

Newsletter

Business and human rights



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Editorial

Addressing the impact of COVID-19 is a key focus of international institutions, governments, companies and many other actors. There are many human rights facets to the pandemic. Health is obviously one.



Individual companies have developed measures and protocols to protect the health of their workers, particularly now, in times where in many countries' restrictions are loosening up and firms are starting to go back to work.

The employment and economic impact of the crisis is disastrous, threatening the livelihoods of many millions of people who do not have access to proper social protection, undermining their right to employment, life and food. We are told by the United Nations World Food Programme Executive Director that we are facing hunger levels of historical biblical proportions, with almost double the acute hunger levels by the end of 2020 at more than a quarter billion people.

The IOE together with ITUC a few weeks ago made a call to arms for a global fund with institutions such as the IMF, the World Bank and others collaborating and offering favourable terms to countries, especially developing ones. The IOE and ITUC and IndustriALL, international brands and retailers as well as the ILO also launched a joint call for action to address the impacts in the garment supply. It is an effort to mobilize collective action to support manufacturers to survive the economic disruption caused by the Covid-19 pandemic and to protect garment workers' income, health and employment.

The IOE also approached the extraordinary G20 Labour Ministers meeting to call on G20 countries to support business continuity through access to finance as well as the development of social protection alongside the DG of the ILO. I myself made the call on behalf of the IOE, to the AU Ministers of Labour to do the same and concomitantly save jobs. The human rights impact of the pandemic goes even much further. I just want to mention here issues such as data protection and risks linked to surveillance technology as well as increased discrimination and xenophobia.

In a very well attended and successful IOE webinar on 29 April, with an amazing line-up of participants, namely, John Morrison, CEO of IHRB, Linda Kromjong, David Vermijs and in which the UN High Commissioner for Human Rights, Michelle Bachelet was keynote speaker, we identified the human rights risks caused by the pandemic, highlighted possible action business can take to address these risks as well as shared best practice. The participants appreciated the importance of sharing experience and best practice to support companies in their efforts to implement their responsibility to respect human rights in the context of COVID-19. The IOE will continue to facilitate these exchanges.

However, despite COVID-19, our "normal" agenda also continues. In this newsletter you will find reports about new initiatives from ISO, the EU and other actors, which call for our immediate attention. The IOE Secretariat will continue to follow these different initiatives closely. We count on you to support us in our engagement in this regard.

Stay Safe! Stay connected with us!

Mthunzi Mdwaba – Chair of the IOE RBC and Human Rights Policy Working Group

Revision of ISO 26000 and the establishment of an ISO Technical Committee on Social Responsibility is up for vote

Matthias Thorns, Deputy Secretary-General

The French Standardisation Organisation AFNOR has launched a proposal at the International Standardisation Organisation (ISO)

- to update ISO 26000 (the ISO standard on responsible business conduct)
- to establish a new ISO Technical Committee on Social Responsibility
 - to develop ISO standards taking into account the size and the global performance of organisations, based on ISO 26000 chapter 7 “Guidance on integrating social responsibility throughout an organization”.
 - to develop standards on specific issues (e.g. education and culture, community involvement) and tools (e.g. materiality matrix, stakeholders matrix) taking into account the size and sectors of the organisations

Background

The ISO 26000 Guidance on Social Responsibility was released on 1 November 2010. The ISO 26000 is not a management system standard, nor is it intended or appropriate for certification purposes or for regulatory or contractual use. The scope of ISO 26000 is to give guidance on the underlying principles of social responsibility, recognizing social responsibility and engaging stakeholders (the core subjects and issues pertaining to social responsibility) and on ways to integrate socially responsible behaviour into the organisation. A systematic review of ISO 26000 is taking place every three years, last time in 2017, to establish whether ISO 26000 is UpToDate or needs to be revised. The next systematic review would have been foreseen for October 2020.



