



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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**Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

REFERENCE: SPB/SHD/MCS/ff

**QUESTIONNAIRE FOR STATES: NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS**

States are invited to complete this questionnaire in order to provide the UN Working Group on the issue of human rights and transnational corporations and other business enterprises with key background information to help it to undertake its mandate.

The Working Group was established by the Human Rights Council pursuant to its resolution 17/4 in 2011. The Human Rights Council requested the Working Group, among other things, to promote the effective and comprehensive dissemination and implementation of the “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”; to identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles; and to support capacity-building and, upon request, provide advice and recommendations.

The Guiding Principles on Business and Human Rights were unanimously endorsed by the Human Rights Council in 2011 (A/HRC/RES/17/4) and have become the authoritative global reference point for preventing and addressing adverse impacts on human rights arising from business-related activity.

This questionnaire is aimed at getting up-to-date and accurate information about existing policies, legislation, initiatives and plans by States to inform the Working Group’s effort to develop guidance to support the development of national action plans for implementation of the Guiding Principles. The policy areas highlighted in this questionnaire are among those that the Working Group considers especially critical to effective implementation of the Guiding Principles.

The Working Group kindly requests that States provide their input by responding to the questionnaire to [wg-business@ohchr.org](mailto:wg-business@ohchr.org) by 30 June 2014. The Working Group will treat information received from States confidentially unless the State authorises the Working Group to share answers in public in its reports and on its website dedicated to national action plans, <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

*If the government's response is "yes" to any of the questions below, the Working Group would be grateful if further details, references or links to the relevant policy, legislation, regulation or documents could be appended, if possible.*

### **Contact information and disclosure**

1. *Please kindly include any relevant contact details in case the Working Group has follow-up questions.*

Ministère des Affaires étrangères et européennes  
Direction des Affaires politiques  
5 rue Notre-Dame  
L-2240 Luxembourg

2. *Please confirm whether the Working Group may include the government's name in the list of respondents.*

Le Luxembourg peut figurer dans la liste des gouvernements ayant remis une réponse.

3. *Please indicate whether the information submitted by the government may be referred to in public or whether it should be made anonymous.*

L'information peut être utilisée de façon publique.

### **National action plans on business and human rights**

4. *Has the government taken steps to implement the Guiding Principles on Business and Human Rights since they were endorsed unanimously by the Human Rights Council in June 2011?*

Le gouvernement envisage de développer un Plan d'action national (PAN) sur les entreprises et les droits de l'homme au cours des années à venir.

5. *Do these efforts include a plan to develop or update a State national action plan on Business and Human Rights and/or on the implementation of the UN Guiding Principles? If no, please continue to Question 6.*

- a. *If yes, and if the national action plan has been made public, please provide the links to any relevant documents.*
- b. *If yes, or if there are plans to develop a national action plan to implement the Guiding Principles, which committee, department or government agency is responsible for overseeing these efforts?*
- c. *If the Government is developing or updating a national action plan, when is this information expected to be made public?*

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### **Alignment of existing CSR frameworks with the Guiding Principles**

6. *Are there specific national Corporate Social Responsibility (CSR) policies, programmes or regulation?*
  - a. *If yes, do these documents specifically reference human rights issues and, if so, which issues are referenced?*
  - b. *Who leads on CSR policies within the Government and who is involved in developing them?*

Par l'intermédiaire du Ministère de l'Economie, le gouvernement soutient financièrement deux initiatives œuvrant en matière de « responsabilité sociale des entreprises » (RSE) :

- IMS Luxembourg et
- INDR.

L'IMS Luxembourg (Institut pour le Mouvement Sociétal)<sup>1</sup> est l'organisation qui accompagne les entreprises dans leur engagement RSE en favorisant le dialogue avec les parties prenantes (privé, public, associatif). L'IMS Luxembourg est le réseau d'échange des entreprises luxembourgeoises actives en matière de RSE. Il représente plus de 10 % de la masse salariale luxembourgeoise.

La mission de l'IMS Luxembourg est d'accompagner ses membres dans leurs démarches liées au développement durable et de leur proposer des outils (guides, fiches de bonnes pratiques, etc.), afin qu'ils puissent développer leurs politiques et réaliser leurs projets. L'IMS Luxembourg offre des solutions concrètes à travers des projets dans lesquels les entreprises peuvent s'impliquer.

