

**THE NATIONAL SCHOOL OF POLITICAL STUDIES AND PUBLIC  
ADMINISTRATION  
FACULTY OF PUBLIC ADMINISTRATION**

**PhD THESIS ABSTRACT**

**PUBLIC ADMINISTRATION, BUSINESS AND HUMAN RIGHTS**

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**Bucharest, 2017**

Corporate responsibility to respect human rights is one of the current topics at international, European and national level, and business evolution has been marked by various periods of time. Likewise, the evolution of human rights has been accelerated after the Second World War.

The second half of the 20th century is marked by the topic of the universal, indivisible and interdependent economic, social, cultural, political and civil human rights being introduced in the debates of international forums and conferences.

The business and human rights issue has been a permanent topic on the global political agenda since the 90s, which reflects the worldwide evolution of the private sector and the corresponding expansion of transnational economic activity. Such evolution has significantly enhanced people's perception of the dramatic business impact on human rights and has also come to the United Nation's attention.

The relationship of public administration - business - human rights is increasingly debated in our century. Individuals accuse the lack of involvement of state institutions in finding a solution to promote, protect and respect their rights within businesses, societies, etc. Specifically, by binding regulations for businesses and companies, more precisely for the entire business environment, and attracting sanctioning them in the event of non-compliance with the legal provisions.

The UN annual forums have been the framework for formulating the requirements for states to develop strategies and plans whose achievement to be sought and pursued by public administrations in each state, and moreover, the respect and promotion of human rights by the environment to become a mandatory condition for its assessment. Also, lately, at EU level also, measures have been taken (eg. the Council of Europe). Starting from this, the concern has also been extended to regional bodies with responsibilities in the field of human rights.

Through the National Action Plans and the Strategies on Business and Human Rights implemented by EU Member States, recommendations have been introduced in order to make the business environment more accountable for human rights violations.

A new attitude was taken by France on this subject. What is highlighted in this situation is the step taken by it, from taking into account the recent proposals in the National Action Plan on Business and Human Rights, to the creation of a legislative framework to amend and sanction non-compliance of human rights by businesses, namely the Law on vigilance for parent companies and subcontractors.

There are also other important legislative initiatives that have been adopted, such as the Modern Slavery Act (UK 2015), or which are in the form of a proposal, such as the Child Labour Due Diligence Bill (Netherlands) or the Responsible Business Initiative (Switzerland).

At national level, despite the fact that there is rich legislation regulating both human rights and the business environment, public administration lays little emphasis on European regulations. It will have to be more concerned about the business-human rights relationship.

The thesis reflects the evolution of research in recent years. The existing legal framework can be improved to prevent violations and to promote human rights and fundamental freedoms, as enshrined in the Universal Declaration of Human Rights, in enterprises and generally in the business environment, without excluding the sanctions.

Today, business and human rights is still a controversial topic.

**The research includes surveys and statistics conducted over the last years with regard to:**

- the business impact on human rights and fundamental freedoms;
- the international and European regional regulations and the measures taken by the relevant authorities to prevent social imbalance;

- the evolution of applicable regulations;
- the State's involvement in the business-related respect, protection and promotion of human rights.

**The paper covers:**

- the balance that should exist between the State and the business environment;
- the implementation of new regulations in the area, in order to ensure that the business community protects human rights;
- the business community's enhanced awareness of human rights and independent freedoms, and of how to challenge the violation thereof;
- the right to fair justice;
- the promotion and protection of human rights at international and European level, by whatever means, regardless of the environment where such rights are exercised;
- a new vision on how to link the State institutions with the business community and human rights, in order to create an integrated whole;
- the enhanced corporate responsibility to respect human rights;
- the implementation of new regulations on business and human rights.

**With regard to applicability**, the paper could be, first and foremost, an important source of information both to those who currently are or will be involved in the respect for, protection and promotion of human rights, and to

those who are to contribute to the development and implementation of new regulations in the area.