What is the IOE position on an update of ISO26000 and the establishment of a Technical Committee?

Despite difficulties, particularly with regard to the misuse of ISO 26000 for certification, the length and complexity of the standard and the fact that the guidance is clearly oriented towards larger organisations, the IOE believes that ISO 26000 has the added value of guiding

all kinds of organisation in their social responsibility. Any revision of ISO 26000 would break the hard-won consensus and greatly jeopardise its standing and impact. The danger would be to re-start a new years-long and bureaucratic process with limited leverage of business and which would most like bring highly controversial requirements for companies into the standard as well as turning ISO 26000 potentially into a certifiable standard.

Even more concerning is the establishment of a Technical Committee (TC) on Social Responsibility to develop all kind of related ISO standards on responsible (business) conduct. The establishment of such a TC will result in a multitude of ISO standards linked to supply chain management, due diligence, reporting with highly controversial provisions, which will not make a positive contribution to the field of human and labour rights and, instead, it risks creating divergence with existing standards and absorbing resources away from current implementation efforts.

Joint position of IOE and ITUC on the AFNOR Proposal

The IOE together with the International Trade Union Confederation (ITUC) has launched a joint statement against the AFNOR proposal, arguing that:

- There is the danger that this proposed Technical Committee would undermine and create divergence of universally accepted and carefully negotiated standards on human and labour issues. Existing standards on human and labour rights have been developed by Governments, in consultation with stakeholders, including trade unions and employers, over a number of years and continue to be developed in areas where there are gaps.
- There is real concern that this proposal would result in the privatisation of social standards. The competence and responsibility for standard setting on human and labour rights, including responsible business conduct, at the international level lies within the ILO and the UN. Authoritative international standards and guidelines – including the UN Guiding Principles on Business and Human Rights, ILO Conventions, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises – have been carefully developed, in multi-stakeholder processes, and the guidance tools are publicly-available at no cost. Whereas, ISO standards are subject to copyright protections and must be purchased.
- From an organisational perspective, while ISO convenes small expert groups to address discrete technical issues, its model and membership is not appropriate for addressing larger social issues, including on human rights that require truly representative processes



A powerful
and balanced
voice for business



ILO DG Guy Ryder has written to ISO Leadership to reject the ISO proposal.

In his letter to ISO SG Sergio Mujica, ILO DG Guy Ryder expressed concerns of the ILO that the revision of ISO risks upending the existing global consensus achieved in the ISO 26000 process. Furthermore, unnecessary changes and additions will likely introduce inconsistencies with other instruments as well as country-level regulatory and policy frameworks. Additionally, the proposal to develop an “ISO 26000 series”, if accepted, is expected to follow the regular ISO committee model of establishing a Project Committee (PC), which does not permit effective participation of representative organizations. Under the operating rules, only ISO NSBs can be TC or PC members, thus excluding full and equal representation and participation of the wide range of stakeholders in fields covered under SR that are vital to the legitimacy of instruments and guidance in this area.

Next steps

The AFNOR proposal has been sent out for vote to all ISO member organisations (the national standardisation bodies). The deadline for the vote is 15 July. The ISO decision making body, the ISO TMB, will take a decision on the proposal, based on the vote, in September.

IOE is in contact with a broad range of like-minded stakeholders to create a broad coalition against the AFNOR proposal. A letter by ILO DG Guy Ryder to ISO leadership, warning against the proposal has been sent out.

Suggested action by IOE members

The IOE strongly recommends that each member contact its national standards body ASAP to start the advocacy work that ISO 26000 should not be revised and that no Technical Committee on Social Responsibility should be created. The current guidance is still valid and does not need a wholesale revision. The AFNOR proposal should be rejected.

Recent developments at the OECD on responsible business conduct

Hanni Rosenbaum, Deputy Secretary-General Business at OECD (BIAC)

In line with the overarching focus of the Organization, OECD efforts in relation to responsible business conduct (RBC) currently focus on the implications for RBC in light of the Covid-19 crisis.