Depuis sa création, l'IMS n'a cessé de croître autour de la sensibilisation des entreprises à ces enjeux. L'IMS Luxembourg est actuellement tourné vers des projets concrets de recherche-action, qui impliquent diverses parties prenantes tant aux niveaux national qu'europpéen (Ministères, PME, Grandes entreprises, associations, réseaux nationaux, collectivités...). Son objectif est de faire émerger et de diffuser des bonnes pratiques via son réseau.

L'IMS Luxembourg est le représentant national de CSR Europe pour le Luxembourg (CSR Europe est le plus important réseau d'entreprises pour la RSE en Europe. Il est constitué de plus de 80 entreprises multinationales et de 35 partenaires nationaux).

L'Institut national pour le développement durable et la responsabilité des entreprises (INDR) a été créé par l'Union des Entreprises Luxembourgeoises pour promouvoir la RSE au sein des entreprises luxembourgeoises afin qu'elles contribuent au développement durable et améliorent leur compétitivité et leur image.

7. *Do government CSR programmes, policies or regulation refer explicitly to the Guiding Principles on Business and Human Rights?*
  - a. *If yes, which ones and how are the Guiding Principles referenced?*
  - b. *If no, is the Government planning to align existing corporate social responsibility programmes, policies and regulation with the Guiding Principles?*

Actuellement, non. Il est toutefois envisageable que l'IMS Luxembourg et l'INDR se réfèrent aux Guiding Principles.

### **Reporting and corporate governance requirements**

8. *Has the Government ever put out a policy or set other expectations regarding company reporting on how they address potential and actual adverse human rights impacts as per the Guiding Principles?*
  - a. *If no, do you provide guidance on a specific sub-set of human rights issues, for example, labour or land rights? Indicate which and the specific standards companies are expected to follow.*

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<sup>1</sup> <http://www.imslux.lu/>

Le Luxembourg adhère aux lignes de conduite de l'OCDE pour les entreprises multinationales.

Au niveau de l'Union européenne (UE), le Parlement européen a adopté en séance plénière le 15 Avril 2014 la directive sur la publication d'informations extra-financières et d'informations relatives à la diversité par certaines grandes sociétés et certains groupes (« rapports non financiers »). Les entreprises concernées devront communiquer des informations sur leurs politiques, les risques, les résultats en ce qui concerne les questions environnementales, les aspects sociaux et liés au personnel, le respect des droits de l'homme, les questions de la lutte contre la corruption, et la diversité dans leur conseil d'administration.

9. *Are there any guidelines in your country to encourage business enterprises to report on their human rights risks and impacts?*

a. *If yes, how many companies typically do so?*

Il n'y a pas de lignes de conduite en dehors de celles de l'OCDE et des rapports non financiers de l'UE.

10. *Does the country have any laws that require companies to report on their human rights risks and impacts?*

Il y a lieu de se référer aux dispositions prévues par les rapports non financiers de l'UE.

11. *For all of the above, if these policies, guidelines or laws exist, do they apply to all companies or only to certain types of companies (i.e. State-owned enterprises, listed companies etc.)?*

Les dispositions prévues par les rapports non financiers de l'UE s'appliquent à certaines grandes entreprises avec plus de 500 salariés. En particulier, les grandes entités d'intérêt public avec plus de 500 salariés seront tenues de publier certaines informations extra-financières dans leur rapport de gestion.

12. *For all of the above, did the government consult with business enterprises, civil society, investors or other stakeholders in developing these policies, guidelines or laws?*

Des consultations ont eu lieu au niveau de l'UE lors de l'élaboration de la directive sur les rapports non financiers.

13. *Is commitment to respecting human rights an explicit or implied requirement at incorporation or when companies are listed in the stock exchange?*

As indicated above, it should be noted that Luxembourg joined the "OECD Guidelines for Multinational Enterprises", which establish common fundamental principles essential for building a healthy and sustainable business environment. Even if these principles are nonbinding recommendations, the aim of these guidelines is to help multinational companies to act in accordance with government policies and legitimate expectations of society in relation to human rights. It follows that these guidelines aim to help improve the foreign investment climate and to enhance the contribution to sustainable development.

Considering the listing of companies on the Luxembourg Stock Exchange, the ten governance principles of the Luxembourg Stock Exchange call the board of directors of listed companies to act in the interest of the company by taking into consideration all aspects of corporate social responsibility. These governance principles were updated in 2013 and will be regularly reviewed to take into consideration future developments in corporate governance (such as social and environmental aspects).

