

NOTE TO THE FILE

2017.11.10

Subject: 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


Background

Ecuador, co-sponsored by South Africa, initiated and managed to obtain a UN mandate Resolution 26/9 in 2014 to set up a working group (the OEIWG) to discuss a possible binding UN Treaty on Business and Human Rights. EU did not participate in the first session held in 2015 as the discussion only focused on Trans National Corporations. As a prerequisite for participating in the second session in 2016, the EU requested that the potential Treaty had to cover all companies whether domestic or transnational, and that the existing UN Guiding Principles on Business and Human Rights should be analysed in terms of progress and implementation and as a possible basis for the Treaty. EUs requests were accepted and EU participated in the 2nd session 2016.

Following up on the Non-Paper on business and human rights presented to COHOM in March 2016 (024/16), a further Non-Paper on current status of issues directly or indirectly linked to the discussions of the OEIWG has been prepared for the 3rd session to take place in Geneva 23-27 October 2017. On 3 October Ecuador (Chair of the OEIWG) produced a document with Elements for discussion at the 3rd session. Pending an in-depth assessment of the Elements for the potential legally binding instrument on transnational corporation and other business enterprises the EU Non-Paper proposes to continue engaging with the OEIWG on the basis of the same general principles: any potential international legal instrument should be consistent with the UN Guiding Principles on Business and Human Rights (UNGPs) and it should cover both transnational and national companies.

EEAS called an Inter Service Group meeting before the 3rd session where it was clarified that a communicative approach is to be applied at the 3rd session in Geneva, combined with clarification seeking questions on terminology and principles stemming from the Elements document (which is unclear, overlapping and even contradictory in places). Commission services, including DG TRADE provided questions related to the Elements document for assisting DEL GVA.

State-of-Play

When the 3rd session started, there was no agreement on the work programme, 

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This 3rd session is the last one covered by the UN mandate 26/9. [REDACTED]

[REDACTED]

[REDACTED]

Conclusions

As a matter of principle, any future legally binding instrument shall ensure and enhance a level playing field, consistent with the existing bilateral and multilateral commitments of the countries involved, and subject to a critical mass requirement from the key economies (and emerging countries) for their effective entry into force.

[Redacted text block]

[Redacted text block]