The OECD recently published a [policy note](#) outlining recommendations on how businesses and governments can integrate RBC considerations into their immediate crisis responses as well as their longer-term strategies. The note is part of a continuously expanding series of policy briefs on a wide range of policy areas on the [OECD Covid-19 hub](#).

Business remains fully committed to RBC as highlighted

in the OECD Guidelines for Multinational Enterprises (MNE Guidelines), the most comprehensive international instrument for responsible business conduct, which covers all major areas of business ethics ([see our business brochure](#)).



Many companies have taken proactive measures and are addressing these unprecedented challenges in a forward-looking manner. At the same time, expectations on companies must remain realistic, and RBC must be considered in line with efforts to bring business back on track. While many companies are subject to enormous pressures, we call upon policy makers to refrain from introducing additional layers of complexities, and work in partnership, keeping in mind the broader policy challenges and business realities.

Covid-19 has been also be the topic of the first part of the 2020 OECD Global Forum on Responsible Business Conduct on 19 May, which this year has been held virtually. The second part of the OECD Global Forum will take place on 17 June and will commemorate the 20th anniversary of the National Contact Point (NCP) system with a special focus on the broader remedy/accountability landscape.

NCPs are established by adhering governments to promote the MNE Guidelines and handle so-called “specific instances” as a non-judicial grievance mechanism. It is expected that NCPs will be given increased attention going forward as they may face specific instances arising in the context of Covid-19, an issue which business will need to carefully watch.

In the context of the MNE Guidelines, the OECD has over the last years developed a number of due diligence guidance documents. Work on the implementation of the various guidances remains high on the OECD agenda. Following the release of the latest report for the financial sector on [Due Diligence for Responsible Corporate Lending and Securities Underwriting](#), the OECD is currently engaged in new work on RBC in the context of project and asset finance.

More broadly, the OECD RBC Center has embarked on an increasingly horizontal approach to the RBC agenda. This includes, for instance, a project on the nexus between public procurement and RBC, work on RBC and the environment, discussions on the link between digitalization and RBC, and analysis on the inclusion of RBC in investment treaties, on which we submitted detailed [comments](#).

Important new developments at EU level

Rebekah Smith, Deputy Director Social Affairs, BusinessEurope

After proposing an ambitious work programme at the start of its mandate, the European Commission is now reviewing its priorities, in view of the current COVID-19 situation.

- BusinessEurope is actively engaging with the EU institutions, calling for all efforts to be mobilized to deal with the current emergency, to properly prepare the exit and recovery, and highlighting the priorities of the business community therein.



Whilst COVID-19 and the economic and social implications of it are naturally the focus, there are also ongoing workstreams in the areas of non-financial reporting, sustainable finance, due diligence and directors' duties, and human rights. It remains to be seen what impact COVID-19 will have on the timing and content of initiatives, but it is clear that they remain firmly on the table.

The Commission's work on sustainable finance and non-financial reporting come under the framework of the 'European Green Deal – the Commission's roadmap for making the EU's economy sustainable.' The Commission recently published a [public consultation](#) on a renewed sustainable finance strategy (deadline 15 July), covering a wide range of topics including green investment, company reporting and transparency, sustainability ratings and corporate governance. This follows on from the agreement at the end of 2019 on the EU taxonomy regulation, which aims to give companies and investors a common framework for assessing whether economic activities are environmentally sustainable. The key issue here for the business community is to ensure that all activities that enable or contribute to reaching EU long-term climate and sustainability goals are eligible under the taxonomy and to avoid activities being 'brown-listed', thereby hampering investment opportunities for companies and their access to finance.

