
Labour Rights and International Labour Standards in the ESG Agenda

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Abstract

The paper considers the place of international labour standards in the key ESG instruments adopted at the level of the UN: UN Global Compact, Guiding principles on business and Human Rights and the Principles of responsible investment. In the first part the focus will be made on the definition of ESG and its content, the second part analyses the texts of the instruments and the relevant guidelines on the point of their reference to ILS. This part substantiates the lack of clear incorporation of the international labour standards (other than fundamental ones) in the UN ESG instruments. Also, it argues the lack of the understanding by business of related to labour human rights in line with the UN human rights covenants.

Keywords: ESG; CSR; International Labour Standards; Labour rights; Human Rights.

1. Introduction.

Environmental, Social and Governmental (ESG) compliance is a very trendy topic. Much is written about it while for many lawyers it might remain rather unclear what does ESG really mean. Financial Times Lexicon defines it as “a generic term used in capital markets and by investors to evaluate corporate behaviour and to determine the future financial performance of companies”.¹ Some authors recognize the congruence between ESG and CSR and use these abbreviations interchangeably,² others understand it in terms of

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¹ See <https://markets.ft.com/glossary/searchLetter.asp?letter=E>

² Huang D., *Environmental, social and governance (ESG) activity and firm performance: A review and consolidation*, in *Accounting & finance*, 61, 1, 2021, 335-360; Baraibar-Diez E., Odriozola M., *CSR Committees and Their Effect on ESG Performance in UK, France, Germany, and Spain*, in *Sustainability*, 2019, 11, 18, 5077; Gillan S. L., Koch A., Starks L.T., *Firms and social responsibility: A review of ESG and CSR research in corporate finance*, in *Journal of Corporate Finance*, 2021, 66, 101889.

sustainability,³ some speak about “internal CSR and external ESG performance metrics”.⁴ ESG movement started at the level of the UN as an attempt to solve the problem of the regulatory gap: the lack of the binding mechanism to ensure that multinational enterprises respect intentional human and labour rights in their operations in developing countries.

The launch of the UN Global Compact (UNGC) initiative⁵ in 2000 and the adoption of the UN Guiding principles on business and Human Rights (UNGPs) in 2011 (so-called Ruggie principles) were one of the first steps towards promotion of the commitment of business to respect human rights (the “S” part of the ESG agenda). The roots of this commitment go to the OECD Guidelines for Multinational Enterprises’ 1976 and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (“MNE Declaration”)’1977. Mostly since the adoption of the UNGPs, ESG compliance, including the compliance with human rights (HR) and ILO fundamental principles, has become an important issue for academics, big business and investors. The recent study of Wharton School found that firms that had strong performance on material ESG measures generated 4% higher returns over a three-year period as measured by return on invested capital (ROIC).⁶ In the web it is easy to find hundreds of articles publicizing “sustainable investment”.⁷ One Forbes article, for example, calls on “making money through sustainability, social justice and ESG investing”.⁸ ESG also has become a source of making profit for numerous consulting, ranking, information providing firms and turned into a big business per se.⁹

The compliance with human rights and ILO fundamental standards is a part of the “S” (Social) part of ESG. According to the principle 12 of the UNGPs, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.¹⁰ Following the UNGPs and exposed to much public pressure by various international NGOs the MNEs now tend to report about their performance in the sphere of individual and collective labour rights and react upon the allegations on the violations in this field. As a recent example we may refer to the H&M reaction on allegations of being engaged in forced labour of Uyghur

³ Abhayawansa S., Tyagi Sh., *Sustainable Investing: The Black Box of Environmental, Social, and Governance (ESG) Ratings*, in *The Journal of Wealth Management*, Apr 2021, 24, 1, 49-54.

⁴ Meaney M. E., *Private Corporations and Environmental Social Governance: An Uneven Response*, in *Fulfilling the Sustainable Development Goals*, Routledge, 2021, 437-438.

