

Assessment of the National Action Plan (NAP) on Business and Human Rights of ITALY



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INTERNATIONAL CORPORATE
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In December 2016, the Italian government launched a National Action Plan (NAP) on business and human rights. In response, the International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) conducted a structured assessment of the Italian NAP, using the NAPs Checklist developed and published by ICAR and the Danish Institute for Human Rights (DIHR).ⁱ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them.

This assessment is part of a larger effort by ICAR to assess all existing NAPs on business and human rights. In November 2014, ICAR and ECCJ published its first version of a joint report *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights*,ⁱⁱ which systematically assessed the published NAPs from the United Kingdom, the Netherlands, Denmark, and Finland. In November 2015, ICAR and ECCJ published an update of this report including the assessments of the Lithuanian and Swedish NAPs. This report was updated a further time in August 2017, in conjunction with both ECCJ and Dejusticia, to include assessments of the Colombian, Norwegian, United States, United Kingdom (second iteration), Italian, and Swiss NAPs.

ASSESSMENT SUMMARY:
ITALIAN NATIONAL ACTION PLAN

Introduction

The Italian government expressed its intention to draft a National Action Plan (NAP) on business and human rights in 2013. Italy's Inter-ministerial Committee for Human Rights (CIDU) at the Ministry of Foreign Affairs and International Cooperation coordinated the drafting of the NAP. In December 2013, the Italian government released "The Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights," ("Foundations paper") which was based on an analysis of the gaps in domestic implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and served as an outline for the development of the NAP.

The Italian NAP is organized exclusively around Pillar I, the State duty to protect, and Pillar III, access to remedy of the UNGPs, and goes through their respective UNGPs principle by principle. Rather than addressing Pillar II specifically, the NAP broadly discusses the corporate responsibility to respect under the "Government Expectations Toward Business" section. This is in part because the Italian government views business and human rights and corporate social responsibility as two separate policy areas, and maintains a separate national action plan on corporate social responsibility (CSR).

This summary outlines key trends in terms of process and content, as identified through the attached assessment of the Italian NAP. It is hoped that other States that are considering or are in the process of creating a NAP will use this assessment to inform their own processes.

Process

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) the government commissioned a gap analysis, or national baseline assessment (NBA), prior to drafting the NAP; (3) an inter-governmental working group was created to inform the NAP drafting; and (4) a draft of the NAP was published and consulted upon before the final version was adopted.

From the beginning of the NAP process, it was clear that CIDU was the lead agency responsible for the coordination of the NAP process. Additionally, prior to the drafting of the NAP, the government commissioned academics from the University of Sant'Anna to conduct a NBA, which examined the "adequacy of the Italian regulatory and institutional frameworks in comparison to

the [UNGPs],” identified strengths and weaknesses, and elaborated specific recommendations on how to ensure stronger conformity with the UNGPs.³ The creation of the NBA and subsequent “Foundations paper” allowed the Italian government to develop a more informed and evidence-based NAP.

Another strong aspect of the NAP process was the establishment and coordination of an ad hoc working group composed of representatives from several ministries and institutions to participate in the NAP process. By helping to facilitate broad governmental engagement, the NAPs process can serve to build government buy-in and increase the likelihood of efficacious implementation. Similarly, the draft NAP was published and open for public comment from July 27 to September 10, 2016.

However, the NAP process could have been improved in a number of ways. First, the entire NAP process could have benefitted from increased transparency; the Italian government did not publish a budget, terms of reference, or timeline for the NAP process. Additionally, while the process included a number of stakeholder consultations, these efforts could have been strengthened through the facilitation and inclusion of disempowered or at-risk stakeholders.

In relation to monitoring and follow-up to the NAP, the government commits to establish an inter-departmental group, known as the Working Group on Business and Human Rights to work jointly with a consultative body composed of relevant non-governmental stakeholders, such as businesses, trade unions, civil society organizations, human rights defenders, and academics, to monitor the implementation of the NAP. Although the NAP layouts out a framework for monitoring and reporting which includes at-risk stakeholders, it does not go as far as to clarify a framework for reporting on implementation or commit to update the NAP in the future.

Content

The content of the NAP focuses on the Italian government’s commitments under Pillars I and III. The NAP only broadly discusses Pillar II, the corporate responsibility to respect, in terms of expectations, rather than action points.

One positive aspect of the Italian NAP is that it addresses the full scope of the State’s jurisdiction by focusing on promoting corporate responsibility and protecting human rights both domestically and abroad. The NAP also does a good job of prioritizing the most serious business-related human rights abuses based on the results of its NBA, including: promoting due diligence, decreasing exploitation of vulnerable groups by businesses, promoting fundamental labor rights, strengthening Italy’s international development cooperation, tackling discrimination and

inequality, and promoting environmental protection. The NAP also gives special focus on vulnerable and excluded groups.