**In terms of novelty**, the paper brings to the fore our country's development of a National Action Plan and Strategy on Business and Human Rights, which the United Nations requested from all States as early as 2011.

**In terms of research methodology**, the research was carried out in several stages: choosing the topic of research, documentation, scientific research, explaining the issues, drafting the paper, disseminating outputs via studies, articles, attending scientific and international conferences.

**The paper uses the research methodology specific to the public administration research:**

➤ *Organisational analysis*

*The organisational analysis*, as a research method of administration, is founded on the idea that the success of big organizations constitutes one of the essential characteristics, if not the most important one of modern societies. This type of analysis insists on topics such as: that of autonomy, porosity of the organization's borders and segmentation of the organization.

The organization's autonomy refers to the fact that there are no regulated or controlled systems. The porosity of the organization's borders refers to the fact that there is no clear or strictly delimited border between the outside and the inside of an organization, between an organization and its environment. The segmentation of the organization refers to the fact that the administration is fragmented, compartmentalised, precisely through the relationships that exist between it and its environment.

➤ *Functional analysis*

*The functional analysis*, as a research method, insists in particular on two topics: differentiation and dysfunctions of the administration.

The differentiation topic relates to the existence of specialized structures in the performance of specific functions.

The dysfunctions topic envisages the idea that an activity could have adverse effects on the system as a whole.

➤ *Systemic analysis*

*The systemic analysis*, as a research method, insists on four points: the interactions of the administrative system with its environment, the persistence of the administrative system in its environment, deciphering methods of regulation and self-regulation of the public administration system, hierarchy of self-regulation and regulation mechanisms given the degree of complexity thereof.

In addition, **the following research methods** were used for the study of the business and human rights:

➤ *The historical method* – used to present the emergence of the phenomenon of protection, promotion and protection of human rights by business;

➤ *The mathematical method* – used to collect the data needed to draw up the case study and to identify the related theoretical and practical elements of the subjects studied;

➤ *The sociological method* – used to obtain and process the verified information so as to provide scientific explanations for social facts, phenomena, processes;

➤ *The comparative method* – used to make the differentiation between national legislation and the international legal framework concerning the main aspects of the respect of human rights by business.

➤ *The questionnaire method* – an analysis of the data resulting from the sociological research conducted through the questionnaire method, to identify the expectations that people, the civil society and the business

community have in terms of the respect for, protection and promotion of human rights;

**The “Public administration, business and human rights” paper has seven chapters.**

*Chapter 1 – Business and influences on human rights*

It includes a chronological presentation of the development of the business environment since ancient times until present times, and also of human rights, basic notions being defined in these areas. The relationship between the two phenomena is identified also in this chapter.

The business phenomenon is a complex one, which has increased or decreased over time, being influenced by various factors. Time has left its mark on the steps and backward steps of the business environment in various periods.

Business constitutes a complex economic, legal, social, cultural, political and administrative mechanism comprising multiple fields of activity. Whatever the branch of activity, the intrinsic nature of the relationships established between resources, capital, and labour is similar. Their common feature in relation to business is the demand-supply governing the volume of transactions on the market with direct implications in the production process.

The issue of human rights was raised in the years following the Second World War, but the genesis of human rights goes back to ancient times, passes through the Middle Age, grows through the contribution of the 17<sup>th</sup> and 18<sup>th</sup> centuries, and then takes its final shape. It is not known where it actually began, but the search should start with the relation man-deity, man-power, from which sprang the human attitudes that define good or bad conduct.

The science of human rights was formed and has evolved into an interdisciplinary field analysing individual and societal behaviours, applicable to a group of disciplines studying the systems, structures and interactive manifestations between various groups or persons.

The first decade of the 21<sup>st</sup> century is marked by the introduction of the topics on universal, indivisible, economic, social, cultural, political and civil human rights at the debates of world forums and conferences on economic and social governance of the world, involving not only the Governments of the world's states but also the other social factors: non-governmental organizations, trade unions, employers' organisations of all industries and economic services, religious organisations, representatives of media, local and regional bodies/communities.