⁵ See <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁶ Wharton Report. *Walking The Talk: Valuing A Multi-Stakeholder Strategy*. 2022: https://www.fcltglobal.org/wp-content/uploads/Walking-the-Talk_Stakeholder_Capitalism_Report.pdf

⁷ For ex: Polman P., Winston A., *Yes, Investing in ESG Pays Off*, in *Harvard Business Review*: <https://hbr.org/2022/04/yes-investing-in-esg-pays-off>, April 13, 2022.

⁸ Brewer J., *Making Money Through Sustainability, Social Justice and ESG Investing*. Oct 11, 2020 <https://www.forbes.com/sites/jbrewer/2020/10/11/making-money-through-sustainability-social-justice-and-esg-investing/?sh=66db51a320fb>.

⁹ See Bloomberg video about MSCI, the largest ESG rating company, which, in the opinion of the authors “doesn’t even try to measure the impact of a corporation on the world,” see https://www.youtube.com/watch?v=f_rrS-giP8

¹⁰ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

in China. This organization is part of UN Global compact since 2001¹¹ and in 2012 it adopted the Human Rights Policy based on the UNGPs.¹² In 2021 it issued the statement of non-working with any garment manufacturing factories located in XUAR, and non-sourcing products from this region thus seemingly contributing to the struggle with forced labour in China.¹³ The broad media coverage of such cases might make the public feel that finally the solution to the problem of implementation of international labour standards (ILS) is found and think that the system of ESG compliance is a mechanism that serve this objective. In the present paper, the place of ILS and labour rights will be considered in different ESG instruments. Firstly, the focus will be on the definition of ESG and its content (part 1), secondly, different public ESG instruments will be reviewed to establish their relevance to labour rights and ILS (part 2). In the conclusions the recommendation on the clearer incorporation of the ILS and broader understanding of related to labour human rights in the ESG agenda will be formulated.

2. ESG compliance – very much ado about what?

In the abundance of the literature on ESG it is hard to encounter a clear definition of what it is. A recent study provided seven definitions and all of them had one key trait in common: they refer to the evaluation of the Environmental, Social and Governmental performance of organizations for investors.¹⁴ It makes clear that ESG is mostly perceived as an investor's tool. However, it is much broader and complex than this. It is about the voluntary and in some cases mandatory¹⁵ commitment of business to act in line with international norms on human and labour rights, ensure due diligence in its operations and disclose the relevant non-financial information which matters for their business. It is largely the same as the concept of Corporate Social responsibility (CSR). The EU, for example, defined the subjects of CSR in 2011 as human rights, labour and employment practices (such as training, diversity, gender equality and employee health and well-being etc.), environmental issues, and combatting bribery and corruption.

¹¹ See <https://unglobalcompact.org/what-is-gc/participants/4719-H-M-Hennes-Mauritz-AB>

¹² See https://hmgroupp.com/wp-content/uploads/2020/10/HM_Group_UNGP_Index_2018.pdf

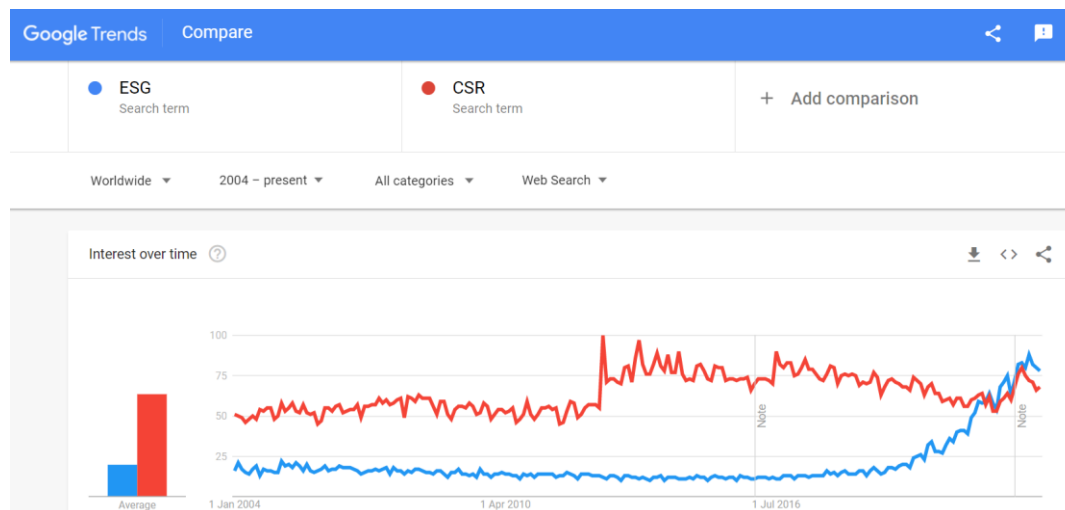
¹³ H&M Group statement on due diligence see <https://hmgroupp.com/sustainability/fair-and-equal/human-rights/h-m-group-statement-on-due-diligence/>. It is worth noting that this statement provoked a boycott of H&M goods by Chinese online e-commerce platforms and customers. See: Teh C., "Die, H&M, die": brand grapples with Chinese boycott and social media firestorm over Xinjiang "forced labor" comments. Mar 25, 2021, in <https://www.insider.com/hm-chinese-e-commerce-boycott-social-media-firestorm-2021-3>

