Annex 5

Of the Commission Implementing Decision on the 2019 Annual Action Programme for cooperation with third countries to be financed from the general budget of the European Union

Action Document for Business and Human Rights in Asia

1 KEY IDENTIFICATION DATA

Title of the Action	Business and Human Rights in Asia
Country/region/global	South Asia and South-East Asia, in particular India, Indonesia, Malaysia, Myanmar, Sri Lanka, Thailand
Sector of intervention	Human Rights
Indicative budget	Total: EUR 5 500 000 EC contribution: EUR 5 500 000 (100%) Other contributions: NA
Duration and target start date of implementation	48 months – Q4 2019
Method of implementation	Indirect management with International Organisation
Legal basis	Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries
Programming document	European Commission Implementing Decision C(2018)4001 on the second Multiannual Indicative Programme for the Partnership Instrument for the period 2018-2020
DAC code(s)	15160

Markers (from CRIS DAC form)	General policy objective	Not targeted	Significant objective	Main objective
	Participation development/good governance	☐	☑	☐
	Aid to environment	☐	☑	☐
	Gender equality (including Women In Development)	☐	☑	☐
	Trade Development	☐	☑	☐
	RIO Convention markers			
	Biological diversity	☑	☐	☐
	Combat desertification	☑	☐	☐
	Climate change mitigation	☐	☑	☐
	Climate change adaptation	☑	☐	☐
Global Public Goods and Challenges (GPGC) thematic flagships	NA			

2   RATIONALE AND CONTEXT

2.1   Action summary

Asia has long been synonymous with economic dynamism. Over the last decades, the value of capital investment and trade flows in the region has increased exponentially, lifting hundreds of millions of people out of poverty. However, rapid growth has not been without costs and risks. In many countries in Asia economic growth is linked to environmental pressures and social risks such as hazardous working environments, exploitations, and other rights violations with long-term implications on the stability and prosperity of states, communities and individuals.

The overall aim of the action is to promote the agenda on Business and Human Rights and ensure that it is further taken up by Asian governments and business, through an EU-UN partnership, thereby promoting multilateralism and levelling the playing field for businesses that integrate human rights considerations into their operations and supply chains.

To this end, the EU and the UN will partner up to promote the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in Asia through National Action Plans, policy discussions and awareness raising programmes in six countries (namely India, Indonesia, Malaysia, Myanmar, Sri Lanka and Thailand) while strengthening policy coherence with international corporate governance and compliance standards.

2.2   Background/Context/Rationale for PI funding

Over the last decades Asia has been characterised by strong economic dynamism and rapid growth, primarily due to private sector forces, encouraged by pro-growth policies, backed by foreign direct investment (FDI), and driven by the productivity gains of global supply chains.

However, rapid growth has not been without consequences and negative externalities. In many countries in Asia, economic growth is linked to environmental risks, such as contaminated water supplies, accelerated deforestation and increased air pollution. In some instances, large infrastructure projects have led to environmental degradation and displacement. Labour-intensive manufacturing has at times taken place in hazardous working environments, with exploitation and workers' rights violations posing a threat and a challenge to long term stability and prosperity.

At the heart of these challenges is an uneven commitment by some governments in Asia and some businesses based in Europe and elsewhere to international labour standards, to environmental protection, and to human rights, including the rights of children, migrants, women and indigenous peoples.

Reports of human rights abuses on workers (e.g. in factories, fishing boats and plantations) have given rise to contentious debates in both Asia and the EU over social values and the role of supply chains management in supporting or undermining those values. EU firms operating or sourcing products from Asia have been implicated in some cases, resulting in damaged reputations and disruptions to their operations.

Increasingly, consumers in Asia and in the EU are demanding changes, including greater accountability for abuses, legislators are enacting legislation raising transparency and compliance with relevant international instruments, and the private sector is faced with higher expectations on their corporate responsibility practices. Banks and international financial institutions are also increasingly under pressure and have greater incentives to comply with economic, social and governance considerations.

In this context, government officials, civil society organisations, and business champions are expressing increased interest in the potential of the UNGPs to frame policy interventions and provide guidance for action to mitigate risks of human rights abuses.

UN Guiding Principles on Business and Human Rights

Since their endorsement by consensus in the UN Human Rights Council in 2011, the UN Guiding Principles (UNGPs), the most authoritative normative framework guiding efforts to address possible adverse impacts of business operations on human rights, including environmental rights, are divided into three pillars outlining the roles 1) for States to fulfil their duty to protect human rights; 2) for businesses to respect human rights; and 3) for both States and businesses to commit to remedying any abuses committed in the course of business operations. The UNGPs recall existing obligations, identify gaps and highlight actions required to meet the human rights obligations a State has already undertaken or is subject to under international law. Importantly, these Guiding Principles insist on the importance of non-discriminatory practices, with particular attention to the rights, needs and challenges faced by vulnerable or potentially vulnerable/marginalised groups or populations and with due regard to the different risks that may be faced by women and men.

Successful implementation of the UN Guiding Principles requires that they be owned and understood by multiple ministries, state-owned enterprises, private sector firms, trade unions, CSOs, National Human Rights Institutions (NHRIs), local authorities and the public. To help ensure the likelihood of buy-in from such a wide group of stakeholders, States have been encouraged to develop National Action Plans on Business and Human Rights (NAP).

National Action Plans (NAP) are government-drafted policy documents that articulate state priorities and indicate future actions to support implementation of legal obligations or policy commitments. They are normally drafted following extensive consultations involving a large range of stakeholders. The EU and subsequently the UN Human Rights Council (HRC) urged states to develop NAPs that would define how the implementation of the UN Guiding Principles would be taken forward in their respective territories.[1] The UN Working Group on Business and Human Rights is continuously engaging with States to develop NAPs and is keeping a record of NAPs finalised and under preparation[2].

