

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

# Interim Report

## Survey phase 2020



## Preamble

The Federal Foreign Office has commissioned Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft (EY), in cooperation with its consortium partners adelphi consult GmbH, Systain Consulting GmbH and focusright GmbH, to conduct the survey to monitor the status of implementation of the human rights due diligence obligations of enterprises (monitoring) set out in the National Action Plan for Business and Human Rights 2016-2020 (NAP). The aim of this Interim Report is to present the results of and the approach taken in the second survey phase from March to June 2020. It is based on the information in the Inception Report (of 4 September 2018), the 2018 Interim Report (of 5 July 2019) and the 2019 Interim Report (of 14 February 2020).

On 14 July 2020, the consortium shared preliminary information on the results with the Federal Foreign Office, which in turn informed the Interministerial Committee on Business and Human Rights and the Business and Human Rights Working Group of the National CSR Forum. The results of the 2020 survey were presented to the Interministerial Committee on Business and Human Rights at a meeting held on 11 August 2020 and to the Business and Human Rights Working Group at a meeting held on 12 August 2020. Furthermore, the draft of the report was submitted to the Interministerial Committee on 17 August 2020 for advice and comments. The Business and Human Rights Working Group also received the draft report for comments prior to the official publication. The report in its final version was published on 15 September 2020.

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## Summary

In chapter III of the National Action Plan for Business and Human Rights 2016-2020 (NAP), 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 2020.

The performance specification<sup>1</sup> for the monitoring process envisages 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 2020 describes the approach taken and the results of 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<sup>2</sup> on 5 July 2019. 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. Apart from the slight adaptations for the sake of comprehensibility explained below, the methodology basically follows the same procedure as the first representative survey phase in 2019.

### Sampling, representativeness and randomness

At the time of the 2020 survey there were **7396 enterprises** based in Germany with more than 500 employees. They comprised the **pool of enterprises**. 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 aimed to achieve a slightly higher response rate of approximately 400 responders. For this purpose, a total of 3325 enterprises (**gross 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 2020 survey was achieved with **455 responders (net sample)**. All questionnaires completed by

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<sup>1</sup> "Monitoring NAP" tender of 29 December 2017, notification reference number: VV-118-2017-0201 by the Federal Foreign Office.

<sup>2</sup> The Interministerial Committee on Business and Human Rights comprises representatives of the following ministries: Federal Foreign Office (Chair), Federal Ministry of Finance, Federal Ministry of the Interior, Building and Community, Federal Ministry for Economic Affairs and Energy, Federal Ministry of Justice and Consumer Protection, Federal Ministry of Labour and Social Affairs, Federal Ministry of Food and Agriculture, Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Federal Ministry for Economic Cooperation and Development. The Federal Chancellery participates in the meetings as an observer in accordance with the rules of procedure of the Interministerial Committee on Business and Human Rights.

the enterprises and submitted online were included in the evaluation. The questionnaire tool was set up so that enterprises that did not fully complete the questionnaire were not able to submit it.

The categorisation of the pool of enterprises into the six levels was as follows:

Size	Sector		
	Producing sector	Trade and services	Total
<b>501–1000 employees</b>	1547	2170	3717
<b>1001–2000 employees</b>	796	1196	1992
<b>&gt; 2001 employees</b>	704	983	1687
Total	3047	4349	7396

The representativeness of the responders for the pool of enterprises and the randomness of the responders from the enterprises in the gross sample 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<sup>4</sup> of the gross and net sample differ significantly in statistical terms was examined. To do so, categorisation was chiefly undertaken according to the number of employees and the sector. The examination revealed that larger enterprises (> 2000 employees) are overrepresented in the net sample while smaller ones (> 1000 employees) are underrepresented. This finding is also reflected in other related factors such as legal form, turnover and the type of firm of the parent company. In the context of sector, enterprises in the area of services are slightly underrepresented. However, that is not significant.

