Compilation of statements delivered by States during the State-led negotiations of the eighth session

Note by the Secretariat

Summary

The present document contains a compilation of statements made by States during the State-led negotiations of the eighth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.[1] It has been prepared in accordance with paragraph 25 (c) (ii) of A/HRC/52/41. Statements have been reproduced in the original language of submission and are included only if they were shared with the Secretariat in written form.

[1] These statements have also been posted online at https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session8/oral-statements.

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A. States and Observer States

Article 6

1. France

Monsieur le Président,

La France vous remercie pour vos propositions d'amendement de l'article 6 relatif aux mesures de prévention des violations des droits de l'Homme et des dommages environnementaux.

Cet article est, de notre point de vue, fondamental ; il souligne la responsabilité première des Etats et il rappelle cette vérité de bon sens que « prévenir vaut mieux que guérir », tout particulièrement dans le cas d'atteintes graves aux droits humains ou à l'environnement.

Sur le plan procédural, elle regrette la transmission tardive de ces propositions qui emportent d'importantes modifications.

Sur le fond, la nouvelle rédaction nous semble plus simple et plus claire, et cette clarté devrait apporter plus de sécurité juridique et de prévisibilité pour les entreprises. Ces éléments positifs sont un gage d'efficacité et d'équité dans la mise en œuvre.

La France souhaiterait toutefois une rédaction plus conforme aux grands textes internationaux en matière de devoir de vigilance, au premier rang desquels les principes directeurs des Nations unies et de l'OCDE.

La France regrette néanmoins la disparition d'un critère de proportionnalité dans l'application des règles de vigilance par les entreprises visées. La définition de seuils permettrait, en effet, de gagner en lisibilité et en efficacité dans la mise en œuvre de ces mesures.

Elle regrette l'omission du devoir de vigilance relatif à l'égalité femmes-hommes, ainsi que la disparition de l'obligation pour les entreprises de publier régulièrement des études d'impact.

La France est disposée à poursuivre ces discussions dans un esprit ouvert et constructif ; avec toutes les parties prenantes et en concertation étroite avec la société civile.

Merci.

2. United States of America

The United States appreciates that the Chair's proposals on Article 6 are less prescriptive and more concise than the those in the 3rd revision of the text, and that they provide more flexibility for implementation, reflecting the diversity of legal systems. As noted yesterday, we believe these are a promising first step in the right direction of developing a workable text. In light of this, the United States will be focusing its comments on Articles 6-13 on the Chair's proposals.

While we believe that it is important for any BHR instrument to further purposes of the UNGPs by encouraging states to take steps within their domestic legal frameworks to help prevent human rights abuses from occurring, in order for the provisions on prevention to be implementable and garner the necessary support, we propose that rather than mandating that measures be adopted in full immediately, the chapeau of 6.1 should be edited to say that **Consistent with domestic legal and judicial systems, each State party should take steps to adopt legislative, regulatory, and other measures, as appropriate, to:**

With respect to Article 6.3 of the Chair's proposal, the United States appreciates the importance of addressing human rights due diligence as a means of furthering the goals of the UNGPs. We do think that language in the 3rd revised draft that drew from the UNGPs'

recognition that due diligence will vary depending on the business was useful. To that end, in the Chair's text we suggest replacing 6.3 with the following language: **To achieve the ends identified in 6.1 (a)-(d), States Parties shall take steps to encourage business enterprises to undertake human rights due diligence, proportionate to their size, risk of human rights abuse and the nature and context of their operations and their business activities and relationships.**

We recommend **deletion of the subparts under 6.3** in the Chair's proposal**,** as this level of detail may be better suited for an optional protocol to a Framework Agreement, guidance on best practices in conducting human rights due diligence, and/or framed as factors for businesses to consider. We would also note that the development of optional protocols could be pursued simultaneously with development of a framework agreement.

With regard to Article 6.4, the United States notes that the proposed text has shifted from a prescriptive approach to the content of due diligence requirements to a focus on the extent to which a business would be required to conduct due diligence. Because agency relationships can be complicated and addressed differently under domestic legal systems, the United States believes that this topic could also benefit from additional technical consultations, perhaps intersessionally, to determine how third-party actions could be most effectively and practically addressed in the context of an LBI.

Article 7

1. United States of America

As noted in our intervention with respect to the definition of "relevant state agencies," it is unclear whether the scope of Article 7 is intended to cover administrative bodies only or all grievance mechanisms, including any potential judicial mechanisms.

