

UN Working Group on Business and Human Rights

Questionnaire “The State as an economic actor: Promoting corporate respect for human rights through trade and investment promotion”

Answers by the Federal Republic of Germany

Economic Diplomacy and Trade and Investment Promotion

- 1. Do the relevant ministries that address cross border trade and investment promotion have any policy commitment to address human rights as part of their activities?**

If yes, does such a commitment include any reference of the UN Guiding Principles on Business and Human Rights and other standards for responsible business conduct (e.g. OECD Guidelines; IFC Performance Standards)?

Relevant ministries that address cross border trade and investment promotion in general are the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Finance, the Federal Foreign Office, the Federal Ministry for Economic Cooperation and Development and the Federal Ministry for Food and Agriculture.

In the German National Action Plan on Business and Human Rights (NAP), the Federal Government has committed to address business and human rights issues in the field of export credits, investment guarantees and other instruments for the promotion of external trade.

Two Interministerial Committees (members: Federal Ministry of Economic Affairs and Energy, the Federal Ministry of Finance, the Federal Foreign Office, the Federal Ministry for Economic Cooperation and Development) regularly decide on applications for export credit and investment guarantees put forward by German companies. In 2017, the two Interministerial Committees adopted schemes that aim at giving human rights more specific consideration and a higher profile in assessment procedures.

The human rights related assessment schemes of the ministries as well as of the relevant export credit and investment guarantee agencies explained hereafter include strong references to the OECD Guidelines for Multinational Enterprises, the German Sustainability Codex (“Deutscher Nachhaltigkeitskodex”), the World Bank Safeguard Policies and the IFC Performance Standards as well as to the UN Guiding Principles on Business and Human Rights.

- 2. Have relevant trade/business-oriented ministries and agencies required business to demonstrate respect for human rights / alignment with the UN Guiding Principles on Business and Human Rights as a condition of receiving government support through export credit, investment guarantees, and political risk insurance?**
If yes, please provide examples of how this requirement has been implemented.
- 3. Have such ministries or agencies involved with export promotion, required business to demonstrate commitments to human rights/ alignment with the UN Guiding Principles as a**

condition of participating in trade missions, receiving export promotion assistance, and being eligible for trade advocacy services?

If yes, please provide examples of how this has been implemented.

Questions 2 and 3 will be answered together since the issues addressed are closely linked.

The instruments of external-trade promotion in Germany provide assistance for German enterprises in accessing and safeguarding foreign markets. The range of instruments includes the provision of advice by German diplomatic and consular missions, the network of German Chambers of Commerce Abroad and the Germany Trade & Invest (GTAI) agency. The Federal Government also supports participation in trade fairs abroad, arranges visits by delegations and funds hedging instruments such as export credit guarantees, known as Hermes guarantees, to insure export transactions, federal guarantees for direct investments abroad (DIAs) and untied loan guarantees as insurance for banks against the risk of default.

The processing of export credit guarantees, DIA guarantees and untied loan guarantees is undertaken on behalf of the Federal Government by the mandated companies Euler Hermes and PwC. The decision to grant such guarantees is taken jointly in the competent Interministerial Committees by the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Finance, the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development.

Respect for human rights has long been an important component of the environmental and social due diligence for those guarantees. Following the adoption of the NAP, the federal Government has measured the existing assessment procedures against the requirements set out in the NAP and made adjustments where necessary. Particular priority has been given to measures for better identification of risks to human rights as part of the assessment process. Hence, the Federal government has ensured that human rights are now given more specific consideration and a higher profile in assessment procedures.

General remark: The application of the NAP in assessment procedures for export credit guarantees, DIA guarantees and untied loan guarantees is to be considered work in progress. The information given in this questionnaire should therefore not be seen as definite; further adjustments remain possible.

Better information and greater transparency serve to draw corporate attention, as early as during the initiation stage of projects, to the great importance attached to human rights due diligence and to the OECD Guidelines. There has been an update of the government website on Foreign Trade and Investment Promotion Scheme (www.agaportal.de): it now includes a specific section on requirements of corporate respect for human rights.

The minimum requirement for the assumption of a guarantee is compliance with the national standards of the target country. Projects with a considerable impact on human rights are subjected to a more thorough examination.

For those projects that fall within the scope of the OECD Common Approaches and for investment guarantees with far-reaching environmental, social and human rights implications, compliance with international standards such as those of the World Bank Group, particularly its sectoral Environmental, Health and Safety Guidelines and the IFC Performance Standards, is required in addition. In projects with such implications, compliance with these standards must be checked and confirmed by an independent assessor. In particular, human rights aspects like the protection of indigenous people, cultural heritage, minorities and vulnerable groups will be assessed within the scope of the due diligence. In addition, the evaluation of occupational health and safety, security, safety and health of the population, legitimacy of land acquisition and resettlement, consultation of the affected population, labor rights (freedom of association, collective bargaining, rights to free movement of workers etc.) and the existence of a grievance mechanism will be considered.