One negative aspect of the NAP is that none of the planned measures contained in the NAP have specific timelines for implementation, nor do they specify which government agency or department is tasked with implementing and following-up on future actions. Additionally, as mentioned above, many of the measures included only vague commitments. The lack of specificity and structure of the planned measures will make tracking the NAP's implementation difficult. The planned measures could have been improved through more specificity in the nature of the commitments made and the process by which implementation will be achieved.

ICAR-ECCJ ASSESSMENT OF THE ITALIAN
NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

1.GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Italian government expressed its intention to draft a NAP on business and human rights in 2013.⁴ In December 2013, the Italian government released “The Foundations of the Italian Action Plan on the United National Guiding Principles on Business and Human Rights,” which laid the groundwork for the adoption of the Italian NAP.⁵ This document was based on a gap analysis commissioned by the OECD National Contact Point (established within the Italian Ministry of Economic Development) and conducted by University of Sant’Anna in 2013.⁶ The creation of both of these documents is a positive indication of the government’s commitment to a comprehensive NAP process.</p> <p>In the NAP, the government acknowledges that the NAP is an instrument to “move towards the new needs of interaction between human rights and the economic dimension” in line with the UN Guiding Principles on Business and Human Rights (UNGPs).⁷ It affirms Italy’s “promotion and respect for human rights - with particular consideration to the most vulnerable groups” as “primary vehicles to rebalance the distortions and inefficiencies produced within the economic and productive contexts that have proved not to be efficient in this regard.”⁸</p> <p>In its statement of commitment, the NAP notes that Italy is “committed to promote and carry out key-actions to provide that, within the domestic</p>

	<p>legislative, institutional and operational framework regulating economic activities, human rights are conceived as a priority so that the eventual adverse impact of business on these rights is properly addressed.”⁹ It further states that this commitment “will reflect also in Italy’s external action, by encouraging and favoring the adoption of adequate measures to foster respect of human rights in business activities at regional and international level.”¹⁰</p> <p>While the creation of an inter-departmental group to guide the NAP process (to be discussed in section 1.2 of this assessment) is another positive indication of the government’s commitment to the NAP process, the vague monitoring and implementation commitments and lack of reporting requirements demonstrate a weakness in the overall commitment to the NAP process. Failure to implement more specific action points with timelines and reporting requirements will necessarily impact the plan’s effectiveness.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>Italy’s Inter-ministerial Committee for Human Rights (known by Italian acronym, CIDU) at the Ministry of Foreign Affairs and International Cooperation coordinated the drafting of the NAP.¹¹</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, the Ministry of Foreign Affairs and International Cooperation was the lead agency on the creation of the NAP. An ad hoc working group composed of representatives of several ministries and institutions, including the Ministry of Economic Development, Ministry of the Infrastructures and Transports; Ministry of Justice; Interior Ministry; Ministry of Labour and Social Policies, Ministry for the Environment, Land and Sea, National Institute of</p>

	<p>Statistics, was also established and coordinated by CIDU.¹²</p> <p>In addition, an inter-departmental group, known as the Working Group on Business and Human Rights (in Italian: GLIDU), is charged with ensuring implementation of the NAP, working jointly with a consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, NGOs, civil society organizations, human rights defenders, individual experts and representatives from academia).¹³</p>
1.4. Devise and publish terms of reference and a timeline for the NAP process.	<p>Neither terms of reference nor a timeline for the NAP process was published. The government published the “Foundations of the Italian Action Plan on UN Guiding Principles on Business and Human Rights (UNGPs)” as a foundational document on which it based the NAP; however, this document did not contain a clear timeline for the process.¹⁴</p>
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	<p>There is no information publicly available on the level of funding provided for the NAP process.</p>

2.STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	The Italian government did not provide a clear plan or timeline for stakeholder participation in the NAP process. Pre-draft consultations were limited in the development of the NAP. ¹⁵ The Italian inter-departmental working group invited only the UN Global Compact Network to participate in a few of its meetings. ¹⁶ Italy circulated the first full draft NAP to a select list of stakeholders: ActionAid, Amnesty International Italy, Mani Tese, Re:Common and a few other civil society organizations. ¹⁷ The government then released an updated draft NAP online for public consultation from July 27 to September 10, 2016. ¹⁸
2.3. Provide adequate information and capacity-building where needed.	The Italian government did not provide capacity-building measures in its engagement with stakeholders.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	The Italian government did not thoroughly facilitate participation by disempowered or at-risk stakeholders. While it did publish a draft of the NAP online for public consultation, ¹⁹ it is unclear if this reached disempowered/at-risk stakeholders. There is no evidence to suggest that specific efforts were made to seek testimony from rights holders or facilitate opportunities for affected individuals to participate in consultations.