If the intent is to cover all grievance mechanisms, consistent with the United States proposal to change the definition of "relevant state agencies" to instead be a definition of "state-based judicial and non-judicial grievance mechanisms," all references to "relevant state agencies" throughout the text would be replaced with "state-based judicial and non-judicial grievance mechanisms" as used in the UNGPs.

Otherwise, the United States notes with appreciation that the Chair's proposal for Article 7.1 appears to move away from a prescriptive approach and towards one that may allow for flexible implementation in accordance with domestic judicial and administrative systems. That said, it is not clear how the goals of Article 7, in particular the goal in 7.1(c) of ensuring delivery of effective remedy, could be achieved through the mandate of the LBI. At a minimum, in 7.1(c) we propose **changing "ensure" to "work towards ensuring"** and furthermore we believe there could be a benefit to intersessional technical consultations to assess the scope and feasibility of Article 7.

Additionally, focus within Article 7 also seems to be only on "victims," or those who have been found as a matter of fact to have suffered from human rights abuses, and we wonder if language from the UNGPs might be useful here. To that end, we would suggest **replacing "victims" here, and throughout the text, with "right holders," and will offer a parallel suggestion when the definition of "victims" is presented on screen.**

The United States appreciates the efforts of the Chair to make Article 7.2 more general and less prescriptive, as well as the efforts to take into account important concerns such as mitigating the risk of reprisals. As with other aspects of Article 7, we believe paragraph 7.2 would benefit from intersessional technical consultations on the scope and feasibility of the proposal.

With respect to paragraph 7.3, we understand the sentiment behind this text of some of these concepts, for example reducing the risk of reprisals. Again, it is unclear in this paragraph whether the focus of the paragraph is intended to be only "victims," or instead anyone who has alleged that they have suffered human rights abuses. The scope of this provision is broad and at the same time very specific in a way that would be challenging for many States to implement. This is the type of detailed concept that could potentially be pursued in an

optional protocol rather than in the main body of an agreement. In that context it could also be helpful to have intersessional technical consultations as to how these provisions would be implemented in practice.

While the United States understands the sentiment behind Article 7.4 in that enhancing access to remedy supports implementation of the UNGPs, there are concepts embedded in the subparagraphs that require clarification. For example, in subparagraph (a), what remedies are the relevant state agencies (or grievance mechanisms) expected to directly deliver or contribute to? Additionally, does (b) suggest that victims are to receive preferential treatment over, or the same treatment as, businesses during any grievance proceedings? And finally, the type of functions contemplated in (c) may or may not be appropriate or achievable within relevant state agency resource allotments. This is the type of detailed concept that could potentially be pursued in an optional protocol rather than in the main body of an agreement. In that context it could also be helpful to consider in intersessional technical consultations as to how these provisions would be implemented in practice.

Article 8

1. United States of America

While we acknowledge the new proposal recognizes the need for flexibility, the treatment of natural and legal persons may vary depending on domestic legal systems, and thus this proposed article warrants technical consultations on what limitations there might be on implementation. For our part, we have not yet had the time to fully analyze how this could be implemented within the United States and would be interested in any intersessional technical conversations that could address implementation.

Article 9

1. Argentina

Muchas gracias, Señor Presidente.

En primer lugar, y por ser la primera vez que tomamos la palabra en esta 8º Sesión, queremos agradecerle por su trabajo y por la contribución informal que ha presentado para el debate esta semana.

No hemos realizado comentarios generales en el día de ayer por no contar con consideraciones adicionales a las que oportunamente expresamos en las sesiones anteriores, las que constan en registro.

Con respecto, específicamente, a la propuesta realizada en relación al artículo 9 inciso 4, sobre cooperación jurisdiccional, creemos que la misma puede resultar de difícil cumplimiento.

En términos prácticos, si un caso estuviera siendo juzgado en una jurisdicción, y se tomara conocimiento que otro Estado también está juzgando el mismo hecho, no necesariamente el primero debe declinar jurisdicción.

Y, en cualquier caso, al menos en nuestro sistema, el Poder Ejecutivo no podría obligar al tribunal de su país a proceder de ese modo.

Tampoco podría el Poder Ejecutivo obligar al tribunal a "coordinar" acciones con un juzgado del otro Estado, según reza el artículo 9 inciso 4 propuesto.