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. This 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** (e.g. number of employees, turnover, existence of a policy statement, etc.) are ensured with a statistical weighting procedure. As it did in the context of the 2019 survey, in 2020 the survey team also checked whether a publicly accessible human rights policy statement was available for all enterprises in the gross sample due to the importance of what is known as *non-responder bias*. The characteristic of the existence of a human rights policy statement was also used to determine whether there is a bias as a result of **unobservable factors**. In this context, 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 must

<sup>4</sup> Arithmetical comparison of characteristics between the two samples to determine whether they are comparable.

therefore 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 completely resolved with statistical methods since it cannot be precisely measured. This factor must be taken into consideration in the interpretation and discussion of the 2020 survey results, as it was in the 2019 survey. From the indications that there are unobservable factors, it can be extrapolated that the result with regard to the “compliers” is not higher but could be lower than the parameters show.

### 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 and used in the 2019 survey. Prior to the 2020 survey phase, individual formulations and response options in the version of the online questionnaire used for the 2019 survey were adapted slightly to make them more comprehensible, in cooperation with the Interministerial Committee on Business and Human Rights. The adaptations had no effect on the content of the evaluation system and the requirements framework (see below).

The survey followed the same four-stage procedure as in the previous year: 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 the responses to 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 that 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 2020 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”** is a constituent part of the questionnaire and evaluation system and was used by the majority of enterprises in the survey phase in 2020. In addition, the enterprises had the opportunity in almost all questions to explain their approach in writing by using a free-text option. 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 and confirmed by it on 24 February 2020 through its approval of the 2019 Interim Report. 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”). Under the evaluation system approved by the Interministerial Committee on Business and Human Rights, 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 targets at the time of the survey, have submitted 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 targets in full, but their overall approach can be seen as good practice and they are thus well on the way to achieving compliance.

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 2020**

On the basis of the results of the evaluations and the application of the statistical weighting procedures described above, **13 to 17 percent of the enterprises are considered to be “compliers”**, while 83 to 87 percent of the enterprises are deemed to be “non-compliers”. Within the group of “non-compliers”, 10 to 12 percent of the pool of enterprises are “on the right track” towards fulfilling the NAP requirements. The proportion of “enterprises with implementation plans” is less than one percent.

