channel(s) / mechanism(s) to their own suppliers.	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0
<b>C2</b>	<b>Grievance channel(s)/mechanism(s) to receive complaints or concerns from external individuals and communities</b>	<b>0</b>
<b>Score 1</b>	The Company indicates that it has one or more channel(s)/mechanism(s), or participates in a shared mechanism, accessible to all external individuals and communities who may be adversely impacted by the Company (or individuals or organisations acting on their behalf or who are otherwise in a position to be aware of adverse impacts) to raise complaints or concerns, including about human rights issues related to the Company, particularly in high risk locations.	0
<b>Score 2</b>	The Company also describes how it ensures the channel(s)/mechanism(s) is accessible to all potentially affected external stakeholders at all its own operations, including in local languages. <b>AND</b> The Company describes how it ensures external individuals and communities have access to the Company's own channel(s)/ mechanism(s) to raise complaints or concerns about human rights issues at the Company's suppliers or the Company expects its suppliers to establish a channel/mechanism for them to raise such complaints or concerns, and to convey the same expectation on access to grievance channel(s) / mechanism(s) to their suppliers.	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0
<b>C7</b>	<b>Remediating adverse impacts and incorporating lessons learned</b>	<b>0</b>
<b>Score 1</b>	For adverse human rights impacts which it has caused or to which it has contributed, the Company describes the approach it took to provide or enable a timely remedy for victims, <b>OR</b> if no adverse impacts have been identified then the Company describes the approach it would take to provide or enable timely remedy for victims.	0
<b>Score 2</b>	For adverse human rights impacts which it has caused or to which it has contributed, the Company also describes changes to systems and procedures to prevent similar adverse impacts in the future <b>OR</b> if no adverse impacts have been identified then the Company describes the approach it would take to review and change systems and procedures to prevent similar adverse impacts in the future. <b>AND</b> The Company provides an evaluation of the effectiveness of the grievance channel(s)/mechanism(s).	0
*	Company has met one or more requirements of Score 2 but NOT Score 1	0

# Annex 3: Assessment of Belgian defence firms

## FN Herstal

[FN Herstal](#) is located in Wallonia and forms part of the Herstal Group. FNH manufactures small arms, light weapons, weapon pods (rocket launchers, heavy machine-gun pods), remotely operated weapon stations and ammunition. An ammunition production line is located in Flanders. In its [Charter of Ethics](#) it is stated that FN Herstal complies with (a) the principles laid down in the fundamental conventions of the International Labour Organization, (b) ethical business practices (anti-corruption laws and regulation), (c) environmental regulations and (d) export control regulations and “pursuant to the company’s specific policies in this area”. Nowhere is specified what these “specific policies” in relation to export control regulations are.

## John Cockerill

[John Cockerill](#), formerly Cockerill Mechanical Industries (CMI), is located in Wallonia and manufactures turrets for armoured vehicles. The “activity report 2018” speaks of the “Group's golden rules” in the area of ethics but nowhere is explained what these are.

## Forges de Zeebrugge

[Forges de Zeebrugge](#) (FZ) is located in Wallonia and forms part of the [Thales Group](#). FZ manufactures 2.75-inch rockets. The [Thales Code of Ethics](#) relates to the Group's staff and secondly to customers, suppliers, subcontractors and partners. Thales’ partners need to comply with the principles of the United Nations Global Compact (human rights, labour standards, protection of the environment and the fight against corruption). The Code specifies that the Group’s business activities will comply with international trade regulations, [export/re-export control](#) rules and any restrictions and economic sanctions in force in each country where Thales operates: “Thales sites have rigorous procedures in place to control sensitive technologies and assure compliance with international export control agreements ( = international laws and conventions regulating the production, sale, export, re-export and import of dual-use components, equipment and technologies). Each exporting entity has its own team of experts with a full understanding of local rules and regulations.”