Por último, aún si algún tipo de coordinación fuera jurídicamente factible, ésta debería desarrollarse de acuerdo con lo previsto en los acuerdos de asistencia jurídica internacional vigentes entre los estados involucrados.

2. United States of America

We see the Chair's proposal as an improvement to Article 9. We recognize the need to have greater access to remedy and accountability, which this text seeks to achieve. That being said,

we would recommend exploration of these concepts for potential inclusion in an optional protocol in a less prescriptive approach. This would allow the international community and diverse stakeholders to dedicate time and attention with the right level of expertise to finding a mutually agreeable text.

Article 10

1. United States of America

Regarding the Chair's proposal on Article 10, given that the definition of "human rights abuse" for purposes of the LBI is clearly circumscribed to focus on actions in connection to business activities, it is unclear what human rights abuse could constitute a war crime, a crime against humanity, or the crime of genocide since, generally, the United States only views natural persons as having the capacity to commit such crimes. While we have not yet had the time to fully evaluate this proposal, preliminary questions we have include: 1) who -- or what entity -- would the judicial proceeding be against, recognizing that many states only view natural persons as the subjects of international criminal law, and 2) how would "in relation to" be defined, as it could be interpreted so broadly as to be capture any attenuated relationship to a person engaged in one of these crimes.

Article 12

1. United States of America

Regarding the inclusion of mutual legal assistance in the LBI, in general, we appreciate the Chair's efforts to streamline the text. The proposed LBI is geared towards effective remedy in a variety of contexts—administrative, civil, and criminal. Mutual legal assistance is used to support criminal investigations and prosecutions and is well covered in multilateral agreements as well as bilateral agreements between many countries. Even if the LBI were to impose an obligation on state parties to criminalize conduct, because the system of bilateral mutual legal assistance agreements is a sophisticated and well-functioning one, any attempt to bring mutual legal assistance into the LBI should be made only on the basis that it would address gaps that aren't otherwise addressed in existing agreements, for instance, the Hague Judgements Convention. Absent further information about the scope of the provision and what gaps we are seeking to address, absent further understanding of the scope and what gaps exist, we propose deletion of Article 12.

Preamble – Article 3

1. United States of America

United States' Interventions on the Suggested Chair's Proposals

Definitions

Remedy: We recognize the importance of access to remedy in this text as there is still much work to be done in implementing the UNGPs, particularly pilar three. Therefore, precise definitions are particularly important. The United States believes that there is tension between the proposed definitions of "remedy" and "effective remedy" that needs to be reconciled. According to the definition, any remedy provided is expected to return a victim to the position "they would have been [in] had the abuse not occurred, or as nearly as is possible in the circumstances." Yet, the definition of "effective remedy" includes a range of options that, while consistent with the forms of remedies contemplated under the UNGPs, may or may not "restore" a victim to their prior position. Moreover, the definition of "effective remedy" too narrowly characterizes remedy as "reparations," which suggests that all remedies must be monetary in nature. The United States proposes that the definition of remedy be aligned more closely with the commentary of UNGPs principle 25, and thus the first sentence would be replaced with: "Remedy" shall mean redress to counteract or make good for any human rights abuses that have occurred. The second sentence also should be revised, both to address the "reparations" concern and to eliminate redundancies. We suggest the following: An

"effective remedy" involves redress that is adequate and prompt; is gender and age responsive; and may draw from a range of remedies such as restitution, compensation, rehabilitation, cessation of abuse, apologies, sanctions, and guarantees of non-repetition."

Relevant State Agencies: The definition of "relevant State agencies" seems overly broad to the United States, as at least under the U.S. system, judicial functions are generally independent, and not under the control of, the State and therefore are not agents of the state. We suggest instead that rather than using "relevant State agencies" as the operative term in, e.g., Article 7, the term "state-based judicial and non-judicial grievance mechanism" should be used and therefore defined, based on the UNGP definition. Thus, we would revise this definition by replacing "relevant State agencies" with "state-based judicial and non-judicial grievance mechanisms." This term could include, for example, a non-judiciary grievance mechanism at a bilateral development finance agency as well as a judiciary grievance mechanism through a court. If instead the definition is intended to focus on the functions within the administrative bodies of a State, the definition should be clarified to exclude judicial bodies and non-administrative courts.

United States' Interventions on the 3rd Draft Rev. Text

Preamble

Starting with PP4. As PP4 does not directly track the Charter of the United Nations, the United States proposes striking "as set out in the Charter of the United Nations" and inserting "the Charter of the United Nations" after "treaties,".

