

LTT business and human rights

- The EU is actively engaged in the efforts to **address human rights violations by business**. We want to see the UN guiding principles on business and human rights duly implemented and call on all business enterprises, both transnational and domestic, to comply with them.
- On the domestic front, the EU has made a substantial progress on the implementation of the UN guiding principles, including at legislative level. For example, the 2014 EU Directive whereby companies with more than 500 employees are required to disclose non-financial information in their management reports is being transposed. Information includes socially-related aspects, respect for human rights, anti-corruption and bribery issues. The scope includes approximately 6,000 large companies and groups across the EU.
- The **EU Council Conclusions of 20 June 2016** on Business and Human rights are a testimony of the renewed commitment of the European Union and all its Member States with clear directions of work to implement the UNGPs.
- As of today, close to half of EU Member States have adopted National Action Plans on Business and Human Rights, and most of the others are advancing significantly with National Action Plans on Corporate Social Responsibility and/or on Business and Human Rights. This is important, because the EU is the home base of many multinationals with global value chains and potential human rights impacts.
- Regarding **external action**, this issue is also one of the priorities in the area of Human Rights (July 2015 Action Plan on Human Rights and Democracy). The Action Plan on HR proposes clear objectives in this regard:
 - Raising awareness with third parties throughout the world: At bilateral level, the EU is increasingly discussing and exchanging experience on Business and Human Rights in EU human rights dialogues (including with strategic partners such as South Africa, Mexico, Brazil, and with the African Union), and dedicated seminars and workshops.
 - Building capacity and knowledge on the effective implementation of the UNGPs. (increased role (and training) of DELs to promote B&HR)
 - Relevant support through different financial instruments to the elaboration of National Action Plans on Business and Human Rights in third countries.
 - Systematically including the respect of internationally recognized principles and guidelines on Corporate Social Responsibility in future EU trade and investment agreements.
 - Continue developing initiatives on CSR.
- At the multilateral level, as was the case last year, the EU engaged with the UN Inter-Governmental Working Group (IGWG) for the preparation of an international legally-binding instrument on Business and Human Rights (23-27 October 2017).

- At the 3rd session of the IGWG, the European Union underlined – this is a clear position agreed by all Member States - that the discussions **should not be limited only to transnational corporations**, which is the case now, as many abuses are committed by enterprises at the domestic level. All companies should be equally accountable regarding their responsibility to respect human rights, no matter where they are headquartered or where they operate. Moreover, rule of law principles require that the law applies equally to all; it would be unacceptable that conduct by certain business is penalized while the same conduct by another kind of business enjoys impunity.
- In the world of today there are complex business networks and ways of working between the transnational corporations and enterprises operating at domestic level. Only through applying a broad scope of tools and pursuing discussions with all relevant stakeholders can we ensure that all the victims of human rights abuses resulting from companies' actions receive the same level of protection.
- Against this backdrop, we did not object to the adoption of the Programme of Work focussing only on Transnational Corporations, nor the discussions of the IGWG. On the contrary, we understand the importance the issue has, including for civil society organisations and human rights defenders, and therefore engaged fully in the debate.
- We continue to believe that we need to collectively move forward to ensure the implementation of our obligations and ensure that the victims of abuse by corporations regardless of the level – transnational or domestic - are put first and receive much-needed protection and justice. **Victims remind us that much more remains to be done to implement and enforce existing obligations.**
- The global consensus reached on the UN Guiding Principles on Business and Human Rights came as a result of broad, sustained and in depth consultations with States and all stakeholders. We believe that any possible further steps regarding the international legal framework for business and human rights at UN level must be inclusive, firmly rooted in the UN Guiding Principles and address all types of companies. With this understanding, we will do our utmost to continue our engagement at all levels . We will also continue meaningful discussions with relevant stakeholders, including civil society organisations, trade unions and the business community.

[Does the EU support the UN compact on business and human rights and related initiatives?]