## Mecar

[Mecar](#) is an ammunition manufacturer (medium and large caliber, hand grenades and rifle grenades) located in Wallonia. It currently is part of [Nexter](#). In 2015 Krauss-Maffei Wegmann and Nexter Defense Systems merged into the German-French defense technology group KNDS. The [KNDS Ethics Charter](#) specifies that the Group’s business activities must always be carried out in compliance with local laws and regulations and with integrity and respect for ethical principles, including (a) to prevent corruption and bribery, (b) respect for competition and anti-trust law, (c) prevent money laundering, (d) tax compliance, and (e) comply with export control regulations: “The Group respects and acts responsibly in accordance with local, national or international laws and regulations as well as established embargoes, boycotts or other trade restrictions on goods, services, software or technology”.

In addition to the KNDS Ethics Charter the Nexter Group has adopted a [Code of Conduct](#), as part of Nexter’s Compliance Program, dedicated to the prevention of corruption and influence-peddling. The content of the Code of Conduct is based on an analysis of the potential risks linked to business activities. The Code of Conduct is made available in educational booklet format for employees and all third parties of the company. A whistleblowing system is provided for employees to report suspect acts contrary to the Code of Conduct.

The Nexter Group’s [Suppliers Charter](#) specifies that suppliers agree to comply with all applicable laws,

in particular the laws and regulations against: (1) Illegal labour; (2) child labour; (3) forced labour; (4) anti-competitive practices; (5) and corruption within the meaning of French law and the OECD Convention in particular, and any other laws or regulations applicable in the supplier's country or any other countries concerned. More generally suppliers agree to comply with the laws and regulations against any breach of human rights.

### **OIP Land Systems**

Formerly Sabiex International, located in Wallonia, and currently part of the Israeli company [Elbit Systems Ltd.](#) [OIP Land Systems](#) offers Maintenance, Repair & Overhaul (MRO), and Refurbishment services of armoured vehicles. OIP Land Systems maintains a Human Rights, Anti-Slavery and Human Trafficking Policy with zero-tolerance towards modern slavery, human trafficking and child labour. The [Code of Business Conduct and Ethics](#) specifies compliance with all laws, rules and regulations. "This includes, but is not limited to regulations relating to the conduct of government tenders, procurement integrity and anti-bribery and corruption". The bribery and corruption company policies are contained in the [Anti-Bribery Compliance Policy](#). Elbit Systems has adopted a Procedure on Anti-Bribery and Corruption Due Diligence to provide guidance on the anti-corruption due diligence that must be conducted prior to signing a contract with a service provider, acquiring a target company, or partnering with an entity as part of a teaming arrangement or joint-venture.

A whistleblowing system is provided for employees to report suspect acts contrary to the [Code of Business Conduct and Ethics](#). The procedure is explained in the Elbit Systems Ltd. company-wide [whistleblower and investigations procedure](#).

Elbit maintains a [Supplier Code of Conduct](#) for an ethical supply line. It includes zero-tolerance towards modern slavery, human trafficking and child labour. Third parties are required to comply with applicable laws, directives and regulations governing the import and export of parts, components and technical data. "You will provide truthful and accurate information relating to import and export authorization processes and obtain import and export licenses and/or approvals where necessary."

The [Supplier Code of Conduct](#) also includes a Responsible Sourcing of Minerals clause. Suppliers need to comply with applicable laws and regulations regarding "Conflict Minerals", which include tin, tungsten, tantalum and gold. In addition, suppliers need to establish a policy to reasonably assure that the tin, tungsten, tantalum and gold which may be contained in the manufactured do not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses. Suppliers should exercise, as may be directed by law or industry practice, due diligence on the source and chain of custody of these minerals and require the same from their next tier suppliers.

According to Elbit its [Conflict Minerals Compliance Program](#) is consistent with the OECD Guidelines and industry practices. Its program entails due diligence of the supply chain through a "reasonable country of origin inquiry", based upon the use of the Electronic Industry Citizenship Coalition and Global e-Sustainability Initiative Conflict Minerals Reporting Template.