On PP6, The United States recognizes the importance of access to remedy, as the third pillar of the UNGPs, in this process. We suggest revising PP6 to be consistent with the framing of human rights under international human rights law. Furthermore, we have questions about the reference to international humanitarian law as it is used here, where it is intermingled with references to international human rights law, and absent further clarity about how international humanitarian law fits within this provision and the scope of this agreement as a whole we would recommend replacing the reference to international humanitarian law with "including as applicable during armed conflict."

The United States proposes editing PP6 to read: Reaffirming the rights of every person to be equal before the law, to equal protection of the law, and to have an effective remedy in case of violations of international human rights law, including as applicable during armed conflict, including rights related to non-discrimination, participation and inclusion.

On PP9, The United States opposes adding the language proposed by Iran and proposes reverting to language that has been agreed in other UN contexts for this paragraph as follows: Upholding the principles of sovereign equality among Members of the UN, peaceful settlements and territorial integrity as set out in Article 2 of the United Nations Charter.

On PP11, as has been noted, the United States understands the desire of the drafters to increase corporate accountability through this process. However, we would not be able to accept the suggestion that an agreement among states can itself directly impose legal obligations on businesses. PP 11 misstates international human rights law by asserting that business enterprises have "obligations" to respect internationally recognized human rights, when businesses do not have the capacity to take on obligations as a matter of international law. The United States proposes replacing PP11 with the following, which would be consistent with principle 13 of the UNGPs by replacing "obligation" with "responsibility," and replacing "human rights abuses" with "adverse human rights impacts," : Underlining that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the responsibility to respect internationally recognized human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and by seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.

On PP14bis, while protection of the environment is an important global concept, the inclusion of these environmental treaties in PP14bis suggests that their key goals relate to the protection of human rights; as that is not the case, we believe their inclusion is beyond the scope of the LBI, and we recommend deletion of PP14bis.

Lastly, on PP18, The United States again notes that business enterprises do not have obligations under international human rights law to be clarified through the LBI, and thus proposes that "obligations" be replaced with "responsibilities," consistent with the UNGPs. I thank you.

Article 1. Definitions

The United States notes that the draft definition of victim is somewhat confusing in light of the use of the term throughout the draft treaty. Specifically, as a victim is defined as a person or group of persons that "have suffered harm that constitutes human rights abuse," a factual determination would need to be made that harm has been suffered in order for the term "victim" to apply. Thus, for example, it might not make sense to discuss in Article 7 reducing barriers to access to grievance mechanisms for "victims" as such provisions could only apply to individuals who have already been determined to be victims as part of the grievance process, and thus the protections the LBI is intended to put in place for individuals seeking remedy would not apply from the beginning of any grievance process. Therefore, while we take no issue with the term "victim" or its definition, we think it could lead to an unintended, narrow interpretation of Article 7. As per the UNGPs, we suggest that "rights holder" be used in place of "victims" throughout the LBI.

In 1.3, the definition of business activities, the phrase "other activity" presents vagueness issues. In order to improve predictability as to the scope to be covered, we recommend deleting "and other activity" in the beginning of the paragraph.

In 1.4, business activities of transnational character The United States would like to note a general concern that limiting application of provisions of the LBI to business activities of a transnational character would, in some cases, be unduly narrow and inconsistent with the UNGPs.

Article 2. Purpose

The US believes it is important to ensure that any additional instrument on BHR builds upon and is aligned with the UN Guiding Principles and international law. We would welcome input from experts on the UNGPs as to how best to ensure alignment of this provision with the UNGPs. As we stated before, only states, not businesses, have human rights "obligations" to fulfill, therefore we prefer the use of "responsibilities" in b) as proposed by Brazil and the EU.

Article 4 –5 – 14

1. United States of America

United States' Interventions on the 3rd Draft Rev. Text

Article 5. Protection of Victims

In Article 5, the United States understands the importance of including provisions on preventing reprisals in this article. Protecting and supporting human rights defenders is a key priority of U.S. foreign policy. Human rights defenders - including those engaging on worker rights and the environment - face increasing retaliation, threats, and violence for their work in holding their governments and private sector actors accountable to respect human rights. We have concerns about the ability of the United States to implement certain aspects of 5.1, 5.2, and 5.3 without these provisions being subject to or consistent with domestic legal and judicial systems. For example, 5.1 may raise concerns under the confrontation clause of the Sixth Amendment of the US Constitution. We look forward to considering the issue further intersessionally before next year's negotiating session.