At the time of writing, thirty-seven governments and non-state actors such as NHRIs across Europe, the Americas, Africa and Asia have launched NAPs or NAP-related processes on the implementation of the Guiding Principles. In Asia, India, Indonesia, Japan, Malaysia, Thailand and South Korea are in various stages of developing NAPs or other strategic pathways.

Status and key challenges in the region

The action will target India, Indonesia, Malaysia, Myanmar, Sri Lanka and Thailand. Countries were identified on the basis of the following criteria: (1) relative importance of the country to build regional momentum and cohesion on business and human rights; (2) political will favouring engagement on Business and Human Rights (B&HR) by all concerned actors in a given country (government, business sector, civil society); (3) importance of international and intra-regional trade, based primarily on trade volume; (4) alignment with the EU political agenda and interests in and with the country; (5) alignment with the UN's Strategic Plan on B&HR and; 6) the presence of an NHRI.

In recent months, Thailand has made substantial strides towards the implementation of the UNGPs with significant repercussions in South East Asia, driving momentum in support of the B&HR agenda in Indonesia, Malaysia, Viet Nam and other countries in South East Asia. In South Asia, India is currently planning efforts to develop a roadmap to a NAP to be launched in 2020.

Despite significant momentum behind the B&HR agenda, headwinds persist. Many Asian government and business leaders lack awareness about the UNGPs or the business-case for implementation. A concise analysis of the B&HR landscape in the six countries covered by this action is presented below.

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1 European Commission, 'A Renewed EU Strategy 2011–14 for Corporate Social Responsibility', COM (2011) 681 final (25 October 2011), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF; Human Rights Council, 'Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/RES/ 26/22 (15 July 2014), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/083/82/PDF/G1408382.pdf?OpenElement.
2 https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx

<u>South East Asia:</u>

<u>Indonesia</u>: after a lengthy consultation process, Komnas HAM, Indonesia's National Human Rights Commission, in close collaboration with civil society, launched a draft NAP on B&HR in 2017. However, the government wanted to avoid having a second action plan besides the existing national human rights action plan and therefore decided to draft guidelines on B&HR instead. In 2017, the Coordinating Ministry for Economic Affairs (CMEA) was designated as focal point to lead government efforts in this area. At the request of the CMEA, UNDP has worked with a variety of ministries to develop the Bogor Declaration outlining a *Roadmap towards a National Action Plan on Business and Human Rights.* Overall, the process has progressed slowly and more advocacy efforts are required.

<u>Malaysia</u>: Malaysia's former government announced the intention to launch a NAP on B&HR in November 2017, also to address concerns over the treatment of migrant workers [in the rubber, construction, electronic and palm oil supply chains]. After the 2018 elections, Malaysia's new government has sent strong signals that it intends to fulfil the commitment to the UNGPs. UNDP is actively supporting SUHAKAM, Malaysia's National Human Rights Institution, in partnership with the new Ministry of Laws to ensure the NAP goes forward. The EU is supporting (through an EIDHR grant) SUHAKAM's work on promoting Malaysia's accession to the remaining six core human rights treaties (Malaysia has already ratified the CEDAW, the CRC, and the CRPD)[3]. UNDP will also work with this NHRI to secure interest and validation of the UNGPs across ministries.

<u>Myanmar</u>: despite progress on labour rights since reforms began in 2011, Myanmar continues to face human rights challenges [in extractive industries and agriculture]. There is need for improvement in terms of participation in trade unions, collective bargaining, and working conditions. Currently, the National Human Rights Commission of Myanmar is expressing interest in engaging in Business and Human Rights. The EU-led resolutions on Myanmar in the Human Rights Council include clear provisions on Business and Human Rights, the latest being A/HRC/37/32[4].

<u>Thailand</u>: Thailand has adopted various legal and policy frameworks, including the UNGPs, as a tool to guide its efforts in making industry practices more responsible, also to address concerns raised by civil society organisations (CSO) reports[5] alleging that the country's fishing, shrimp production and broiler chicken industries were engaging in violations of labour rights. Thailand announced in May 2017 that it would examine more fully the adverse impact of its industries on human rights, spurring Indonesia and Malaysia to do the same. UNDP has provided visibility, expert level advice, while facilitating consultations in support of Thailand's efforts. A NAP is expected to be launched in the first quarter of 2019.

<u>South Asia:</u>

<u>India</u>: While interest in the B&HR and responsible business conduct is on the increase in India, progress in India's economy formalization is rather slow and is facing challenges. Main obstacles pertain to specific sectors , such as the extracting]. Furthermore, many workers are reportedly subject to bonded labour, denied the national minimum wage, and forced by circumstances to have their children work alongside them. Informal workers face dangerous working conditions, long working hours, and employer abuse. Following the increased number of ratifications of ILO Conventions, India

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3 CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women; CRC: Convention on the Rights of the Child; CRDP: Convention on the Rights of Persons with Disabilities

4 Paragraph 31. "Encourages all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the Guiding Principles on Business and Human Rights, calls upon the Government of Myanmar to meet its duty to protect human rights, and calls upon home States of business companies operating in Myanmar to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction are to respect human rights throughout their operations;"

5 See below a not exhaustive list:

http://www.swedwatch.org/en/publication/report/trapped-in-the-kitchen-of-the-world/

https://www.finnwatch.org/en/news/185-finnwatch-research-ongoing-serious-rights-abuses-found-in-export-orientated-pineapple-factories-in-thailand

https://ejfoundation.org/resources/downloads/shrimp_report_v44_lower_resolution.pdf

https://www.motherjones.com/files/accenture_shrimp_report.pdf

needs continued support in the implementation of recognised international core standards. Issues such as trade unions and civil society space, as well as on the freedom of assembly, association and expression are also relevant. India's central government has expressed interest in adopting and implementing the UNGPs on B&HR. UNDP is currently advising the Ministry of Corporate Affairs (MCA) as it updates the "National Guidelines on Responsible Business Conduct". The revised National Guidelines will include a specific chapter on Human Rights Promotion and Protection and make strong reference to the UNGPs. Efforts continue to develop a roadmap to a National Action Plan to be launched in 2020. A National Baseline Assessment on the adverse impacts of business operations on human rights is expected to be conducted in 2019. In October 2018, India was re-elected as member of the UN Human Rights Council and will serve another three year-term mandate as of January 2019.