¹⁴ Doni F., Johannsdottir L., *Environmental Social and Governance (ESG) Ratings*, in Leal Filho, W., Azul, A.M., Brandli, L., Özuyar, P.G., Wall, T. (eds) *Climate Action. Encyclopedia of the UN Sustainable Development Goals*, Springer, Cham, 2020.

¹⁵ See the proposal for the EU Directive on corporate sustainability due diligence which will provide corporate due diligence duty to identify, bring to an end, prevent, mitigate and account for negative human rights and environmental impacts in their own operations, subsidiaries and value chains. See also the Child Labour Due Diligence Act 2019 in the Netherlands, the Supply Chain Due Diligence Act in Germany (comes into force in January 2023), the Corporate Duty of Vigilance Act 2017 in France, Modern Slavery Act in the UK.

The same subjects are considered in the three parts of the ESG – Environmental, Social and Governmental.

Interestingly, the ESG term seems to become more used than CSR, especially in the context of non-financial performance of an enterprise. For example, it is currently more searched than CSR, as Google Trend demonstrates:



Picture 1. Google trend in the searches for “ESG” and “CSR”

<https://trends.google.com/trends/explore?date=all&q=ESG,CSR>

The ESG requirements or recommendation are set in different public and private instrument also called non-financial reporting provisions. These are the documents providing mandatory or voluntary commitment of covered business to respect HR and fundamental labour standards within business and in the relations with the supply chain (further referred to as ESG instruments).

ESG instruments are numerous. The 2020 Carrot and Sticks report (C&S), an international initiative to assesses the regulatory landscape of non-financial and sustainability reporting, covered 614 reporting provisions, of which 73 are from Africa and Middle East, 174 from the Asia Pacific, 245 from Europe, 37 from North America and 85 from South America, including public laws and regulations; self-regulation (for example, issued by stock exchanges or industry bodies); codes, guidance and questionnaires; guidelines and standards for non-financial reporting; index questionnaires (for preparing ratings).¹⁶ C&S have evidenced the significant growth of mandatory provisions understood as disclosure requirements, introduced by regulatory and self-regulatory actors in the public and market sphere, for example, the mandatory ESG listing requirements are now adopted by about 50 exchanges following the UN-backed Sustainable Stock Exchanges (SSE) initiative.¹⁷

¹⁶ Carrots & Sticks.

¹⁷ *Ibid.*

It is important to distinguish some other types of ESG instruments. First of all, they might be public (ex. OECD Guidelines, UNGC, UNGPs, World Bank Environmental and Social Policy for Investment Project Financing) and private.¹⁸ The private might be multistakeholder as, for example, ISO 26000, SA8000, Global Reporting Initiative (GRI)¹⁹ or SASB standards, and company instruments (ex. Codes of Conduct, Framework Agreements, HR policies). As it is impossible to address all those reporting provisions in this paper, in the second part it will focus on the ILS in the key ESG instruments adopted on the level of the United Nations: UNGC, UNGPs and the Principles of Responsible Investment. These instruments provide a universal vision of business commitments and serve as a source of inspiration and direct borrowing for a number of other public and private ESG instruments.

