

## **ENNHRI Statement on Occasion of the 4th session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (IGWG)**

### **I. Context**

In 2011 the United Nations Guiding Principles on Business and Human Rights<sup>1</sup> (UNGPs) were endorsed by the UN Human Rights Council.

Three years later, the UN Human Rights Council created “*an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.*”

The national human rights institutions (NHRIs) which constitute the European network of NHRIs (ENNHRI), believe that a binding treaty could make a significant contribution to addressing current governance gaps and strengthening prevention of business-related human rights abuses while also improving access to remedy for victims of such abuses, wherever they are.

NHRIs believe a business and human rights treaty building on the UNGP’s three pillars<sup>2</sup> should and can be complementary to the UNGPs.

Since the adoption of the UNGPs, European States have articulated their political commitment to their implementation. The EU has called for implementation of the UNGPs both within the EU and in third countries as demonstrated, for example, by the 2014 CSR Communication<sup>3</sup>, and the 2015-2019 Action Plan on Human Rights and Democracy<sup>4</sup>, not least by requiring all EU Member States to develop national action plans (NAPs) on Business and Human Rights. The Committee of Ministers of the Council of Europe (CoE) adopted a Recommendation<sup>5</sup> in 2016 calling for the implementation of the UNGPs and providing guidance to CoE Members States. To date, 15 countries within the EU have adopted a business and human rights NAPs to implement the UNGPs, and four others are in the process of developing such a plan.

The EU is the largest economy in the world<sup>6</sup> with substantial influence in the global economy.

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<sup>1</sup> UN Guiding Principles on Business and Human Rights, available [here](#)

<sup>2</sup> Protect, respect, remedy.

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a renewed EU Strategy 2011-14 for corporate social responsibility, available [here](#)

<sup>4</sup> Action Plan on Human Rights and Democracy (2015-2019), available [here](#)

<sup>5</sup> Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, available [here](#)

<sup>6</sup> [EU position in world trade](#)

Furthermore, it is worth noting that in a number of EU countries domestic legislation has been proposed or enacted that builds on and contributes to the UNGPs' implementation, for example, the French 2017 'Duty of Vigilance' law and the UK Modern Slavery Act 2015.

In addition, the EU has committed to the 2030 Agenda for Sustainable Development<sup>7</sup> and in March 2018 reaffirmed its engagement on financing sustainable growth, respectful of human rights, by adopting an action plan on sustainable finance.<sup>8</sup>

ENNHRI regrets, however, that despite these positive developments and despite the growing awareness by businesses of their contribution to sustainable development, there remains insufficient progress on the part of European businesses in implementing human rights due diligence. ENNHRI also expresses concern about the continuing adverse impacts of businesses on human rights, both within and outside of Europe<sup>9</sup>. Therefore, ENNHRI is convinced that there is still a great need for further efforts, including through legally binding instruments, in this area.

## II. NHRI mandate on Business and Human Rights

The role and mandate of NHRIs in the area of business and human rights is recognised *inter alia* by:

- The [ICC Edinburgh Declaration of 2010](#)<sup>10</sup> and [ENNHRI Berlin Action Plan](#) of 2012<sup>11</sup>
- The [UN Guiding Principles on Business and Human Rights](#)<sup>12</sup> (UNGPs), endorsed unanimously by UN Human Rights Council (UNHRC) in 2011
- Repeated resolutions of the UNHRC on business and human rights<sup>13</sup>

NHRIs across the globe and in Europe have been using their mandate as independent state institutions to address business and human rights concerns including through promoting and participating in the development of business and human rights NAPs, monitoring the implementation of the UNGPs, and promoting multi-stakeholder dialogue.

ENNHRI's Working Group on Business and Human Rights has focused specifically on national implementation efforts concerning the UNGPs, including through the use of NAPs to protect, respect and remedy the adverse human rights impacts of business activities.

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<sup>7</sup> Communication on the next steps for a sustainable European, available [here](#), also in The new European consensus, available [here](#)

<sup>8</sup> Action Plan: Financing Sustainable Growth, available [here](#)

<sup>9</sup> NHRIs are particularly concerned about issues such as, *inter alia*, human trafficking, modern slavery, sexual violence, harassment (including in the workplace), labour rights, right to privacy, protection of personal data, discrimination in employment and access to services, environmental issues and corporate tax evasion.

<sup>10</sup> The Edinburgh Declaration, available [here](#)

<sup>11</sup> Berlin Action Plan on Business and Human Rights, available [here](#)

<sup>12</sup> UN Guiding Principles on Business and Human Rights, para. 3,23,27, available [here](#)

<sup>13</sup> See for example, Resolution adopted by the Human Rights Council on 22 June 2017, A/HRC/RES/35/7, available [here](#)

### III. Key considerations

#### 1. Regarding the negotiation process

ENNHRI urges the EU<sup>14</sup> and all EU Member States to proactively engage in the drafting process throughout the session.

#### 2. Regarding the “Zero Draft” Treaty

ENNHRI welcomes the “Zero Draft” Treaty<sup>15</sup> as a step towards further elaboration of a treaty text. In particular, ENNHRI welcomes:

- the emphasis on access to justice and remedy for victims<sup>16</sup>
- the emphasis on 1) remedy and 2) prevention by requiring States to pass human rights due diligence legislation
- the recognition of the central role of human rights due diligence in ensuring accountability of businesses for identifying and addressing their adverse human rights impacts<sup>17</sup>
- the emphasis on states as duty bearers under international human rights law, including their right to regulate at the domestic level to ensure protection from human rights abuses committed by third parties such as businesses<sup>18</sup>
- the emphasis on the urgent need for policy coherence in the areas of human rights and trade<sup>19</sup>
- the emphasis on mutual cooperation between states in ensuring business accountability<sup>20</sup>

However, ENNHRI notes the following points of concern with regard to the “Zero Draft” Treaty:

- the scope of the current activities to be covered includes only activities of a ‘transnational character’, whereas it would be beneficial for practical reasons and for the purpose of aligning fully with the UNGPs, to clearly state that *all* business enterprises are addressed, including, for instances, enterprises that fall under the ‘state-business nexus’, such as state-owned enterprises<sup>21</sup>
- the need for all aspects of the text to be made more precise in subsequent iterations, for instance, to ensure alignment of the due diligence provisions with the UNGPs, as well as established principles of law,
- while the references to gender and the position and needs of vulnerable groups are a good starting point, these will need to be refined and strengthened.

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<sup>14</sup> The EU will be present at the upcoming session of the open-ended inter-governmental working group (IGWG), 15 – 18th October 2018 .

<sup>15</sup> “Zero Draft” Treaty, available [here](#)

<sup>16</sup> Zero Draft” Treaty , Article 2, Article 8.1

<sup>17</sup> Ibid, Article 9.1.

<sup>18</sup> Ibid, Article 1 – Preamble.

<sup>19</sup> Ibid, Article 13.6.

<sup>20</sup> Ibid, Article 11.1

<sup>21</sup> Ibid, Article 4.1.

With regards to the Optional Protocol:<sup>22</sup>

- ENNHRI welcomes the idea of national implementation mechanisms<sup>23</sup> and is keen to engage in further exploration of how NHRIs can be involved.

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<sup>22</sup> Draft Optional protocol to the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, available [here](#)

<sup>23</sup> Ibid, Article 1.