Sri Lanka: Sri Lanka faces several obstacles on the road to responsible business. Allegedly, low wages, long working hours, hazardous working environments, ethnic discrimination, forced labour and sexual exploitation continue to hamper Sri Lanka's efforts to regain its reputation. Despite these shortcomings, in Sri Lanka there is significant interest in the B&HR agenda. Awareness-raising from civil society and UN system actors in the country has heightened government and business interest in the UNGPs. Private sector firms show an increased appetite for engagement, as they attempt to enhance Sri Lanka as a risk-free partner for FDI and trade. UNDP is working closely with the Global Compact Network in Sri Lanka to consolidate support of the private sector behind a NAP, and to design due diligence guidance o ensure businesses respect human rights in their operations.

Linkages to EU policy frameworks

The EU and its Member States have played an important role in ensuring the implementation of the UNGPs, taking tangible steps towards the adoption of National Action Plans (NAPs), and encouraging countries outside the EU to consider doing the same. The European Commission in a Communication to the Parliament, the Council and other EU entities, stated that it "expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UNGPs."[6]

The Communication further noted that "better implementation of the UNGPs will contribute to EU objectives regarding specific human rights issues and core labour standards, including child labour, forced prison labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to collective bargaining."[7]

Citing the large numbers of European companies involved in global value chains, the European Commission also invited EU Member States to develop, by the end of 2012, national plans for the implementation of the UNGPs. This commitment also features in the EU Human Rights and Democracy Action Plan 2015-19. Taking up this challenge, member states of the EU were among the first to craft and implement NAPs on the UNGPs[8]. Clear directions of work were set out in the Foreign Affairs Council Conclusions on Business and Human Rights of 20 June 2016, including a call "on all business enterprises, both transnational and domestic, to comply with the UN Guiding Principles, the ILO Tripartite Declaration and the OECD Guidelines, *inter alia* by integrating human rights due diligence into their operations to better identify, prevent and mitigate human rights risks."[9]

Noting that enhanced implementation of the UNGPs will also contribute to achieving core EU foreign policy objectives, the EU has stated that "EU external activities would promote a global level playing field on business and human rights."[10] The EU has also affirmed that it is "dedicated to a two-pronged

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[6] European Commission, Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, Brussels, 25.10.2011, Com (2011) 681 Final

[7] See id.

[8] These 14 member states include: Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, The Netherlands, Poland, Spain, Sweden, and the United Kingdom.

[9]https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/council_conclusions_on_business_and_human_rights_foreign_affairs_council.pdf

[10] EU Statement, UN Human Rights Council, Forum on Business and Human Rights, 3-4 December 2013.

approach: first, to ensure that the Guiding Principles are fully understood and adhered to at European Union level; and second, to promote their implementation through its external actions."[11] In like manner, the EU is committed to promoting gender equality and social inclusion through its external actions, as stated in its Gender Action Plan 2016-2020 (also known as GAP II).[12]

This action is also in line with the overarching EU foreign policy framework set by the EU Global Strategy (EUGS). The EUGS in fact places sustainable development at the core of the EU external action and clearly states that "the EU will lead by example by implementing its commitments on development and climate change"[13]. (EUGS p.40).

This action is aligned with the Partnership Instrument (PI) Regulation, namely with its Objective 2: "A strategy for smart, sustainable and inclusive growth" Implementing the international dimension of "Europe 2020".

In particular, the project contributes to the PI Multiannual Indicative Programme (MIP) 2018-20 priority "Trade and economic diplomacy (including Responsible Business Conduct)" and mainstreams the following cross-cutting issues: Multilateralism (building alliances) contributing to a global order based on international law, EU principles and values (democracy, rule of law, human rights and fundamental freedoms, respect for human dignity, the principles of equality, including gender equality, and solidarity); Resilience and Innovation.

Trade for All Communication

The EU has long recognised that trade policy must be embedded in wider foreign policy objectives, which include strengthening of human rights abroad. As outlined in the European Commission's Trade for All Communication, "responsible management of global supply chains is essential to align trade policy with European values". The Trade for All Communication also notes that the challenge of ensuring consistency between trade policy and values is "complex and must involve a range of public, private and civil society actors to make meaningful changes for people on the ground". Furthermore, mitigating costs and risks require a smart mix of policy and programming responses.

EU Strategy for Corporate Social Responsibility

The Communication setting out the European Strategy on Corporate Social Responsibility (CSR)[14] stipulates that businesses must respect human rights in accordance with the UNGPs. This framework defines CSR as the "responsibility of enterprises for their impacts on society," and identifies human rights as a priority concern. Importantly, the Commission's approach to CSR is built upon "a smart mix of voluntary policy measures and, where necessary, complementary regulation," as well as on the notion that "the development of CSR should be led by enterprises themselves". The 2015 Commission Staff Working Document on Implementing the UNGPs on B&HR states that "this approach also holds true for implementing the UNGPs" and any forthcoming revision of the EU CSR Strategy, "will retain these underlying principles."[15]

Europe 2020

Promotion of the implementation of the UNGPs is fully aligned with the aims of the Europe 2020 strategy for smart, sustainable and inclusive growth and with the principles of the European Pillar of Social Rights.