### **OIP Sensor Systems**

[OIP Sensor Systems](#) is situated in Flanders and currently part of [Elbit Systems Ltd](#) (Israel). It manufactures electro-optical equipment (night vision goggles, weapon sights, fire control systems...). OIP Sensor Systems maintains a Human Rights, Anti-Slavery and Human Trafficking Policy with zero-tolerance towards modern slavery, human trafficking and child labour. The [Code of Business Conduct and Ethics](#) specifies compliance with all laws, rules and regulations. "This includes, but is not limited to regulations relating to the conduct of government tenders, procurement integrity and anti-bribery and corruption". The bribery and corruption company policies are contained in the [Anti-Bribery Compliance Policy](#). Elbit Systems has adopted a Procedure on Anti-Bribery and Corruption Due Diligence to provide guidance on the anti-corruption due diligence that must be conducted prior to signing a contract with a service provider, acquiring a target company, or partnering with an entity as part of a teaming arrangement or joint-venture.

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In compliance with the 2010 Dodd Frank Wall Street Reform and Consumer Protection Act Elbit has adopted reporting and disclosure rules relating to conflict minerals. According to Elbit its [Conflict Minerals Compliance Program](#) is consistent with the OECD Guidelines and industry practices. Its program entails due diligence of the supply chain through a “reasonable country of origin inquiry”, based upon the use of the Electronic Industry Citizenship Coalition and Global e-Sustainability Initiative Conflict Minerals Reporting Template.

### **PB Clermont**

[PB Clermont](#) is located in Wallonia and a subsidiary of [Eurengo](#), which in turn belongs to KNDS (Krauss-Maffei Wegmann + Nexter Defense Systems). PB Clermont manufacturers propellants for small caliber ammunition, medium caliber ammunition, large caliber ammunition and mortar increments.

No explicit reference to ethics, code of conduct, due diligence, export control etc. on website. But because Eurengo is a subsidiary of the Nexter Group within KNDS the KNDS Ethics Charter, the Nexter Group’s Code of Conduct, and the Nexter Group’s Suppliers Charter should apply.

### **Belgian Advanced Technology Systems (Bats)**

[BATS](#) is a Walloon electronics company which manufacturers sensors for surveillance radars, electro-optic systems, COMINT systems, optics, seismic sensors. “It is a wholly owned subsidiary of Israeli defence electronics giant Elta Systems, which itself belongs to the public conglomerate Israel Aerospace Industries”<sup>421</sup>.

No reference to ethics, code of conduct, due diligence, export control etc. on website.

### **iDirect**

Formerly known as Newtec. [iDirect](#) is a subsidiary of ST Engineering (Singapore), and based in Flanders. Provides hardware, software and services for satellite communications technology.

ST Engineering’s [Code of Business, Conduct & Ethics](#) implicitly refers to labour laws where it states that the company is committed to obey the laws and regulations in the countries where they operate. The Code explicitly refers to a non-discrimination or harassment policy and to comply with environmental laws and relevant regulations. ST Engineering has a zero-tolerance policy towards corruption. The company is committed to comply with all applicable competition, antitrust and fair dealing laws.

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<sup>421</sup> Africa gives Israeli firms IAI, Elbit and Mer a back door into the worldwide UN base security market (Africa Intelligence, 9 November 2020).



The iDirect [Policy on Conflict Materials](#) supports the 2010 Dodd Frank Wall Street Reform and Consumer Protection Act and to “comport with the Dodd Frank legislation, and act ethically and responsibly as a corporation, iDirect commits to the following steps:

- 1) In accordance with the standards of the Organization for Economic Co-operation and Development (OECD), iDirect will require due diligence on the part of all suppliers to undertake a Reasonable Country of Origin Inquiry (RCOI) with respect to all 3TG material in the products they supply, and to produce a standard Electronic Industry Citizenship Coalition (EICC) report detailing that information;
- 2) iDirect expects suppliers to use the information regarding the origin of these materials to reduce and eliminate dependence upon illegally sourced minerals;
- 3) iDirect will roll up the EICC reports of all our suppliers and make available to our customers an integrated EICC report disclosing the provenance information for each of these materials;
- 4) iDirect will use the sourcing information from suppliers to reduce and eliminate materials originating or potentially originating from the illegal mines from our supply chain;
- 5) iDirect may disqualify suppliers who fail to comply with RCOI requirements or who fail to exert due diligence to reduce and eliminate illegally mined 3TG materials from their supply chains.

