

**European Union**

**UNITED NATIONS   
HUMAN RIGHTS COUNCIL**

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

**6th Session**

**Statement by the European Union – as delivered**

**Geneva, 26 October 2020**

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Mr Chairperson-Rapporteur, High Representative, Minister Gallegos, excellencies, delegates and the many non-governmental stakeholders,

The EU and its Member States thank the Chairperson and the Secretariat for organising this session in such difficult conditions, with the many constraints due to the pandemic and the reduced staff capacity.

By exposing the vulnerabilities of global supply chains and the people that make them work, the COVID-19 crisis has made the importance of the Business and Human Rights agenda even clearer. The crisis has shown in particular the urgency of stepping up efforts to ensure that states protect human rights in the context of business activities and that business respect human rights, including labour rights, in their operations. The pandemic has made it even clearer that businesses and their supply chains are more resilient when they act responsibly and respect human rights.

Let there be no doubt: The EU and its Member States are firmly committed to implementing and promoting the Business and Human Rights agenda worldwide.

Mr Chairperson-Rapporteur,

We thank you for organising informal consultations earlier this year and for enabling the effective participation of a wide range of stakeholders including civil society, trade unions, the business community and National Human Rights Institutions. If there is one thing that I learned in my capacity as chair of the multi-stakeholder steering group for the OECD work on ‘conflict minerals’, is that multi-stakeholder participation is vital.

We also thank you for presenting the second revised draft legally binding instrument. As we stated before, the value added of any possible legally binding instrument should be to enhance the protection of and respect for human rights, to ensure victims’ access to effective remedy when violations occur, and to ensure a level playing field for companies globally. As expressed in previous sessions, we think that such an instrument should cover all businesses in a non-discriminatory manner, should be consistent with the UN Guiding Principles on Business and Human Rights, should be realistically implementable and enforceable – these can be complicated legal issues - and supported by a critical mass of UN members.

In last year’s session we had the opportunity to indicate that the revised draft of the instrument addressed a key EU concern about the scope of the Instrument (which was no longer limited to transnational corporations and activities). We acknowledge that some of the new elements introduced in the second revised draft instrument represent positive developments. The draft texts, since the publication of the zero draft three years ago, have progressed and moved on some aspects towards addressing our main concerns. For example, we welcome that the draft now expressly includes “state-owned enterprises” among the entities that can carry out business activities, that it requires businesses to integrate a gender perspective in all stages of their human rights due diligence processes and that it reinforces an element of proportionality when defining the due diligence obligations. We note positively that there has been an attempt over the last years to better align the provisions of the draft with the wording, purpose and objective of the UNGPs. We observe that the current draft makes new references to important human rights-related texts and strives to give more precise definitions of the human rights legal basis. These could be helpful new elements, and we would welcome further clarification on the alignment to the UNGP concerning the state-business nexus.

However, substantial shortcomings have so far remained unsolved. The text should leave no ambiguity regarding its relation to the UNGPs and other very relevant international instruments. The text still has a number of elements that are unclear or ambiguous, in particular regarding issues of scope of the LBI, the regulation of civil and criminal liability, applicable law and jurisdiction, or the relationship with existing international instruments on judicial cooperation.

In sum, while we truly appreciate the efforts made by the Chairman-Rapporteur, we believe that the complexity and implications of many of the draft’s provisions still require a lot of work to become a basis for a legally sound, implementable and enforceable instrument capable of meeting the overall objective of enhancing the level of protection for victims and ensuring a level playing field for companies globally.

Importantly, it is essential for any proposal to reach the necessary traction amongst UN members. Still a number of them are not ready to engage in negotiations.

Mr Chairperson-Rapporteur,

With the proviso that much remains to be done, the EU and its member states are very active in implementing the UN Guiding Principles on Business and Human Rights - the authoritative framework for action of governments and businesses to prevent and address human rights violations and abuses caused by business activities. In line with the ‘state duty to protect’, the EU has a smart mix of measures that aim at fostering business respect for human rights that we would like to share with you.

The EU has a solid body of legislation on responsible business conduct, which might be of some use to the discussions of this Group given the legal complexity of the topic. For instance, EU law imposes due diligence obligations on importers of timber and on importers of minerals from conflict-affected and high-risk areas, requires large EU companies to report on non-financial aspects of their operations, and guarantees the rights of victims in cases of human rights violations and abuses.

Moreover, a majority of EU Member States have adopted or are developing National Action Plans on Business and Human Rights aiming to improve coordination of actions at national level. Several EU Member States have adopted or are preparing legislation on mandatory human rights due diligence for companies along or for parts of the value chain and have introduced measures to provide access to remedy. These national legislative experiences are also relevant to our discussion.

The EU has also created partnerships with international organisations such as the OHCHR, UNDP, ILO and the OECD to promote responsible business conduct inside and outside of Europe. For instance with projects in Latin America and Asia assisting governments to develop National Action Plans. The EU and Member State delegations raise awareness with host governments and companies, and assist civil society to further the implementation of the UNGPS.

The EU will build on this solid body of legislation and policies even further. The forthcoming EU Action Plan on Human Rights and Democracy for the period 2020-2024 will strengthen the EU’s commitment to support the implementation of the UN Guiding Principles, including work on a new comprehensive EU framework on UNGP implementation to enhance coordination and coherence of EU action. In addition, the European Commission is preparing a legislative initiative for 2021, which may introduce mandatory human rights and environmental due diligence across value chains.

Mr. Chairperson-Rapporteur,

There is an urgent need to strengthen the prevention and mitigation of adverse human rights impacts related to business activities and to provide access to effective remedy. In this context, and in accordance with the very principles that underlie its foundation, the EU will pursue its firm commitment to promote human rights in the context of business activities.

This commitment means that the EU will continue to work to enhance its internal instruments and international partnerships and engage with stakeholders both inside and outside the EU to drive forward substantially the implementation of the UN Guiding Principles on Business and Human Rights. We will also enhance our rules and policies on corporate responsibility to promote sustainable and responsible business activities and value chains.

The EU and its Member States will continue to engage in multilateral processes to ensure that States and companies around the world fulfil their duty respectively responsibility as laid out by the UNGPs. We have put and will continue to put the United Nations at the heart of these efforts. This includes supporting and making good use of the valuable contributions, initiatives and resources related to Business and Human Rights as offered by OHCHR, the UN Working Group on Business and Human Rights, UNDP, the ILO and the UN Global Compact - just to name a few.

The EU and its Member States look forward to following the discussion during this session and – as Minister Gallegos put it – we will continue to ‘participate in the debate’.

I thank you Mr. Chairperson-Rapporteur

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