<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>According to the Italian government, during the NAP drafting process, “ad hoc working groups [were] created to involve in this exercise also non-institutional actors and the business world working in Italy and abroad promoting the full awareness and implementation of the UNGPs.”²⁰</p> <p>In addition, the NAP announces the creation of the Working Group on Business and Human Rights (GLIDU, in Italian), an inter-departmental steering committee coordinated by CIDU. The GLIDU will “work jointly with a consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, NGOs, civil society organizations, human rights defenders, individual experts and representatives from academia)” in supervising the implementation of the NAP.²¹ The GLIDU was supposed to be established in March 2017; however, no public information about this occurrence has been released²².</p>
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3.NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>In early 2013, the OECD National Contact Point at the Italian Ministry of Economic Development commissioned academics from the University of Sant’Anna to conduct an NBA.²³ They launched the report “Business and Human Rights: The Italian case” (in Italian only) in November 2013.²⁴ The report examined the “adequacy of the Italian regulatory and institutional framework in comparison to the Guiding Principles,” identified strengths and weaknesses, and elaborated specific recommendations on how to ensure stronger conformity with the UNGPs.²⁵ It also sought to provide “clear guidance to those companies willing to meet the new international standards within the existing normative framework.”²⁶ The analysis is based mainly on “desk-based research and a limited number of interviews, mainly with State administration and national civil society, without any systematic outreach to potential victims.”²⁷</p> <p>In addition, in December 2013, the Italian government released “The Foundations of the Italian Action Plan on the United National Guiding Principles on Business and Human Rights” (The Foundations paper) based primarily on the gap analysis.²⁸ The Foundations paper focuses exclusively on the first and third Pillars of the UNGPs, i.e., the state’s duty to protect and access to remedy issues.²⁹</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>The gap analysis was carried out under the supervision of Professor Andrea de</p>

3.NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	Guttry, by a group of researchers at the University of Sant'Anna, comprising Claudia Cinelli, Damiano de Felice, and Chiara Macchi. ³⁰
3.3. Fully involve stakeholders in the development of the NBA.	The gap analysis was based in part on “direct examination of policies and legal instruments, analysis of specific government grants, the study of comments and annotations in specialist publications and conducting interviews with experts in the various disciplines addressed [translated from original Italian].” ³¹ The extent to which stakeholders were involved in the analysis is unknown; according to some “consultations were limited to a few domestic stakeholders.” ³²
3.4. Publish and disseminate the NBA.	The gap analysis was published online on November 4, 2013, in Italian only. ³³

