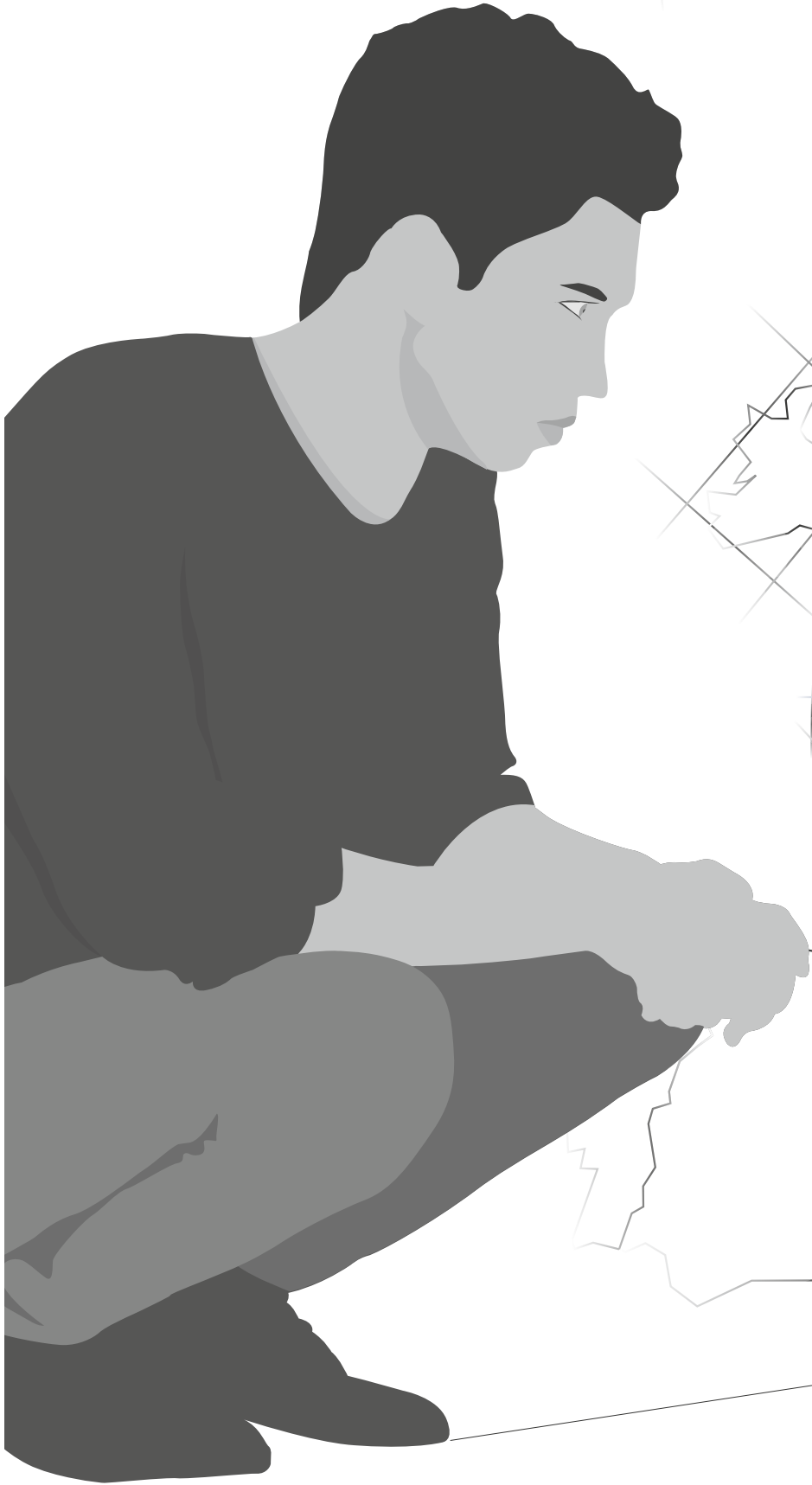


IN THE  
FACE OF  
**CORPORATE IMPUNITY**

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**PROGRESS  
IN EUROPE**

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# IT IS URGENT TO LEGISLATE ON MULTINATIONALS' **DUTY OF CARE!**

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Providing a regulatory framework for multinationals by means of binding rules is essential. Even if companies contribute to the economy, their activities may also result in fundamental human rights violations and environmental damages that voluntary initiatives alone cannot prevent effectively.

Since 2011, the United Nations Guiding Principles on Business and Human Rights require companies to respect human rights through the implementation of "due diligence". These monitoring systems aim to identify and prevent risks, while establishing redress mechanisms and providing access to justice for victims. The UN is also preparing a binding treaty on transnational corporations and other business enterprises with respect to human rights, however this will take a long time to be established. The OECD and the European Commission have taken measures on, but

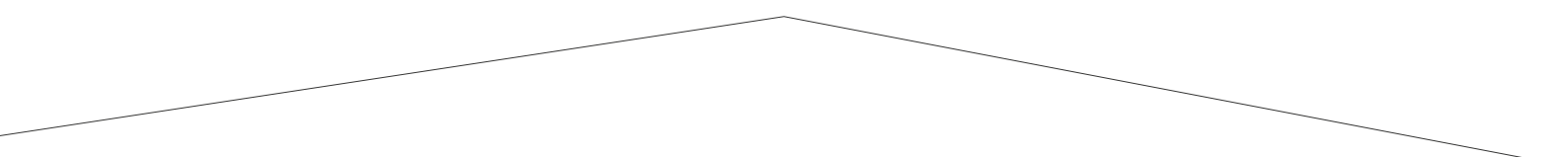
without creating a binding framework. The Commission has also encouraged EU Member States to implement the principles of the United Nations in their own internal law.

Since the enforcement of these declarations relies on the political will of each State, it is high time for them to take action.

France is preparing a bill relating to the duty of care incumbent upon parent and subcontracting companies, which is struggling to be definitively adopted. Yet this bill would finally make it possible to tackle the human rights violations and corruption taking place in French companies' supply and production chains.

France is not the only European country working towards this objective. Here is the proof..<sup>1</sup>