3. Labour-related issues in the key UN ESG instruments.

It was noted in one research that similar to the absence of ESG definition, there are no common definitions of what ESG factors and criteria include.²⁰ Already mentioned UN Global Compact and the UNGPs are the key pillars for understanding what the list of ESG issues/factors/criteria is.

3.1 UN Global Compact, labour rights and ILS.

UNGC is a UN initiative for business, which might be joined by any enterprise sending the filled form about the commitment to 10 principles, dedicated to human rights, labour, environment and anti-Corruption. Parties are supposed to produce an annual Communication on Progress that outlines efforts to operate responsibly and support society.²¹ It is stated in the UNGC principles that they derive from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. Among the ten principles of Global Compact, four directly refer to fundamental labour standards.²²

¹⁸ In literature also referred to as transnational private labour initiatives. See Alhambra A. G. M., Ter Haar B., Kun A., *Harnessing Public Institutions for Labour Law Enforcement: Embedding a Transnational Labour Inspectorate within the ILO*, in *International Organizations Law Review*, 2020, 17, 1, 233-260.

¹⁹ Professor B. Waas considered in the recent paper the place of ILS in a private ESG reporting instrument – GRI – and underlined the need to attach more attention to the ILS and to the opinions of ILO supervisory bodies in ESG compliance. Waas B., *The “S” in ESG and international labour standards*, in *International Journal of Disclosure and Governance*, 2021, 18, 403-410.

²⁰ Doni F., Johannsdottir L., nt. (14).

²¹ See <https://www.unglobalcompact.org/participation/join/application>

²² Principle 3: The freedom of association and the effective recognition of the right to collective bargaining; Principle 4: the elimination of all forms of forced and compulsory labour; Principle 5: the effective abolition of child labour; and Principle 6: the elimination of discrimination in respect of employment and occupation.

Thus, we can presume that at least these 4 principles – ILO fundamental labour standards – form the part of the “S” issues when we speak about the UN approach to ESG. The ILO report²³ about the labour principles in the Global Compact provided recommendations to the parties of this initiative following from the ILO fundamental conventions (8 conventions back then). The first block of the Global Compact principles refers to human rights in general. Labour rights form part of the internationally recognized human rights in a much broader scope than they are recognized in the fundamental ILO principles. The Universal Declaration of Human Rights (UNDHR), referred to in the UNGC lists a number of labour and social rights which were developed further in the UN Covenants. Therefore, the scope of labour rights set in the UN Global Compact is much broader than just ILO fundamental standards.

For example, the norm of the article 23 of the UNDHR provides the right to just and favourable remuneration ensuring for a worker and his family an existence worthy of human dignity. This right is not mentioned in the UNGC directly, but there is a separate project within the framework of the Global Compact towards promoting living wage – the Living Wage Think Lab. This initiative is supposed to promote the provision of a living wage to all employees regardless of their employment status and country of residence between business, help to address key business challenges and identify good practice across sectors and regions.²⁴ Also, on the site of UNGC there is a separate page dedicated to the topic “Ensuring a Living Wage is an Essential Aspect of Decent Work”.²⁵ On this page it is stated that “an “adequate standard of living” and “just and favourable conditions of work” are universally recognized human rights.

Thus, from the analysis of the UNGC it becomes clear that in theory, labour rights should form a much wider part of the UNGC commitments than those directly stated in the principles 3-6, coming from ILO fundamental standards. However, such opinion might be formed only if one will make an effort to search for particular labour rights. The review of the new questionnaire which the business should fill under UNGC demonstrates that it is not required to provide the information concerning labour rights other than fundamental standards. The part on reporting about labour rights is divided into the parts, dedicated to “commitment”, “prevention” and “performance”. The “commitment” part is mostly about the adoption of the labour rights policies. If the policy in respect of one of the listed labour rights (“fundamental labour standards”²⁶ + “working conditions (wages, working hours)”) is adopted, the enterprise has to report if this policy is aligned with international labour standards (ILS). Though the questionnaire leaves unclear what is meant under ILS, what kind of standards should be referred to as the benchmarks. It does not mention any norm of any ILO Convention.