Another big concern for the business community is also a last-minute deal, to require in the new regulation an extra reporting requirement for companies based on the taxonomy. This comes on top of the existing reporting requirements in the 2014 non-financial reporting directive, likely to cause duplication as well as confusion. And this comes right at the moment when the Commission is also embarking on a review and probably revision of the non-financial reporting directive itself. Following an assessment of the directive, the Commission has concluded that it has a number of weaknesses – lack of comparability between companies, inadequate information for investors, lack of external verification of the non-financial statements etc. It is likely that a revision of the directive will follow towards the end of this year or early 2021, probably providing more prescriptive requirements for companies either in the directive or by way of separate EU 'standards'. The business community has strong concerns that the directive will be less flexible, thereby not allowing companies to tailor their non-financial reporting to their specific situation and stakeholders.

The Commission is also pursuing action on due diligence through the supply chain, encouraged by the European Parliament and numerous stakeholders to come up with an EU level mandatory due diligence framework. A number of options are on the table and whilst no decisions have been taken yet, there is criticism among some policy-makers of voluntary due diligence actions and a clear political momentum towards a binding due diligence or duty of care requirement for companies across sectors of the economy. The Commission is planning on launching a separate public consultation on this. The timing of a possible legislative initiative is unclear, however, action is expected at the latest in 2021. It seems that the focus would

not only be on human rights, but also on environmental and climate actions, where we see a clear link to the overall 'Green agenda' of the Commission. This is also likely to be a high priority on the agenda in the upcoming German Presidency. The European Commission recently confirmed aside from due diligence there is also a (linked) work stream on directors' duties and liability.

The results of a study conducted on behalf of the Commission reviewing various policy options related to due diligence (no action - voluntary guidelines – new reporting requirements – mandatory requirements) were published in February. Whilst positively recognizing the importance of the UN Guiding Principles on Business and Human Rights, as well as referring to the OECD Guidelines for MNEs and the ILO tripartite declaration of principles for MNEs, the study is overly critical of existing due diligence practices, in particular their coverage of 'first tier suppliers only'. Aside from general concerns on a mandatory due diligence requirement, including high burdens on SMEs, a key aspect for the business community going forward will be how far requirements apply throughout the supply chain, knowing that meeting requirements related to first tier suppliers is already extremely complicated. Another key concern will be whether sanctions or other enforcement mechanisms are foreseen.

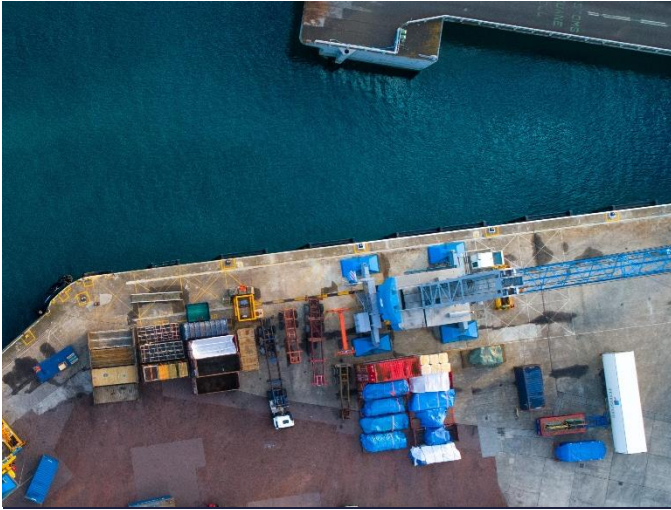
Linked to the next steps on due diligence, but more broadly, on 25 March, the Commission published its EU Action Plan on Human Rights 2020-2024. Positively, the Commission identifies a strong role for EU delegations in third countries, including more training so they can step up their work on business and human rights – a key point the business community has made previously. It also calls for work to take place in the existing frameworks of the UN and the ILO. Furthermore, engagement with business should support them in their actions to uphold human rights, as well as promoting good practices on CSR and due diligence. And the focus regarding promotion of human rights due diligence in supply chains is on supporting partnerships and labour rights in trade relations. This is somewhat in contrast to the political discourse criticizing voluntary actions and calling for binding legislation. This being said, the action plan identifies the need to develop an EU human rights due diligence policy in the context of missions in the framework of the EU Common Security and Defence Policy, as well as a new horizontal EU global human rights sanctions regime to tackle serious human rights violations and abuses worldwide. Whilst no detail is provided in the action plan, this could play into discussions on a possible mandatory due diligence framework.