The development of business in relation to human rights at international level is an evolving issue given the growing concern of undertakings towards the promotion, protection and understanding of human rights, but also towards the means to prevent abuses or damage they could cause to human rights.

## *Chapter 2 - Business Responsibility in respecting, promoting and protecting human rights*

It describes: the guiding principles relating to business and human rights, focusing on those relating to the responsibility of the undertaking in respecting human rights; the instruments of protection and promotion of human rights, in general and by the business through public administration; the corporate social responsibility and sustainable development in the field of human rights.

In 2005 the position of Special Representative of the United Nations (UN) was created for the issue of human rights in relation to multinational companies, which launched a comprehensive process of international consultation and documentation on the position of the parties concerned, on the views of

Governments, international organizations and funds, on the rules and good practices at national level, on the proposed approach or regulation for the future.

The “UN Protect, Respect and Remedy framework” relating to business and human rights, proposed by Professor John Ruggie, comprises the “Guiding Principles on Business and Human Rights”. It has a total the number of 31 guiding principles that Professor John Ruggie presented and analysed in two works, namely “Guiding Principles on Business and Human Rights” and “The Corporate Responsibility to Respect Human Rights”.

The universal instruments of international, European and national protection of human rights enshrining the fundamental rights to liberty, life, and security of person, are the *Covenant on Civil and Political Rights*, together with the *Universal Declaration of Human Rights*, the *Covenant on Economic, Social and Cultural Rights* – of the *International Bill of Human Rights* and the *European Convention on Human Rights*.

An actual, and at the same time permanent, problem that humanity faces is that of creating a business environment that respects and protects the fundamental human rights and freedoms.

By referring to the national law nature of the institution of human rights, it includes principles, mechanisms and procedures of the internal legal order.

There is a notable experience over time with regard to human rights and although they should be guaranteed by the State, sometimes this action proves to be insufficient and ineffective.

The mechanisms for the promotion and protection of human rights are intertwined with the phenomenon of public administration, closely tied with the legal, political, social and economic field.

Thus, with regard to the national rules promoting the business and the protection of human rights, focus may be placed on the consumption legislation, labour legislation, and environmental legislation.

The importance of the existence of a national legal framework which corresponds to international standards, procedures and practices is undeniable. However, when legal means are used, we are dealing with a failure as regards the respect of human rights.

A good knowledge, management and awareness of human rights, of the European and international protection system by public authorities, but also by the individuals, beneficiaries of the rights and protection thereof, represent the areas in which the role of the legislature, the Executive and judicial power is limited.

Currently, focus is placed on the promotion and protection of human rights in the public administration system, by raising good governance, and therefore the good administration, to the rank of principle. This shows the importance granted to the citizen and its rights as an individual within the public administration system.

“Due diligence” is a term increasingly used lately to define a number of concepts from various branches of activity.

The concept of “due diligence” was analysed from several perspectives, emphasis being placed on human rights and the role of the State in implementing this concept.

The premises of the analysis are:

- Business Transactions and corporate finance;
- Philanthropy;
- Foreign corrupt practices act;
- Hedge funds and foreign exchange funds;
- Civil litigation;
- Criminal law;
- Commercial property;
- Information security;

- Human rights.

As the business gained momentum, having better mobility, more economic rights and greater opening to the markets, States seemed to fail in their duty to protect human rights. Due to the global expansion of economic activity, the number of human rights abuses has increased, the number of victims affected by economic activity increased, and Government authorities have not kept pace in addressing these problems.

The concept of “human rights due diligence” is a method through which undertakings can identify and prevent the damage they could cause and at the same time offer State structures the possibility to stimulate increasing respect by undertakings of human rights.

The “human rights due diligence” report was released by ICAR, ECCJ and CNCA in order to understand how Governments could use their authority to authorise or encourage business to engage in the activity of “human rights due diligence”.