²³ ILO. The Labour Principles of the United Nations Global Compact A Guide for Business. 2008. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Flabour%2Fthe_labour_principles_a_guide_for_business.pdf

²⁴ <https://unglobalcompact.org/take-action/think-labs/just-transition/living-wage>

²⁵ <https://www.unglobalcompact.org/what-is-gc/our-work/livingwages>

²⁶ These are: freedom of association and the effective recognition of the right to collective bargaining, forced labour, child labour, non-discrimination in respect of employment and occupation, safe and healthy working environment.

The part L3 of the questioner includes the question about the type of action that the company has taken in the reporting period with the aim of preventing/mitigating the risks/impacts associated with the labour rights topic, including safe and healthy working environment and working conditions (wages, working hours). The latter, though, will appear in the communication only if the working conditions issue was chosen by the reporting enterprise as material human rights topics connected with its operations and/or value chain. The part L3 further lists possible answers about the type of action taken by business in the field of labour rights. It includes the following: “Provided internal training/ capacity building for the direct workforce; Building capacity among relevant business relationships; Conducting an audit process and/or corrective action plan; Collective Action with peers or other stakeholders, in particular workers’ organizations, to address the issue; Collaboration with governmental or regulatory bodies; Other; No action within reporting period”.²⁷ This list demonstrates that business is not supposed to provide information about their actual compliance with ILS. Also, that labour rights, other than fundamental ones, may be not addressed at all in the reports under the UNGC.

Determining the ILS which business is supposed to follow when adopting labour policies is not a simple task. There are no references in the UNGC to other instruments than the UDHR, the latter is too general on labour rights. The Questioner refers only to the ILO Occupational Safety and Health Convention 1981 (No. 155) and it remains unclear why only this Convention deserved being mentioned.

The relevant ILS for the fundamental labour rights are fixed in the ILO fundamental labour conventions, thus it might be relevantly easy to determine the scope of these rights. However, it is not clear what kind of ILS should determine the regulation of working conditions (wages, working hours). The norms of the UN Human Rights Covenants might be helpful to determine the benchmark for the labour rights commitments of business. In particular, the norms of the article 7 of the International Covenant on Economic, Social and Cultural rights and the relevant general comments of the Committee on Economic, Social and Cultural rights (CESCR). However, in the absence of the links to the Covenant in the UNGC, such interpretation might seem too broad and not corresponding to very “soft” intentions of the drafters of this initiative.

The “performance part” of the UNGC questioner contains the following questions: do the existing collective bargaining agreement(s) provide more favourable rights than fixed in legislation or in an applicable sectoral agreement, what is the percentage of women in senior leadership level positions and the average ratio of the basic salary and remuneration of women to men. It also concerns the number of injuries per hour worked, the incident rate and the provision of remedy in case of labour rights violations. Thus, again we see that the performance part refers solely to certain fundamental labour standards. Supposedly, the question on the number of fines imposed by the labour inspection and about the correlation of the minimum wage paid to the living wage (particularly, in the countries where the former is much lower than the living wage) might bring more light to the compliance with ILS.

²⁷ UNGC. Questionnaire Communication on Progress (Effective 2023) Document version: August 2022 <https://www.unglobalcompact.org/participation/report/cop>

Summing up the research of the incorporation of ILS into the UNGC, the following conclusion might be made: this initiative is too soft as far as it concerns other labour rights than fundamental ones. Despite the fact that other labour rights are recognized as human rights (the right to just and favourable conditions of work in general and to just and favourable remuneration in particular), this initiative does not oblige business to report on performance in this field and does not refer neither to ILS (except for the ILO Declaration) nor to UN Human Rights Covenants.

In contrast with the UNGC, the next UN ESG instrument – UNGPs directly refers to the UN Covenants. Further this instrument will be considered in more detail.

