

Translation of the Federal Foreign Office, Berlin

Monitoring of the status of implementation of the human rights due diligence of enterprises set out in the National Action Plan for Business and Human Rights 2016-2020.

Interim Report

Survey phase 2019

Summary

This summary corresponds to the introductory section of the Interim Report on the 2019 survey, which was conducted by the consortium commissioned by the Federal Foreign Office with carrying out the monitoring process (Ernst & Young Wirtschaftsprüfungsgesellschaft mbH (EY) together with the adelphi consult GmbH, Systain Consulting GmbH und focusright GmbH).

The Interim Report presents the results and the approach of the first phase of the survey from August to November 2019.

The Interim Report was released on 24 February 2020 by the Federal Foreign Office in consensus with the Interministerial Committee on Business and Human Rights.

*The full version of the Interim Report in German language is available here:
www.diplo.de/nap-monitoring*

In chapter III of the NAP¹, 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.

The status of implementation of the process in enterprises described in the NAP has been monitored since June 2018. The aim of this monitoring process is to establish whether at least 50 percent of enterprises based in Germany with over 500 employees have incorporated the core elements of human rights due diligence described in the NAP into their business processes by 2020².

The monitoring process comprises three survey phases, one each in the years 2018 (exploratory survey phase), 2019 (first representative survey phase) and 2020 (second representative survey phase). The Interim Report for 2019 describes the approach taken and the results of the representative survey phase in 2019 and also provides information on the planning for the next steps for the representative survey phase in 2020.

The methodology for data collection and evaluation (including the evaluation system) is in line with the description in the Interim Report on the exploratory phase in 2018, which was adopted by the Interministerial Committee on Business and Human Rights on 5 July 2019.³ The report stipulates that the pool of enterprises must consist of businesses that meet the above-mentioned criteria with regard to their headquarters and number of employees. The random sample from this pool of enterprises should be suitable for making representative statements with a confidence level of 95 percent.

Sampling, representativeness and randomness

At the time of the 2019 survey, the **pool of enterprises** comprised a total of **7285 businesses**. This yielded a required number of at least 363 responders in order to ensure that the results of the survey are representative for the pool of enterprises. In the representative surveys in 2019 and 2020, the consortium aims to achieve a slightly higher response rate of approximately 400 responders. For this purpose, a total of 3325 enterprises (known as a gross sample; of which 1822 enterprises in the first sampling and 1503 enterprises as part of an extension to the sample) were contacted by email, telephone and post on several occasions and asked to make a self-declaration regarding the status of implementation of human rights due diligence in their enterprises in the form of an online questionnaire. The intended response rate for the 2019 survey was achieved with **465 responders**.

The representativeness of the responders for the pool of enterprises as well as the randomness of the responders is key as regards the reliability of the results.

In order to assess the **representativeness of the responders with respect to the pool of enterprises**, the extent to which the arithmetic averages of the gross and net sample differ significantly in statistical terms was examined. Distribution by size was the predominant consideration in this regard. The examination revealed that larger enterprises (> 2000 employees) are overrepresented in the net sample while smaller ones (<1000 employees) are underrepresented. This finding was also

¹ The NAP is available as download document in English at: <https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf> or at the NAP-dedicated website of the Federal Foreign Office: www.diplo.de/business-and-human-rights.

² The five core elements according to the German NAP are (1) Human Rights Policy Statement, (2) Procedure for the Identification of Actual or Potential Adverse Impact on Human Rights, (3) Measures to Ward Off Potentially Adverse Impacts and Review of the Effectiveness of these Measures, (4) Reporting, (5) Grievance Mechanism.

³ Available at: <https://www.auswaertiges-amt.de/blob/2232418/1531aad304f1dec719954f7292ddbc05/190710-nap-zwischenbericht-data.pdf>, last accessed on 2 December 2019.

reflected in other related variables such as legal form, turnover and the type of firm of the parent company.