## Public procurement

*14. Has the government taken steps to integrate human rights considerations into public procurement frameworks and processes?*

Tout opérateur économique qui remet une offre pour un marché public organisé par l'Etat ou une collectivité locale doit être conforme aux lois et règlements applicables au Grand-Duché de Luxembourg. A titre d'exemple, le travail des enfants étant interdit au Luxembourg, il est évident qu'il ne saurait être autorisé dans le cadre d'un marché public.

Il convient de remarquer que la législation relative au travail luxembourgeois constitue une norme d'ordre public, qui doit être respectée impérativement au Luxembourg, donc même par des entreprises étrangères exécutant un marché au Grand-Duché. A côté de toutes les normes de sécurité, le salaire minimum garanti doit être versé à tous les salariés participant à l'exécution d'un marché public, que ce soit une entreprise établie au Grand-Duché de Luxembourg ou une entreprise qui n'est pas établie au Luxembourg mais qui vient uniquement exécuter des travaux au Luxembourg.

Les offres remises étant contrôlées avant l'adjudication de manière scrupuleuse, d'éventuelles atteintes aux droits de l'homme seraient ainsi repérées.

La législation sur les marchés publics permet également de prendre en considération des aspects sociaux allant au-delà du respect des droits de l'homme.

En ce qui concerne la phase de l'exécution des marchés, il existe également une multitude d'instances de contrôle qui procèdent à des contrôles sur les chantiers, de sorte que d'éventuelles atteintes aux droits de l'homme seraient répertoriées, et pourraient mener à l'exclusion de l'entreprise de la participation aux marchés publics pour faute grave, voire mener à une condamnation par le juge pénal.

*15. Does the government have human rights due diligence requirements for public procurement?*

- a. If yes, please indicate in which areas (e.g. child labour, forced labour and freedom of association; gender discrimination; migrant labour; land; free, prior and informed consent), sectors or categories (e.g. privatised delivery of public services)?*

Comme indiqué ci-dessus, les offres sont analysées de manière détaillée avant l'adjudication pour vérifier si elles sont conformes aux cahiers des charges et à la législation luxembourgeoise en général. Partant, toute violation des droits de l'homme dans ces offres serait repérée, et l'offre serait rejetée. Lorsqu'une violation des droits de l'homme surgit lors de l'exécution du marché, le marché sera résilié pour faute grave et l'entreprise en cause pourra être exclue de la participation aux marchés publics.

## Publicly owned or controlled enterprises

*16. Are State-owned enterprises required to report on human rights risks and/or impacts?*

- a. If yes, what issues are these enterprises required to report on?*

Il y a lieu de se référer aux lignes de conduite de l'OCDE et aux rapports non financiers de l'UE. Le nombre d'entreprises dont l'Etat détient un nombre significatif de parts et qui sont actives mondialement est très réduit. Ces entreprises publient des rapports en matière de RSE. Les autres entreprises concernées sont principalement actives au Luxembourg et en Europe.

*17. Do publicly owned or controlled financial institutions (e.g. export credit agencies or development banks) have safeguard policies that refer to human rights?*

- b. If yes, do they have human rights due diligence requirements for activities or clients that benefit from financial or advisory support?*
- c. If yes, what issues or spectrum of issues are these enterprises required to report on?*

Decisions taken by financial institutions, such as export credit agencies or development banks can have significant impacts on human rights. Aside from the principles and guidelines mentioned in question 13, financial institutions are bound by their internal policies and operational documents which often refer to human rights. They are notably inspired by:

- the World Bank which addresses environmental law and social aspects of the communities and regions in which they operate in their "safeguard policies".
- the Office du Ducroire, which has established an environmental "code of ethics" for the selection of eligible projects as well as an "ethical Charter" in application of which the Ducroire asserts an accrued vigilance in the prevention of transactions involving bribery; and
- the European Investment Bank which sets out in its "Integrity Policy and Compliance Charter" the fundamental ethical principles applicable to the EIB and the EIF.

### **Companies operating abroad**

18. *Have embassies abroad received explicit instructions from the government to raise or advise on the human rights risks and impacts of businesses domiciled in its own jurisdiction that are operating abroad, as per the Guiding Principles?*

Actuellement, non.

19. *Is there any requirement for companies to report whether they have due diligence procedures (e.g. human rights impact and risk assessments) in place to address and manage human rights impacts of subsidiaries, joint ventures or other commercial interests abroad?*

Il y a lieu de se référer aux dispositions prévues par les rapports non financiers de l'UE.

