

**European Union**

**UNITED NATIONS   
HUMAN RIGHTS COUNCIL**

**Open-ended intergovernmental working group on transnational corporations   
  
and other business enterprises with respect to human rights**

**4th session (15-19 October 2018)**

**Intervention by the European Union under Item 5 "Adoption of the report"**

**Geneva, 19 October 2018  
  
- CHECK AGAINST DELIVERY -**

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Mr Chairperson Rapporteur,

We would like to thank you for the handling of this session and allowing for diverging views to be expressed. We would like to thank the Secretariat for the handling of this session and the elaboration of the draft report.

Four years have passed since the adoption of resolution 26/9 which triggered division in the Human Rights Council establishing this Intergovernmental Working Group. We would have liked to see genuine steps by the main sponsors to address the concerns expressed by us and others with a view to overcoming divisions. Otherwise, there is a risk that several States stick to their position not to participate and that others take a similar position. There is ultimately a risk that many States will not adopt the draft text if and when it is produced by this process. Equally, there is a risk of disillusionment among civil society, trade unions and even business who see the merit of further legal developments at the international level to level the playing field to better prevent abuses, and ensure access by victims to remedy when abuses occur.

We believe in effective multilateralism and we continue to expect that the flaws of this process be fixed or that a new process be initiated for progress on this important, yet complex, issue of our time. We owe it to victims and to the next generations.

The 4th session of the Intergovernmental Working Group is about to end. One year has passed since the end of the 3rd session when the Intergovernmental Working Group requested the Chairperson-Rapporteur to "undertake informal consultations with States and other relevant stakeholders on the way forward" [A/HRC/37/67], which entailed a need to find agreement on process. At the first and only consultation convened on 17 July 2018 to discuss the process, the European Union and States from different regions made concrete proposals, including to revert to the Human Rights Council, to find common ground and build a foundation for an inclusive, fruitful, substantive and constructive discussion – see Annex I for the full text of the EU intervention of 17 July 2018; Annex II contains the Joint Statement on Intergovernmental Working Groups delivered on 19 September 2018 during the 39th session of the Human Rights Council. These proposals and the proposals from others were unfortunately dismissed; instead, two days later, the Permanent Mission of Ecuador published the draft treaty and indicated it would proceed to the 4th session without a resolution. We reiterated our suggestions before the 39th session of the Human Rights Council, but to not avail.

Once it became clear that there would be no resolution before the 4th session, we conveyed the expectation that discussion on the future of the process be held before the start of the 4th session with all States and stakeholders to ensure predictability and minimize the risk of disagreement when Conclusions and recommendations are negotiated at the end of the session. There was no such space for discussion before the session, or indeed during the current session. The draft Conclusions and recommendations were made available only on the last day of this session, 19 October at around noon. Their content clearly confirmed that, in our view, there was no attempt by the Chairperson-Rapporteur to respond positively to the proposals to revert to the Human Rights Council with a view of rethinking the best way forward.

We decided therefore not to engage in the consultations on the Recommendations of the Chair-Rapporteur and Conclusions of the working group called on 19 October at a late hour in the session, and disassociate ourselves from their adoption. We therefore request that our position be accurately reflected in the report under the section "Adoption of the report": *"the European Union disassociates from the Recommendations of the Chair-Rapporteur and the Conclusions of the working group and considers that it is not bound by the directions set out".*

We see that the draft report presented to us does not always accurately reflect all views and positions and we welcome the fact that there will be a two-week period to make comments. We also welcome that an Annex will be developed with the attributions of positions expressed throughout the session, including in the opening and closing of this session.

We do not wish to block the adoption of the report, but we rather send yet another signal that it is about time to build common ground. We are committed to continue working within the EU on options for further legal development likely to effectively allow progress in the prevention of abuses by business-related activities, and ensure access to victims to remedy when abuses occur.

We invite all to reflect on the words of former Special Representative of the Secretary General Prof. John Ruggie in his [Open letter](https://www.business-humanrights.org/en/professor-john-ruggie-provides-guiding-principles-for-the-business-human-rights-treaty-negotiations-in-open-letter) to this Intergovernmental Working Group before the start of this session: *"Success—not on paper but on the ground—demands deep reflection, good will, and a constructive process that searches for consensus in the knowledge that real change requires it."*

I thank you Mr. Chairperson-Rapporteur.