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The Italian NAP is organized almost exclusively around Pillars I and III of the UNGPs, and goes through their respective UNGPs principle by principle. The NAP begins with an introduction of the UNGPs and a brief description of the three Pillars. The substantive content of the NAP is divided into narrative lists of government commitments under UNGPs 1-2 and 28-31, and into 59 more specific “Planned Measures,” which are organized under UNGPs 3-10 and 25-27.</p> <p>Despite the less comprehensive focus on Pillar II, the NAP does state with regard to the “Responsibility to Respect,” that “enterprises have to conduct processes aimed at preventing the risk of causing (or contributing to) adverse human rights impact and at adopting specific measures able to mitigate eventual harmful consequences.”³⁴ The NAP then elaborates on specific expectations for companies such as creating and implementing due diligence processes and providing grievance mechanisms for victims of abuse.³⁵</p> <p>In general, the Italian NAP is a summary of ongoing processes and existing objectives, framed by often vague commitments – many of which will be difficult to monitor in the absence of a timeline and clearly allocated responsibilities.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2)</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) a regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).³⁶ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content.</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>One of the Italian government's six priorities for the NAP is "promoting human rights due diligence processes, aimed at identify [sic], prevent and mitigate the potential risks with particular focus on SMEs."³⁷ In consideration of this focus, the NAP establishes a number of commitments to promote due diligence, both generally and at the company level.</p> <p>Generally, the NAP commits the government to promoting the concept of due diligence and its general development as an international standard. For example, under UNGP 3(c, d) the government commits to "participate to [sic] initiatives in the context of the OECD, EU and other international <i>fora</i> on sustainable supply chains, human rights and due diligence."³⁸ Similarly, under UNGPs 9-10, the government will "promote further and wider recourse to due diligence processes and foster exchanges of experiences with partner countries at EU and global level, and with international organizations such as the OECD, ILO, IOM, and UNICEF."³⁹</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Other planned measures aim to promote the use of due diligence at the company level. For example, under UNGP 3(c,d), one planned measure is to “promote [a] common understanding of due diligence among companies and strongly encourage companies to engage in human rights policy and due diligence processes involving the entire supply chain.”⁴⁰ Similarly, under UNGP 7, the NAP commits the government to “further promote the knowledge of the OECD due diligence guidance” and to encourage and support SMEs in following this guidance.⁴¹ However, it is unclear how the government will promote due diligence, and in what ways, if any, it will seek to provide positive or negative incentives.</p> <p>Another future commitment that could be seen to incentivize the use of due diligence is a planned measure under UNGPs 9 & 10, which states that the government will “advocate for a system of ‘human rights credits’ in international trade through the proposal of introduction of a ‘special duty’ for goods imported from countries and/or produced by enterprises not complying with human rights fundamental standards.”⁴² By imposing a special duty on enterprises not complying with fundamental human rights, businesses will be incentivized to ensure compliance with human rights standards through conducting due diligence in order to avoid this monetary penalty.</p> <p>The NAP also lists current government policies that could establish certain incentives for due diligence processes. For example, Italy’s ‘legality rating’ provides legally compliant companies with good governance initiatives a certification of compliance, which entitles them to access public funding and</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>easier bank credit access.⁴³ As another example, under the Italian government’s recent initiatives to comply with UNGP 3(a), the NAP lists a 2014 Decree that established “Rete del Lavoro Agricolo di Qualità,” a network aimed at countering irregular work in agriculture.⁴⁴ Under this decree, companies compliant with specific requirements under labor, social security, and fiscal law may apply to join the network, and this is rewarded with special incentives (such as being included in a ‘white list’ which lets government enforcement agencies prioritize their controls over companies who are not on the list).⁴⁵</p> <p>Ideally, however, the NAP missed an opportunity to establish more specific ways in which positive and negative incentives for due diligence can be provided for.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>The NAP does not explicitly require or mandate disclosure of due diligence activities, but does commit to broadly promoting disclosure and reporting mechanisms. For example, under UNGP 3(a), the government commits to “promote effective implementation of EU Directive 2014/95 on disclosure of non-financial and diversity information by large enterprises and groups.”⁴⁶ Similarly, under UNGP 3(c, d), the government commits to promoting “environmental accounting in sustainability reporting and encouraging the adoption of disclosure processes for the assessment and communication of the environmental and carbon footprint of business.”⁴⁷</p> <p>The NAP also does not refer to any existing regulatory regimes that may</p>