Article 14. Consistency with International Law principles and instruments

The United States opposes adding the proposed language, and instead recommends reverting to language that has been agreed in other UN contexts. Thus, "the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States" should be replaced with "the principles of sovereignty and territorial integrity."

Article 14.5 purports to obligate States to reinterpret all previously negotiated international agreements relevant to the LBI and implement them in a a manner consistent with the LBI, irrespective of the intent and interpretations of the negotiators at the time those prior agreements entered into force. Such a provision would be challenging for States to implement and potentially time- and resource-intensive. Moreover, to the extent that not all parties to the prior agreements may be party to the LBI, reinterpretation could be impossible to achieve. Any potential conflicts between the LBI and relevant provisions of other agreements, either existing or yet to be negotiated, would be addressed by interpreting the agreements in accordance with Article 30 of the Vienna Convention on the Law of Treaties, as stated in paragraph 14.4 above.

Article 15 – 24

1. United States of America

United States' Interventions on the 3rd Draft Rev. Text

Article 15. Institutional Arrangements

The United States supports multilateral action to promote business respect for human rights, as it has through the UNGPs. However, any proposal to establish a new treaty body of 12 independent experts may entail significant additional outlays in the UN budget, and other implications and consequences would need to be considered carefully. Moreover, before deciding to establish a Committee, it would be important to identify more clearly its substantive duties and responsibilities. We could see the benefit of intersessional technical consultations with experts to explore potential synergies with existing mechanisms such as the UN BHR Working Group and the BHR Forum, to build on the UNGPs. We would also like to note that National Action Plans on Business and Human Rights serve as a useful tool to publicly communicate State progress on implementing the UNGPs, which relates to the objectives of this article.

Article 16. Implementation

In regard to Article 16, we question whether Article 16.5 as drafted might be overly broad, internally inconsistent, and inconsistent with other provisions in the proposed text. If the objective is to state that parties should interpret and apply the LBI in accordance with international law, such a provision is unnecessary. Furthermore, to say that "application and interpretation of these Articles . . . shall be without any discrimination of any kind or on any ground, without exception" is vague. Given its literal meaning, it could be at odds with Article 3, which allows States to differentiate how it applies measures taken to implement the LBI with respect to different sizes and types of businesses, or could require states to provide equal access to remedies to victims of abuses in other countries as to those within their countries. To be clearer, we propose that "without any discrimination of any kind or on any ground, without exception" be replaced with "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" to mirror the language of Common Article 2 of the ICESCR and ICCPR. Furthermore, we propose adding "applicable" before "international law, including international human rights law and international humanitarian law, as the applicability of either body of law would depend on the circumstances. We look forward to studying Article 16 further intersessionally, especially considering the implementation of provisions that potentially do not allow for domestic court systems to discriminate between victims located within the United States and subject to its jurisdiction and those that are not.

Article 17. Relations with Protocols

As has been recommended previously by the United States, we would encourage the exploration of an approach that allows for more detailed issues to be addressed in protocols. Notably, this would involve having a core text with optional protocols in which issue or industry specific areas could be negotiated separately and signed onto by interested parties. Therefore, we appreciate that the text provides for the negotiation of protocols.

Article 18. Settlement of Disputes

The United States is still reviewing this provision, especially as it does not identify any rules that would be used even if a single organization and procedure were identified. Furthermore, the United States believes arbitration is an area that would benefit from an examination of best practices for dispute settlement in other treaties.

Article 16

Replace "without any discrimination of any kind or on any ground, without exception" with "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Add "applicable" before "international law, including international human rights law and international humanitarian law".

16.5. The application and interpretation of these Articles shall be consistent with applicable international law, including international human rights law and international humanitarian law, and shall be without any discrimination of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

B. Regional organizations

Article 6

1. European Union

Article 6. Prevention

With the caveat that this does not represent a negotiating position on behalf of the EU, the EU would like to provide some comments on the issue of prevention on the basis of the recent legislative proposal by the European Commission for a Directive on Corporate Sustainability Due Diligence.

The European Commission's Proposal for a Directive on CSDD lies down a mandatory legal framework for corporate due diligence in the value chain as an effective tool for identifying, preventing, mitigating and accounting for adverse human rights impacts, and for having adequate governance, management systems and measures in place to this end.

