

Monitoring of the National Action Plan (NAP) on Business and Human Rights

Interim Report (5 July 2019)

Editorial note: The following summary of the first interim report of the NAP monitoring is an extract of the full report which can be downloaded in German on the Website of the Federal Foreign Office, www.diplo.de/nap-monitoring. On this website, an English version of the questionnaire can be found, too.

Summary

The “National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights, 2016 – 2020” (NAP) was adopted by the Federal Cabinet on 21 December 2016. In chapter III of the NAP, the Federal Government expresses its expectation that enterprises will introduce the process of human rights due diligence described in the Action Plan in a manner commensurate with their size, sector, and position in supply and value chains. This process encompasses the following five core elements:

- a human-rights policy statement
- procedures for the identification of actual and potential adverse impacts on human rights
- measures to ward off adverse impacts and review of the effectiveness of these measures
- reporting
- a grievance mechanism

The status of implementation of the five core elements in enterprises has been monitored since June 2018. Monitoring is divided into three survey phases. The aim of these surveys is to establish whether at least 50 percent of Germany-based enterprises with over 500 employees have incorporated the core elements described in the NAP into their business processes by 2020. If the core elements have not been implemented adequately, the NAP stipulates that the Federal Government will consider further action, which may culminate in legislative measures.

The Federal Government has commissioned a consortium comprised of Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft (EY), adelphi consult GmbH, Systain Consulting GmbH and focusright GmbH to monitor progress. Responsibility for the project lies with Ernst & Young.

This interim report presents the findings of the first exploratory survey phase in 2018 and provides information on the planning of the next steps and the further development of the methodology for the representative survey phases in 2019 and 2020.

Exploratory phase in 2018 – approach

In order to obtain qualitative information on the extent to which the core elements of human rights due diligence have been implemented and on the challenges associated with them, the survey team conducted interviews with 30 company representatives. The participating enterprises were selected on the basis of their size, sector, human rights risk exposure and experience in dealing with human

rights due diligence. The survey team drew up a list of identical interview questions for the semi-structured interviews with the participating enterprises. In order to obtain the necessary access to these enterprises and to acquire the most comprehensive qualitative information possible, the enterprises in this report have been anonymised.

Semi-structured interviews were also conducted with nine different stakeholder representatives selected by the Business and Human Rights Working Group, with the aim of achieving a wider information basis and thus being able to ensure greater inclusion of other relevant stakeholders during the exploratory phase. A second set of interview questions was drawn up for the interviews with the stakeholders.

Exploratory phase in 2018 – findings from the interviews with the selected enterprises

The anonymised findings from the enterprise interviews are based entirely on the information provided by the 30 participating enterprises. Due to the (predefined) low number of interviews, the findings should not be seen as representative of the German business sector as a whole. It is not possible to extrapolate general trends as regards issues and actions, let alone to assess or evaluate the status of implementation of the NAP requirements, from these findings. During the interviews, the focus was on discussing the enterprises' current implementation of the five NAP core elements, as well as the difficulties, challenges and activities involved.

Representative surveys in 2019 and 2020 – drafting the questionnaire

A questionnaire drafted during the exploratory survey phase will serve as the basis for enterprises to provide information in the representative surveys in 2019 and 2020. In order to define the attributes of the requirements (formerly known as the "evaluation criteria"), the **NAP core elements were first analysed**. In addition to the German definitions of the NAP requirements, the definitions of the requirements in the UN guidelines were analysed, compared and listed. The various requirements were then grouped as **attributes**. The next step was to **translate** the individual NAP requirements into **specific questions**. Drafting the questions also involved defining **response categories**.

During the interviews with selected stakeholders, the design of the questionnaire for the survey phases in 2019 and 2020 was discussed in terms of its user friendliness, the structure of the questions, the contents and the interviewees' views on the level of implementation. The draft was then revised on the basis of these responses to make it easier to understand and more positive as regards the language used and to provide more open-ended answer options (by allowing respondents to write their own answers).

In order to improve the questionnaire, the first draft was presented to others involved (including the Interministerial Committee on Business and Human Rights, the selected enterprises from the exploratory survey and the members of the Business and Human Rights Working Group). All comments and remarks were discussed in the consortium and a second draft of the questionnaire was produced on this basis.