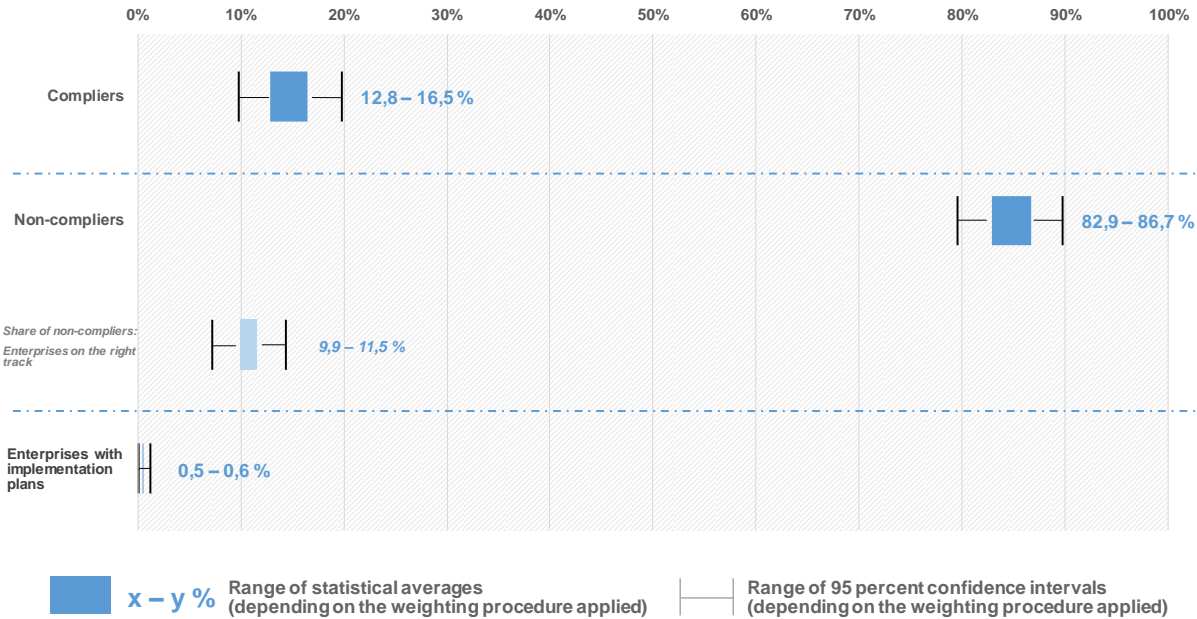


Diagram: Results of the survey in 2020

**With respect to the objective of the monitoring process, it was shown that, in 2020, 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.** Even including responders with an implementation plan does not affect this finding, as the proportion of these enterprises is less than one percent.

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”. 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 entire 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.

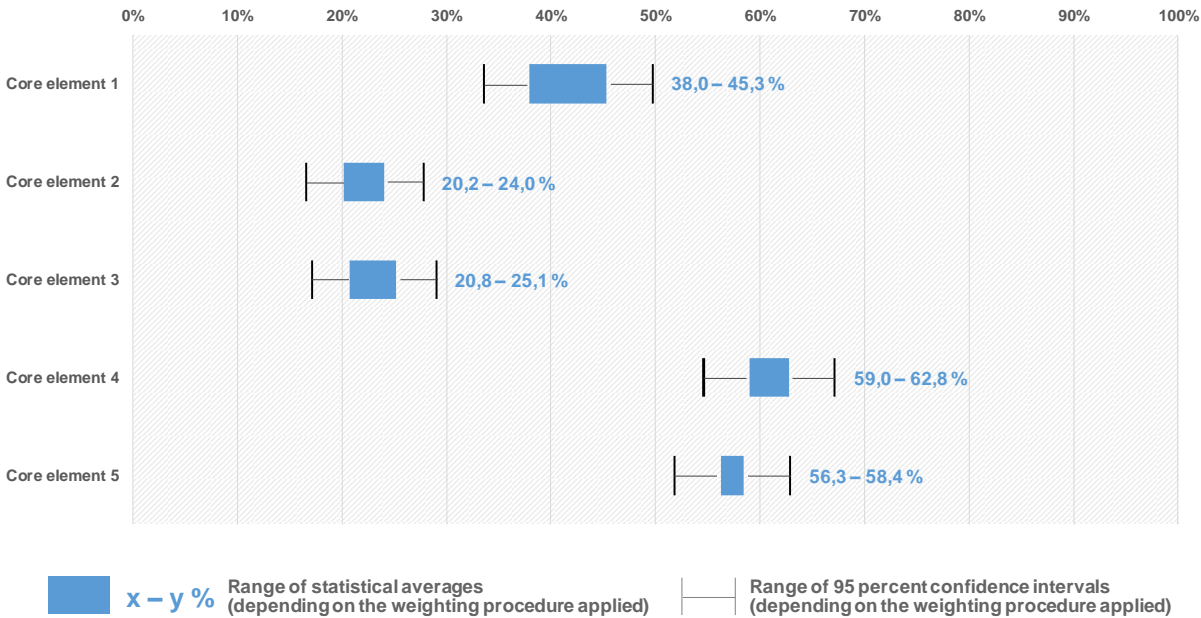


Diagram: “Compliers” per core element

**Overall assessment**

The second representative survey phase in 2020 rounds off the NAP monitoring process. The results of all three monitoring phases (2018-2020) **provide objective and sound data** on the current status of implementation of the NAP requirements as well as on challenges with regard to the implementation of human rights due diligence in enterprises. They make it possible to address enterprises’ activities in the debate on corporate responsibility.

A comparison of the similar manifestations of the results of the representative surveys in 2019 and 2020 shows that the survey methodology has proved its worth and underscores the quality and the soundness of both the statistical weighting procedure used and the survey results.