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	<p>mandate such disclosures, but refers to the need for them. For example, under the government’s expectations for business, the NAP states that “it is important to add the need of disclosure of non-financial information...and the existence of remarkable standards such as the UNGP Reporting Framework.”⁴⁸</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are few planned measures within the NAP that could require due diligence as part of compliance with a legal rule. Under UNGP 3(b), the government commits to “conduct a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform introducing provisions such as the ‘duty of care’ or due diligence for companies.”⁴⁹ Depending on the outcome of this review, the Italian government might decide it necessary to require mandatory due diligence. Additionally, under UNGPs 4-6, the Italian government commits to elaborating “within the CIDU the concept of a ‘human rights clause’ to be included <i>as a requirement</i> for competing enterprises in all public model tenders and agreements with business enterprises for the purchase of goods and provision of services.”⁵⁰ However, the planned measure does not detail what the human rights clause would specify and if it would require due diligence.</p> <p>The NAP does mention existing legal rules and policies that would likely require due diligence. For example, Legislative Decree No. 231 of 2001 provides a form of liability (administrative in nature, but ascertained by a penal judge/according</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to criminal law procedures) for entities committing specific offences (ranging from financial crimes like corruption and fraud to trafficking and to even serious environmental crimes).⁵¹ To avoid liability, entities must adopt sound models and a mechanism for monitoring/supervising compliance with that model, making the law both preventive and punitive.⁵²</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the commitments outlined in the NAP includes many positive planned measures which either promote due diligence and disclosure of due diligence, or could require due diligence as part of compliance with a legal rule. However, the regulatory mix is not fully satisfactory, because it neither describes how the government will provide incentives for due diligence, nor does it go as far to commit to requiring mandatory due diligence—although it does lay the groundwork for possibly doing so in the future.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Italian NAP is focused on promoting corporate responsibility and protecting human rights both domestically and abroad. Therefore, the NAP generally addresses the full scope of the State’s jurisdiction, keeping a broad focus on both companies (Italian or foreign) acting within the country, and Italian companies acting in other jurisdictions.</p> <p>The NAP has a number of domestically-focused planned measures, specifically in relation to three of its six key priorities: tackling <i>caporalato</i> (illegal hiring); tackling discrimination and inequality and promoting equal opportunities; and</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>promoting environmental protection and sustainability.⁵³</p> <p>The NAP also includes several internationally-focused planned measures such as elaborating “within the CIDU the concept of a ‘human rights clause’ to be included as a requirement for competing enterprises...with particular focus on i) enterprises operating abroad; ii) enterprises availing themselves of foreign suppliers; [and] iii) foreign enterprises.”⁵⁴ Other proposed measures include “providing guidance to Italian enterprises abroad through the diplomatic and consular network for the dissemination of UNGPs and the SDGs” and “disseminating respect of the UNGPs to enterprises investing abroad through an information toolkit for the diplomatic and consular network”.⁵⁵</p> <p>Furthermore, judicial reform/remedy priorities also focus on both domestic and international corporate actors. For example, the NAP proposes that Italian legislators focus on “measures to strengthen special courts for enterprises by extending their competence to consumer protection-related claims, misleading advertising and unfair competition” and the “introduction of criminal provisions against economic crimes, also committed abroad.”⁵⁶ The NAP also focuses on analyzing and removing barriers to accessing remedy for victims of human rights abuses “especially with regard to extraterritorial violations.”⁵⁷</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Italian NAP extensively discusses international and regional organizations and standards and how the State and businesses should use those organizations and standards to push for greater respect for human rights in general, and</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>further implementation of the UNGPs.</p> <p>The NAP explicitly mentions international organizations and standards in several measures. For example, in relation to Guiding Principles 3(c, d), the NAP provides eight planned measures specifically in relation to the OECD Guidelines for Multinational Enterprises.⁵⁸ It also discusses the OECD National Contact Point system.⁵⁹</p> <p>Multiple other planned measures discuss promoting activities of the United Nations Global Compact,⁶⁰ ratifying/integrating ILO norms and protocols,⁶¹ disseminating/promoting the Sustainable Development Goals,⁶² and promoting awareness of the UNICEF ‘Business Lab’ initiative,⁶³ among other references to international organizations and standards.</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does address thematic and sector-specific human rights issues in its planned future measures. It touches on issues such as trade, conflict areas, corruption, security concerns, responsible investment, and public procurement. It specifically prioritizes tackling illegal forms of labor and labor exploitation in the agricultural, construction, manufacturing, and services sectors.⁶⁴ There is also a heavy focus on the environment and measures that promote sustainability, specifically Agenda 2030 and the Sustainable Development Goals.⁶⁵</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The NAP states that Italy has “undertaken the drafting of a National Action Plan on business and human rights to ensure the integration and implementation of the UNGPs within national policy and strategy.”⁶⁶ It also includes as the first section, a “statement of commitment,” where it outlines the Italian governments commitments in relation to ensuring the “respect of human rights within economic activities.”⁶⁷</p> <p>In addition, the NAP is designed around the three pillars of the UNGPs and mentions the UNGPs specifically throughout the NAP. It lists its current activities and future commitments under the framework of each guiding principle under Pillars I and III.⁶⁸ However, as discussed in section 4.1, rather than addressing specific planned measures under Pillar II, the NAP only discusses Pillar II more broadly in terms of expectations, rather than action points.⁶⁹</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>All of the specific planned measures developed in the NAP appear to be relevant to the goal of promoting business respect for human rights and protecting against and remedying business-related human rights abuse.</p> <p>None of the planned measures contained in the NAP have specific timelines for implementation. The only mention of a timeline in the entire NAP is in the mid-term review to be conducted by GLIDU in 2018, during which time the group will assess the results achieved and identify the gaps in the actions undertaken</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to ensure the effective protection and advancement of human rights with regard to economic activities.⁷⁰</p> <p>The majority of the planned measures in the NAP also do not specify which government agency or department is tasked with implementing and following-up on future actions (for more information, see section 6.1 of this assessment).</p> <p>While the majority of planned actions falls short in setting timelines or specifying implementing agencies, some planned actions are relatively strong in relation to outlining the actions the government is committing to undertaken and how these actions will be fulfilled or can be achieved. For example, under the planned measures for UNGP 3(a), the NAP commits the government not just to “promote the realization of interventions on immigrants’ rights protect,” it specifies it will do so in line with an already existing project which has already shown positive results.⁷¹ Similarly, under UNGP 3(c,d), the NAP does not only commit the government to provide “guidance to Italian enterprises abroad through the diplomatic and consular network for the dissemination of the UNGPs and the SDGs,” but it states that this will be carried out by the Ministry of Foreign Affairs and International Cooperation through the development of a strategy which will include actions such as “advocacy, watchdog activities and match making among enterprises.”⁷² Additionally, under UNGPs 4-6, the government pledges to “[s]trengthen the implementation of socially responsible public procurement rules by adopting a comprehensive framework of reference for bidders” to be coordinated by the Italian Anti-Corruption Authority (A.N.AC).⁷³ It then goes on to clarify that this “comprehensive framework for</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>reference” will cover topics such as “anticorruption, non-financial disclosure, supply chain, environment, labour, equal opportunities and non-discrimination.”⁷⁴</p> <p>There are, however, a number of planned measures that could benefit from more specificity. Some action points, similar to the ones discussed above, which commit the government to “strengthening”, “reinforcing”, “supporting”, and “promoting” various standards or programs, are still too broad for the exact nature, extent, and process of the government’s commitment to be clear. For example, under UNGP 3(c, d), the government commits to “promote [a] common understanding of due diligence among companies...;” “promote the international framework agreements developed by the International Trade Unions;” and “promote and encourage leading multi-stakeholder initiatives involving both big companies and SMEs for exchange and common action on BHR,” however, it is very vague as to how it will go about doing any of these commitments. Another example of this problem is in relation to the planned measures of UNGPs 9-10, which commit the government to “support initiatives in all relevant <i>fora</i> aiming at developing instruments to enhance fair competition for the safeguard and promotion of human rights.”⁷⁵ Here, it is unclear what will qualify a forum as “relevant” and how the government will go about “supporting” these initiatives.</p> <p>The NAP avoids introducing new legislation, only leaving the door open for further consideration, and it is framed by vague commitments - which will be difficult to monitor in the absence of a timeline and clearly allocated</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>responsibilities. However, these commitments do include some positive elements. For example, under UNGPs 1 and 3(b), the government promises to look into enhancing enforcement of laws requiring corporate respect of human rights, and to conduct a review of the current domestic legal framework.⁷⁶ The review will assess if legislative reforms could introduce provisions on duty of care or due diligence for companies.⁷⁷ Similarly, in relation to UNGP 25-26, the NAP commits the government to “evaluate the introduction of relevant additional legislative measures to strengthen access to effective remedy both in civil, criminal, and administrative law” following the review of legal mechanisms and gaps in access to remedy.⁷⁸</p>
<p>Priorities for NAPS</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP focuses on six priorities based on the gaps identified in the NBA.⁷⁹</p> <p>These priorities are:</p> <ol style="list-style-type: none"> 1. “Promoting human rights due diligence processes, aimed at identifying, preventing and mitigating the potential risks, with particular focus on SMEs; 2. Tackling <i>caporalato</i> (illegal hiring) (especially in the agricultural/construction sector) and other forms of exploitation, forced labor, child labor, slavery and irregular work, with particular focus on migrants and victims of trafficking; 3. Promoting fundamental labor rights in the internationalization process of enterprises with particular regard to the global productive processes; 4. Strengthening the role of Italy in a human rights-based international