Given that both human rights and business are constantly evolving, the State should increase its efforts to combat human rights abuses resulting from the business activity.

The business must be up-to-date with the latest regulations in force concerning the protection, respect and promotion of human rights and must apply them for the purposes of a proper co-habitation between operators and human rights.

The State involvement by increasing undertakings respect of human rights through corporate social responsibility and sustainable development is another element which must be monitored.

*Chapter 3 – National Actions Plans (NAP) on Business and Human Rights at international and european level*

The scale of this phenomenon has prompted the United Nations to annually organize Forums on Business and Human Rights, through a Working Group on business and human rights. The United Nations has called for the implementation of National Action Plans (NAPs) on Business and Human Rights and this chapter outlines the recent evolutions of the NAPs, while indicating the States which have already complied with this demand.

A Working Group on business and human rights was set up within the United Nations Human Rights Council in June 2011, following the endorsement of Resolution A/HRC/17/4 on 16 June 2011.

The United Nations Working Group encouraged Member States to take part in the development, drafting and implementation of National Action Plans, with a view to implementing the Guiding Principles on Business and Human Rights.

The "National Action Plans on Business and Human Rights" paper, drafted by ICAR in cooperation with DIHR, defines National Action Plans as "policy documents in which a State articulates priorities and actions that it will adopt to support the implementation of international, regional or national obligations and commitments with regard to a given policy area or topic."

Despite the globally prominent desire to participate in the development of such National Action Plans, most countries are sending to the UN Council scant information on the steps taken by the government and the business community's contribution to implement the Principles on business and human rights into National Action Plans.

According to statistics, governments are still in the early stages of the Principles' implementation, and such actions may even take months. The processes require collecting information from other governments, closely liaising

and communicating with the business community and identifying priorities, needs and responsibilities.

Companies should consider cooperating with the State institutions and the human rights protection institutions and actually cooperate with them actively, to assume the responsibilities of abiding by the international human rights standards and implementing the Principles.

Considering the challenge launched by the United Nations Human Rights Council to the States over their cooperation with corporations in “measuring” the latter’s impact on human rights, ICAR and DIHR initiated a major report to help and support governments in their initiative of developing NAPs. Therefore, 10 criteria have been proposed to the States in order to develop and implement NAPs.

As aforementioned, the United Nations Human Rights Council set up the Working Group on business and human rights in June 2011, and mandated its members to cater for and support the States in the Guiding Principles’ implementation into National Action Plans. Please note that a United Nations Forum is being held every year to discuss business and human rights issues.

The European Commission issued, in 2011, a Communication entitled the European Union Strategy for Corporate Social Responsibility, calling on the Member States to take part in the development and drafting of National Action Plans to implement the United Nations Guiding Principles. Considering the strategy’s spectacular evolution, deadlines have been extended.

The European Commission defines this strategy as ”the responsibility of enterprises for their impact on society”. According to the European Commission, ”enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders”.

The European Union also maintains that, considering its role of protection, it shall ensure that the United Nations Guiding Principles are well understood and

interpreted by the Member States, with a view to implementing them into solid National Action Plans.

The Member States continue to develop and take major steps in adopting NAPs. Therefore, the European Union provides them with materials and fosters Corporate Social Responsibility, with the main goal of globally promoting the business and human rights "term".

There are several categories of States. The first category consists of the States which have already implemented National Action Plans and of those which are currently developing such Plans. Such category includes: The United Kingdom (September 2013), the Netherlands (December 2013), Denmark (April 2014), Spain (summer 2014), Finland (October 2014), Lithuania (February 2015), Sweden (August 2015) (December 2015), Italy (December 2016), Switzerland (December 2016), United States of America (December 2016), Germany (December 2016), France (April 2017).

The second category includes the States which took the commitment to develop a NAP. This category consists of: Argentina, Australia, Azerbaijan, Belgium, Chile, Czech Republic, Guatemala, Greece, Ireland, Japan, Jordan, Kenya, Luxembourg, Malaysia, Mauritius, Mexico, Mozambique, Myanmar, Poland, Portugal, Slovenia, Thailand.