3.2. UN Guiding Principles on Business and Human Rights, labour rights and ILS.

The UNGPs establish the famous framework for the compliance of business and states with human and labour rights: states should protect human rights, business should respect them and both should ensure remedy in cases of violations. According to the principle 12, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights; understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The so-called Bill of HR consists of two UN Covenants and the Universal Declaration of Human rights. Each Covenant includes certain rights connected to the world of work. International Covenant on Civil and Political Rights provided the right to privacy (Article 17), International Covenant on Economic, Social and Cultural Rights enshrines a broad right to the enjoyment of just and favourable conditions of work (article 7). This right includes, in particular, fair wages which guarantee a decent living for workers and their families, safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. Article 8 of the ICESCR expressly stipulates the right to strike. The CESCR General Comments N 18 (right to work) and N 23 (right to the enjoyment of just and favourable conditions of work) provide the interpretations of the rights set in those two articles. The General Comment No. 18: The Right to Work (Art. 6 of the Covenant) refers to ten ILO Conventions covering forced and child labour, employment policy, dismissal protection, discrimination, employment of disabled people, protection against unemployment and labour statistics.²⁸ In the most recent General comment No. 23 (2016) on the right to just and favourable conditions of work, the CESCR identified twenty ILO conventions as relevant for determining favourable and just conditions of work under article 7. Those twenty conventions cover the issues of maternity protection, working time and rest regulation, minimum wage, equal remuneration, discrimination, minimum age, occupational safety, workers with family responsibilities, night and part-time work.²⁹ In view of the fact that the Covenants are directly referenced in the

²⁸ ILO Conventions No. 2, 29, 88, 105, 111, 122, 158, 159, 160, 168.

²⁹ Sychenko E., *ILO Contributions to the Jurisprudence of International Human Rights Bodies*, in *Zbornik Pravnog fakulteta u Zagrebu*, 2021, 71, 6, 897-920.

UNGPs, the ILS referred to by the CESCR in the mentioned General Comments should be considered by business as the benchmarks for the compliance with their responsibility to respect HR and fundamental labour rights.

In order to check whether these ILS are indeed perceived as the benchmarks by business 12 MNCs' reports published in the UNGPs database were considered. The UN Guiding Principles Reporting Framework was launched in 2015 by Shift (an independent, non-profit center for business and human rights practice) and Mazars (leading international audit, tax and advisory firm)³⁰ and is supported by UN experts, governments, stock exchanges, investors. It provides 31 "smart" questions that enable companies to report on their human rights performance, regardless of size or how far they have progressed in implementing their responsibility to respect human rights.³¹ The framework³² lists fundamental labour rights and also the right to work, to just and favourable conditions of work which includes the right to fair wage, the right to rest, leisure and holidays, occupational health. Describing the right to enjoy just and favourable conditions of work It states that ILO standards provide further guidance on the content of the right without specifying the particular ILO Conventions. Thus, it remains unclear what are the ILO norms which might be used by business as benchmarks to evaluate their compliance with ILS.

In the search engine of the reports database, it is possible to filter the disclosures picking particular issues. Among these issues five refer to the fundamental ILS and there are two more: "Labour rights" and "Wages" which are part of the human right to the enjoyment of just and favourable conditions of work (article 7 of the ICESCR). Leaving aside the fundamental ILS which are increasingly incorporated in different instruments,³³ it is interesting to see how the respect to labour rights other than fundamental ILS, is depicted by business. The explanation point in the database states that "different companies use different terminology for similar issues" and the two chosen categories (labour and wages) might also include "employees' rights, employment and working conditions, fair and transparent working conditions, favourable and cordial environment, fundamental human rights and trade union rights, humane working conditions, labour rights protection, treatment and safety, protection of labour rights, quality of life in the workplace, respectable employment, safe and healthy work environment, worker welfare, workers' rights, compensation and working hours, competitive wage, fair Living Wage, minimum wage and work week and payment of wages."³⁴ The list is very impressive: it contains everything and

³⁰ <https://www.mazars.com/Home/About-us/News-publications-and-media/Latest-news/UN-Reporting-Framework-Launch>

³¹ <https://www.ungpreporting.org/framework-guidance/>

³² See UN Guiding Principles Reporting Framework. Table: internationally recognized human rights and examples of how business might impact them, https://www.ungpreporting.org/wp-content/uploads/UNGPRReportingFramework_withguidance2017.pdf