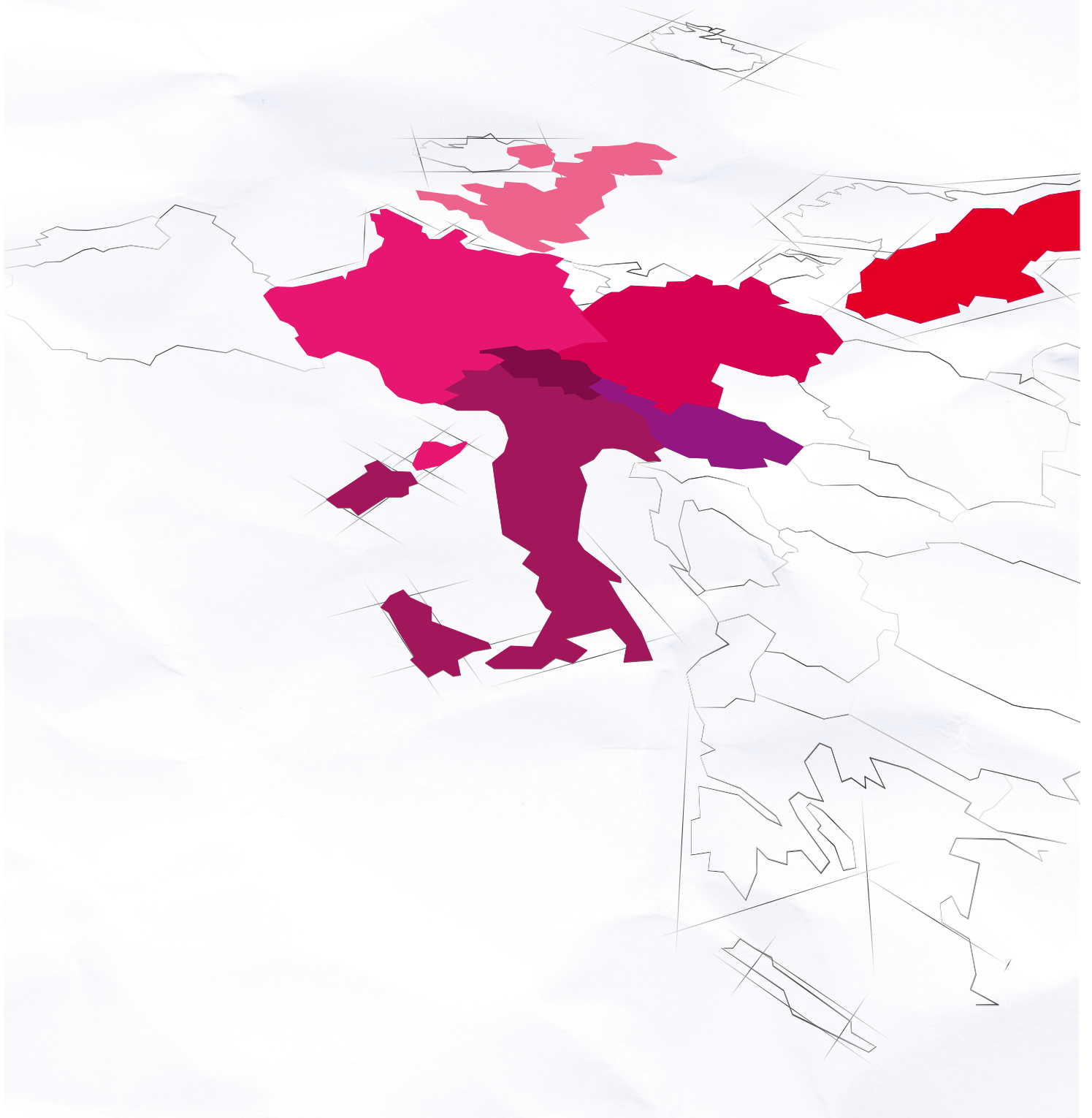
<sup>1</sup> This document was produced in October 2016. It only shows European initiatives although regulations also exist on other continents.

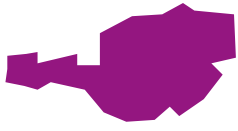


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AT THE  
NATIONAL  
**LEVEL**

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## AUSTRIA

### PROMOTING A CHANGE OF THE AUSTRIAN LAW TO IMPLEMENT MANDATORY HUMAN RIGHTS DUE DILIGENCE FOR BUSINESSES AND ACCESS TO JUSTICE FOR VICTIMS.

#### Initiative:

A study commissioned by NGOs and trade-unions (NeSoVe-Network for Social Responsibility and the Austrian Chamber of Labour for Vienna) finds out that Austrian law has to be changed in order to protect Human Rights from activities of Austrian business, their subsidiaries and suppliers, and to give victims access to justice. These findings, later discussed with 10 other organisations, are being used to promote a change of Austrian tort law, including certain alleviations of the burden of proof.

#### Calendar:

2016-2017 finding supporters of a law change within the Austrian government, social partners and pioneer companies.

#### More informations:

Netzwerk Soziale Verantwortung.

<http://bit.ly/2cDDhJ8>



## FRANCE

### BILL ON DUTY OF CARE FOR PARENT AND SUBCONTRACTING COMPANIES.

#### Goal of the measure:

Mandatory publishing and implementing a vigilance plan.

#### Human rights covered:

All human and environmental rights.

#### Sectors covered:

All.

#### Companies covered:

French companies having at least 5,000 employees (headquarters and subsidiary companies) and French and foreign companies having at least 10,000 employees (headquarters and subsidiary companies).

#### Scope of the measure:

Subsidiary companies, subcontractors and suppliers within the company "sphere of influence".

#### Penalty planned:

A maximum fine of 10 million Euros.

#### Stage of the measure:

Bill passed a first time in the National Assembly (31/03/2015), rejected by the Senate (18/11/2015), passed a second time in the National Assembly (23/03/2016). Final approval planned in 2016, followed by a decree in 2017.