Representative surveys in 2019 and 2020 – monitoring evaluation system

An evaluation system presented in the inception report defined a specific risk assessment, as well as the implementation levels resulting from it for enterprises primarily on the basis of structural attributes such as size, sector and position in the supply chain. The consortium has ascertained that enterprises' risk disposition (which is based on these attributes) plays a crucial role in their approach to human rights due diligence. Accordingly, the revised evaluation methodology is largely based on the assessment of the enterprise-specific risk analysis (core element 2), which it uses as the main basis for forming evaluation clusters.

For each of the possible answers in the questionnaire, expectations were defined that an enterprise must meet in order to be regarded as a “complier” in the quantitative evaluation (“requirement framework”). The revised evaluation system gives enterprises the opportunity to describe the status of implementation in free-text answers. Only enterprises that have met all of the core elements or adequately explained their non-compliance (please see the comply-or-explain mechanism) are regarded as “compliers” in the overall results. There is no standardised requirement framework for all enterprises. No compensation between core elements is envisaged. The findings report will account for the group of “compliers” and “non-compliers”.

A further group of “enterprises with implementation plans” will be described in quantitative and qualitative terms in the report. This group comprises enterprises that have not yet implemented all NAP targets at the time of the survey, but have presented concrete plans to do so by the end of 2020. As the group of “enterprises with implementation plans” is based on prognoses, the consortium will not be able to state which of these companies are “compliers” or “non-compliers” when the final report is presented in summer 2020. The consortium will check in early 2021 whether the planned measures have been implemented and will amend the report accordingly.

The NAP expresses the expectation that all enterprises will introduce the processes described in the core elements “in a manner **commensurate with** their size, sector, and position in supply and value chains”. This is reflected in the requirement framework by the fact that many questions allow enterprises to choose from a number of different implementation options or to answer in the form of a free text. The definition of the evaluation cluster on enterprises’ individual risk disposition and the comply-or-explain mechanism also reflect the idea of “commensurate with size, sector, and position in supply and value chains”.

Representative surveys in 2019 and 2020 – comply-or-explain mechanism

If an enterprise has completed the online questionnaire (self-disclosure), its answers are checked if the requirements are not met and if the enterprise has provided an explanation for why they have not been met. As a general rule, the comply-or-explain mechanism can be used by enterprises for the entire questionnaire and is an integral part of the evaluation system. In terms of a “learning system”, the comply-or-explain mechanism will be developed further on the basis of the 2019 survey results.

Representative surveys in 2019 and 2020 – multi-stage model

Data will be gathered in four stages. In stage 1, the online questionnaire will be sent to all enterprises in the random sample. If an enterprise does not answer the questionnaire, despite being repeatedly reminded to do so by e-mail, telephone and post, it will be categorised as a non-responder. All information provided by enterprises will be checked in terms of the requirement framework for the core elements. On the basis of information available in the public domain, stage 1 will also include a structured media analysis as regards indications of possible human rights violations for all enterprises that have answered the questionnaire. The information provided on risk analysis will also be checked using scientific information on human rights aspects for specific sectors. During stage 2, the information provided on the core elements will be checked for plausibility. In cases where discrepancies are found as regards plausibility in stage 1 or 2, the enterprises will be asked to provide a statement on such discrepancies in stage 3. If the discrepancies are not clarified by the statement in stage 3, stage 4 will come into play. During this stage, surveys will be conducted of selected stakeholders in Germany and abroad. If a discrepancy cannot be clarified in stage 3 or 4, the requirement behind it will be regarded as not having been met.

Collecting and evaluating statistical data

In order to evaluate the review threshold (50%) for the implementation status of the NAP core elements, the Federal Government has adopted a procedure in which a sample is taken from a pool of enterprises and the analysis of this sample is used to derive information on the implementation status of this pool. A confidence level of 95 percent and a confidence interval of 5 percent were stipulated so that a representative statement could be made.

The results are analysed in a multi-stage process using statistical methods. The first step is to define the pool of enterprises, followed by the random sample size. The consortium is using the company database Bisnode for this definition.

Should statistically significant selection bias be perceived during the evaluation, the Interministerial Committee on Business and Human Rights will discuss this and decide whether and with which processes this bias should be corrected during the survey in 2020.

The findings are illustrated by graphs and charts. The data collected will be evaluated in terms of various parameters and individual core elements, features and questions regarding the different levels of implementation. The role of the comply-or-explain mechanism in meeting the NAP targets can also be shown. Furthermore, the findings report will highlight the group of “enterprises on the right track”. This group has not implemented all the NAP targets in full, but its overall approach can be seen as good practice and it is thus well on the way to compliance.

The interim report (including the annexes) was presented to internal and external quality assurance for review and comments.