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[11] EU Statement, UN Human Rights Council, Forum on Business and Human Rights, 3-4 December 2013.

[12] Joint Staff Working Document, EU Gender Action Plan II, "Gender Equality and Women's Empowerment: Transforming the Lives of girls and Women through EU External Relations 2016-2020", https://ec.europa.eu/europeaid/joint-staff-working-document-gender-equality-and-womens-empowerment-transforming-lives-girls-and_en

[13] EU Global Strategy: https://europa.eu/globalstrategy/en/global-strategy-foreign-and-security-policy-european-union, p. 40

[14] Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, Brussels, 25.10.2011.

[15] European Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights - State of Play, Brussels, 14.7.2015. SWD (2015) 144 final. p. 7

The UNGPs offer important benefits as a framework for governments, businesses and civil society to engage each other in discussions and actions that promote smart, sustainable and inclusive growth. Efforts to implement the UNGPs can also enhance EU business competitiveness by illuminating risk factors through public consultations, human rights assessments as well as environmental and gender-sensitive impact assessments. An increasing number of EU investors also undertake social, environmental and human rights audits to ensure their investments are secure against reputational and litigation risks. Thus, efforts to implement the UNGPs in Asia may lead to more robust investments across borders, with fewer negative repercussions for EU-based investors.

Justification of the policy domain

Promoting the UNGPs in Asia will strengthen internationally recognised standards of responsible business behaviour, based on agreed human rights norms, while levelling the playing field for businesses that integrate human rights considerations into their operations and supply chains. Importantly, implementation of the UNGPs requires for Governments' robust engagement with CSO and national business leaders, opening the door to constructive discussions on a broad set of issues, such as land rights, environmental concerns, doing business, and human rights.

Furthermore, the impact of the UNGPs can be measured, debated and promoted before an international audience of policy makers, business leaders, and other authorities through the Global Forum on B&HR, hosted every year in Geneva by the secretariat of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Through this Forum and other formats in Asia, this action can strengthen a positive discourse around international economic integration, responsible business practices, and their impacts on human rights and gender equality.

2.3 Lesson learnt

On the basis of substantial discussions during the scoping missions, in international and regional fora, and with UN system and CSO partners at coordination events, the following main lessons learned have emerged:

- Awareness raising among all stakeholders is a critical first step in moving the B&HR agenda forward;

- Facilitating peer learning and dialogue between key stakeholders cultivates uptake or race-to-the-top momentum on UNGPs implementation at the regional level;

- Multi-stakeholder approaches towards NAP development ensure strong implementation and legitimacy of efforts;

- Striving for policy coherence at the national levels is key to priority setting, coordination and whole of government implementation;

- Making the business case for UNGPs brings in diverse actors and ensures sustainability of efforts;

- Including SMEs in the conversation on responsible business practices informs NAP development and sensitises business owners and workers to UNGPs;

- Working closely with the UN system and other multilateral actors, including the OECD, ensures coordinated messages and cohesive approaches towards the B&HR agenda;

- Support to human rights defenders facilitates and strengthens remedial mechanisms.

2.4 Coherence and complementarity

Given the complementarity between the UNGPs and the main Responsible Business Conduct frameworks, as articulated *in primis* by the OECD Guidelines on Multi-National Enterprises (OECD Guidelines) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), complementarity and synergies with the EU-ILO-OECD joint

initiative "Responsible supply chains in Asia"[16] will be actively pursued. In this regard, ILO and UNDP intend to adopt a joint action plan of activities in close consultation with the EU and OECD. In ensuring complementarity between approaches, this project will, *inter alia*, work closely with governments and CSOs to ensure wide public awareness of the UNGPs so as to complement the focus of ILO-OECD on raising awareness among members of the business sector. Importantly, this project will assist the OECD National Contact Points (NCPs) in gathering relevant information in Asia, as necessary, and encourage learning between NCPs and NHRIs. UNDP will work with ILO and OECD to provide trainings to private sector actors on human rights due diligence practices and grievance mechanisms in the countries jointly covered by both actions, namely Thailand and Myanmar.

Complementarity and synergies will also be particularly sought with the on-going regional project "Business and Human Rights in Asia: Promoting Responsible Business Practices through Regional Partnership (B+HR Asia)" funded by the Swedish Government and implemented by UNDP. The B+HR Asia project is envisioned to support regional efforts at strengthening human rights in business operations and is currently in a "set-up" phase whereby UNDP will develop workplans for the next five years.

The joint EU-UNDP initiative will focus primarily on country level interventions, while the Swedish support is aligned with wider regional efforts[17]. UNDP will also capitalise on longstanding partnerships with UN system organisations while building new relationships at the bilateral level and with local governments, businesses, regional, national and local CSO, as well as with donor partners.

Other complementary actions of relevance include (non-exhaustive list):

- EU Spotlight Initiative programme "Safe and Fair: Realising women migrant workers' rights and opportunities in the Association of Southeast Asian Nations (ASEAN) region";
- EU efforts in responsible management of global value chains, particularly in the garment sector, funded under the Development Cooperation Instrument (DCI)[18];
- Partnership Instrument-funded action "Promoting Economic Empowerment of Women at Work in Asia" (China, India, Indonesia, Malaysia, Philippines, Thailand, Vietnam);
- OECD – Promoting transparency of the minerals supply chains in conflict-affected and high-risks areas building on the OECD Initiative on Due Diligence for Responsible Mineral Trade [SfFPI].