In addition, human rights due diligence reports are required to be provided in cases where there is a high probability of serious implications for human rights.

Depending on the environmental, social and human rights relevance of a given project, enterprises may have to routinely report on the progress of the project as well as on the human rights situation. If it receives information on negative impacts, the Federal Government may require remedial action. The types of actions are determined on a case-by-case basis. They are developed in close consultation with the applicant and if necessary site visits are undertaken to directly engage affected people.

Every individual or organisation can submit a complaint against an alleged violation of the OECD Guidelines by a company to the relevant National Contact Point (NCP). The German NAP stipulates that it is expected of companies which seek support through instruments of foreign trade promotion to take part in specific instance procedures brought against them before the German NCP. If this is not the case, the Federal Government reserves itself the option to exclude them from its foreign trade support. As for the participation of companies in high level trade missions, the Federal Ministry for Economic Affairs and Energy reserves the right to take into account if a company has previously refused to engage in specific instance procedures brought against it before the National Contact Point for the OECD Guidelines for Multinational Enterprises.

In addition to the Foreign Trade and Investment Promotion Scheme described above, KfW (Kreditanstalt für Wiederaufbau) Development Bank, one of the largest development banks in the world, administers Germany's official Financial Cooperation in more than 100 developing and transition countries in Africa, Asia, South and Central America, the Middle East and the Caucasus. Its priority areas of activity include poverty reduction and economic development, good governance, education and health care, and protection of the climate and the environment. The KfW subsidiary *Deutsche Investitions- und Entwicklungsgesellschaft (DEG)* supports investments by private companies (mainly SMEs) in developing and newly industrialised countries. Another KfW subsidiary, KfW IPEX-Bank, has specialized in supporting German and European businesses with project and export financing without a special focus on developing countries.

Both KfW and DEG are actively working to establish and disseminate international environmental, social and corporate governance standards in their cooperation with client companies. That includes carrying out careful environmental and social reviews and closely tracking the implementation of the action plans contractually agreed by the businesses that receive credits or loans. This task is undertaken by a team of DEG's own experienced specialists, supported by external experts. They secure that project companies safeguard human rights, offer good labour practices and that projects are implemented in an environmentally friendly manner.

Relevant benchmarks are the IFC Performance Standards – for the private sector –, the World Bank Group's Environmental, Health and Safety Guidelines, and the conventions issued by the International Labour Organization (ILO). A list of exclusions (Harmonized EDFI Exclusion List) defines the areas in which DEG does not become involved on principle.

In all its financing activities, DEG applies the IFC Performance Standards, including the relevant guidelines on "Environmental, Health and Safety" as well as the ILO standards. The IFC Performance Standards developed by the International Finance Corporation (IFC) are the most widely used assessment standard in international development financing. The standards were revised in 2012 and since then they have also included extensive human rights aspects which are embedded in all eight Performance Standards. In all its investments, DEG checks that workers' rights are observed – for instance, whether working hours and safety standards meet the requirements of the International Labour Organization (ILO).

KfW Group is a signatory to the human rights declaration initiated by the Business & Human Rights Resource Centre in 2008. This is a declaration made by companies that wish to actively uphold and protect human right in their business activities. KfW Bankengruppe - represented by DEG - has been supporter of the Extractive Industries Transparency Initiative (EITI) since April 2010.

In 2011, the UN Guiding Principles were incorporated into the strategy paper of the Federal Ministry for Economic Cooperation and Development on human rights in German development policy. This strategy is binding on the organisations that implement public development policy on behalf of the Federal Government. Contractual obligations to this effect have also been incorporated into agreements on development partnerships with the German and European private sector under the "develoPPP.de" programme.

Through the develoPPP.de programme, the German Federal Ministry for Economic Cooperation and Development (BMZ) promotes companies which invest in developing and emerging countries and which seek ways to make their entrepreneurial action more sustainable. The intention is to combine business interests and development-policy criteria. Submitted projects have to meet the development-policy criteria of the German government, like for example promoting sustainable economic development, strengthening human rights, social and environmental standards, education, food security.

In the NAP the German government has committed to reviewing all instruments of development policy relating to cooperation with business for compliance with the requirements of the UN Guiding Principles. In particular, the contractual clauses of the develoPPP.de programme are to be fleshed out to include the due diligence requirements with regard to human rights.

The Agency for Business and Economic Development of the Federal Ministry for Economic Cooperation and Development was expanded in 2015/2016. It provides advice on development-related support opportunities and information services for enterprises operating in developing and newly industrialized countries. Within the Agency for Business and Economic Development a helpdesk on business and human rights has been created. The core task of the helpdesk is to provide initial consultation on request or referral and to raise awareness of the issues involved, especially regarding corporate due diligence standards based on the requirements mentioned in the UNGP and NAP. The Agency serves enterprises and business organisations as a first stop, informing them of the Federal Government's expectations regarding corporate due diligence in respecting human rights, existing services, contacts and networks. The Agency furthermore provides advice to private sector partners in developing projects aimed at implementing social and environmental standards as well as human rights across global supply chains.

