



Submission to The Department of Foreign Affairs and the Department of Enterprise, Trade and Employment regarding Ireland's Second National Plan on Business and Human Rights (2024-2027)

Submission by Chambers Ireland

September 2023



Contents

About Chambers Ireland	3
Key Points	4
Chambers Ireland's perspective regarding the Second National Plan on Business and Human Rights (2024-2027)	5
General	5
Burdens on businesses need to be proportional.....	6
Safeguarding against superficiality	6
Greater coordination is required between cumulative reporting requirements.....	7
Questions	9
Are there any recommendations from the 2021 Review that our Departments should focus on when developing a second generation plan?	9
Framing recommendations and implementation	9
Structures and policy coherence	9
Reflecting the evolving multilateral landscape.....	10
Capacity building and supports for business enterprises and others	10
Broader policy considerations	11
How should the implementation of Ireland's second National Plan be monitored?	12
Is the 'Implementation Group' model a good way forward?	12



About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

As a member of the International Chamber of Commerce, we promote ethical business conduct, anti-corruption and corporate social responsibility. Founded in 1919, the ICC has represented business for over a century, and succeeded in helping bring about economic prosperity to a world that was still reeling from the devastation of World War I. Paramount to our engagement via ICC Ireland is our belief that approaches to human rights protection - driven by the global business community themselves - are effective at helping to protect human rights and promoting economic and social development.

Our Network has pledged to advocate for and support the advancement of the United Nations Sustainable Development Goals (SDGs). As SDG Champions, we use the Goals as a framework to identify policy priorities and communicate our recommendations. We have a particular focus on five of the goals encompassing decent work and economic growth (SDG 8), sustainable cities and communities (SDG 11), Gender Equality (SDG 5), Industry, Innovation and Infrastructure (SDG 9) and climate action (SDG 13).¹

¹ The Chambers Ireland SDGs. Available at: <https://chambers.ie/sustainable-development-goals/>



Key Points

- Smaller businesses ought not be unnecessarily nor unfairly burdened with legislative and other requirements they do not have the capacity to comply with. If they are, then it is likely that any new legislative requirements they are subject to are rendered ineffectual.
- There ought to be an emphasis on aligning legislative reporting requirements and implementing standardised reporting templates for businesses.
- The Department ought to establish a Working Group to monitor the implementation of new reporting requirements businesses are/will be subject to.
- A lack of standardisation in relation to reporting means that larger firms will likely forego the services of smaller firms, in favour of larger firms who do have the capacity to successfully meet their reporting requirements.
- There needs to be greater, targeted training supports made available for SMEs to enable them to comply with new legislative requirements.
- The cumulative requirements of EU legislation and various reporting regimes applying to businesses require greater coordination.
- The State should provide accessible information to companies regarding the UN Guiding Principles on Business and Human Rights, and on countries or sectors where human rights risks may arise.



Chambers Ireland's perspective regarding the Second National Plan on Business and Human Rights (2024-2027)

General

Chambers Ireland commends the commitment from both Departments to promote the protection of human rights and welcomes the drafting of a second National Action Plan for the Guiding Principles on Business and Human Rights. It is our hope that the second Action Plan can be developed in such a way that builds on the first national plan, and promotes the responsible and ethical behaviour of businesses, both in Ireland and abroad.

The ethos of the Chamber network has always been that the protection of human rights is best served by increasing communication, commerce and interdependence between nations. We are hence staunch supporters of the free trade agenda led by the European Union and any efforts made to increase sustainable global trade, not least through our engagement via ICC Ireland and the Chamber network. We can acknowledge from our practical, day-to-day engagement that international trade supports economic development, which in turn promotes equitable social development and the increased recognition and protection of human rights.

As with the previous National Plan, two questions need to be answered; namely, how do we encourage smaller businesses to embrace the issues of human rights and business; and how can we make the National Plan accessible to everyone and successful? Central to answering both questions is acknowledging that the second Plan must be a collaborative process between businesses, the State and civil society. We believe the second plan should not be communicated 'at' businesses but instead acknowledge the challenges they face in complying with the reporting regimes and legislative instruments associated with the plan. The aim should be to implement a second national plan which empowers businesses to comply with their obligations, rather than implement a structure that is only sustainable on the surface.



Burdens on businesses need to be proportional

Through our collaboration with Eurochambres,² we are united with our European colleagues in emphasising that entrepreneurs need a stable legal framework for responsible trading. Businesses want to incorporate sustainability into their business models and fully support the protection of human rights. However, ensuring both are accounted for will only be done by making sure that businesses are not unnecessarily nor unfairly burdened with new legislative requirements they do not have capacity to comply with. Failing to take their capacity into account risks rendering the second National Plan ineffective and superficial.