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[16] This on-going PI-funded initiative aims at promoting responsible business conduct among businesses engaged in supply chains in six Asian countries, namely China, Japan, Myanmar, the Philippines, Thailand, and Viet Nam.

[17] Swedish supported regional activities include working with ASEAN to raise awareness about the Business and Human Rights agenda and promoting peer learning. Swedish support will also facilitate increased engagement with the Mekong River Commission, Asia-Pacific Economic Council (APEC), and South Asian Association for Regional Cooperation (SAARC), among other regional and international organizations. To ensure alignment between Swedish-supported regional efforts and EU/UNDP support at the bi-lateral level, a mechanism will be put in place to synchronise both interventions.

[18] SWD(2017) 147 final - Sustainable garment value chains through EU development action

2.5   EU added value

As explained in detail in section 2.2 above (sub-section "Linkages to EU policy frameworks"), the EU has played a pioneering role in the implementation of the UNGPs. In this respect, the value added of the EU in helping advance the B&HR agenda in third countries is extremely relevant.

The EU, through the PI as a foreign policy instrument translating EU political commitments into action, can play a critical role in maximising the potential of the B&HR agenda to advance EU foreign policy objectives, values and principles. Along with other instruments, the PI actively pursues business cooperation to unlock opportunities for EU enterprises to access foreign markets, while anchoring them to responsible business conduct. There is a strategic interest in making responsible business a brand of foreign policy driven action funded by the PI. This is fully in line with the EU Global Strategy which affirms that "our [the EU's] interests and values go hand in hand. We [the EU] have an interest in promoting our values in the world. At the same time our fundamental values are embedded in our interests".

This EU-UN joint action on business and human rights would significantly contribute to this approach and complement on-going EU efforts translating EU commitments on sustainable development, enshrined inter alia in the 2030 Agenda for Sustainable Development, into action. EU's current and future support to Strategic Dialogues, Partnership Cooperation Agreements, and Free Trade Agreements, including through the PI, can significantly reinforce UN's efforts to encourage implementation of the UNGPs, and vice versa, if the two processes run in parallel.

In fact, the EU's commitments to the UNGPs, coupled with its public diplomacy efforts and co-operation support on several areas would greatly enhance multilateral UN-led efforts aimed at raising awareness and operationalising the norms that underpin the UNGPs. Joint programming between the EU and UNDP, based on partnership with national and regional stakeholders, will help meet growing consumer expectations in both Europe and Asia for ethical, safe, and environmentally-friendly supply chains.

Finally, this action is conceived as an EU-UN partnership of peers to promote a multilateralism-based approach in the field of human rights. A close partnership between the EU and UN is intended to build on the respective expertise and channels in the region so as to maximise the impact of the action and enhance the EU and the UN political profile.

2.6   Cross-cutting issues

It is widely recognised that Asia's rapid economic growth trajectory has not been without costs and risks. Economic growth has been linked to environmental risks such as contaminated water supplies, accelerated deforestation, and increased air pollution. Large infrastructure projects have led to environmental degradation, land grabs and displacement. Labour-intensive manufacturing has at times taken place in hazardous working environments, with exploitation, abuse of migrant workers, and other rights violations with long term implications on the stability and prosperity of individuals, families and communities. Seemingly, violence against women and discrimination manifested in emerging dialogues on sexual harassment in the workplace, low rates of workforce participation by women, and a widening pay gap between men and women are raising concerns. In this context, the action will address environmental, labour, land and women's human rights issues as cross-cutting themes. These themes will be continuously mainstreamed throughout the different project cycle management phases of the action.

3   ACTION DESCRIPTION

3.1   Objectives

The **overall objective** of this action is to promote the agenda on Business and Human Rights and ensure that it is further taken up by Asian governments and business, through an EU-UN partnership, thereby promoting multilateralism and levelling the playing field for businesses that integrate human rights considerations into their operations and supply chains.

The **specific objectives** (SOs) of the action are:

- SO1: To operationalise an EU-UN partnership promoting internationally agreed principles on human rights and environmental protection in the context of business operations (multilateralism);
- SO2: To raise awareness of and cooperate with national governments, the business sector and civil society in selected countries in Asia to support national efforts to implement the UNGP on Business and Human rights, including the adoption and implementation of NAPs, the establishment of grievances mechanisms by businesses and enhanced access to effective remedies and rights-based solutions (human rights);
- SO3: To facilitate a more level playing field and a reduced risk of disruption of supply chains for EU businesses adopting responsible business behaviours in their operational and sourcing practices in Asia (economic diplomacy);
- SO4: To enhance the profile of the EU as a global actor and promoter of human rights, in line with the EUGS and based on a convinced adhesion to multilateralism (public diplomacy).

In coherence with the above specific objectives, the **expected results** of this action are as follows:

- R1: Awareness of the UNGP by relevant stakeholders in the selected countries is raised, thus creating the necessary grounds and pre-conditions for boosting the B&HR agenda in Asia (SO2);

- R2: National legislative and policy frameworks, including NAPs, are developed and/or implemented by means of targeted support to and dialogue with relevant stakeholders in the selected partner countries, taking advantage of the favourable momentum at regional level to advance the B&HR agenda (SO2);

- R3: Efforts carried out by UNDP at regional level under the project "*Business and Human Rights in Asia: Promoting Responsible Business Practices through Regional Partnerships*" (funded by the Government of Sweden) are amplified through bilateral action under this project with country-level partnership architectures (UN system, NHRI, CSO, and private sector), thus resulting in mutually reinforcing regional and bilateral action (SO2);

- R4: Access to effective remedy for violations of human rights in the context of business operations is enhanced, including in cases of violations occurring outside a country's jurisdiction access (SO2);

- R5: Enabling conditions are created or enhanced for EU's responsible enterprises operating in and sourcing from Asia to benefit from a more level playing field (SO3);

- R6: The EU-UN partnership on B&HR is reinforced and the EU's role and image as a global actor and promoter of human rights under the call of multilateralism are strengthened (SO1, SO4).