4. Do you provide any training or guidance on human rights to your trade officers who assist companies with export promotion and other forms of trade and investment support?

Training for trade officers in German embassies and consulates already includes information on the NAP and the UN Guiding principles and its expectations towards business regarding human rights due diligence. The training will be extended to enable trade officers to provide support to German companies that wish to exercise human rights due diligence in the respective host countries.

At the German export credit and investment guarantee agencies, staff members are offered classroom trainings and informational material on the National Action Plan and the related human rights aspects. Moreover, the environmental and social specialists act as internal helpdesk on any general or transaction-specific questions related to human rights. In addition, a regular dialogue takes place between staff members of the export credit and investment guarantee agencies and the German National Contact Point about relevant developments regarding the OECD Guidelines for Multinational Enterprises.

**5. If a company/business is the subject of a credible complaint by victims, relating to adverse human rights impacts, will your relevant agencies/ministries take any steps to address such issues with a company that is receiving trade and investment support?
If yes, would such complaints impact any decisions about further support for the company in the future or cause your government to withdraw trade and investment support for that company?**

6. In what way do decisions by State-run grievance mechanisms (e.g. national contact points) relating to a business link to whether a business receives trade and investment support?

Questions 5 and 6 will be answered together since the issues addressed are closely linked.

The Federal Government wishes to ensure that enterprises which avail themselves of foreign trade and investment promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP).

Reports published by the NCP, the complaints received by the NCP and certain incidents and problems related with a complaint (e.g. non participation of a company) will be taken into consideration when evaluating the eligibility of projects for export and investment guarantees.

In addition, media and NGO sources are systematically screened during the due diligence process to identify any reports on material incidents, stakeholder concerns or NGO campaigns related to the project. This search is supported by external internet-based tools, ensuring wide multi-language coverage. Applicants are also required to report any complaints in relation to the project. If any critical issues are identified, they will be verified and subjected to a deeper analysis during the further due diligence process. Consequences for export- and investment-related support are determined on a case-by-case basis.

Concerning instruments of investment support to private companies in developing and newly industrialised countries, The KfW subsidiary *Deutsche Investitions- und Entwicklungsgesellschaft* (DEG) developed an Independent Complaints Mechanism (hereafter also: the 'Mechanism' or 'ICM'). ICM aims at ensuring that individuals, groups, communities or other parties who believe to be adversely affected by a project financed or planned by DEG have the right to be heard and the right to complain.

The Mechanism provides stakeholders with a tool to seek alternative ways to resolve disputes between stakeholders and DEG's clients. At the same time the Mechanism strengthens the implementation of and adherence to DEG's own policies and procedures by providing a feed-back loop for DEG.

The Independent Complaints Mechanism consists of an Independent Expert Panel (hereafter also: the 'Panel' or 'IEP') that is supported by the DEG Complaints Office. The Independent Expert Panel consists of a group of three persons with environmental, social, legal and financial expertise. The Panel is fully independent of DEG. It decides whether a complaint is admissible, responds to the complainant, is responsible for a dispute resolution or a compliance review and reports on individual complaints. The Complaints Office is a function performed by DEG employees, which registers and acknowledges receipt of complaints, coordinates adequate fulfillment of the complaints process and provides practical support to the Panel. The Mechanism is a joint initiative with the FMO - Netherlands Development Finance Company. If complaints relating to adverse human rights impacts raised by victims hint to non-compliance with the bank's standards set out above, the complaints procedure may, as a last resort, lead to non-continuation of the financing.

Export Processing Zones and Investment Promotion

7. Are there any type of special export processing zone or special economic zone in your state?

There are no special export processing zones or special economic zones in Germany in which the domestic production is promoted by tax incentives, labor law and social welfare benefits. There are two free zones (ports) in Germany: Bremerhaven and Cuxhaven. Art. 243-249 of the Union Customs Code (UCC) compile the rules, arrangements and procedures applicable to free zones in the European Union. The Code is a single act covering the scope, definitions, basic provisions and content of Union customs law.

8. To what extent do your government entities responsible for investment promotion (e.g. for inward investment into the country) also require business to respect human rights as set out in the UN Guiding Principles?

Investors investing in Germany have to comply with the domestic law that encompasses many of the provisions also included in the UNGPs. Examples include the respect for human rights such as the right to work and for core labour standards that materialize in the Constitution (e.g. freedom of association) and in various labour regulations (limitation of working hours, prohibition of child labour, minimum wage, dismissal protection, social security).

Additional question specifically addressed to the MEMBERS OF THE OECD WORKING PARTY ON EXPORT CREDITS AND CREDIT GUARANTEES (ECG) AND THEIR PRACTITIONERS.

Are there examples of laws, regulations, policies and procedures in place for special economic zones/export processing zones that also include provisions for ensuring that businesses operating in those zones respect the human rights of workers and other people/communities who may be impacted by their activities?

If the project-level due diligence turns up human rights issues specific to special economic zones/export processing zones, special focus will be laid on these aspects during the further due diligence process.