An important procedural point: the Commission is proposing for the European Council to deal with aspects of the Action Plan on human rights by qualified majority voting. This would allow the EU to speak in the UN Human Rights Council and Inter-Governmental Working Group also in situations where the EU does not have the required unanimity.

In conclusion, with so many issues on the agenda linking the EU and the international level, cooperation between the EU and international business community remains crucial. And BusinessEurope remains committed to working closely with the IOE on these important topics!

New Developments with regards to Access to Remedy

Brian W. Burkett, FASKEN



In December of 2019, following years of consultation and drafting led by a team of experts, the Hague Rules on Business and Human Rights Arbitration (“Hague Rules”) were officially launched at a ceremony in the Hague.

After the pandemic has been brought under control, sometime in the months ahead, and national economies have resumed, the debate around the shape and substance of economic globalization will revive in full force. It is predictable that the debate around a proper balance between economic development and social progress, both within nations and on the international stage, will dominate world discourse for years to come with an even greater intensity and urgency than we experienced in the recent past.

Existing international instruments like the UN Guiding Principles on Business and Human Rights (the “UNGP”) (2011) will no doubt remain central to the post-Covid-19 debate. Within the UNGP, the Access to Remedy pillar (Pillar No. 3) will draw even greater attention in the stressed and fragile post-Covid-19 world.

The Access to Remedy debate will unfold against the backdrop of a number of initiatives, some completed and others still in progress, that are in furtherance of the Access to Remedy pillar of the UNGP.

In December of 2019, following years of consultation and drafting led by a team of experts, the Hague Rules on Business and Human Rights Arbitration (“Hague Rules”) were officially launched at a ceremony in the Hague. The Hague Rules provide a set of procedures for the arbitration of otherwise unresolved disputes related to the impact of business activities on human rights. The Hague Rules, specifically designed to apply to human rights disputes, are noteworthy for their consensual and comprehensive nature.

As of 2020, the Hague Rules are on offer to corporations, trade union representatives and workers, alike, as a means of conflict resolution in matters pertaining to human rights.

Meanwhile, important related work around Access to Remedy is underway at the influential American Bar Association (the Centre for Human Rights and Business Law section of the ABA) to develop a variation to the detailed arbitration system contained in the recently released Hague Rules and, on a separate path, to assist in the contractual design of a global supply chain with proper consideration to human rights and arbitration matters within the supply chain.

This article is pointing the reader in a certain direction. The direction is this: The considerable attention to business and human rights during the first two decades of this century is guaranteed to intensify in our post-Covid-19 world as we seek to recover from the catastrophic socio-economic consequences of the pandemic.

Updates from the ILO Global Business Network on Forced Labour

Laura Greene, Programme Technical Officer at ILO Global Business Network on Forced Labour

IOE continues to engage with and guide the activities of the ILO's Global Business Network on Forced Labour (GBNFL). For an overview of the network's purpose and aims, look at this [short video](#).

Recent updates from the network:

- In 2020, network members and partners, as well as the Secretariat, are focussing their advocacy and capacity building efforts on Alliance 8.7 Pathfinder Countries. ILO GBNFL will mobilize business communities at national, sub-national and local level to present key decision-makers with credible solutions to forced labour and work with employer and business membership organizations to build capacity.
- On the 12th of March 2020, ILO GBNFL Members and Partners joined a network webinar on the ILO's 11 operational indicators of forced labour. The ILO's Technical Specialist on Forced Labour, presented the indicators and gave practical examples of how they can be applied. More information on the indicators as well as the webinar recording can be found on [fbusiness.network/resources](https://business.network/resources).
- A new [ILO GBNFL briefing note](#) sets out why small- and medium-sized enterprises (SMEs) are critical stakeholders in working towards the eradication of forced labour and calls for a more inclusive approach on responsible business conduct.
- An overview of activities since the network was launched in 2018 can be found in its [annual report](#).