Ensuring businesses can comply with new legislative requirements (of particular concern are reporting regimes) will only be enabled through a balanced framework which supports them to do so. One way of helping achieve this is by making the corporate due diligence process as harmonised, streamlined and clear as possible. While we agree with the legislative aims of the relevant EU legislation and voluntary OECD Guidelines, small and large businesses must not be treated uniformly. Any policy or reporting regime needs to be proportional to their size and capacity, to ensure they are facilitated in complying with the relevant requirements.

Safeguarding against superficiality

The Guiding Principles on Business and Human Rights are designed to enhance current international legal obligations. It is our hope that they should not be used as an excuse to impose further obligations on the business community. Ensuring they remain voluntary is critical if they are to be effective in promoting a culture of respect for human rights in society, as making them mandatory risks reducing them to a box-ticking exercise in cases where businesses are not empowered to comply with them. A commitment to responsible business conduct requires conviction within a company; voluntary business principles have the advantage of offering flexibility, so they can tailor their approach as conditions change.

² <https://www.eurochambres.eu/publication/article-corporate-sustainability-due-diligence-how-to-make-it-work-for-smes/>



In this context it is worth noting our previous contributions to consultations regarding the Corporate Sustainability Reporting Directive³ and the related European Sustainability Reporting Standards.⁴ In both submissions, we highlighted our concern that while voluntary reporting requirements are mooted, the reality in the context of corporate reporting is that smaller businesses that are not in-scope will be forced to report regardless. This is because they are integrated in the value chains of in-scope businesses. In both submissions, we voiced our concern that larger businesses are already carrying out environmental, social and governance reporting as part of their annual filings, with the consequence that smaller businesses who deal with such businesses are - by extension - already a part of their reporting chain. Those technically not in-scope businesses but who are in reality no less affected, need support to undertake such reporting activities. As highlighted elsewhere in our submission, standardised reporting templates, and increased coordination between reporting regimes will help balance this burden.

Greater coordination is required between cumulative reporting requirements

It is positive that the OECD Guidelines for Multinational Enterprises align with other international standards such as the UN Guiding Principles and the International Labour Organization (ILO) standards. Alignment and equivalency will aid businesses in this context. However, at present there are numerous legislative instruments at EU level which – either in the process of negotiation or imminently about to be transposed into Irish law – present a challenge for many businesses due to a lack of coordination. As we have stated, our main request here is that the reporting regimes they introduce should sit frictionlessly within the broad range of other requirements that are imminently being placed on businesses.

³ <https://chambers.ie/wp-content/uploads/2023/02/Submission-by-Chambers-Ireland-to-the-Department-of-Enterprise-Trade-and-Employment-regarding-the-Corporate-Sustainability-Reporting-Directive-.pdf>

⁴ <https://chambers.ie/wp-content/uploads/2023/07/Submission-by-Chambers-Ireland-to-the-European-Commission-regarding-European-Sustainability-Reporting-Standards.pdf>



The most notable instruments we are concerned about in terms of EU legislation include Directives such as the Corporate Sustainability Reporting Directive (concerning mainly social and environmental information), and the Corporate Due Diligence Directive (concerning human rights and environmental impacts). There are also social and environmental procurement requirements, and private sector ESG requirements to consider.

The aim of such legislative instruments is positive; as an organisation with the United Nations Sustainable Development Goals at the heart of our priorities, we support policies that promote sustainable practices. Nonetheless, the cumulative requirements they impose on companies mean that is practically impossible for them to comply, rendering their effect superficial.

One solution to this problem is to simplify reporting regimes as much as possible. We have outlined previously in our submission that small businesses under the CSRD are effectively burdened with the same reporting requirements as in-scope businesses. Unfortunately there has been a failure to account for the fact that these smaller businesses would not normally be accustomed to producing large volumes of such detailed reporting; they will be disproportionately affected in terms of cost and their administrative workflows. Consistent with our previous comment made elsewhere in our submission, standardisation by way of reporting templates would help ease this reporting burden for those affected businesses. We reiterate the concern that because smaller businesses are at risk of failing to comply, it is therefore critical to mitigate this pressure on SME suppliers by implementing simplified standards.



Questions

Are there any recommendations from the 2021 Review that our Departments should focus on when developing a second generation plan?

We have given indications below regarding the areas we believe the Departments should focus on for the second National Plan.