Finally, the third category incorporates the States where the national human rights institutions or the civil society made progress in developing a national action plan: Ghana, Indonesia, Kazakhstan, Nigeria, the Republic of Korea, South Africa, Tanzania and the Philippines.

Several Member States believe that adopting NAPs is not such an easy step forward. Despite the excellent guidance available, they still encounter a large number of difficulties in developing and implementing NAPs.

#### *Chapter 4 – Romania – National Action Plans*

This chapter describes Romania's legislative situation in terms of business, *i.e.* the National Action Plan to Improve Business.

Romanian intends to build a stable and predictable business environment. The Government's policy in this respect supports private entrepreneurs and stimulate the free initiative resulting from Government Programme 2016-2020.

Romania should focus on fostering businesses through the economic environment, by promoting SMEs within the European Union and enhancing innovation in those matters that influence economic and social performances and the speed at which Romania is catching up with the other European Union Member States.

A Working Group on drafting and monitoring the Business Improvement Action Plan was set up under Government Decision No. 803/2001, as amended and supplemented. The Working Group consists of members of several institutions, such as: the Ministry of European Integration, the Ministry of Justice, the Chamber of Commerce and Industry, the Ministry of Public Finance, the Ministry for Small and Medium-sized Enterprises etc.

The actions currently taken by the Ministry of Economy include:

- The Action Plan for Business and Liberal Professions;
- The Organization for Cooperation and Economic Development;
- Projects submitted for financing via the OP – ACD (Operational Programme - Administrative Capacity Development).

### **The National Action Plan on Business**

With regard to the international framework, OSCE launched in Vienna, on 15 September 2016, a study on the National Action Plans implementing Resolution 1325 of the United Nations Security Council regarding women's role in ensuring peace and security, that was brought to the attention of governmental institutions.

The Chapter entitled National Action Plans of OSCE Participating States: Analysis, Recommendations and Best Practices provides an analysis of the 27 National Action Plans developed by the OSCE Participating States. The first part includes general remarks and recommendations on the technicalities of National Action Plans.

OSCE recommends that the revised National Action Plans should incorporate a balanced set of measures such as: working with the civil society and other partners, creating coordination mechanisms, a baseline study, outlining clear responsibilities, drafting a budget.

Please note that, according to the Department for Small and Medium- sized Enterprises, the Business Environment and Tourism (DSMEBET), a National Action Plan is currently in place with regard to the business environment improvement between 2013 and 2014. The plan was developed and agreed following consultations with the Working Group's members.

The plan is in line with OSCE recommendations and aims to implement such recommendations in Romania.

The Plan was submitted for the Government of Romania's approval in October 2013. The goals pursued by DSMEBET by such plan are:

1. Promoting economic growth through investments, by improving investment climate and stimulating exports.
2. Developing entrepreneurship and innovation.
3. Increasing the Romanian companies' productivity and competitiveness.
4. Fostering and promoting responsible behaviour and corporate integrity.
5. Facilitating economic operators' access to funding.
6. Enhancing transparency in public policies and decision making.
7. Streamlining and reducing administrative burdens.

*Chapter 5 – Cases of Human Rights Violations by the Business Community Reflected in the European and National Case Law*

This chapter describes the evolution of the European Court of Human Rights (ECHR) case law on legal entities and covers cases in the European Union (EU), as well as cases regarding Romania.

The Convention for the Protection of Human Rights and Fundamental Freedoms is an innovative mechanism in international public law that introduces a human rights protection system, which is a regional full protection mechanism, and the Member States that signed the Convention are under the obligation to comply with the ECHR decisions, under the auspices of the Council of Europe.