For further information, contact Laura Greene on fl-businessnetwork@ilo.org or greenel@ilo.org.

For an updated list of members and further updates on the network visit [fbusiness.network](https://business.network). Connect on [LinkedIn](#), and follow the network on Twitter @ILOFLNetwork.

Upcoming webinar hosted by the ILO Global Business Network on Forced Labour: An inclusive approach to eradicating forced labour in the better normal

Join the International Labour Organization's Global Business Network on Forced Labour for a webinar, An Inclusive Approach to Eradicating Forced Labour in the Better Normal, on Friday 29th of May 2020 at 14:30-15:30 CET.

Guy Ryder, Director-General, ILO will introduce the topic and Emmanuel Faber, Chairman and CEO, Danone, and CEO Sponsor, Consumer Goods Forum Human Rights Coalition - Working to End Forced Labour will focus on the role of companies. Following this, expert panellists will discuss and answer your questions on emerging forced labour risks. They will also discuss challenges for smaller businesses and necessary support in the medium- to long-term.

DATE: Friday, 29 May 2020

TIME: 14:30 – 15:30 CET

REGISTRATION: <https://forms.gle/hLE18PMmSC1WUZmK6>

MORE INFORMATION: visit <https://fbusiness.network/upcoming-webinar/> or contact fl-businessnetwork@ilo.org

Work on a binding UN Treaty on Business and Human Rights continues



In June 2014 the UN Human Rights Council established an open-ended intergovernmental working group (IGWG) on transnational corporations and other business enterprises with respect to human rights, to elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises.

After the IGWG negotiated in its fifth session in October 2019 a revised draft treaty, in which the IOE represented the voice of business, the work on the treaty continues. IOE held at the beginning of May an online meeting with the chair of the IGWG, his Excellency Mr Emilio Rafael Izquierdo Miño, Ambassador and Permanent Representative Ecuador to the United Nations Office in Geneva, to discuss key concerns of business in the treaty process, such as the scope of the instrument as well as questions related to jurisdiction and liability. Ecuador is revising at the moment the text and will present a new version of the draft treaty at the end of June. IOE will continue to represent business in the ongoing work.

Developments in Canada

Derrick Hynes, CEC Board Member

Brian W. Burkett, CEC Executive Director and Board Member



Canada, and the members of the CEC, are currently living through a shared experience with the rest of the world. There is a universal strategy unfolding to, first, control Covid-19 and, second, to reboot national economies in a manner that does not reactivate the pandemic.

- The work of the CEC continues through this public health crisis with heightened attention on the shape and substance of economic globalization and the world of work post-Covid-19 (in both its pre-vaccine and post-vaccine phases).

There seems to be little doubt that a consequence of the pandemic will be an intensification of efforts, on so many different fronts, to achieve a better balance between economic development and social progress in the new world that will emerge post-Covid-19. History teaches us that socio-economic reform always, without fail, follows on the heels of a world crisis. We change.

The CEC, for its part, finds itself fortuitously in the middle of a major Project funded by the Canadian Government to identify and report on the views and perspectives of the Canadian business community on international developments in the world of work emanating from a multitude of sources: supranational organizations, like the ILO; national governments; courts and civil society.