³³ The researches were undertaken when there were only four fundamental ILS, thus it does not cover occupational health: Lafarre A., Rombouts B., *Towards Mandatory Human Rights Due Diligence: Assessing its Impact on Fundamental Labour Standards in Global Value Chains*, in *European Journal of Risk Regulation*, 2022, 1-17; Rombouts S., *The international diffusion of fundamental labour standards: contemporary content, scope, supervision and proliferation of core workers' rights under public, private, binding, and voluntary regulatory regimes*, in *Columbia Human Rights Law Review*, 2019, 50, 3, 78-175; Ter Haar B., *Love, Flirt or Repel: Hybrid Global Governance of the ILO Core Labour Standards*, in *European Journal of Social Law*, 2013, 68-102.

³⁴ See <https://www.ungpreporting.org/database-analysis/explore-disclosures/>

nothing in the same time. The first most evident point is the presence of many not legal but evaluative concepts such as competitive wage, respectable employment or cordial environment. This explanation point is yet another illustration of the fact that many companies report on labour rights without any reference to particular ILS, but rather using vague and very broad terms.

However, the review of the reports submitted by business under UNGPs demonstrates that they mostly deal with the fundamental ILS in a declarative way and are silent or very general on fair wage, occupational health, rest and leisure.³⁵ For example, EXXON MOBIL (2015) states to provide “positive, productive and supportive work environments throughout its global operations” and to pay “wages in accordance with local laws”. This formulation has very little to do with ILS or human rights at work. The HR policy of Inditex, reported in the UNGPs systems is rather an exception from the observation presented above. In this document, they directly state that issues regarding working conditions in the occupational safety and health area are governed by ILO Convention 155, and those regarding just, fair and equitable working conditions are governed by ILO Conventions 1, 14, 26, 111 and 131.³⁶

3.3. ILS, Labour Rights and the Principles of Responsible Investment.

The vision of ESG as the investors’ tool to evaluate business takes root in the Principles for Responsible Investment (PRI), elaborated with the support of the UN and launched at the New York Stock Exchange in April 2006.³⁷ According to the PRI official site, the six Principles for Responsible Investment “offer a menu of possible actions for incorporating ESG issues into investment practice”, “in implementing them, signatories contribute to developing a more sustainable global financial system”.³⁸ These principles are surprisingly brief and do not spread any light on what is understood under the ESG issues, which the parties are going to “incorporate into investment analysis and decision-making processes”(see Principle 1). The PRI, as an investor initiative in partnership with UNEP Finance Initiative and UN Global Compact, published a Blueprint For Responsible Investment.³⁹ There a lot of nice pictures but the words “human rights” “labour rights” or “ILO” are not mentioned in the text describing the initiative. In 2022 the PRI issued the report “How investors can advance decent work”, where they pointed out several “encouraging investor initiatives”, such as, for example, Platform Living Wage Financials which encourages and monitors investee companies as regards to paying a living wage

³⁵ The conclusion is the result of the review of disclosures of 12 enterprises: American Express, Apple, Barrick Gold, BP, Coca-Cola Femsa, Exxon Mobil, Inditex, Japan Tobacco, Philip Morris International, Lundin Mining, Royal Dutch Shell, Samsung Electronics.

³⁶ *See*:

https://www.inditex.com/itxcomweb/api/media/7e50ddce-a4de-4d51-9ab0-f7c248d23656/inditex_policy_on_human_rights.pdf?t=1655306506255

³⁷ Doni F., Johannsdottir L., nt. (14).

³⁸ <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>

³⁹ <https://www.unpri.org/download?ac=5330>

through their supply chains.⁴⁰ It outlined the four pillars of decent work, that need to be addressed by investors as part of driving systemic change: workers' voice and social dialogue, living wage, access to benefits, health and safety, and social protection and equal opportunity and treatment.