Framing recommendations and implementation

- We agree that the implementation of the UN Guiding Principles on Business and Human Rights should be taken forward through a series of time-limited plans (as opposed to ‘living documents’) which arise from structured policy development processes and can take account of new developments.
- There should be a focus on the most important policy issues in an Irish context.

Structures and policy coherence

- We wholly agree that the guidelines Responsible Business Conduct need to be straightforward, clear and accessible as possible. This goes beyond Human Rights and extends also to Taxonomy, the United Nations Sustainable Development Goals and Non-Financial Reporting (including supply chain reporting) requirements for businesses.
- In particular, we would like to see membership of the multi-stakeholder group extended to include more business voices, including SMEs. It is critical that businesses (particularly smaller businesses) have a voice in shaping the outcomes of the group.
- It is a risk that any new structures place a burden on businesses that do not have the capacity to comply. As stated elsewhere in our submission, reporting is a chief concern in this context. Accordingly, we agree that the methodology for convening a stakeholder group ought to be examined in developing the second National Plan to ensure proportionality.



Reflecting the evolving multilateral landscape

- We believe that more consideration ought to be given to the suite of initiatives regarding Business and Human Rights and Responsible Business Conduct at the EU (most importantly), UN and OECD.

Capacity building and supports for business enterprises and others

- It is of utmost importance that the Departments acknowledge the different needs of companies depending on their size and related capacity. We are supportive of SMEs being given special reference in this regard.
- There needs to be greater, targeted training supports made available for SMEs. For reasons stated in our submission, this is critical to enable them to comply with any new legislative requirements they may be subject to.
- While we agree that incentive-based structures for businesses ought to be considered, it is unclear what form they may take. More clarity as to what they will constitute is required.
- A central hub on Responsible Business Conduct should be helpful in providing businesses with the support.
- We agree that the legal sector should be given access to further training. As we highlighted in our submission regarding the control of litigation costs,⁵ the courts system needs greater investment and its capacity to carry out its duties – such as making planning decisions and hearing appeals – has been impacted severely as a result of under-resourcing. Without investment and reform, means that the system itself is not empowered to undertake its duty to provide access to a remedy.

⁵ <https://chambers.ie/wp-content/uploads/2023/03/Economic-Evaluation-of-Options-for-the-Control-of-Litigation-Costs-Submission-by-Chambers-Ireland-Nov-2022.pdf>



Broader policy considerations

- We agree at a high level that Ireland should be a global leader in safeguarding human rights and promoting sustainability, however greater alignment and coordination on the Sustainable Development Goals will be critical if this is to be a core aim of the Departments. Currently there is a lack of coordination regarding the SDGs across Departmental long term Strategies and the end result is a complete mismatch on important topics relating to sustainability topics. For example, there is no point in promoting decent work and economic growth (SDG 8) in the agricultural sector if the Department seeks a nitrate derogation from EU legislation which will adversely affect our waterways and clean water and sanitation (SDG 8).
- We disagree with the stipulation that the State should ‘move’ ahead of any transposition timeframe for EU legislation pertaining to Corporate Governance. As stated in our submission on the Corporate Sustainability Reporting Directive, reporting requirements need a transitional period to enable businesses adapt to any new requirements. As stated elsewhere in our submission, this is especially relevant for smaller businesses which will likely be unfairly affected; the result will be ineffective implementation which does not reflect the aims of the Directive.
- We agree that a policy forum involving all relevant departments and open to stakeholders should be convened during the lifetime of the current Implementation Group.



How should the implementation of Ireland's second National Plan be monitored?

It is critical that businesses have the opportunity to revert to the Departments regarding the implementation of the second National Plan, especially regarding pressing issues. To facilitate feedback, we propose a Working Group separate from the Implementation Group which can accommodate dialogue with the Departments regarding reporting burdens on businesses. A Working Group is necessary to track and monitor bottlenecks and pre-empt any potential or likely challenges the business sector will face in meeting reporting requirements. The Working Group ought to be chaired in a similar fashion to those established for managing the effects of Brexit and COVID-19 as part of the State's national response. This would help to voice the concerns of affected businesses and mitigate problems as they arise.

Is the 'Implementation Group' model a good way forward?

We agree with the 'Implementation Group' model comprising of multiple stakeholders. We believe that this will be an efficient way of proposing high-level recommendations for the future of the National Plan. However, we note that the Working Group which we have proposed should be separate to the Implementation Group, as this should focus solely on the most pressing issues for businesses that require urgency. Our hope is that the Working Group may feed into the Implementation Group and advise on the difficulties businesses face in their day-to-day tasks. This will help frame recommendations by the Implementation Group.