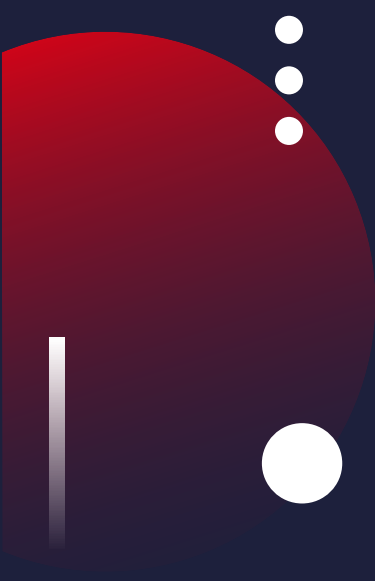
The CEC, in the execution of the Project, has reached out to the IOE (Roberto Suárez Santos, Secretary-General, and Matthias Thorns, Deputy Secretary-General) and a number of individual IOE member employer organizations (the Confederation of German Employers' Associations; the Mouvement des Entreprises de France (MEDEF); the Confederation of Danish Employers, DA; the Irish Business and Employers Confederation

and BusinessNZ) to obtain an international perspective for inclusion in the Final Report to the Canadian Government. The CEC is indebted to the IOE and various employer member organizations for their invaluable assistance and advice.

In the coming months, the CEC will be holding a series of (virtual) Business Roundtables. The timing is such that the CEC will be able to incorporate into the Final Report to the Canadian Government in the Fall of 2020 the emerging view of the Canadian business community on the direction of economic globalization, in union with social progress, in our post-Covid-19 world.

Recent developments on National Action Plans – Germany

Paul Noll, Deputy Director European and International Affairs, Confederation of German Employers (BDA)



The German government is carrying out a review of company compliance with its National Action Plan on Business and human rights.

The NAP was adopted in 2016 and sets out the expectation for at least 50% of German companies with more than 500 employees to have introduced the human rights due diligence elements into their business processes by 2020.

According to its coalition agreement on implementing the NAP, the government has committed to take legal action on national and European level if this target is not reached.

To analyse compliance with the NAP and the need for regulation, a monitoring survey has been set up for 2019 and 2020 carried out by Ernst & Young Consulting Group (EY), Systain Consulting, Adelphi consult and focusright on behalf of the government. The results of the first monitoring round have been published in January 2020 and showed that between 17 and 19 percent of companies were adequately meeting the NAP requirements on human rights due diligence (“compliers”). EY identified a further 9 to 11 percent, which are not yet meeting the requirements but are all in all working to high standards with good practices (“companies on the right track”), and between 2 and 3% of the companies had implemented concrete transformation plans.

On 2 March 2020, the second and final monitoring survey was launched. Of the 7400 companies in the focus of NAP monitoring, 2200 enterprises have been asked to complete the questionnaire. Due to the difficult situation for many companies in Germany and worldwide as well as the special challenges for their resources caused by the COVID-19 pandemic the timeframe for the survey has been prolonged until 29 May 2020.

BDA alongside with other leading business organisations have stressed that no proper stakeholder consultation prior to the launch of the second survey has been carried out. Furthermore, the deficiencies with the first survey’s criteria and measurement methods have been repeated in the second survey. The survey does not correspond 1:1 to the requirements set out in the NAP. Moreover, if only one out of over 30 questions

of the survey is answered uncompleted, then the company is automatically classified as noncompliant at all, although all the other criteria have been fulfilled. A compliance rate of 95% is not sufficient to pass the test. Nevertheless, the final results are to be published in summer 2020 meaning the German government will subsequently be able to discuss and possibly adopt potential follow-up measures before the end of the legislative term in autumn 2021.

Upcoming events

9 – 11 June	United Nations Virtual Forum on Business and Human Rights: New Challenges. New Approaches. Asia and the Pacific
17 June	OECD Forum on Responsible Business Conduct
8 – 9 September	Regional Human Rights Consultation Latin America, Panama
26 – 30 October	6th Session of the Intergovernmental Working Group on a binding Treaty on business and human rights, Geneva
16 – 18 November	UN Forum on Business and Human Rights, Geneva