In addition to representativeness, **randomness (non-responder bias)** is a key factor behind the reliability of the results. As enterprises decide themselves whether or not to take part in the survey, self-selection occurs, which can lead to bias when there is a correlation between participation and implementation of the NAP. In order to test randomness, the group of responders within the gross sample is compared with the group of non-responders based on a range of characteristics for enterprises. Representativeness and compensating for bias with **observable factors** are ensured with a statistical weighting procedure. As part of the 2019 survey, the survey team also checked whether a publicly accessible human rights policy statement was available for all enterprises in the gross sample of the first survey (1822 enterprises) due to the importance of what is known as non-responder bias. The characteristic of the existence of a human rights policy statement was used to determine whether there is a bias as a result of **unobservable factors**. In the current case, it was observed that the proportion of enterprises with a policy statement among responders was far higher than the proportion among non-responders. We can therefore conclude from this that the majority of enterprises that took part in the survey have made a public declaration of their commitment to upholding human rights and that these enterprises have already paid close attention to the NAP's human rights due diligence requirements. This is a clear indication of bias due to unobservable factors. This bias cannot be resolved with statistical methods since it cannot be precisely measured. This factor must be taken into consideration in the interpretation and discussion of the 2019 survey results.

Survey methodology

The core instrument of this survey is a self-disclosure by the enterprises regarding the status of implementation of human rights due diligence in the form of an online questionnaire. This was developed during the exploratory survey phase in 2018 with the involvement of more than 30 enterprises and various stakeholders.

The data was gathered in four stages. In stage 1, the online survey was completed and supplemented by a media analysis and research into human rights issues typical of the industry in order to check the plausibility of the information provided. In stage 2, the information provided was examined for internal and external discrepancies. Internal discrepancies were logical deviations between two or more questions. External discrepancies could arise if the information in the self-disclosure deviated from the publicly accessible information about the enterprises (e.g. in policy statements or on the basis of the media analysis). In the case of discrepancies and in the event the enterprises in question provided contact information, they were contacted in stage 3 in order to clarify this. The original intention was for any remaining discrepancies to be clarified conclusively in stage 4 by interviewing further stakeholders. As it was possible to clarify all discrepancies relevant to the evaluation in stage 3 in discussions with the enterprises, stage 4 was not applied in the 2019 survey.

The questionnaire was designed flexibly in many places for the purpose of processing by the enterprises. The NAP envisages that enterprises can state if they have not implemented specific requirements of the NAP. This **“comply-or-explain mechanism”** was a constituent part of the questionnaire and evaluation system and was used by the majority of enterprises in the survey phase in 2019. In addition, the enterprises had the opportunity to provide free-text answers to almost all questions and to explain their approach in writing. This information was also taken into account in the evaluation.