To achieve these results, the project will be articulated around three (3) **activity workstreams** to be implemented in partnership with governments, businesses and civil society actors. Activities listed under each workstream are indicative, not exhaustive and will not necessarily be implemented in each of the targeted countries.

Workstream 1:

Awareness raising to build knowledge and political will including training and peer-to-peer exchange to further policy convergence and compliance (R1, R2, R3, R4, R5)

- Raise awareness of the UNGPs with governments, making the normative and business-case for adoption and implementation.
- Provide particular awareness raising opportunities for businesses, business associations, including the European Chambers of Commerce, as well as leaders of state-owned enterprises;
- Provide technical assistance to government ministries responsible for drafting and implementing National Action Plans;
- Bring clarity to the range of standard setting guidelines including the UN Guiding Principles, ISO 26000, Global Reporting Initiatives, OECD Guidelines for Multinational Enterprises, among other instruments;
- Host trainings on human rights and sustainable development with a focus on implications for business operations in emerging economies in the region, including among state-owned enterprises as well as national and European Chambers of Commerce;
- Facilitate a tripartite discussion involving relevant policy makers, prominent civil society groups and human rights defenders, European Chambers of Commerce, Asian business associations and state-owned enterprises, so as to expand the number of actors playing an active role in policy-making;
- Advocate for transparency, accountability and transboundary obligations of large infrastructure projects including those linked to Special Economic Zones, mining and energy generation projects, among others, through engagement with civil society, government and businesses, including financial institutions.

Workstream 2:

Communication and Public Diplomacy (R6)

- Produce communication products including short-form documentaries, video animations and social media promotional materials to enhance understanding of UNGPs, gender, trade and human rights nexus.

- Conduct research and publish short policy papers on issues related to human/environmental rights and international supply chains, transboundary jurisdictional issues, and other pertinent topics to business, government and civil society, and women's organisations in the region;

- Link up all communication work to EU action on public diplomacy, in particular to all existing and future PI action on policy outreach in Asia. Communication activities will also involve, when relevant, EU enterprises operating in the partner countries with a view to promoting sharing of experiences.

Workstream 3:

Enhance access to remedies, through right-based solutions, innovative approaches and technology (R2, R4)

- Conduct needs assessments and provide technical assistance to NHRIs and Judiciaries to better understand the UNGPs, environmental rights issues, human rights due diligence, and transboundary jurisdictional challenges so as to strengthen their capacity in dealing with non-state/non-judicial remedies in disputes over human rights abuses;
- Conduct research and convene discussions on the distinctive risks faced by women, (male and female) migrants, children and indigenous peoples in the context of business operations, and potential remedies and prevention strategies;
- Provide support to civil society actors working with environmental and human rights defenders, and women's rights activists, including if needed through pilot projects;

- Conduct sector-specific trainings with government, business and civil society stakeholders on environmental and human rights due diligence and compliance principles;
- Develop and implement innovation lab involving regional and international start-ups[19] to address barriers to access to information and access to justice for groups adversely impacted by business operations;
- Develop pilot initiatives aimed to encourage the uptake by the private sector of relevant ISO standards such as ISO 26000 Social Responsibility and ISO 14000 Environmental Management.

Theory of change

If the EU and UNDP make their respective comparative advantages converge into a joint project and complement existing action on B&HR by other international, regional and national organisations, then policy makers, consumers and business actors would become more aware of the potential adverse impacts of business operations on human rights, and work to prevent these risks, or ensure remedies for violations that have already occurred. In turn, human rights conditions would be strengthened and the risks of disruptions to commercial flows between the EU and Asia are expected to be mitigated, leading to heightened levels of prosperity, greater recognition of the positive role of trade and increased mutual respect between regions.

Further, where the collective influence of the UN and the EU encourages more attention to human rights in the production of goods, commodities and services, then retail brands and producer reputations in both Asia and Europe could be enhanced leading to upward movement in the value-chain for concerned firms. Enhanced reputations and goodwill could lead to greater consumer loyalty, stronger interest from socially responsible investment, better marketability and long-term growth. Overtime, it is envisaged that more and more private sector actors see the B&HR agenda as a pro-business agenda (i.e. *making the business case for human rights*) and engage more fully in this area, serving as "ambassadors" of EU values and related international norms, thus contributing to enhance the role of the EU as a global actor and HR promoter. Increased private sector engagement is expected, in turn, to deepen and lend greater credibility to EU-UN's policy work on business and human rights and confer legitimacy to multilateralism as the preferential way to promote and defend values at global level.

Additionally, if the EU and UNDP joint efforts lead to the effective UNGP implementation in the selected countries, then more countries might feel compelled to follow suit, leading to a "snowball" effect. This is likely to materialise as soon as stronger human rights conditions, instead of being seen as an irritant for profitable business, are perceived as a comparative economic advantage by governments, as well as the private sector, in a similar situation in the region, and as a necessary precondition for engaging in fruitful sustainable trade relations with the EU. All this makes the business case for B&HR: increased commercial flows, fewer disruptions in supply chains, enhanced level playing field facilitating market access to EU enterprises as a result of reduced social dumping in Asia.

