



**Check against delivery!**

**Seventh session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights**

**Item 4: “Article 8 – Legal Liability (Thursday PM)”  
October 28, 2021**

- Thank you, Chair.
- We refer you again to and align with the substantive analysis and text proposals on Article 8 as well as on the full draft LBI, put forward by the International Organization of Employers, Business at OECD and BusinessEurope in their joint submission.
- We join with the states who have raised concerns about the over-prescriptive nature of Article 8.
- We urge reconsideration of a number of its aspects if the goal remains to develop a draft text that enjoys the broad and cross-regional consensus called for by so many states and stakeholders.
- Most especially, we join with the many states and stakeholders who continue to strongly advocate that any proposed LBI must align clearly with the UN Guiding Principles on Business & Human Rights.
- For example, under the UN Guiding Principles articles numbers 15 and 22, remedies are required in cases where a business enterprise has caused or contributed to the human rights violation.
- However, the revised draft LBI contradicts the UNGPs yet again...this time by extending liability onto companies for their “failure to prevent” human rights harms which have not yet occurred.



- Human rights due diligence is a process-based standard but the LBI text incorrectly seeks to recharacterize it as an outcome based exercise. This contradicts the UNGPs and needs to be corrected in the text.
- We also regret that this draft instrument continues to reject the concept of a safe harbor provisions for good faith efforts made by the business community in conducting due diligence.
- We again call on this working group to add in such a provision and stress that a safe harbor clause would not immediately absolve a company from legal liability.
- However, its explicit exclusion here – coupled with the persistent weak rule of law and governance gaps on the part of states which we previously noted, will discourage good faith efforts on human rights and further reduce confidence in weakly governed economies.
- Thank you.