According to the [Code of Business, Conduct & Ethics](#) employees involved in the import or export of goods and services should be aware of national and international laws and regulations governing importing and exporting products, services, technology and information and sanctions imposed upon countries, entities, or individuals. Customers, suppliers and business partners must be screened against local and international sanction lists. Approval must be sought for transactions with parties that are subject to US, UN or European Union sanctions in accordance with the respective implemented procedures.

### **Seyntex**

[Seyntex](#) is located in Flanders. Manufactures ballistic and stab proof protective products.

No reference to ethics, code of conduct, due diligence, export control etc. on website.

### **Sioen Ballistics**

[Sioen](#) is located in Flanders. Manufactures ballistic and stab proof protective products.

The Sioen [CSR Manifest 2020](#) explicitly states that the company is committed to the UN Global Compact, ILO forced labour conventions, ILO child labour convention, ILO equality of opportunity and treatment conventions and ILO freedom of association conventions. Suppliers are asked to adhere to these standards. On its website Sioen, in the section [certificates](#), references the WRAP (Worldwide Responsible Accredited Production) Gold certification for its Indonesian subsidiary: “Being WRAP Gold certified, ensures that garments are being produced under lawful, humane and ethical conditions”.

Sioen’s [Code of Conduct](#) stresses compliance with competition, anti-trust laws and anti-corruption laws. Employees are encouraged to report deviations from the code.

Applicable local import and export control regulations (e.g. for the import and export of defense-related, military or dual use goods) must always be respected. This includes country, goods or person-specific sanctions.

### **New Lachaussee**

[New Lachaussee](#) is located in Wallonia. Manufacturers machines specially designed for the manufacture of ammunition, primers and detonators.

No reference to ethics, code of conduct, due diligence, export control etc on website.

### **Mol CY**

[Mol CY](#) is located in Flanders. Manufactures off-road trucks. Participated in the production of the Alvis

Tactica armored vehicle for the Saudi National Guard. The [vehicles](#) were manufactured by BAE Systems Land Systems Division in Newcastle Upon Tyne with final assembly taking place in Belgium.

No reference to ethics, code of conduct, due diligence, export control etc. on website.

The Tactica vehicles were used to halt civil unrest in Bahrain in 2011 by the Saudi National Guard.

#### **Varec**

[Varec](#) is located in Flanders. Manufactures tracks, track components and wheels for armored military vehicles.

No reference to ethics, code of conduct, due diligence, export control etc. on website.

#### **Advionics**

[Advionics](#) was formerly Airbus Cassidian Belgium. Located in Flanders. Part of the Swiss-based private equity firm Parter Capital Group. Advionics manufactures aerospace electronics.

No reference to ethics, code of conduct, due diligence, export control etc. on website.

