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Non Paper - Business and Human Rights: State of play

A. Introduction

1. Business has a positive impact on the social and economic development of modern societies creating wealth and jobs, and contributing to the promotion of decent work and social rights. However, in some cases, their operations can also have a negative impact on human rights. The issue of violations and abuses of human rights derived from corporate behaviour has attracted increased attention in many regions of the world. In particular in some countries in Asia, Africa and Latin America there are reports of violations of civil and political, economic, social and cultural rights including for instance attacks on labour rights, and rural and indigenous communities facing land grabs and forced displacement. Human rights defenders and civil society actors working in this area may be subject to harassment, persecution and retaliation. The right to redress, and access to justice, is not sufficiently guaranteed in most regions of the world.
2. Business and human rights and Human Rights Defenders form part of the Action Plan on Human Rights and Democracy, 2015-2019. To address these issues comprehensively and most effectively, the EU considers the “UN Guiding principles on Business and Human Rights (UNGPs)”, endorsed unanimously by the Human Rights Council in its 2011 resolution 17/4 , as a key policy tool that, together with other international instruments greatly contributes to the respect of human rights. The EU and its MS have taken steps to ensure their implementation within the EU, and to disseminate the UNGPs and promote EU practices with Partner Countries. At multilateral level the EU is supportive of the consensual track in the Human Rights Council, i.e. resolution 17/4, most recently embodied in resolution 26/22
3. However, some countries have proposed the development of a legally-binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises that have a transnational character in their operational activities. This instrument would not apply to local businesses registered under relevant domestic law. These countries believe that such an instrument would be more effective than the UNGPs, in making international corporations accountable; a segment of civil society has supported this approach in the belief that it will provide better access to remedy for victims of human rights abuses. Ecuador and South Africa have taken the lead in bringing this issue to the Human Rights Council including through Resolution 26/9 in June 2014 which established an Inter-Governmental Working Group (IGWG) for the preparation of an international legally-binding

instrument on Business and Human Rights. The IGWG met in July 2015 for its first one-week session, chaired by the Permanent Representative of Ecuador. The EU opposed resolution 26/9 and only attended the first day of the IGWG, to explain its position, before absenting itself.

4. Following up on a number of documents prepared for COHOM in previous months, this non-paper provides the state of play of the EU work on both the implementation of the UNGPs and the IGWG. It also focuses on some open issues for discussion.

B. Implementation of the UN Guiding Principles on Business and Human Rights (UNGPs)

5. As regards **EU Internal policy**, in July 2015 the European Commission adopted a Staff Working Document, providing a thorough analysis on the state of the UNGPs' implementation at EU level (EU external action is also covered). Following the European Commission's 2011 Strategy on Corporate Social responsibility (CSR), it continued to engage with stakeholders in discussing measures that can facilitate the uptake of responsible business practices of European firms.
6. Furthermore, the EU has enacted legislation and implemented EU social partners agreements ensuring a level playing field for all businesses and ensuring access to protection and remedy on a number of labour related human rights. All EU MS have ratified ILO core labour standards and conventions, as well as other relevant human rights conventions. A Directive on disclosure of non-financial information by certain large companies entered into force in December 2014¹ and is being transposed by Member States into national legislation². The Commission will prepare guidelines on the methodology for reporting by December 2016
7. Several EU Member States have prepared or continued to prepare National Action Plans on Business and Human Rights as well as Corporate Social Responsibility Strategies. By the end of 2015 seven Member States had adopted a National Action Plan on Business and Human Rights, while approximately 20 EU Member States have completed or are working towards delivering their strategies on Corporate Social Responsibility.
8. As for **EU External action**, in addition to commitments by the Parties to respect core labour standards and Conventions as well as key Multilateral Environmental Agreements, all EU's recent Trade and Sustainable Development Chapters (TSD) in EU trade agreements contain provisions on the promotion of internationally agreed principles and guidelines on Corporate Social Responsibility, including the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and social policy.
9. The EU raised the issue of business and human rights with a range of third countries, both during regular human rights dialogues and ad-hoc meetings. The EUSR for Human Rights raised the issue as a key priority in his discussions with strategic partners, including South

¹ 2014/95/EU. This legislation requires large listed companies, as well as banks and insurance companies, with more than 500 employees to disclose in their management report relevant non-financial information, including on policies, principal risks and outcomes relating to respect for human rights.

² Deadline for transposition is 6 December 2016.

Africa and Brazil, and with the African Union. In September 2015, the EU and Brazil organized a dedicated Seminar, during which participants from EU institutions and MS, the Brazilian administration, the UN, as well as Brazilian and European companies shared best practices.

10. As regards technical support, under the European Instrument for Democracy and Human Rights (EIDHR), a capacity building programme to support National Human Rights Institutions (NHRIs) started in 2015, with the aim to strengthen NHRI capacity in dealing inter alia with violations of human rights in the context of business and human rights. In 2016, a global EIDHR global call for proposals will be launched with a 5 million Euro lot devoted to supporting civil society and social partners in implementing the UNGPs. Finally, the EU made preparations for technical support to certain CELAC countries to prepare national Action Plans on Business and Human Rights under the Partnership Instrument.
11. In Multilateral Fora, the EU takes part in efforts to promote a level playing field for businesses, and foster sustainable global supply chains, including in the G7 framework³. In the **UN Framework**, the EU supports the activities of the UN Working Group on Business and Human Rights, including the annual Forum on Business and Human Rights in Geneva. The EU is also supportive of the Accountability and Remedy Project led by the UN OHCHR (some MS also provided financial support). In this context, the OHCHR has prepared a draft guidance aiming at addressing challenges that may prevent accountability and access to remedy in cases of business involvement in human rights abuses, particularly in cases of severe abuses. The guidance will be part of a High Commissioner report to be presented to HRC32 (June 2016) and is likely to be the basis for a resolution by the core group (Argentina, Ghana, Norway, Russian Federation). The EU is also actively engaged in the work of the OECD, together with the UN and the International Conference on the Great Lakes on enhancing and promoting due diligence guidance for Responsible Supply Chains of Mineral from Conflict-Affected and High-risk Areas⁴.

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C. The discussion on a legally binding instrument

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19. The next meeting of the IGWG is due to take place in October 2016. The Chairperson-Rapporteur has not yet convened any meeting of regional coordinators to prepare for the next session.

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