#### More information:

French National Assembly

<http://bit.ly/1AX7Fmu>

#### NB:

Moreover, the French National Assembly has adopted a European resolution calling the European Union and its Member States to support any initiative aiming at reinforcing corporate accountability.

<http://bit.ly/1CkXATd>



## GERMANY

### HUMAN RIGHTS DUE DILIGENCE PROCESSES WITHIN THE NATIONAL ACTION PLAN FOR BUSINESS AND HUMAN RIGHTS.

#### Goal of the measure:

Experiment a due diligence process for state-owned companies and big companies within the National Action Plan (NAP) on Business and Human Rights.

#### Human rights covered:

All of them (subject to NAP's publication).

#### Sectors covered:

All of them (subject to NAP's publication).

#### Companies covered:

At first state-owned companies (binding) and private companies having more than 5,000 employees (voluntary).

#### Scope of the measure:

Subsidiary companies, subcontractors and suppliers within the "sphere of influence" (subject to the definition of Human Rights Due Diligence which will be adopted).

#### Penalty planned:

If 50% of private companies covered have not implemented voluntarily Human Rights Due Diligence processes planned in the NAP by 2020, the government will consider a binding regulation.

#### Stage of the measure:

NAP's release planned in June 2016.

#### More information:

Ministry of Foreign Affairs

<http://bit.ly/2dnqOQS>

or Corporate Accountability Network.

<http://bit.ly/2d7jGQ6>



## ITALY

### DECREE 231/2001 ON JUNE 2001 ABOUT ADMINISTRATIVE LIABILITY OF LEGAL PERSONS.

#### Goal of the measure:

Imposing administrative liability against legal persons for the offence of foreign bribery.

#### Human rights covered:

Bribery.

#### Sectors covered:

All.

#### Companies covered:

Legal persons, companies and associations even those that do not have legal personality.

#### Scope of the measure:

Concerns organisational unit of the corporation having financial and functional autonomy, or persons subject to the management or supervision of one of these organisational units.

#### Penalty planned:

Fines, application of confiscation, prohibitive sanctions, suspended sentences.

#### Stage of the measure:

Adopted.

#### More information:

Organization for Economic Co-operation and Development.

<http://bit.ly/2cDpVrA>



## SWEDEN

### **MANDATORY DUE DILIGENCE FOR SWEDISH STATE-OWNED BUSINESSES AND OTHER BUSINESSES WORKING IN HIGH RISK SECTORS AND COUNTRIES.**

#### **Initiative:**

6 NGOs (Amnesty International Sweden, "Svenska kyrkan" the Swedish church, Latinamericagrupperna, Diakonia, Swed-watch and FIAN-for the right to adequate food) organised a meeting in May 2016 gathering civil society, government and Parliamentarians in order to discuss the possibility of setting up a due diligence for Swedish state-owned businesses and other businesses working in high risk countries and sectors (as extractive sector and telecoms).

#### **Calendar:**

2016 Parliamentarians' mobilisation, 2017 review of the National Action Plan.



## SWITZERLAND

### **RESPONSIBLE BUSINESS INITIATIVE - PROTECTING HUMAN RIGHTS AND THE ENVIRONMENT.**

#### **Goal of the measure:**

Writing down in the Swiss legislation a mandatory due diligence for Swiss businesses having activities abroad

#### **Human rights covered:**

All internationally recognized human rights (as defined in the UN Guiding Principles on Business and Human Rights) and the environment (defined by International Law, international organisations and non-governmental standards).

#### **Sector covered:**

All.

#### **Companies covered:**

Companies that have their registered office, central administration, or principal place of business in Switzerland.

#### **Scope of the measure:**

Companies controlled by Swiss based companies and their business relationships (subsidiaries of companies, joint ventures, multiple-delivery contracts, distribution agreements or subcontracting contracts).

#### **Penalty planned:**

To be defined by the law.

#### **Stage of the measure:**

The popular initiative has been accepted by the Swiss Federal Chancellery (07/04/2015), 140,000 signatures have been gathered in April 2016 (40,000 more than necessary and 6 months before the deadline), official submission on October 10th 2016.