### **Licensing**

20. *Do any environmental and social impact assessments that companies need to submit in order to obtain an environmental or operating license include specific questions on social and human rights impacts?*

- a. *If yes, what spectrum of issues?*
- b. *If no, why not?*

Non. Ces agréments concernent uniquement des activités sur le territoire luxembourgeois et ne prévoient pas d'étude d'impact sur les droits de l'homme.

### **Investment policy**

21. *Does the process of preparing for and negotiating international investment agreements (BITs, FTAs or Economic Partnership Agreements with investment provisions) include consultation with either:*

- a. *those government ministries/agencies/institutions (including national human rights institutions) that would be informed about the State's international human rights obligations and the Guiding Principles' pillar on the corporate responsibility to respect human rights; or*
- b. *other stakeholders who could inform the State about the relevance of human rights obligations to IIAs?*
- c. *None of the above.*

Il y a lieu de se référer aux dispositions afférentes de l'Union européenne.

22. *Is the team responsible for negotiating State-investor contracts with inward investors informed by:*
- those government ministries/agencies/institutions (including national human rights institutions) in charge of following up on the State's international human rights obligations and the Guiding Principles' pillar on the corporate responsibility to respect human rights; or*
  - potential negative human rights implications of the proposed investment, including by human rights impact assessments performed;*
  - None of the above.*

Réponse c.

23. *Is the State policy on investment informed by the Guiding Principles on Business and Human Rights in:*
- promoting inward investment?*
  - supporting "home" business enterprises to invest abroad?*

Non.

#### **Alignment of international development and assistance agencies**

24. *For donor countries: are business and human rights considerations integrated in your development assistance policies?*
- If yes, are any of the following options included (please indicate which ones, and include others if relevant): general training; training of prosecutors and judges; training of government agencies and personnel that oversee environmental and social licensing; training of small and medium enterprises; national and local multi-stakeholder dialogues; victim reparation funds; empowerment of local NGOs that monitor corporate conduct; empowerment of NGOs that work with governments and business as well as victims; documentation of cases and best practices; review and formulation of national action plans; and OECD National Contact Points.*

Actuellement, non.

#### **Alignment of development policies**

25. *Do national and local development plans reference the Guiding Principles on Business and Human Rights to identify and address potential adverse human rights impacts of government-led policies and programmes?*

Voir sous 24.

26. *Does funding from national development banks/financial institutions require recipients to conduct due diligence on human rights risks and impacts?*

Voir sous 24.

#### **Judicial remedy**

27. *Can corporations be held criminally liable for human rights abuse under the country's applicable laws? (If so, have any such cases been brought before national courts?)*

Oui, le Luxembourg connaît un système de responsabilité pénale des personnes morales. Il n'y a pas eu d'affaires.

28. *Do the country's courts permit filing cases against corporations for alleged human rights abuses that were committed abroad (criminal or civil cases)? (If so, have any such cases been brought before the courts?)*

Oui. Il n'y a pas eu d'affaires.

29. *Does the government provide assistance (financial or otherwise) to victims of alleged business-related human rights abuses who seek judicial remedy through the court system?*

Le mécanisme d'assistance judiciaire s'applique à toute personne qui remplit les critères indépendamment de quelle infraction la personne a été victime, donc a fortiori pour des violations des droits de l'Homme liées au monde des affaires.

### **Non-judicial remedy**

30. *Does the government provide support for non-judicial grievance mechanisms (e.g. OECD National Contact Points if applicable) that afford access to remedy to victims of adverse business-related human rights impacts?*

Oui, en application des lignes de conduite de l'OCDE.

- a. *If yes, are there incentives for companies to participate in non-judicial grievance mechanisms?*

Non, il n'y a pas de mesures incitatives à proprement parler.

31. *Does the national human rights institution facilitate dispute resolution, investigations or monitoring in cases of alleged business-related human rights abuse?*

Non, une telle possibilité n'est pas prévue explicitement dans le mandat d'une des institutions nationales des droits de l'homme.

32. *Are any other agencies or government departments involved in promoting or supporting dispute resolution between companies and consumers, workers or local communities?*

Non, un tel rôle revient plutôt aux organisations syndicales, aux ONG, à l'Union des consommateurs luxembourgeois, etc.

### **Multi-stakeholder initiatives**

33. *Does the government participate in one or more multi-stakeholder initiatives relevant to business and human rights?*

- a. *If yes, please enumerate.*

Actuellement, non.