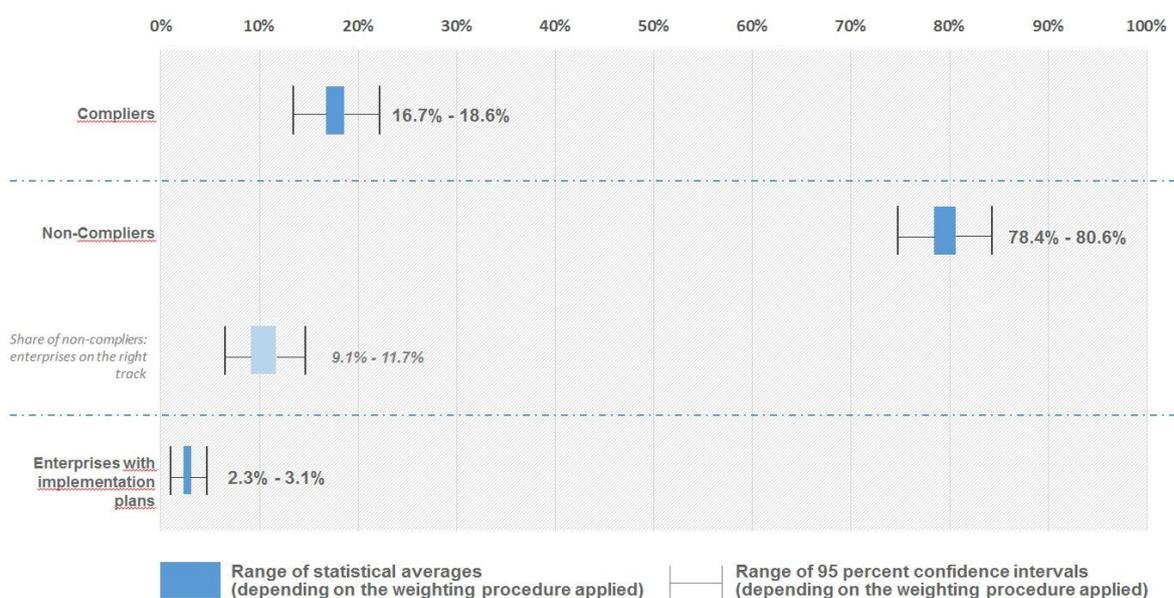
An evaluation system was developed in order to ascertain whether 50 percent of enterprises have implemented the NAP adequately. This system was adopted by the Interministerial Committee on Business and Human Rights on 5 July 2019. In particular, for each of the possible answers in the questionnaire, expectations were defined that an enterprise must meet in order to be regarded as a “complier” in the quantitative evaluation (“requirement framework”). 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.

In the final evaluation, the evaluation system divides the enterprises into “compliers” and “non-compliers”, depending on the status of implementation of the NAP. In addition, a group entitled “enterprises with implementation plans” is featured that comprises enterprises which, while they have not yet implemented all NAP requirements at the time of the survey, have presented concrete plans to do so by the end of 2020. “Enterprises on the right track” are also shown separately within the “non-compliers group”. These enterprises have not implemented all the NAP core elements in full, but their overall approach can be seen as good practice and they are thus well on the way to achieving compliance. Until the presentation of the final report in the summer of 2020, the Interministerial Committee on Business and Human Rights may decide to evaluate these enterprises differently.

The evaluation of the enterprises was initially carried out at the level of individual questions and comprised the four-stage procedure set out above. An allocation to one of the evaluation clusters was then made on the basis of the results of the individual evaluations.

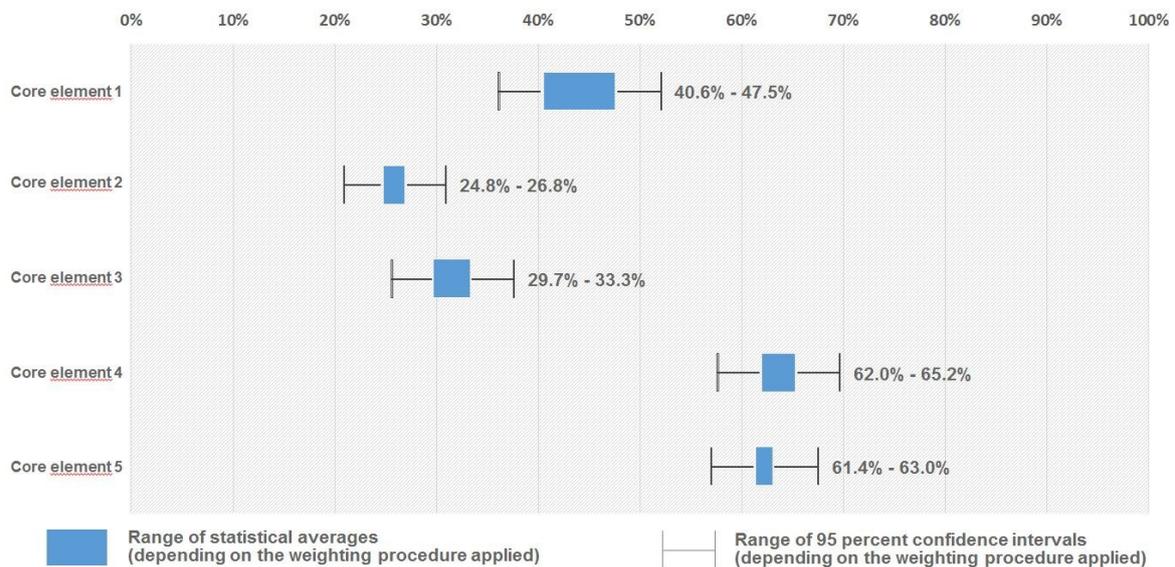
Results of the representative survey in 2019