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>development cooperation [sic];</p> <p>5. Tackling discrimination and inequality and promoting equal opportunities;</p> <p>6. Promoting environmental protection and sustainability.”⁸⁰</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP discusses and includes follow-up actions that specifically relate to vulnerable and excluded groups. In its Statement of Commitment, the Italian government pledges to “[c]ontinue to protect, promote universal respect for, and observance of, all human rights, fundamental freedoms and non-discrimination principles, with special attention to the rights of most vulnerable groups, such as women, children, disabled, LGBTI people, migrants and asylum seekers, and persons belonging to ethnic and religious minorities.”⁸¹</p> <p>The NAP discusses and addresses vulnerable and excluded groups within multiple action points. For example, under UNGP 3(a), the Italian government commits to strengthening “respect of fundamental rights of people with disabilities with regard to access to medical treatment and their quality...”⁸²</p> <p>Under UNGP 3(c,d), Italy commits to “[e]ncourage companies in the dissemination of anti-discrimination culture” through several measures including “promoting bodies...that will have the aim of promoting the inclusion of workers with disabilities within the workplace;” “increasing the awareness within the workplace on the serious issue of sexual abuse and domestic violence;” and “providing incentives for corporate training on inclusion, diversity management, gender balance and gender mainstreaming with specific focus on</p>

4.SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>women empowerment and LGBTI rights.”⁸³</p> <p>In addition, under UNGP 7, one of Italy’s planned measures is to “[r]einforce the action of the Italian Development Cooperation towards gender equality also by supporting women economic empowerment in post conflict countries...”⁸⁴</p> <p>While the NAP explicitly references these groups, it is unclear whether they participated in consultations in the drafting process.</p>