## Annex 4: Overview of cases of human rights abuses (allegedly) involving Belgian companies

Company	Sector	Year	Country	Type of violation	Affected rights-holders	Direct/indirect involvement	Status / Outcome
<b>Advionics</b>	Arms industry	Present	S-A, Yemen	Provided components for the Eurofighter Typhoon aircraft sold to Saudi Arabia and used for air-to-surface attacks in Yemen	Civilians	Indirect	Unknown.
<b>Antwerp Diamond Tender Facility (ATF) and First Element Bvba</b>	Precious metals and/or diamonds	2013-2014	Zimbabwe	Import of conflict diamonds from two companies in Marange mining area that appear to be linked to Zimbabwe's military	Workers, civilians	Indirect (through sourcing from Anjin's diamonds)	Suspected by Global witness 2017 report of facilitating the trade of Anjin's diamonds on at least three occasions between December 2013 and September 2014 in likely violation of EU sanctions towards Zimbabwe
<b>Belgian Investment Company for Developing Countries (BIO)</b>	Public sector	2019	DRC	Labour rights, land rights, environment	Workers, community	Indirect (through investment in Feronia - PHC)	BIO has committed to undertake efforts to address these issues more systematically
<b>Besix</b>	Construction	2018	Qatar	Labour rights: exploitation of migrant workers, dangerous working conditions	Workers	Direct (through subsidiary Six Construct)	Elaborate response by company, and efforts taken to improve human rights track record (e.g. global framework agreement)
<b>CMB Group</b>	Construction (dismantling of ships)	2016	Bangladesh	Labour rights (guards allegedly shot and killed 7 protesters following road accident)	Workers, community	Indirect (supplier Kabir Ship Breaking)	Company denies responsibility.
<b>Deme / Jan de Nul</b>	Construction (dredging)	2015	Egypt	- Labour rights and working conditions during construction of 'New Suez Canal'. - Land rights: project allegedly involved forced evictions by government.	Workers, community	Direct (as consortium partner) and indirect (government evictions)	Company denies wrongdoing. Evictions preceded start of project.

<b>Belfius (formerly Dexia)</b>	Financial sector	Continuous	Myanmar, Israel, ...	- Investment in companies with poor HR track record (including arms producers); - Ownership of banks in Palestinian territories that lend money to Israeli settlers, ...	Community, workers	Indirect (investment and lending activities)	Disinvestment from a number of companies and activities e.g. arms companies producing cluster munition, shares of Dexia Israel sold (but reportedly for other reasons).
<b>Byttebier Hout</b>	Tropical hardwood	2015	CAR	Sourcing from company (SEFCA) accused of illegal logging and conflict financing.	Community, civilians	Indirect (supplier)	SEFCA responded to Global Witness allegations with claims that its timber is legal and that it is a victim itself as it lost several vehicles in the upheavals
<b>John Cockerill (formerly CMI)</b>	Arms industry	2014-Present	S-A, Yemen	Supplied to countries with poor human rights track record	Civilians	Direct	Cockerill continues to deliver turrets to General Dynamics Lands Systems (GDLS) for the Saudi 8x8 Light Armored Vehicle (LAV). Cockerill has signed a joint venture agreement with Saudi Arabian Military Industries for local manufacture of turrets.
<b>Kardiam</b>	Precious metals and/or diamonds	2014	Central African Republic	Import of diamonds and gold from mining areas in CAR that fall under control of armed groups (former Séléka and anti-balaka)	Civilians, workers	Direct (as subsidiary of BADICA)	Badica/Kardiam was put on UN Security Council's sanction list in 2015. Council of the European Union decided in 2015 to freeze the funds of Badica and Kardiam in Europe. Decision upheld by General Court of Luxemburg.
<b>KBC</b>	Financial sector	Continuous	Angola, Sudan, Brazil, ...	Investment in companies with poor HR track record (including oil companies, mining companies, arms companies)	Civilians	Indirect (investment); Direct (in KB Lux case)	KBC is undertaking efforts to clean up its act, but this has not prevented new cases from arising.
<b>Mecar</b>	Arms industry	Present	S-A, Yemen	Supplied to countries with poor human rights track record	Civilians	Direct	
<b>Newtec</b>	Arms industry	2019	Myanmar	Supplied satellite technology to Mytel, which is partly owned by Myanmar's military.	Civilians	Indirect (supplier of technology)	Threat of legal action against NGO presenting evidence. Following 2018 UN fact finding mission company was one of the first ones to withdraw from Myanmar
<b>Seyntex (Sioen)</b>	Textiles (clothes)	2020	Romania	Labour rights: low salaries paid by Romanian subsidiary that produces uniforms for Belgian army/police	Workers	Direct (subsidiary)	Seyntex/Sioen responded by referring to competitive pressures. In addition, they claim that workers earn higher-than-average wages according to Romanian standards.
<b>SIAT</b>	Agri-food	2015-2018	Ivory Coast, Nigeria, Ghana	Violation of customary land rights, environmental impact of rubber plantations, repression of community resistance	Communities, environment	direct (subsidiary - CHP)	Company has responded by lamenting biased reporting by civil society organizations, and by emphasizing that it respects legal rights and Free and Prior Informed Consent (FPIC), while creating thousands of local jobs.
<b>Stanley/Stella</b>	Textiles (clothes)	2019	Bangladesh	Working conditions in garment factories; mass dismissal and labour violations	Workers	Indirect (supplier)	Company has investigated the findings and remains "strongly committed to help this country and workers to improve their welfare".