Although the Convention is subject to the principle of subsidiary, according to which the contracting states will be, first and foremost, those called upon to defend the rights guaranteed by the Convention, through their national legal systems, some innovative solutions in the relations between sovereign States under the classical principles of international public law are the possibility that any person claiming to be a victim of violation of his/her fundamental rights refers the matter directly to the European jurisdiction, provided that he/she was under the defendant State's jurisdiction when the violation took place, and the possibility that the contracting States bring legal proceedings in the Court of another contracting State not only for the violation of its own nationals' rights, but also in favour of any foreign or stateless person who is under the defendant State's jurisdiction, or merely because legal provisions or administrative practices that might infringe the Convention's provisions are in place in the defendant State.

Evolvability and adaptability are two characteristics of the protection system based on the protection mechanism which is built on the case law of the Commission and the Court in Strasbourg, that gave both a theological and an evolutionary interpretation to the Convention.

Although one may argue that the protection offered by the Convention mainly covers individuals, its range of warranties also covers collective subjects, legal entities or even mere "groups of private individuals". Thus, the number and

importance of the cases on collective subjects have permanently increased over time, at least for two main reasons.

On the one hand, following the extension of the European Union and the emergence of new democracies from the former Soviet region, along with the constant concern about human rights' protection across Europe, the human rights' protection system acquired and provided enhanced protection to reporting the violations of the rights that are set out in the so-called hard core of the Convention, that is fundamental freedoms. Otherwise, the main cases of violation of individuals' Convention rights are determined either by issues regarding the evil generated by the totalitarian regime and the centralized economy in the former Communist countries, or by the inefficient functioning and organization of certain State institutions or by the difficulties regarding the transformation and modernization of how the judicial system operates in certain countries.

On the other hand, the role played by the collective subject, by the organization, in social life, has constantly evolved and the legal entity has gained, in its various positions, an increasingly important social and economic role, which has progressively lead to an enhanced awareness of the need to guarantee fundamental rights and freedoms also in the private matter of the relations between individuals and, implicitly, to a higher number of cases on collective matters brought before the Court in Strasbourg, as well as to the diversification of the legal matters raised in such cases. Any entity with a structure of its own and a form of organization that allows it to express its legal will as an entity may initiate proceedings as a victim of the violation of one of his/her Convention rights.

An analysis of the Convention and the Additional Protocols in view of the circumstances created by the case law of the Convention's bodies shows us the collective subjects' place in the protection scope provided by the Convention, the limit and size of such protection and the perspective of the collective subjects' presence before the judges in Strasbourg, considering the context and the

dynamics of the new European political and particularly economic and social realities.

As regards companies, the right to bring a matter before the Court belongs, in principle, to statutory bodies; it should be added that in the case of the companies that are being wound up, shareholders no longer have the capacity to refer to the Convention's bodies, based on article 1 of Protocol No. 1, for the damage caused to the company's assets, such right belonging to liquidators.

The State can be defined as an institutionalized political organization form of a human society that was historically set up and is geographically located on a certain territory, where a group of individuals hold, based on the sovereignty of the people and as an expression of the people's will, or illegally, the powers and tools for exercising public authority, for drafting and implementing social living rules, voice and defend the fundamental interests of the State and the nation and impose their wish as a general mandatory will. In other words, the State's three constituents are: territory, population and sovereign political power.

The State is also a collective subject of public law and its participation in public international law relations is based on the national sovereignty and equality principles.

The protection mechanism implemented by the Convention was an innovation in the international treaties' system, since it created an inter-State redress mechanism which any contracting State can use to initiate legal proceedings before the Court against another contracting State for any violation of the rights of both its nationals and of any refugee or Stateless person.

### *Chapter 6 –Business and Human Rights in the light of National Law*

This chapter covers the survey methods and techniques used to unveil valid information that is the basis for redressing the forms and mechanisms that led to the business environment's violation of human rights.

The research was conducted by looking into the international, European and national tools and mechanisms of business-related promotion and protection of human rights. An emphasis was placed on examining the United Nations Forums on Business and Human Rights, the European Forums on the same topic, the documents prepared by such forums, as well as the National Action Plans on Business and Human Rights. Assumptions and proposals applicable in the domestic law were developed.