PRI official site states that since the development of the UN Guiding Principles on Business and Human Rights (UNGPs), and the UNGPs' endorsement by the UN Human Rights Council in 2011, it has become increasingly clear that the consideration of human rights in investment activities is of fundamental importance to the advancement of Environmental, Social and Governance (ESG) investing.⁴¹ The parties to the PRI have to annually report about the implementation of these principles. The review of PRI reporting guidelines, unfortunately, does not help to establish what is the role of labour rights and ILS in ESG. There are only very general words about the need to answer "how ESG factors are incorporated into an organisations' overall approach to responsible investment and their asset allocation decisions", the reporting on the sustainability outcomes is completely voluntary.⁴² Thus, the place of labour rights and of ILO standards in the ESG approach of PRI remains very unclear.⁴³ Certain activities of the PRI as the report on decent work makes us understand that ESG in the view of PRI should also be about the respect to labour rights. However, this initiative still does little to ensure practical implementation of their principles as far as the field of labour and the ILS are concerned.

4. Conclusions.

Many authors writing about the due diligence, ESG or CSR point that there is lack of clarity about what is business supposed to report about and risk of inconsistency when different reporting frameworks are considered.⁴⁴ In this paper the problem of the use of ILS as benchmarks for ensuring the respect to labour rights was considered. The research

⁴⁰ <https://www.unpri.org/human-rights/how-investors-can-advance-decent-work/10190.article>

⁴¹ Principles for Responsible Investment sets new human rights expectations for investors, in <https://www.unpri.org/news-and-press/principles-for-responsible-investment-sets-new-human-rights-expectations-for-investors/6638.article>, 22 October 2020

⁴² PRI reporting framework. Overview and structure, in: https://dwtz6upklls.cloudfront.net/Uploads/w/h/f/overview_and_guidance_reporting_framework_structure3_584160.pdf

⁴³ In the same time in its own Human rights commitment, the PRI as an organization declares that they are committed to respecting human rights as codified under international law in the International Bill of Human Rights, the UN Global Compact 10 Principles and the ILO's Declaration on Fundamental Principles and Rights at Work. This commitment, however, applies only to PRI employees, members of the PRI Board and their contractors and suppliers, but not to signatory parties of the PRI. <https://www.unpri.org/Uploads/y/v/q/PRI-Human-Rights-Policy.pdf>

⁴⁴ Landau I., *Human rights due diligence and the risk of cosmetic compliance*, in *Melbourne Journal of International Law*, 2019, 20, 221; Weil D. et al, *The effectiveness of regulatory disclosure policies*, in *Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management*, 2006, 25.1, 155-181, cited from Landau, I; Rusinova V., Korotkov S., *Mandatory Corporate Human Rights Due Diligence Models: Shooting Blanks?* in *Russian Law Journal*, 2021, 9, 4, 33-71; Parker Ch., *Meta-Regulation: Legal Accountability for Corporate Social Responsibility*, in McBarnet D., Voiculescu A., Campbell T. (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law*, Cambridge University Press, 2007.

demonstrated that there is a lack of clarity in determining which labour rights are considered as human rights and the lack of universal understanding of ILS which should determine the minimum obligations of business in this field. These shortcomings, most evidently demonstrated in the part about the UNGC and the PRI, lead to the possibility of so-called cosmetic compliance and with only fundamental ILO standards. Other labour standards are not mentioned in none of the considered initiatives.

The analysis demonstrated that these three UN ESG instruments are too “soft” when the rights at work are at stake. To solve this issue there firstly the need to ensure a more general understanding of what are human rights at work and which ILS determine the quality of business commitment. It is proposed to elaborate a more detailed commentary to these ESG instruments in collaboration between ILO and the Committee on Economic, Social and Cultural rights (CESCR). It should be finally noted that the UN Working Group on the issue of human rights and transnational corporations and other business enterprises recently stated that human rights risks are too often not considered as a key part of sustainability commitments and the Environmental, Social and Governance (ESG) agenda, whereas they should be at the center of the S in ESG.⁴⁵ ILS, understood much broader than only fundamental ILO Conventions, should serve as a benchmark for ensuring the compliance of business with the obligation to respect labour rights as human rights.

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⁴⁵ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Human Rights Council Fiftieth session 13 June-8 July 2022. A/HRC/50/40/Add.3

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