3.2 Stakeholders

The action will involve many stakeholders that can be grouped according to the following categories.
- National authorities (Ministry of Industry, Ministry of Justice, Ministry of Environment, Ministry of Economic Affairs, Ministry of Employment and Social Affairs, Ministry of Agriculture, Ministry of Trade, National Parliaments, National Human Rights Institutions; etc.);
- Business associations and Chambers of Commerce;
- European and Asian businesses, including Micro-, Small- and Medium- Enterprises (MSMEs);

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[19] The innovation lab will bring actors together from disparate fields to brainstorm on 1-3 priority human rights or environmental rights issues. Nurtured through sequentially hosted workshops, 1 project per year for 3 years will be provided with seed funding to bring the idea to market. These ideas can involve the introduction of new technologies, including block chain or Artificial Intelligence, or can simply involve an innovative approach.

- International Organisations, including OECD and ILO, as well as OHCHR and the UN Working Group on Business and Human Rights;
- Workers' organisations and trade unions;
- Civil society organisations (both national and regional such as the ASEAN CSR Network[20]) and human rights defenders;
- Local authorities;
- Research entities and universities.

3.3 Risk assessment and management

Risk description	Risk level (H/M/L)	Mitigating measure
Shifting levels of political will leads to delays in the implementation of the UN Guiding Principles or related action.	M	The project will work closely with B&HR national champions and trusted advisors to government with strong connections to policy makers. UNDP Country Offices, building on the expertise of OHCHR and the UN Working Group on Business and Human Rights, will guarantee close co-ordination with governmental counterparts to ensure ownership of the B&HR agenda. UNDP will bring together regional actors to discuss opportunities and challenges and facilitate peer learning to help states clarify what investments and what returns on investments in this project they can expect. In addition, the EU will make all necessary diplomatic efforts to ensure that the B&HR agenda remains a priority in the targeted partner countries.
Election cycles in target countries might delay implementation.	M	Project activities will be implemented through the UN Country Teams and advice will be sought from the UN Resident Coordinators and their Peace and Development Advisers so as to calibrate the approach to possibly changing government's structures. The Project Advisory Committee will support the Steering Committee by providing high-level advice and recommendations, including on appropriate measure to be taken when project deliverables are delayed due to unforeseen political circumstances.
Engaging with private sector actors can prove difficult if a 'business case' is not fully developed. Moreover, certain reputational risks exist with regards to "blue-washing".	M	The project will work with credible business associations such as the Global Compact Networks, national and international Chambers of Commerce, and industry-specific bodies to create interest in sustained actions and investments. UNDP will organise events and invite private sector champions to help showcase the progress of private sector actors to reward and validate their efforts. UNDP will host knowledge-sharing labs and other events, made up of NHRIs, CSOs, UN-system actors and business champions which will encourage heightened business participation and ownership in support of behavioural change in the business sector. UNDP will keep its base of business partners as broad as possible and yet explore the need

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[20] The ASEAN CSR Network is one of the key stakeholders in the B&HR regional project implemented by UNDP with funds from the Swedish Government (*cf.* pg. 10; pg. 14-5).

		to develop a sustainable-business partner programme to qualify engagement.
Countries could perceive NAP processes as simply public relations exercises, develop ineffective NAPs, or fail to follow-up on implementation after its drafting.	M	UNDP will take appropriate measures, including the possibility of disengagement or support, to help ensure that government commitments under the B&HR agenda are not merely for public relations purposes, and that processes, content and implementation meet international standards. UNDP will build on the expertise of OHCHR and the UN Working Group on Business and Human Rights to ensure the quality of NAPs through advocacy missions and dialogue, training and roundtables that include policy makers at regional meetings. UNDP will also deploy its own technical capacities and CSO partner expertise where necessary. It will convene stakeholder consultations and validation exercises. It will bring human rights defenders to the table to voice their challenges in a safe space. UNDP will leverage the Universal Periodic Review process, and international fora such as the UN Forum on B&HR, to facilitate review of NAPs by recognised authorities and peers. UNDP will also encourage at the early stage of development that countries request the UN Working Group on B&HR to plan an official country visit. UNDP will facilitate CSO participation in all review events.
A NHRI may be downgraded in status by the Sub-Committee on Accreditation at GANHRI[21] amounting to a set-back for the B&HR agenda in a specific country in several respects, including limiting access to effective remedies for victims of business-related HR violations.	M	UNDP will actively deploy technical assistance and advice to help relevant NHRIs monitor, report, and investigate human rights abuses more effectively and in a timely manner, to reduce the risk of downgrading.

UNDP will strengthen support to national and regional CSOs working with human rights defenders to provide legal assistance in furtherance of adequate remedies. |
| Human rights defenders and victims of violations may be placed in danger by the project's support to CSOs and community-based organizations leading to an increase in conflicts or security risks. | M | The project will continuously assess security risks and revise project activities accordingly.

Conflict analyses routinely developed by UNDP Country Offices will be used to inform the implementation of the activities and ensure conflict sensitivity and do-no-harm approaches. |
| Delay in establishing appropriate platforms for discussions and knowledge sharing internally and externally, due to events outside project control. | L | The activities are designed to be flexible and should be revised based on achievements in years prior. Focus on forward planning will mitigate risks of delays. |

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[21] Global Alliance of National Human Rights Institutions

3.4 Communication and EU visibility

Communication and visibility of the EU is a legal obligation for all external Actions funded by the EU.

This Action shall contain communication and visibility measures which shall be based on a specific Communication and Visibility Plan of the Action, to be elaborated at the start of implementation.

Appropriate contractual obligations shall be included in, respectively, the procurement and grant contracts, and delegation agreements.

The Communication and Visibility Manual for European Union External Action22, which came into force on 1 January 2018, shall be used to establish the Communication and Visibility Plan of the Action and the appropriate contractual obligations.