5.TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>Numerous documents that fed into or explained the NAP process were made publicly available. The NBA was published online in Italian, and the Foundations paper in English.⁸⁵ The draft NAP was published in July 2016, and public comment was accepted until September 10, 2016.⁸⁶ In addition, other documents were made available to explain the NAP process, including the Fact Sheet which accompanied the launch of the NBA, and the Italian government’s response to the UN Working Group on Business and Human Rights “surveys on implementation of the Guiding Principles.”⁸⁷</p>

6.ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The majority of the planned measures of the NAP do not explicitly identify the responsible government agency involved. There are a few planned measures, specifically in relation to the Guiding Principles 4-6 and 7, which do specify that the CIDU will jointly help to develop and implement these commitments.⁸⁸</p> <p>The provision on follow-up to the NAP, to be discussed in detail in section 6.2, is assigned to the members of the GLIDU, which will be composed of all the administrations represented within the CIDU. The GLIDU will also “work closely with a consultative body composed of all relevant non-institutional stakeholders.”⁸⁹</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP lays out a framework for monitoring and reporting in Section V “Monitoring, Update and Dissemination of the Plan.”⁹⁰</p> <p>To ensure the implementation of the NAP, the NAP establishes the GLIDU, which will “have the task of supervising the progressive implementation of the NAP, coordinating the monitoring activities and proposing modifications and/or revisions of the measures foreseen in the Plan on the base of either the necessity to fine tuning with future governmental policies or with new necessities and thematic priorities that will emerge in the meetings and multi-stakeholder initiatives related to the implementation of the Plan itself.”⁹¹</p>

6.ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>The NAP also commits the GLIDU to conduct a mid-term review in 2018 “to assess the results achieved and identify the gaps in the actions undertaken to ensure the effective protection and advancement of human rights with regard to economic activities.”⁹² The NAP gives further context to the 2018 review by stating that it will be “carried out with special focus on the priorities set in the present Plan with the aim of addressing future challenges.”⁹³</p> <p>However, the NAP does not lay any framework for reporting on implementation of any measures, or contain a commitment to update the document or draft a revised NAP on business and human rights in the future. The NAP simply states that a mid-term review will be conducted in 2018 and that the NAP is valid through 2021.</p>

ENDNOTES

- ⁱ DANISH INSTITUTE FOR HUMAN RIGHTS & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS ON BUSINESS AND HUMAN RIGHTS (2014) [*hereinafter* NAPs TOOLKIT].
- ⁱⁱ INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS, NOVEMBER 2015 UPDATE (2015).
- ³ ITALIAN MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS: 2016-2021 (English Version) 8 (2016), <http://www.cidu.esteri.it/NR/rdonlyres/82FBBD9B-EBA5-4056-A45C-281F0D2C9398/49117/NAPBHRENGFINALEDEC152017.pdf> [*hereinafter* Italian NAP].
- ⁴ *Fact sheet: Business and Human Rights: The Italian Case, Analysis of the Normative and Institutional Framework*, PUNTO DI CONTATTO NAZIONALE (Nov. 13, 2013), available for download at <http://pcnitalia.sviluppoeconomico.gov.it/en/news/item/271-business-and-human-rights-the-italian-case> [*hereinafter* Event Fact Sheet].
- ⁵ ITALIAN MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, THE FOUNDATIONS OF THE ITALIAN ACTION PLAN ON THE UNITED NATIONAL 'GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS,' (2014), <https://business-humanrights.org/sites/default/files/media/documents/foundations-ungps-nap-italy.pdf> [*hereinafter* The Foundations].
- ⁶ Event Fact Sheet, *supra* note 4, at 2; Damiano de Felice & Andreas Graf, *The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights*, 7 J. OF HUM. RTS. 40, 49 (2015).
- ⁷ Italian NAP, *supra* note 1, at 2.
- ⁸ *Id.*
- ⁹ *Id.* at 5.
- ¹⁰ *Id.*
- ¹¹ OPEN CONSULTATION, ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS, CIDU 4 (Jul. 2016), <http://unipd-centrodirittiumani.it/en/news/Italy-online-public-consultation-on-the-National-Action-Plan-on-Business-and-Human-Rights-2016-2021-open-until-10-September/4149> [*hereinafter* OPEN CONSULTATION].
- ¹² *Italy Survey 2015 Forum Response to UN Working Group surveys on implementation of the Guiding Principles*, MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS (2015), <http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx> [*hereinafter* Italy OHCHR Survey Response].
- ¹³ Italian NAP, *supra* note 1, at 30.
- ¹⁴ The Foundations, *supra*, note 2.
- ¹⁵ De Felice & Graf, *supra* note 6, at 56.
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ Italian NAP, *supra* note 1, at 2.
- ¹⁹ OPEN CONSULTATION, *supra* note 11, at 4.
- ²⁰ Italy OHCHR Survey Response, *supra* note 9, at 1.
- ²¹ Italian NAP, *supra* note 1, at 30.
- ²² Based on the experience of members of the Human Rights International Corner. *Human Rights International Corner*, <http://www.humanrightsic.com/> (last visited June 6, 2017).
- ²³ Event Fact Sheet, *supra* note 4, at 2.
- ²⁴ Damiano de Felice, et al., *Imprese e Diritti Umani: Il Caso Italia, Analisi del Quadro Normativo e Delle Politiche di Salvaguardia*, SCUOLA SUPERIORE SANT'ANNA (2013), www.sviluppoeconomico.gov.it/images/stories/documenti/Imprese_e_diritti_umani_Il%20caso_Italia_FINALE_NO_V_2013.pdf [*hereinafter* BHR: The Italian Case].
- ²⁵ Event Fact Sheet, *supra* note 4, at 2.
- ²⁶ *Id.*

