



EUROPEAN UNION

Permanent Delegation to the United Nations Office
and other international organisations in Geneva

Ambassador

Geneva, 6 January 2012
D(2012) 703 034

Subject: Business and Human Rights – Human Rights Council resolution 17/14

Dear Mr. Graig Mokhiber,

I would like to thank you for your Note Verbale dated 23 November 2011 requesting to submit proposals to help the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises establish its work programme. I have the honour to transmit herewith a contribution of the European Union.

The European Union has been a strong supporter of the UN Guiding Principles on Business and Human Rights, which provide the authoritative policy framework in this particularly important field. The EU wishes success to the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises for its first session on 16-20 January 2012 and beyond. The EU looks forward to cooperating with the Group in the effective implementation of the Guiding Principles by all relevant stakeholders.

Yours Sincerely,



Mariangela ZAPPIA

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Contribution of the European Union before the first session of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises

6 January 2012

The European Union has been a strong supporter of the UN Guiding Principles on Business and Human Rights, which provide the authoritative policy framework in this particularly important field.

The EU welcomes the appointment of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises and looks forward to cooperating with the Group in the effective implementation of the Guiding Principles by all relevant stakeholders. The European Union welcomes the invitation from the Working Group to contribute to its work programme regarding key thematic priorities and activities.

The European Commission has recently published a new policy on corporate social responsibility (CSR). This Communication lays out the Commission's work plan and its aspirations in the field of CSR over the next years. This new policy has been welcomed by the Member States of the European Union. The new policy places a stronger emphasis on the issues of business and human rights, and makes various references to the UN Guiding Principles. In particular, the European Commission:

- specifically lists human rights as one of the issues that enterprises should integrate into their operations and strategy in order to fully meet their social responsibility;
- recognises the UN Guiding Principles as one of the core set of internationally recognised CSR guidelines and principles;
- and states its expectation that all European enterprises should meet the corporate responsibility to respect human rights as set out in the Guiding Principles.

In terms of concrete actions, the European Commission makes a commitment to:

- develop in 2012 human rights guidance for a limited number of industrial sectors, as well as for small and medium-sized enterprises, based on UN Guiding Principles;
- publish a report by the end of 2012 on EU priorities for the implementation of the Guiding Principles;
- and raise understanding of the challenges that companies face when operating in countries where the state does not fully meet its duty to protect human rights.

Regarding the request to suggest concrete actions that the Working Group should focus on in the coming year, the EU would like to emphasize the importance of identifying and disseminating good practices in the implementation of the Guiding Principles by States and

enterprises. An inclusive multistakeholder approach to the identification and dissemination of good practice would contribute to broad acceptance of the outcomes. In this regard, the EU would like to stress the importance to seek and receive information from all relevant sources, including civil society and rights-holders. In doing so, the Working Group could consider publishing the responses to the questions asked by stakeholders identified in its mandate.

Regarding good practices in the **State duty to protect** human rights, the EU would encourage the Working Group focus on the critical issues of:

- developing an effective framework to facilitate the performance of the duty as well as the particular tools that States could use (principles 3-6), in particular with a view to assisting those countries who have difficulties in acting on abuses on their territory to strengthen their implementation of the Guiding Principles;
- how States can ensure coherence and consistency between human rights policy and business-related policy (principles 9-10);

In focusing on these issues, the Working Group could consider developing, on the basis of identified good practice, more detailed guidance for States in specific areas relevant to the implementation of the Guiding Principles e.g. corporate law (directors' duties, human rights aspects in mergers). In its dialogue with stakeholders, the Working Group could consult States and regional judicial bodies on the potential inconsistencies that may arise between the Guiding Principles and national or international law. Another area worth exploring may be the challenges posed by the legal form of some transnational entities.

In relation to the **corporate responsibility to respect**, the due diligence framework expressed in principles 17 to 20 offers a good, practical method for efficiently improving outcomes for victims. When identifying good practices in relation to the corporate responsibility to respect, the Working Group may wish to consider making recommendations with regard to what is considered reasonable and sufficient to meet that responsibility in different circumstances. When gathering such good practices, the Working Group could develop an accessible database which could in particular help build up a methodology of "due diligence".

The Working Group should give special attention, as per principle 12, to the promotion and respect of fundamental rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

To facilitate the implementation of the Guiding Principles in this area, the Working Group could draft sector-specific guidelines and collect sector-specific best practices, and should give particular attention to small and medium-sized enterprises.

The Working Group should also assess progress and collect best practices in relation to **access to remedy** (principles 25 to 31). Principles 25 and 26 are especially key to assisting States who have difficulties in acting on abuses in their territories. Particular attention should be given to such groups as women, children, persons with disabilities and indigenous peoples, and to possible situations of denial of justice for various reasons.

In all its activities, the Working Group should ensure consistency between action in the UN Human Rights Council, and other processes in the UN and other international organizations, especially the OECD Guidelines for Multinational Enterprises (recently updated in accordance with the UN Guiding Principles) with their National Contact Points as complaints

mechanisms. The Working Group would strive to avoid overlapping and duplication, both in substance and in procedures, with other efforts.

In accordance with OP6-g of HRC resolution 17/4, the Working Group could establish a working relationship with other UN thematic special procedures, including on the following questions:

- How do other special procedures interpret, within their respective mandates, the notion of "severe human rights impact" (principle 21)? In cooperation with the UN Special Rapporteur on the situation of human rights defenders, how could the Guiding Principles be articulated with the UN Declaration on Human Rights Defenders?
- What action do those other special procedures take when they become aware of allegations of "severe human rights impacts" in the context of business operations?
- Do they draw lessons on laws, regulations and/or self-regulation measures that have failed to prevent the occurrence of "severe human rights impacts"?

Furthermore, in implementing OP6-h of HRC resolution 17/4, the Working Group could develop a dialogue with different institutions and agencies (on financial, development or international cooperation issues), including the World Bank, UNDP and the International Finance Corporation, to take stock of tools already in place to prevent negative human rights impacts resulting from corporate behaviour as well as their effectiveness.

The EU looks forward to close consultation with the Working Group, in particular with regard to possible cooperation on specific actions envisaged by the EU for the coming year, which could be included among the areas of the Group's work programme.

Finally, the EU stands ready to contribute to the work of the Working Group and expresses strong interest to participate in the Forum on Business and Human Rights, which is open to, inter alia, regional organizations. This Forum should be one of the means to ensure that all stakeholders, having been successfully involved in the phase of elaboration of the Guiding Principles, continue to be fully engaged by the Working Group in the phase of dissemination and implementation.