



# EUROPEAN COMMISSION

Directorate-General for Trade

Directorate D - Sustainable Development; Economic Partnership Agreements - African, Caribbean and Pacific; Agri-food and Fisheries

**The Director**

Brussels, 20 March 2018

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## NOTE FOR THE ATTENTION OF JEAN-LUC DEMARTY DIRECTOR-GENERAL

**Subject: Summary of the process and developments on a binding UN Treaty on Business and Human Rights**

This note summarises recent developments in the UN Human Rights Council regarding a possible binding UN binding Treaty on Business and Human Rights and seeks your approval on the approach DG Trade should take on this file. A more in-depth analysis on potential impact and perspectives for the investment policy will follow from Directorates B and F.

### UN developments on a binding treaty on Business and Human Rights

Work in the UN context on business and human rights has traditionally focussed on voluntary principles through the UN Guiding Principles on Business and Human Rights (UNGPs) adopted in 2011.

Attempts to develop a binding UN Treaty started in June 2014, with the adoption by the UN Human Rights Council of resolution 26/9 to 'elaborate an international legally binding instrument to regulate the activities of Transnational Corporations and Other Business Enterprises with respect to human rights'. The resolution was drafted by Ecuador and co-sponsored by South Africa, Bolivia, Cuba and Venezuela. These countries focus their attention on transnational companies.

These negotiations have taken place in the format of an open-ended intergovernmental working group (OEIWG), in parallel with the work on the implementation of the UNGPs. The setting of the OEIWG is unusual. The process is led by Ecuador, in close co-operation with South Africa and some Latin American countries.

Discussions are public and NGOs have been attending the UN meetings as observers.

Discussions on the binding Treaty have been controversial and positions polarised. The EU decided not to participate in the first meeting of the OEIWG in 2015,

[REDACTED]

The European Parliament and NGOs have criticised the EU's lack of support for the development of the binding Treaty. The EUMS and EEAS revised its position and joined in the negotiation sessions in 2016 and 2017. Currently the EU is planning to attend the 2018 session in October.

### **EU internal process**

Within the EU the handling of the file is complex. [REDACTED]

[REDACTED] Council Conclusions from 2016 focus on implementation of the UNGPs. As this process concerns human rights under the Human Rights Council, the legal competence has so far stayed with Member States, while the EEAS coordinates the EU approach. DG DEVCO is the service responsible for human rights coordination within the Commission. TRADE is affected via the link with investment policy and investors' obligations to uphold and protect human rights, the link with labour aspects of Corporate Social Responsibility (CSR) and links which are being made with the Multilateral Investment Court project. If the discussions in Geneva move on into substance, DGs GROW, TRADE, JUST and other Commission services will get more involved, and the legal competence will shift towards EU shared competence.

[REDACTED]

[REDACTED]

Commission services and the EEAS have so far adopted a pragmatic, yet not fully elaborated position, to participate in the process on the basis of 2 objectives: 1) that the scope of application is not limited to transnational corporations and 2) that the implementation of the voluntary UNGPs is not undermined.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

With regard to the European Parliament (EP)<sup>1</sup> there is a general strong support for the UN binding Treaty initiative, [REDACTED]

[REDACTED]

[REDACTED] There is, however, no common position on the exact shape

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<sup>1</sup> In several resolutions, the EU Parliament explicitly recommended that the EU and its Member States participate and support the UN debate on a legally binding international instrument on business and human rights (of 14 December 2016 on the Annual report on human rights and democracy in the world; of 25 October 2016 on Corporate liability for serious human rights abuses in third countries; of 21 January 2016 on the EU's priorities for the UNHRC sessions in 2016; of 14 February 2017 on the revision of the European Consensus on Development etc.)

of the UN Treaty and on the Ecuador-lead initiative. A couple of MEPs (from the S&Ds, the Greens, ECR groups) are strongly in favour of the process and have made statements in the OEIWG in Geneva.

[REDACTED]

### Next steps

- The EU together with a number of UNMS (Canada, Australia, South Korea and Switzerland) are looking for consultations with Ecuador to find out more on the process ahead. Ecuador has committed to consultations before the 4<sup>th</sup> session in 2018.
- The Human Rights Council holds its 37<sup>th</sup> Regular Session in Geneva 26th February to 23<sup>rd</sup> March 2018. Contrary to previous indications, Ecuador will not ask for a new resolution but will continue work under the 2014 resolution. Funding from UN budget has been secured for a 4th session to take place in October 2018.
- The EU intends to participate in the 4<sup>th</sup> session 2018 along the EU initiatives relevant for this process (including the Non-financial reporting Directive 2014/95/EU, the EU Directives on public procurement and concessions 2014/24/EU, 2014/25/EU and Directive 2014/23/EU and other initiatives), [REDACTED]  
[REDACTED] The US and Canada are not expected to participate.
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- If the process takes off with text negotiations for a Treaty, it is expected to take years before concluding.
- An expert meeting group (COM, EEAS and EUMS) established in January 2018 will take part in preparations as needed.

### Conclusion

The EU is already a frontrunner in the implementation of the UNGPs on Business and Human Rights and on promotion of Human Rights globally. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

Sandra GALLINA

Encl. Up-date on the outcome of the 3rd session of the "open ended intergovernmental group on transnational corporations and other business enterprises with respect to human rights" (OEIWG) 23-27 October 2017.

Non-Paper EEAS / Commission services on the preparation of the "open ended intergovernmental group on transnational corporations and other business enterprises with respect to human rights" (OEIWG).

c.c.: Mr J. Korte, Mr M. Petriccione, [REDACTED], [REDACTED], [REDACTED],  
[REDACTED], Mr P. Sandler, [REDACTED], [REDACTED], [REDACTED],  
[REDACTED], Ms M. Martin-Prat, [REDACTED], [REDACTED], Mr D. Redonnet,  
[REDACTED], [REDACTED], Ms S. Ratso, [REDACTED], [REDACTED], [REDACTED]  
[REDACTED] [REDACTED] : [REDACTED]