²⁷De Felice & Graf, *supra* note 6, at 54.

²⁸*Id.* at 49.

²⁹The Foundations, *supra*, note 2.

³⁰BHR: The Italian Case, *supra* note 24, at 2.

³¹*Id.* at 6-7.

³²De Felice & Graf, *supra* note 6, at 49.

³³Event Fact Sheet, *supra* note 4, at 2.

³⁴*Id.* at 9.

³⁵*Id.*

³⁶ These sub-criteria are laid out in Kristin Jesnes, *Statens plikt til å beskytte menneskerettigheten e: En analyse av nasjonale handlingsplaner for oppfølging av FNs veiledende prinsipper for menneskerettigheter og næringsliv. (The State Duty to Protect: An Analysis of National Action Plans on Business and Human Rights)*. Fafo-notat 2014:15 (2014), available at <http://www.fafo.no/pub/rapp/10199/index.html> (currently only available in Norwegian).

³⁷ Italian NAP, *supra* note 1, at 7.

³⁸*Id.* at 20

³⁹*Id.* at 25.

⁴⁰*Id.* at 20.

⁴¹*Id.* at 23.

⁴²*Id.* at 25.

⁴³*Id.* at 13.

⁴⁴*Id.* at 14.

⁴⁵*Id.*

⁴⁶*Id.* at 16. The directive was implemented by the Italian government in January 2017.

⁴⁷*Id.* at 19.

⁴⁸*Id.* at 9.

⁴⁹*Id.* at 17.

⁵⁰*Id.* at 22 (emphasis added).

⁵¹*Id.* at 14.

⁵²*Id.*

⁵³*See generally, id.* at 15-6, 19-20.

⁵⁴*Id.* at 22.

⁵⁵*Id.* at 19.

⁵⁶*Id.* at 26-27.

⁵⁷*Id.* at 26.

⁵⁸*Id.* at 20.

⁵⁹*Id.* at 28

⁶⁰*Id.* at 25.

⁶¹*Id.* at 16, 20, 25.

⁶²*Id.* at 16,19

⁶³*Id.* at 20.

⁶⁴*Id.* at 7, 16.

⁶⁵*Id.* at 16, 19.

⁶⁶*Id.* at 6.

⁶⁷*Id.* at 5.

⁶⁸*Id.* at 10-29.

⁶⁹*Id.* at 9. The NAP also highlights other leading international reporting standards such as the UN Global Compact and the Global Reporting Initiative.

⁷⁰*Id.* at 30.

⁷¹*Id.* at 16.

⁷²*Id.* at 19.

⁷³*Id.* at 22.

⁷⁴*Id.*

⁷⁵*Id.* at 25.

⁷⁶*Id.* at 10, 17.

⁷⁷*Id.* at 17.

⁷⁸*Id.* at 26.

⁷⁹*Id.* at 7.

⁸⁰Italian NAP, *supra* note 1, at 7.

⁸¹*Id.* at 5.

⁸²*Id.* at 16.

⁸³*Id.* at 20.

⁸⁴*Id.* at 23.

⁸⁵BHR: The Italian Case, *supra* note 24; The Foundations, *supra* note 5.

⁸⁶OPEN CONSULTATION, *supra* note 11.

⁸⁷Event Fact Sheet, *supra* note 1; OHCHR Survey Response, *supra* note 9.

⁸⁸ Italian NAP, *supra* note 1, at 22, 24.

⁸⁹*Id.* at 30.

⁹⁰*Id.*

⁹¹*Id.*

⁹²*Id.*

⁹³*Id.*