



**European Union**

**UNITED NATIONS  
HUMAN RIGHTS COUNCIL**

**Open-ended intergovernmental working group on transnational corporations  
and other business enterprises with respect to human rights**

**2<sup>nd</sup> session (24-28 October 2016)**

**Geneva, October 2016**

**- CHECK AGAINST DELIVERY -**

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**EU intervention for Day 4 under Panel V Subtheme 1: "Moving forward in the  
implementation of the UN Guiding Principles on Business and Human Rights"**

I would like to thank the panellists for their interventions. I would like to thank Mr. Nils Muizniekis, Commissioner for Human Rights of the Council of Europe, for his presentation. In its Council Conclusions of 20 June 2016<sup>\*</sup>, the European Union welcomed the recent adoption of the Council of Europe's Committee of Ministers' Recommendation on Human Rights and Business with a particular focus on access to remedy. The EU Institutions and Member States were encouraged to implement this recommendation.

We would also like to thank Mrs. Lene Wendland for her presentation and her leadership in the Office of the High Commissioner for Human Rights allowing the Accountability and Remedy Project to develop and come to fruition with the High Commissioner's report: "Improving accountability and access to remedy for victims of business-related human rights abuse" [A/HRC/32/19]. In its Council Conclusions, the European Union recognizes that this initiative may provide best practices that can be implemented at EU and Member State level, including on improved cooperation between States in cross-border cases. The Council Conclusions have also called on the Commission to address remedies in the forthcoming EU Action Plan on Responsible Business Conduct, including at EU legislative level as appropriate, and to consider providing guidance to Member States in this regard. In this context, the EU Fundamental Rights Agency was requested to issue an expert opinion on possible avenues to lower barriers for access to remedy at

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<sup>\*</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-business-human-rights-conclusions/>

the EU level, taking into account existing EU legal instruments and competences at EU and Member States' levels.

And, last but not least, we would like to thank Surya Deva for his presentation on behalf of the UN Working on Business and Human Rights. We fully support the UN Working Group, including the yearly UN Forum on Business and Human Rights. We look forward to the 5<sup>th</sup> Forum on 14-16 November which will focus on "Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy". We value the UN Working Group's work in preparation of the report requested by resolution 32/10 on "best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights". We also look forward to the UN Working Group's report on SMEs, and stand ready to share tools such as the guide launched by the European Commission already back in 2012 as one of the means to implement the UN Guiding Principles: *"my business and human rights. A guide to human rights for small and medium-sized enterprises"*.<sup>†</sup> This guide has been translated in several languages for a global use.

Beyond these specific examples inspired by our speakers today, we would like to elaborate further steps taken to implement the UN Guiding Principles. The 2015 European Commission "Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights<sup>‡</sup> - State of Play" provides a useful analysis of existing provisions in the EU regarding the three pillars of the UN Guiding Principles, including Access to remedy: there is a well-established body of law and practice in civil justice, criminal justice as well as non-judicial remedies [SWD (2015) 144 final; 14.7.2015 – pp. 23-33 on Access to remedy].

The EU Member States have taken the lead internationally on developing and adopting National Action Plans (NAPs) to implement the Guiding Principles or integrating the UN Guiding Principles into national CSR Strategies. We are committed to develop peer learning on business and human rights, including cross regional peer learning.

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<sup>†</sup><http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi58rHt9vLPAhVC6xoKHW20AT0QFggcMAA&url=http%3A%2F%2Fec.europa.eu%2FDocsRoom%2Fdocuments%2F10375%2Fattachments%2F1%2Ftranslations%2Fen%2Frenditions%2Fnative&usg=AFQjCNETeRvHKg2IFRTFiILZJCHHF6XxYg&bvm=bv.136593572,d.d2s>

<sup>‡</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/swd\\_2015\\_144\\_f1\\_staff\\_working\\_paper\\_en\\_v2\\_p1\\_818385.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/swd_2015_144_f1_staff_working_paper_en_v2_p1_818385.pdf)

The EU smart mix of voluntary and regulatory measures is indeed our recipe to implement the UN Guiding Principles. Recent regulatory measures include the EU Directive on disclosure of non-financial and diversity information by certain large companies and groups and the revised Directive on public procurement - both are due to be transposed in national legislation by EUMS by the end of 2016. In June 2016, the EU has also agreed on a framework to stop the financing of armed groups through trade in conflict minerals.<sup>§</sup>

The High Commissioner's report and its Guidance reminds us of the need for companies to have a clear and predictable legal framework which, if need be, can act as "effective deterrence" – policy objective 1 [A/HRC/32/19 – p.12]. It is equally essential that all enterprises take all appropriate due diligence measures throughout their operations to prevent abuses, and allow access to remedy when abuses occur. Some leading enterprises have shown a remarkable progress over the past years, and others still need to see the full benefit of ensuring respect for human rights.

We value the role of civil society organizations and human rights defenders as they often bring to our attention concrete cases of abuses. We are concerned that, in too many instances, human rights defenders working for the implementation of the UN Guiding Principles are subjected to harassment, persecution and retaliation. Human rights defenders and civil society actors in this sensitive area of work need particular attention and protection. As one of the means to provide support to civil society and human rights defenders in the field of Business and Human Rights, a specific budget line has been allocated for the first time under the European Initiative for Democracy and Human Rights.

Because of the nature of business today, the UN Guiding Principles need to be implemented at the global level, which requires a cross-regional commitment of all, States, enterprises and civil society. Beyond the existing initiatives, what could be done to further incentivize stakeholders to move forward in implementing the Guiding Principles? To what extent the world of finance and financial institutions could be better used as a vehicle to boost the implementation of the UN Guiding Principles? Are we doing enough to embed the UN Guiding Principles in the implementation of the 2030 Agenda?

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<sup>§</sup> <http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-conflict-minerals/>

**EU intervention for Day 4 under Panel V Subtheme 2: "The relation between the UN Guiding Principles and the elaboration of an international legally binding instrument on TNCs and other business enterprises"**

We would like to like to thank the panellists for their presentations.

In line with our intervention on the first day of this session, the European Union values the global consensus reached on the UN Guiding Principles and Business and Human Rights five years ago and stresses that any possible further steps regarding the international legal framework for business and human rights at the UN level must be inclusive, firmly rooted in the UN Guiding Principles and address all types of companies.

As stated earlier, our motto remains: implementation, implementation and implementation. Could the panellists elaborate on best possible way to implement the existing obligations as recalled in the UN Guiding Principles? If and as implementation of existing obligations seem to be a challenge in many instances, how does this challenge impact no the discussion to elaborate new norms?