The Proposal applies the principle of proportionality in the context of due diligence. The burden on companies stemming from compliance costs, has been adapted to the size, resources available, and the risk profile.

In relation to the Chair's proposed language for art 6.2, the Proposal for a Directive on CSDD sets out the requirement for Member States to designate one or more national supervisory authorities in order to ensure compliance by companies with their due diligence obligations and to exercise the powers of enforcement of those obligations. It foresees the creation of a European Network of Supervisory Authorities.

Natural and legal persons will be entitled to submit substantiated concerns to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with the national provisions adopted pursuant to the Directive.

With reference to Art 6.4 of the 3rd draft of the LBI, the EU stresses the need to ensure transparency about sustainability performance of companies including in the area of human rights. The European Commission adopted in April 2021 a proposal for a Corporate Sustainability Reporting Directive (CSRD) which will amend the existing reporting requirements of the Non-Financial Reporting Directive of 2014. The proposal i.a. introduces more detailed reporting requirements whereby large companies are required to report on sustainability issues including concerning human rights. Moreover, the Proposal for a Directive on CSDD, foresees that companies not already subject to reporting requirements, should report on how they perform due diligence under the Directive, and publish an annual statement on their website.

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Article 7

1. European Union

Article 7. Access to Remedy

With the caveat that this does not represent a negotiating position on behalf of the EU, the EU would like to provide some comments on the issue of access to remedy on the basis of the recent legislative proposal by the European Commission for a Directive on Corporate Sustainability Due Diligence.

The Proposal requires Member States to ensure companies covered by the future Directive establish and maintain a complaints procedure, where persons and organisations can submit complaints where they have legitimate concerns about the actual or potential adverse human rights impacts.

Moreover, the proposed Directive on CSDD, on "Substantiated concerns" establishes the requirement for Member States to ensure that any natural or legal person that has reasons to believe, on the basis of objective circumstances, that a company does not appropriately comply with the provisions of the Directive, is entitled to submit substantiated concerns to a supervisory authority. Member States shall ensure that the persons submitting the substantiated concern and having a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

Article 8

1. European Union

Article 8. Legal Liability

With the caveat that this does not represent a negotiating position on behalf of the EU, the EU would like to provide some comments on the issue of legal liability on the basis of the recent legislative proposal by the **European Commission for a Directive on Corporate Sustainability Due Diligence.**

The Proposal for a Directive on CSDD, provides for a combination of administrative sanctions and civil liability.

Member States should provide for dissuasive, proportionate and effective sanctions for infringements of those measures, including pecuniary sanctions.

Member States are required to lay down rules governing the civil liability of companies for damages arising due to failure to comply with the obligations to prevent and mitigate potential adverse impacts or to bring actual impacts to an end and minimise their extent.

The civil liability regime in the Proposal applies in case harm occurs in a company's own operation, at the level of its subsidiaries and at the level of business relations in the value chain.

Article 9

1. European Union

Article 9. Adjudicative Jurisdiction

Article 11. Applicable law

With the caveat that this does not represent a negotiating position on behalf of the EU, the EU would like to provide some comments on the issue of applicable law on the basis of the recent legislative proposal by the European Commission for a Directive on Corporate Sustainability Due Diligence.

The Proposal for a Directive on CSDD includes a provision on applicable law that serves the purpose of ensuring application of the harmonised rules, including on civil liability, also in cases where otherwise the law applicable to such claim is not the law of a EU Member State. It introduces the obligation for Member States to ensure that the civil liability provided is not denied on the sole ground that the law applicable to such claims is not the law of a Member State.

Article 13

1. European Union

Article 13. International cooperation

With the caveat that this does not represent a negotiating position on behalf of the EU, the EU would like to provide some comments on the issue of international cooperation based on the recent legislative proposal by the European Commission for a Directive on CSDD.

The Proposal provides that the European Commission and Member States should continue to work in partnership with third countries to support upstream economic operators build the capacity to effectively prevent and mitigate adverse human rights and environmental impacts of their operations and business relationships, paying specific attention to the challenges faced by smallholders.

The Proposal foresees that the EU Member States and Commission should provide accompanying measures to companies in the scope of the Directive and to actors along global value chains that are indirectly impacted by the obligations of the Directive. Such support can range from the operation of dedicated websites, portals or platforms to financial support to SMEs, and facilitation of joint stakeholder initiatives. This could include working with partner country governments, the local private sector and stakeholders on addressing the root causes of adverse human rights and environmental impacts.