Two survey techniques were used: the questionnaire technique that consists in sending questionnaires to individuals, the civil society and the business community's representatives, and the sociological technique, consisting in the analysis of the abovementioned documents.

The survey was conducted between January 2014 and April 2017 and the survey sampling was partially random.

#### *Chapter 7 – Conclusions and Proposals for Lege Ferenda*

This essential chapter is of specific importance to the paper. This last part of the paper incorporates a proposed blueprint of both a National Action Plan on Business and Human Rights in Romania, and a Strategy Implementing the National Action Plan on Business and Human Rights.

The month of June 2016 marked the fifth anniversary of the unanimous adoption by the United Nations Human Rights Council of the Guiding Principles on Business and Human Rights. The implementation of such principles is further supported and promoted, benefits everyone and reduces risks for people and business alike. The United Nations Council also supports the Organization for Economic Cooperation and Development's Guidelines for multinational companies and the International Labour Organization's Tripartite Declaration on Multinational Enterprises and Social Policy and acknowledges the importance of the UN Global Compact and ISO 26000 Guidance on Social Responsibility.

The European Union will further cooperate with and support the work of the UN Working Group on Business and Human Rights, also with regard to the UN Forums and the other regional forums on business and human rights. These offer valuable opportunities at a global level for further enhancing awareness of, and also supporting and implementing the Guiding Principles.

According to the UN, the most important role that business should play in the future is helping both in achieving sustainable development goals and implementing the Agenda for Sustainable Development 2030. The European Union recognizes that corporate respect for human rights and not only, as well as embedding such respect in corporate operations are indispensable to sustainable development.

The European Union and its Member States committed to actions that make progress in the area of business and human rights, by adopting the EU National Action Plan on Human Rights and Democracy 2015-2019 of 20 June 2015.

### **Implementation of the UN Guiding Principles on Business and Human Rights:**

The European Union Member States have taken the lead internationally on developing and adopting National Action Plans to implement the guiding principles or integrate the UN Guiding Principles into national Corporate Social Responsibility Strategies. Peer learning on business and human rights, including cross regional peer learning is promoted. The European Union also has the intention to launch, in 2016, an Action Plan on Responsible Business Conduct. This action plan is meant to address the implementation of the guiding principles, including with regard to due diligence, access to efficient remedies of human rights' violations and to provide a global political framework.

### **Corporate Responsibility to Respect Human Rights:**

According to the UN, both transnational and domestic companies should comply with the guiding principles, the ILO Tripartite Declaration and the OECD Guidelines by cautiously integrating human rights into their activity, in order to identify at an early stage, prevent and mitigate the risks of human rights abuses. Transparency has a critical role in business, by enabling markets to recognize, stimulate and reward respect for human rights by companies, recognising the close linkage with other areas within the responsible business agenda.

It is very important to incorporate human rights in impact assessments for EU sectoral policies, such as trade and development cooperation. The European Union and its Member States address their corporate responsibilities both as commercial actors, and when supporting or partnering with other businesses.

#### **Access to effective remedies of human rights violations:**

Both the UN and the EU confirm that access to effective remedies for victims of business-related human rights abuses is of crucial importance and should be addressed in National Action Plans.

Further progress is also necessary on the access to effective remedies of human rights violations. Remedies should be addressed in the forthcoming European Union Action Plan on Responsible Business Conduct, including in the European Union law, as appropriate, and providing additional information and guidance to Member States in this regard should be considered.

The European Union Fundamental Rights Agency should issue an expert opinion on possible avenues to lower barriers for access to remedy of human rights violations at EU level, taking into account existing legal instruments and competences at EU and Member States' levels.

The Initiative on enhancing accountability and access to remedy of the UN Office of the High Commissioners for Human Rights and the High Commissioner's recent report "Improving accountability and access to remedy to victims of business-related human rights abuse" are welcome, thus recognising

that this initiative may provide best practices that can be implemented at EU Member States' level, including on improved cooperation between states in cross-border cases. This initiative will also be considered when adopting or updating National Action Plans, encompassing concrete measures aimed at improving redress mechanisms.