<b>Tony Goetz NV<sup>422</sup></b>	Precious metals and/or diamonds	2016-2017; 2020	Eastern DRC	Import of conflict gold from eastern DRC and Venezuela	Civilians	Indirect (Tony Goetz NV was affiliated to Goetz Gold, which is sourcing from Uganda. Venezuelan gold allegedly obtained from suppliers in Curaçao)	Tony Goetz NV asserts that it follows strict procedures to avoid sourcing conflict minerals and that it follows all laws and international guidelines (The Sentry)
<b>Vandecasteele Houtimport</b>	Tropical hardwood	2019	Brazil	Environment: sourcing of illegal hardwood	local communities, environment	Direct (sourcing)	Companies emphasize that control mechanisms are in place. Response from Fedustria emphasising DD efforts by Belgian timber companies
<b>Vogel Import &amp; Export</b>	Tropical hardwood	2019	Brazil	Environment: sourcing of illegal hardwood	local communities, environment	Direct (sourcing)	Companies emphasize that control mechanisms are in place. Response from Fedustria emphasising DD efforts by Belgian timber companies

<b>Advionics</b>	Vlaams Vredesinstituut (2011). <i>Wapens van Vlaamse makelij worden wereldwijd ingezet</i> . Retrieved from <a href="https://vlaamsvredesinstituut.eu/persbericht/wapens-van-vlaamse-makelij-worden-wereldwijd-ingezet/">https://vlaamsvredesinstituut.eu/persbericht/wapens-van-vlaamse-makelij-worden-wereldwijd-ingezet/</a>
<b>Antwerp Diamond Tender Facility (ATF) and First Element Bvba</b>	EURACTIV (2017). <i>Report traces Zimbabwe's illicit diamond trade to Antwerp</i> . Retrieved from <a href="https://www.euractiv.com/section/development-policy/news/report-traces-zimbabwes-illicit-diamond-trade-to-antwerp/">https://www.euractiv.com/section/development-policy/news/report-traces-zimbabwes-illicit-diamond-trade-to-antwerp/</a> EURACTIV (2017). <i>Du Zimbabwe à Anvers, un rapport dévoile le commerce illicite de diamants</i> . Retrieved from <a href="https://www.euractiv.fr/section/monde/news/report-traces-zimbabwes-illicit-diamond-trade-to-antwerp/">https://www.euractiv.fr/section/monde/news/report-traces-zimbabwes-illicit-diamond-trade-to-antwerp/</a> Brussels Times (2017). <i>European sanctions on trade with diamonds from Zimbabwe may have been violated in Antwerp</i> . Retrieved from <a href="https://www.brusselstimes.com/brussels/44050/european-sanctions-on-trade-with-diamonds-from-zimbabwe-may-have-been-violated-in-antwerp/">https://www.brusselstimes.com/brussels/44050/european-sanctions-on-trade-with-diamonds-from-zimbabwe-may-have-been-violated-in-antwerp/</a>
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### CONTROL OF CHANGES

Date	Version	Changes
8/3/2021	1. Final version submitted by the Consortium Hiva KUL -Law and Development Research Group – Universiteit Antwerpen	
30/9/2021	2. Revision of the Public procurement and sustainable investment parts.	Pages: 7, 54, 62-4, 66-8 and 164. Realised by L. Lizarazo Rodriguez