Besides following the rules and guidelines linked to communication and visibility for EU-funded projects in third countries, this action will have a strong EU Public Diplomacy angle and will contribute to enhance the profile of the EU as a global actor, as promoter of human rights and good governance as well as of inclusive and sustainable trade, in line with, *inter alia*, the EU Global Strategy and the Trade for All Communication.

To this end, a communication strategy including media engagement and defining clear messaging along the lines above to enhance the EU's profile will be elaborated in the inception phase of this action. To ensure pertinence, impact, and coherence, the Press and Information sections of the EU Delegations in the six countries covered by this action will contribute to the main communication and visibility actions envisaged.

The annual UN Forum on Business and Human Rights in Geneva can be an excellent platform to give visibility to this action, including through references in EU written contributions and interventions.

4 IMPLEMENTATION ARRANGEMENTS

4.1 Method of implementation

Indirect management[23] with an international organization

This action may be implemented in indirect management with the United Nations Development Programme (UNDP).

This implementation entails undertaking all necessary actions, including the main indicative activities described in section 3 above, to achieve the objectives and expected results of the project. This implementation is justified given that UNDP is widely recognised as the convener of the UN system around the UNGPs in the Asia-Pacific region, leading an emerging UN Partnership Architecture on the UNGPs that brings the UN system, CSOs and independent thought leaders together to discuss and find solutions to B&HR challenges. This Partnership Architecture comprises, *inter alia*, the Asia Pacific Forum, the International Labour Organisation (ILO), the International Organisation for Migration (IOM), OECD, Oxfam, UN Environment (UNEP), UN Economic and Social Commission for Asia and the Pacific (ESCAP) and UN Women, and is designed to maximise collective efforts, through enhanced policy coherence, consistent advocacy messaging, and the sharing of innovative ideas. UNDP will be encouraged to build on the expertise and experience of the UN Office for the High Commissioner for Human Rights (UN-OHCHR) and, possibly, the UN Working Group on Business and Human Rights.

With a presence in 23 countries across the Asia-Pacific region, UNDP is well positioned to support the implementation of the UNGPs on a truly regional scale. UNDP in Asia-Pacific has been engaged in

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[22] https://ec.europa.eu/europeaid/sites/devco/files/communication-visibility-requirements-2018_en.pdf

[23] Article 154 FR - Selection of the entities entrusted with the implementation of EU funds in indirect management

B&HR issues since 2015, with the support of the Swedish government through the Swedish International Development Cooperation Agency (SIDA). UNDP is facilitating regional exchanges of best practices in policy and regulatory development, raising awareness among multiple actors and stakeholders, and building political will through advocacy and information sharing.

Partnerships will be strengthened with international organisations that are either active or have expressed strong interest in furthering B&HR work at the regional level.

4.2   Indicative budget

Method of Implementation	Amount in EUR million
Indirect management with an international organisation	5.5
Total	**5.5**

The Commission will ensure that the EU appropriate rules and procedures for providing financing to third parties are respected, including review procedures, where appropriate, and compliance of the action with EU restrictive measures[24].

4.3   Organisational set-up and responsibilities

The regional project office will be located in the UNDP Regional Office for Asia and the Pacific in Bangkok. The Project Management Team will be composed of UNDP staff including international and national team members located in regional and country offices respectively (detailed composition of the team to be determined).

To ensure political governance, strategic orientation and oversight of progress a Project Steering Committee (PSC) reflecting the EU-UN bipartite nature of the action will be set-up. It will be composed of representatives of the UNDP Regional Office for Asia and the Pacific, and representatives of relevant services of the European Commission and the European External Action Service. Representatives of EU Member States (such as Sweden, for instance) and implementing partners of relevant complementary EU-funded actions in the region, such as the ILO, the OECD and the UN-OHCHR) might be invited as observers.

It is envisaged that a Regional Project Advisory Committee and a National Project Advisory Committees will be established in each target country. The type and the degree of involvement/participation of the EU in these mechanisms shall be discussed with UNDP as part of the negotiation of the contract and thereby laid down.

4.4   Performance monitoring

The day-to-day technical and financial monitoring of the implementation of this Action will be a continuous process and part of the implementing entity's responsibilities. To this end, the implementing entity shall establish a permanent internal, technical and financial monitoring system for the Action and elaborate regular progress reports (not less than annual) and final reports. Every report shall provide an accurate account of implementation of the Action, difficulties encountered, changes introduced, as well as the degree of achievement of its results. The progress and final reports shall provide quantified and qualitative data in relation to the logical framework indicators which will include relevant indicators from the list of core and corporate indicators.

The report shall be laid out in such a way as to allow monitoring of the means envisaged and employed and of the budget details for the Action. The final report, narrative and financial, will cover the entire period of the Action implementation.

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[24] www.sanctionsmap.eu Please note that the sanctions map is an IT tool for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal (OJ). In case of discrepancy between the published legal acts and the updates on the website it is the OJ version that prevails.

The Commission may undertake additional Action monitoring visits both through its own staff and through independent consultants recruited directly by the Commission for independent monitoring reviews (or recruited by the responsible agent contracted by the Commission for implementing such reviews).

4.5   Evaluation and audit

For this Action, the Commission may carry out interim and/or final/ex-post evaluation(s) via independent consultants contracted by the Commission based on specific terms of reference.

Without prejudice to the obligations applicable to contracts concluded for the implementation of this Action, the Commission may, on the basis of a risk assessment, contract independent audits or expenditure verification assignments.

As the "N+1" rule applies for contracting under this decision, external evaluations and audits, as well as additional external monitoring referred to under section 4.4 above will be funded from sources other than those allocated to this specific Action.