ANNEX: Concrete examples

EU Internal Implementation

- EU at the forefront of the publication of National Actions Plans. 13 EU Member States countries have completed theirs¹, other MS are in the preparation process , or integrating the implementation of the UNGPs in their Corporate Social responsibility Strategies.
- 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. 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). 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.
 - Directive on non-financial information disclosure: the Council adopted a proposal in September 2014 according to which, large listed companies, banks and insurance 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. Member States were required to transpose the Directive into national legislation by 6 December. The European Commission issued non-binding guidelines to facilitate the implementation of the Directive on 26 June 2017. Companies will start reporting in 2018 about the 2017 financial year.
 - Public Procurement: The EU Directives on public procurement and concessions (Directives 2014/24/EU, 2014/25/EU and Directive 2014/23/EU) adopted on 26 February 2014, had to be transposed into national law by Member States 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 Directives cover all HR aspects relevant for public procurement including child labour and human trafficking.
 - The EU and Responsible Global Value Chains - EU Council conclusions (12 May 2016) recognise that global value chains (GVCs) have become an important feature of global production patterns. With the complexity of GVCs comes the need for increased and proactive engagement in the EU and abroad to ensure their adequate management for inclusive and sustainable growth. One of the objectives of the EU is

¹ Belgium, Denmark, Finland, France, Germany, Ireland (about to be published), Italy, Lithuania, Netherlands, Poland, Spain, Sweden, UK

to ensure that inclusive economic growth and development go hand in hand with social justice, human rights, including core labour standards, and sustainable environmental practices and policy frameworks. This issue is of particular relevance in a development context, as developing countries often face significant challenges in terms of sustainable development and growth for the most vulnerable.

- The EU Council Conclusions on Child Labour from June 2016 reaffirmed strong commitment to the elimination of child labour, recalling the Charter of Fundamental Rights of the EU, the EU Action Plan on Human Rights and Democracy 2015 - 2019, the Council Conclusions on Child Labour (2010), the EU Guidelines on the Promotion and Protection of the Rights of the Child and the EU Guidelines on Children and Armed Conflict. In particular, the Council reaffirms the urgency to eliminate the worst forms of child labour and underlines the importance to apply a child-rights based approach to inform and guide all EU actions to eliminate child labour.
- 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 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 Member State can generally be sued in the courts of that Member State. The Regulation provides for the possibility of an EU-based transnational corporation being sued before the courts of the EU Member State where the company has its domicile (either seat, central administration or principal place of business) even for violations of human rights 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 the 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. These two legal instruments are limited to determining which law applies without regulating the content of the applicable law. Therefore, the legal liability of parent companies for actions of their subsidiaries which is an issue of substantive liability law, is governed by national law in the Member State.
- Responding to the Council's request in the 2016 Conclusions on Business and Human Rights, the European Union Agency for Fundamental Rights (FRA) published on 10 April 2017 an opinion on "improving access to remedy in the area of business and human rights at the EU level. As a follow up to the Agency's opinion, the Commission proposed on 24 August 2017 that FRA "could collect information on judicial and non-

judicial mechanisms in the Member States concerning access to remedy for victims of business related violations".

EU External Implementation

- The EU is actively engaged with the OHCHR project "Corporate liability for gross human rights abuses", with the aim of achieving a fairer and more effective system of domestic law remedies.
- In 2016, technical support to prepare National Action Plans to implement the Guiding Principles on business and human rights was provided under the Partnership Instrument (PI) to countries in Latin America such as Brazil, Costa Rica, Mexico, Panama and Peru. A follow-up, larger PI action on Responsible Business Conduct in Latin America and the Caribbean has been under preparation. Furthermore, EU-funded technical support was provided to the Africa Union for the development of an AU framework on promoting responsible business conduct in Africa.
- Two actions are currently in the pipeline for the Partnership Instrument support, namely "Responsible Business Conduct (RBC) in Latin America" and "Responsible Supply Chains in Asia", developed by the EU together with the Organisation for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO) and planned to start at the end of 2017/beginning of 2018.
- We also propose to cooperate with the Council of Europe within the framework of the HELP programme: to develop training curricula to share best practices and provide advice for legal professionals in the area of business and human rights.
- Technical support is also provided by the European Instrument for Democracy and Human Rights (EIDHR). Moreover, the EU supports an increasing number of human rights defenders and activists working to prevent and denounce abuses committed by businesses and through the EIDHR and the Rights, Equality and Citizenship Programme (ie ENNHRI and Equinet). DG TRADE has included in recent Free Trade Agreements (e.g. South Korea, Canada, Singapore, Colombia-Peru, and Central America) references to the promotion of Corporate Social Responsibility. This involves also trading in products that respond to sustainability considerations, including products subjects to fair and ethical trade schemes, eco-labelling, organic production but also development of practices aiming to a sustainable use of the environment, such as ecotourism. DG TRADE intends to pursue a similar approach in ongoing and planned negotiations, including those for stand-alone investment agreements.
- FLEGT stands for Forest Law Enforcement, Governance and Trade. The EU's FLEGT Action Plan was established in 2003. It aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber.