



European Union

2018 United Nations Forum on Business and Human Rights

26-28 November 2018

Contribution of the European Union

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Following the 2017 Forum on Business and Human Rights focussing on “Realizing Access to Effective Remedy”^{*}, the European Union is pleased to participate in the 2018 Forum on Business and Human Rights on 26-28 November 2018 with the central theme chosen by the UN Working Group on Business and Human Rights: “Business respect for human rights – building on what works” to “drill down on what has been working to date in terms of government, civil society and business practice, but also on what is not working and where current efforts are falling short, and how to fill the gaps”.

The European Union thanks the core group on Business and Human Rights (Argentina, Ghana, Norway and the Russian Federation) for its continued leadership in the Human Rights Council to foster the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) with their three pillars: “the State duty to protect”; “the corporate responsibility to respect” and “access to remedy”. We are pleased that resolution 38/13 adopted by the Human Rights Council in July 2018 allows for the continuation of the OHCHR-led Accountability and Remedy Project with a focus on non-State-based grievance mechanisms, bearing in mind the collective responsibility to make full use of the findings and recommendations of the first two legs of this project on judicial mechanisms and State-based non-judicial mechanisms[†].

In this written contribution, the European Union would like to draw particular attention to a number of policy and regulatory developments that are a testimony to progress on due diligence. This contribution builds on a document submitted by the European Union to the UN Working Group on Business and Human Rights in June 2018[‡] in the framework of the Working Group's consultations on “Corporate human rights due diligence” and in preparation of its 2018 report to the UN General Assembly [A/73/163][§].

At the policy level, the Foreign Affairs Council Conclusions on Business and Human Rights of 20 June 2016 came with a clear call on *“all business enterprises, both transnational and domestic, to comply with the UN Guiding Principles, the ILO Tripartite Declaration and the OECD Guidelines, inter alia by integrating human rights due diligence into their operations to better identify, prevent and mitigate human rights risks”*^{**}. The OECD Due Diligence Guidance for Responsible Business Conduct published in May 2018 provides a further tool and their implementation can help enterprises to *“avoid and address adverse impacts related to workers, human rights, the environment, bribery,*

^{*} <https://www.ohchr.org/Documents/Issues/Business/ForumSession6/EU.pdf>

[†] <https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>

[‡] <https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/EU.pdf>

[§] <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>

^{**} https://ec.europa.eu/anti-trafficking/publications/council-conclusions-business-and-human-rights-foreign-affairs-council_en

consumers and corporate governance that may be associated with their operations, supply chains and other business relationships”^{††}.

Among the several steps at a regulatory level, we would like to highlight specific provisions on due diligence in the following regulations:

1 – EU Directive as regards disclosure of non-financial and diversity information

The EU Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups of undertakings contains clear provisions requiring companies to *"prepare a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters."*^{†††}. The non-financial statement should also include information on the due diligence processes implemented by the undertaking, and also on *"the principal risks linked to the undertaking's operations, including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts [...] and how the undertaking manages those risks."*

According to the Directive, companies may rely on national, EU or international frameworks to produce their statements, and if they do so, they should specify which frameworks they have relied on. In June 2017 the European Commission published guidelines to help companies to disclose relevant non-financial information, as required by the Directive. These include more detailed provisions on due diligence^{§§}. The large undertakings and groups started reporting in 2018 about the 2017 financial year. By mid-2019, the European Commission will publish a fitness check of EU legislation on public corporate reporting, including the Directive on non-financial reporting.

2 – EU Timber Regulation (Regulation (EU) 995/2010)

The Regulation is one of the key actions in the Forest, Law Enforcement, Governance and Trade (FLEGT) Action Plan of 2003, which aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber.

The Regulation adopted in 2010 and applicable since 2013 prohibits the placing on the EU market of illegal timber and obliges operators putting timber and timber products on the EU market for the first time to set up and implement a due diligence system to minimise the risk that the timber might have been harvested in violation of the applicable laws in the country of harvest. Inter alia, timber is considered illegal if harvested in violation of legislation covering *"third parties' legal rights concerning use and tenure that are affected by timber harvesting"*. The due diligence system includes

^{††} <http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

^{†††} Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

^{§§} https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

the obligation to assess and, where relevant, mitigate the risk of illegal harvest to a negligible level, by applying risk criteria like “*the prevalence of armed conflict*” and “*sanctions imposed by the UN Security Council*”^{***}.

Recently, the European Commission published a biennial implementation report for the period March 2015-February 2017, underlining that almost all EU Member States comply with the formal requirements of the Regulation and identify best practices and possible areas for improvements in the future.

3 – EU Regulation on responsible sourcing of minerals (“conflict minerals “)

The Regulation adopted in 2017 lays down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The obligations for EU importers are consistent with the OECD’s five-step approach for responsible sourcing of minerals and will apply as of 1 January 2021. The Regulation establishes system for supply chain due diligence in order to break the nexus between mineral trade and armed conflict and associated human rights abuses^{†††}, also pointing out to common human rights risks in resource-rich conflict-affected and high-risk areas as for example child labour.

Other policy developments

The European Union was pleased to Chair the **Kimberley Process in 2018** and the Plenary convened in Brussels on 12-18 November 2018 as we marked the fifteenth anniversary of this process. Since it was launched in 2003, the Kimberley Process has contributed towards peace, security and prosperity. It has proven to be an effective multilateral tool for conflict prevention in stemming the flow of conflict diamonds. The Kimberley Process has had valuable developmental impact in improving the lives of most people dependent on the trade in diamonds. The Kimberley Process has been complemented by other initiatives in natural resource governance. The commitment of the Tripartite of governments, industry and civil society is at the heart of this success The European Union is pleased to see agreement on the principle of establishing a Permanent Secretariat and looks forward to contributing to define the modalities^{†††}.