### **External policy**

It is utterly important that the EU institutions and the Member States continue to raise the UN Guiding Principles and work to strengthen government ownership in contacts with third countries, including in political dialogues.

The European Union and Member States' support with regard to third countries and regions' capacity building and the civil society involvement is also very important for the development of action plans on business and human rights.

Last but not least, the Member States' capacity of working effectively on business and human rights issues, including supporting human rights' defenders working on corporate accountability and providing guidance to companies on the Guiding Principles is also extremely important, both within the EU delegations, and within embassies.

### **Romania**

Romania is a Member State of the European Union that backs the protection and promotion of business-related human rights. It is therefore important that harmonization is achieved between the United Nations' and European Union's requirements on the protection and promotion of fundamental human rights and freedoms, through the State involvement in the process, by encouraging and enhancing corporate responsibility for respecting human rights, by providing access to effective remedies for the victims of business-related human rights abuses, strengthening relations with the other Member States, creating new tools of protection against human rights abuses, involving the civil

society, implementing the business and human rights plans or strategies proposed by the UN and the EU.

Progress must be made in enhancing business accountability and civil society's awareness of the risks involved and the remedies for such situations. However, it is particularly necessary to create a legislative framework whose cornerstone are the United Nations Guiding Principles on Business and Human Rights.

Romania intends to build a stable and predictable business environment. Therefore, an emphasis should be placed on fostering businesses through the economic environment, by promoting SMEs within the European Union and enhancing innovation in those matters that influence economic and social performances and the speed at which Romania is catching up with the other European Union Member States.

Romania also wishes that its business environment respects and protects human rights and should therefore focus on developing and legally drafting the national legal framework, while harmonizing it with the European one.

Indeed, Romania has an ample and cumbersome legal framework that is undergoing constant changes. A large number of regulations (ordinances, laws, decisions etc.) are rather unclear and under constant revision, which might generate confusions among entrepreneurs or the civil society.

Although laborious papers have been written both on business and on human rights, *i.e.* "Drepturile Copilului și Principiile de Afaceri" (The Rights of the Child and Business Principles), or "Planul național de acțiune pentru îmbunătățirea mediului de afaceri" (The National Action Plan for Business Improvement), no National Action Plan or National Strategy on Business and Human Rights has been developed yet.

## **National Action Plan on Business and Human Rights**

First, the National Action Plan on Business and Human Rights should be governed by the three pillars of the United Nations' Guiding Principles on Business and Human Rights: the State duty to protect human rights, the corporate responsibility to respect human rights and the access to effective remedies of human rights violation.

To create a robust NAP, the Government should also consider the 10 criteria proposed by ICAR and DIHR in their report meant to support governments in their NAP development initiative.

### **The National Strategy**

Since the abovementioned Action Plan should be accompanied by an implementing procedure, it is necessary to develop a National Strategy on Business and Human Rights.

A Government Decision Setting Up a Working Group/Expert Committee for Developing and Monitoring a National Action Plan on Business and Human Rights in Romania and for Developing a National Strategy on Business Environment and Human Rights should therefore be adopted. This draft Government Decision should be promoted by the institutions entitled to make legislative proposals in this area, and the Working Group should consist of members of several institutions and of individuals who are directly involved in this project for the promotion and protection of business-related human rights and fundamental freedoms.

After the two documents of national concern have been developed, a new draft Government Decision approving the National Action Plan and the National Strategy on Business and Human Rights should be submitted for the Government's approval.

Therefore, we may conclude that the global standard development mechanism has already been initiated in this sensitive area where universal upholding of human rights is intertwined with economic development and

technological progress and that such mechanism will lead to enhanced social corporate responsibility with regard to the general interest of universally promoting human rights and respecting general interests of present and future generations.