

**IOE Statement on article 9 of the draft LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

**Article 9. Jurisdiction**

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

As general comment, let reaffirm the third revised draft treaty remain far from possible **implementation**. Strong international support of this draft is what is currently missing, and we regret the fact that the Chair’s proposals which are a step in the good direction to achieve this aim are not regarded as a more balanced basis of negotiation.

On the revised third draft treaty:

The proposed scope of article 9 continues to promote extraterritorial jurisdiction with poorly defined terms creating great legal uncertainty for business. **This entire article must be redrafted or omitted**. and we positively welcome States’ reservation regarding the entire article as it stands.

Indeed, the new draft defines that a company is considered domiciled where it has “activity on a regular basis”. This is not only very vague language but would mean universal jurisdiction for many multinational companies that are active in most economies around the world.

The extensive jurisdictional scope of the draft is further exacerbated when considering the breadth of the “activities” to be regulated, which include electronic transactions.

The new draft also appears to allow for concurrent jurisdiction in the company’s host country where the harm occurred, the home country where the company is located, or even in a third country. Adding to this jurisdictional uncertainty, the draft continues to explicitly reject the doctrine of the *forum non conveniens*.

Additionally, the text fails to provide for practical and effective pathways to remedy at a local level, allowing States to sidestep any responsibility for maintaining their fundamental obligations regarding remedy under Pillar III.

**In 9.1.** New proposals from would allow the “plaintiffs” and their “family” to decide instead of States where to the claims can be brought upon their discretionary power. This undermines the general principle that the applicable law is that of the forum State. This should be omitted in full.

Additionally, the new inclusion under **new point 9.2.d.** would create liability for companies where substantial assets are held. Who is to be subject to liability needs to be determined by national law and be subject to broader issues of commercial liability. This should be omitted in full.

Turning to the Chair’s new proposals:

Again, as for the third revised draft treaty, the proposed scope of article 9 continues to promote broad extraterritorial jurisdiction, encourage forum shopping and creating legal uncertainty with extreme vague language.

Thank you.