On the basis of the results of the evaluations and the application of the statistical weighting procedures described above, **17 to 19 percent of the enterprises are considered to be “compliers”** while 78 to 81 percent of the enterprises are deemed to be “non-compliers”. Within the group of “non-compliers”, 9 to 12 percent of the pool of enterprises are “enterprises on the right track” towards fulfilling the NAP. Furthermore, two to three percent are “enterprises with implementation plans”.



With respect to the objective of the monitoring process, it was shown that, in 2019, less than 50 percent of enterprises based in Germany and employing over 500 staff have integrated the core elements of human rights due diligence described in the NAP into their business processes by 2020. Statements regarding the status of implementation in 2020 cannot be extrapolated from this.

With regard to the core elements, it can be extrapolated from the responses that enterprises face major challenges, particularly in setting up and implementing a procedure to “identify, to prevent or to mitigate potentially adverse effects of corporate activity on human rights” (known as risk analysis) and in implementing appropriate measures to “ward off potentially adverse impacts” (see NAP, p. 8). This can be seen from the fact that some enterprises have stated that they do not have a risk analysis or measures based on such an analysis. Moreover, it is striking that some of the enterprises have limited their consideration of human rights risks to only selected areas of the value chain (e.g. their own enterprise) without sufficient justification. In contrast, the NAP gives expression to the requirement that human rights impacts be considered across the value chain. Overall, when examining the results in detail according to core elements, it must be taken into account that some of the requirements stemmed from the enterprises’ risk disposition – i.e. from the specification of the human rights risks relevant to the enterprise in the questionnaire for core element 2. Since the risk analysis required for this was not available in the majority of cases or did not meet the NAP requirements (low degree of compliance in core element 2), a sound assessment of these enterprises in core elements 3, 4 and 5 was only possible to a limited extent.



Core element 1: Human Rights Policy Statement

Core element 2: Procedure for the Identification of Actual or Potential Adverse Impact on Human Rights

Core element 3: Measures to Ward Off Potentially Adverse Impacts and Review of the Effectiveness of these Measures

Core element 4: Reporting

Core element 5: Grievance Mechanism

Overall assessment and outlook for 2020

The results of the two completed phases in 2018 and 2019 already offer insights into the current status of implementation of the NAP and challenges in the implementation of human rights due diligence in enterprises. They **provide independent, scientific data** and make it possible to address enterprises' activities in the debate on corporate responsibility.

Likewise, the current survey, in comparison with the results of the second representative survey already scheduled for 2020, will allow progress to be measured. The enterprises' various responses to the completed survey provide indications that the monitoring process has helped to raise awareness among the enterprises and to learn lessons with regard to human rights diligence.

The NAP monitoring process will now be continued with the second representative survey phase in 2020. The NAP monitoring process is designed as a learning system, and the experiences of the 2019 survey phase will therefore be used to improve the NAP monitoring process in 2020. The analysis of the results of the previous survey has shown that the present evaluation methodology is adequate overall. Changes will be made with regard to the size of the gross sample as well as the scope for contacting enterprises. Furthermore, in the light of the experiences and results of the 2019 survey, the Interministerial Committee on Business and Human Rights has reviewed and made minor adjustments to the questionnaire and the requirement framework in order to avoid potential misunderstandings regarding the requirements of the NAP.