The European Commission strongly supported to underline business responsibility to exercise due diligence in the 2017 G20 Leader's Declaration^{§§§} and G20 Labour and Employment Minister's Declaration^{****} and the 2016 ILO resolution concerning decent work in global supply chains.^{††††} Regarding in particular Child labour, the IV Global Conference in Buenos Aires in November 2017

^{***} <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0995>

^{†††} <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/>

^{†††} <https://www.kimberleyprocess.com/en/2018-final-communique-brussels-belgium>

^{§§§} http://www.consilium.europa.eu/media/23955/g20-hamburg-leaders_-_communiqu%C3%A9.pdf

^{****} <http://www.g20.utoronto.ca/2017/g20-labour-ministerial-declaration.pdf>

^{††††} http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf

stressed the need to pay particular attention and accelerate action to eradicate child labour in supply chains.

Furthermore, the European Commission adopted on 8 March 2018 an ambitious **action plan on financing sustainable growth** in order to meet the challenge of scaling up private investment that contributes to achieving sustainable and inclusive growth.^{****} While most measures relate to the finance sector, one of the key objectives is to promote more sustainable corporate governance i.e. of all non-financial companies. Corporate governance can significantly contribute to a more sustainable economy, allowing companies to take the strategic steps necessary to develop new technologies, to strengthen business models and to improve performance. We consider human rights as being an important part of the sustainability. In its Communication on the Action Plan on Sustainable Finance, the Commission announced that in 2019, it will carry out analytical and consultative work with relevant stakeholders to assess the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets. The European Commission will carry out a study assessing the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate human rights due diligence throughout the supply chain, and measurable sustainability targets. This study will cover also issues related to child labour. As regards other measures of the action plan, a legislative proposal was adopted in May 2018, among others, which would require financial market participants to disclose information on the integration of sustainability risk in the investment decision making processes.

Policy and regulatory developments at the EU level are translated at the national level by EU Member States and Member States also develop their own regulatory or voluntary measures. One such example is the fact that 15 EU Member States have adopted **National Action Plans** on Business and Human Rights, thus promoting the implementation of the UN Guiding Principles on Business and Human Rights. Actions plans line out inter alia expectations towards business regarding corporate human rights due diligence.

The EU now continues to promote Corporate Social Responsibility (CSR)/Responsible Business Conduct (RBC) as part of the wider work on **SDG implementation**. It is important to ensure that the implementation of the SDGs and Agenda 2030 is intertwined with the implementation of the UN Guiding Principles on Business and Human Rights and we are exploring how best to do it. It is important to identify the gaps in the implementation of the UNGPs. As part of the SDG implementation exercise, we are working with stakeholders to identify any gaps and areas for improvement. The Commission carries out a similar exercise on Corporate Social Responsibility and Business and Human Rights implementation.

The EU is also raising awareness throughout the world and **promoting the implementation of the UN Guiding Principles on Business and Human Rights through policy dialogue and development cooperation** with third countries. The EU provides support to civil society and social partners in the implementation of the UNGPs through the European Instrument for Democracy and

^{****} https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en

Human rights (EIDHR). The EU is increasingly collaborating with National Human Rights Institutions (NHRIs) to promote an enabling environment for sustainable development. NHRIs act as accountability mechanisms in implementing the SDGs. Similarly, giving voice to marginalized communities increases the potential for non-discrimination and equal access. Through its Indigenous Navigator project^{§§§§}, the EU aims at building up the reporting mechanisms that can have greater impact and effectiveness in the promotion and protection of human rights for all at the national, regional and global levels.

Development cooperation plays a particular role in promoting responsible management of value chains and compliance with social and environmental standards and human rights in non-EU countries, as set out in the Communication *"A stronger role of the Private Sector in achieving inclusive sustainable growth in developing countries"* (COM(2014)263), through a wide range of projects related to CSR/RBC and sustainable production and consumption, supporting key actors in developing countries, including through multi-stakeholder partnerships.

At bilateral level, the EU is increasingly discussing and exchanging experience on Business and Human Rights, including due diligence, in EU human rights dialogues and dedicated seminars and workshops. The EU has integrated commitments on promoting responsible business practices in all its recent trade agreements with a reference to the UNGPs, the OECD MNE and sectorial Guidelines as well as the ILO MNE Declaration.

Outreach and capacity building events in close cooperation with international organisations and civil society are at the core of the implementation of these provisions. We have created partnerships with international organisations such as the ILO, the OECD and the OHCHR for instance to provide technical support to develop National Action Plans in Latin America, to develop tools and activities for the implementation of due diligence in specific sectors, and to promote responsible supply chains in six trading partners in Asia. In Africa, the EU is also supporting the African Union Commission to develop an African Union Policy Framework on the Implementation of the UN Guiding Principles on Business and Human Rights at the National Level in Africa.

The European Union believes that the annual Forum on Business and Human Rights provides a unique space to share experiences, further strengthen partnerships and work collectively with all stakeholders for progress in the implementation of the UN Guiding Principles on Business and Human Rights. We are committed to a meaningful and tangible progress on Business and Human Rights, an agenda linking the promotion and protection of human rights to other global issues: trade, investment, environment, social and labour protection, tax evasion, corruption, and the list is long. In short, collectively, we need to harness globalization.

^{§§§§} <http://nav.indigenousnavigator.com/index.php/en/about/partners>

