

## EU Position Paper on a Legally Binding instrument on Business and Human Rights

### Objective

1. Following up on the Non-Paper on business and human rights presented to COHOM in March 2016 (024/16), this document aims to help prepare the EU's position on a potential draft treaty that will be discussed at the open ended intergovernmental group on transnational corporations and other business enterprises with respect to human rights" (OEIWG) which will meet on 23-24 October.

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### Background/State of Play

3. The EU is committed to making progress on the issue of human rights and business and is a strong supporter of the UNGPs endorsed by Consensus by the Human Rights Council in 2011. The EU has supported and engaged with the UN Working Group on Business and Human Rights which is tasked with promoting the effective implementation of the UNGPs.

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**EU position on any potential draft – General Principles**

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11. [Redacted text block]

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<sup>1</sup> [Redacted footnote text]

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**A good story to tell that could help the treaty process...**

12. The EU has been increasingly active in the area of business and human rights by adopting strategies, policies, guidance and legislation. The EU and MS are also strongly committed to the implementation of the UNGPs, as well as other instruments such as the 2016 Council of Europe Recommendation on human rights and business.
13. As a sign of this commitment, in June 2016, EU MS adopted Council Conclusions on human rights and business outlining clear steps towards the implementation of the UNGPs. At present, 13 EU Member States have adopted national action plans on human rights and business.<sup>3</sup>

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<sup>2</sup> [REDACTED]

14. In 2015, the European Commission published A Commission Staff Working Document on implementing the UN Guiding Principles on Business and Human Rights. This comprehensive document outlines the different internal and external initiatives and legislative framework on this issue<sup>4</sup>. Some examples include:

- Guiding material to companies adopted in 2013 outlining the responsibility of business to respect human rights in three key business sectors (employment and recruitment agencies, ICT companies, and oil and gas companies)<sup>5</sup>. The Sector Guides are consistent with the UNGPs and take account of the experience of EU companies, but aim to be as globally applicable as possible. A separate guide was elaborated to help SMEs translate human rights in their operations<sup>6</sup>.
- Accounting Directive on non-financial information disclosure: the Council adopted a proposal in September 2014 according to which companies with more than 500 employees will be required to disclose certain non-financial information in their management reports. The Directive leaves significant flexibility for companies to disclose relevant information in the way that they consider most useful, or in a separate report. Companies will need to disclose information on policies, risks and outcomes as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors. The scope includes approximately 6,000 large companies and groups across the EU. MS will have two years to transpose the Directive into national legislation. Companies will start reporting in 2017.
- Public Procurement: The new EU Directives on public procurement and concessions (Directives 2014/24/EU, 2014/25/EU and Directive 2014/23/EU), which have been ratified by MS and were adopted on 26 February 2014, have to be transposed into national law by Member States at the latest by 18 April 2016. They allow public authorities to take social, labour and environmental concerns into account in the award decisions, exclusion grounds, rejection of a tender and conditions for the performance of contracts. These new Directives cover all HR aspects relevant for public procurement and now include child labour and human trafficking.
- Country-by-country reporting (Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings): to enhance transparency in the sensitive oil, gas, mining and forestry sectors, the European Union adopted in June 2013 a Directive according to which companies in these sectors are obliged to report payments of more than €100,000 made to the government in the country in which they

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4 SWD(2015) 144 final

5 [https://ec.europa.eu/anti-trafficking/publications/european-commission-sector-guides-implementing-un-guiding-principles-business-and-hum-0\\_en](https://ec.europa.eu/anti-trafficking/publications/european-commission-sector-guides-implementing-un-guiding-principles-business-and-hum-0_en)

6 <https://business-humanrights.org/sites/default/files/documents/SME-BHR-guide-EU.pdf>

operate, including taxes levied on their income, production or profits, royalties, and license fees.

- Access to EU courts if human rights violations occur outside the EU: The Brussels I Regulation establishes rules regulating the allocation of jurisdiction in civil or commercial disputes of a cross border nature, including civil liability disputes concerning the violation of HR. The Regulation ensures the recognition and enforcement of judgements among MS, and means that a person domiciled in a MS can generally be sued in the courts of that MS. Opens up the possibility of EU-based transnational corporations being sued for violations of HR committed abroad.
- When a court in a MS has jurisdiction in a case with a cross-border element, it has to determine which country's law is applicable to the dispute. Related rules have been harmonised at EU level by Rome I Regulation for contractual obligations and by Rome II Regulation for non-contractual obligations. The case of four Nigerian farmers against Royal Dutch Shell, which is currently heard in the Netherlands, is an example of the application of these EU provisions.
- Externally, business and Human Rights is also one of the priorities of the 2015/2019 EU Action Plan on Human Rights and Democracy. The main priorities in this area: 1) increased role (and training) of DELs to promote actively B&HR around the world; 2) Increased seminar and awareness-raising activities with Third countries on top of regular HR dialogues; 3) co-ordination with COM work (including domestic EU strategy) on SCR and Business rights; 4) continued work on NAPs, both at EU level in our external policy.
- As for EU External action, in addition to commitments to respect core labour standards and Conventions, all EU's recent Trade and Sustainable Development Chapters (TSD) in EU trade agreements contain provisions on internationally agreed principles and guidelines on CSR, including the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and social policy.
- At bilateral levels, the EU is increasingly discussing and exchanging experience on Business and Human Rights in EU human rights dialogues and dedicated seminars and workshops with a number of partner countries. This has been the case with China, South Africa, or Brazil to list a few. The EU has also established a strong partnership with the African Union (AU), and is financing a project to support the AU to develop a framework to implement the UNGPs. Support is also being given to the development of national Action Plans in CELAC countries.

15. Technical support is also provided by the European Instrument for Democracy and Human Rights.

## **Conclusion**

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