#### **More information:**

The Responsible Business Initiative.

<http://bit.ly/1R18ZMA>



## UNITED KINGDOM

### **MODERN SLAVERY ACT 2015 (SECTION 54 - TRANSPARENCY IN SUPPLY CHAINS).**

#### **Goal of the measure:**

Preparing and publishing a slavery and human trafficking statement, disclosing the steps that commercial organizations have taken during the financial year to ensure that slavery and human trafficking is not taking place in any of their supply chains, and in any part of their own business, or a statement that they have taken no such steps.

#### **Human rights covered:**

Slavery and human trafficking.

#### **Sectors covered:**

All.

#### **Companies covered:**

A body corporate or a partnership, wherever incorporated, which carries out business activities, or part of a business, in any part of the United Kingdom, which supplies goods or services, and has a total turnover of not less than 36 million pounds.

#### **Scope of the measure:**

Statements may cover the supply chains and any part of the commercial organization's own business.

#### **Penalty planned:**

If a business fails to produce or publish a statement, the Secretary of State may seek an injunction through the High Court requiring the organization to comply. If the organization fails to comply with the injunction, they will be in contempt of a court order, which is punishable by an unlimited fine.

#### **Stage of the measure:**

Adopted in October 2015, currently in force, several hundreds of statements have already been published.

#### **More information:**

UK National Archives.

<http://bit.ly/1HOCviy>

#### **NB:**

The United-Kingdom has also adopted a "Bribery Act" in 2010 preventing persons associated with commercial organisations from bribing.



## EUROPEAN UNION

### REGULATION (EU) N° 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 20 OCTOBER 2010 LAYING DOWN THE OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE MARKET (EUTR).

**Goal of the measure:**

Prohibiting the placing on the market of illegally harvested timber or timber products derived from illegally harvested timber. Operators must exercise “due diligence” and traders must keep records of their suppliers and customers.

**Human rights covered:**

Human and labour rights, environment, and corruption.

**Sectors covered:**

Timber or timber products derived from such timber, except recycled products and printed papers such as books, magazines and newspapers.

**Companies covered:**

The operators shall exercise due diligence when placing timber or timber products on the market for the first time. Once on the market, traders shall be able to identify, throughout the supply chain, operators or traders who have supplied or to whom they have supplied timber and timber products.

**Scope of the measure:**

Throughout the supply chain.

**Penalty planned:**

Criminal and administrative penalties may include fines, seizures and suspension of authorisations to trade.

**Stage of the measure:**

Applied since March 3, 2013.

**More information:**

Text <http://bit.ly/2drsEY3>

Dedicated section on the EU Commission's website.

<http://bit.ly/ULEYGD>

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# AT THE EUROPEAN LEVEL

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## SEVERAL MEMBER STATES ASK THE EUROPEAN UNION TO GO FURTHER.

In May 2016, the French National Assembly and seven other European parliaments launched a “Green Card” initiative in order to ask the European Commission to legislate on a duty of care for European companies. Such a duty of care should prevent and repair abuses towards peoples and communities, whose rights and environment are impacted by European companies’ activities.

The parliaments involved are the ones of Estonia, Lithuania, Slovakia and Portugal, the UK House of Lords, the House of Representatives in the Netherlands, the Senate of the Republic in Italy, and the National Assembly in France (recently joined by Greece). On the 18th of May 2016, during an inter-parliamentarian conference with representatives of 22 EU member states, Members of the Parliament from Germany, Greece, Romania, Czech Republic and Denmark signed a common statement supporting this action at the EU level.

## THE COUNCIL OF EUROPE IS REQUESTING ITS 47 MEMBER STATES TO GO EVEN FURTHER.

In March 2016, the Council of Europe’s decision-making body, the Committee of Ministers, adopted a recommendation encouraging Member States to legislate on the effective implementation of companies’ due diligence requirement as regards any of their business activities that have an impact on human rights.

This recommendation stipulates that this due diligence requirement must reflect the UN Guiding Principles on Business and Human Rights.

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