



European Union

2016 United Nations Forum on Business and Human Rights

14-16 November 2016

Contribution of the European Union

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Business and Human Rights continues to be very high on the European Union's agenda. The Council Conclusions of 20 June 2016 are a testimony of the renewed commitment of the European Union and all its Member States with clear directions of work to implement the UN Guiding Principles on Business and Human Rights as we mark the 5th anniversary of their adoption by consensus in the Human Rights Council*.

The European Union would like to commend the UN Working Group on Business and Human Rights and the Secretariat for organizing this 5th Forum on Business and Human Rights focussing on "Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy". We are honoured that the architect of the UN Guiding Principles, Prof. John Ruggie, former Secretary-General's Special Representative for Business and Human Rights and other high level speakers have come to address this Forum. It remains a unique opportunity to engage and take stock with all involved stakeholders including States, international organisations, trade unions, civil society and business enterprises.

We value the UN Working Group's various work streams to support the implementation of the UN Guiding Principles. The EU Member States have taken the lead internationally on developing and adopting National Action Plans (NAPs) to implement the Guiding Principles or integrating the UN Guiding Principles into national CSR Strategies. We are committed to develop peer learning on business and human rights, including cross regional peer learning, and are pleased to see during this Forum several session dedicated to the development of National Action Plans. We also look forward to the UN Working Group's report on SMEs, and stand ready to share tools such as the guide launched by the European Commission already back in 2012 as one of the means to implement the UN Guiding Principles: *"my business and human rights. A guide to human rights for small and medium-sized enterprises"*. This guide has been translated in several languages for a

* <http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-business-human-rights-conclusions/>

global use. We also follow with interest the preparation of the report requested by resolution 32/10 on "best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights".

As we mark the 5th anniversary of the UN Guiding Principles, we were indeed pleased to witness and support consensus on the resolution 32/10 by the core group (Argentina, Ghana, Norway, the Russian Federation) on "Business and Human Rights: improving accountability and access to remedy", a remarkable progress since resolution 26/22. Following-up on the solid High Commissioner's report [A/HRC/32/19 and Add.1] and the OHCHR-led Accountability and Remedy Project, resolution 32/10 sends the needed signal and commitment from all States that effective and pragmatic steps can be taken without delay to ensure accountability and access to remedy. We owe it to the victims. We owe it to human rights defenders active in this sensitive area. We would like to commend the Office of the High Commissioner for Human Rights for its leadership allowing the Accountability and Remedy Project to develop and come to fruition with the High Commissioner's report: "Improving accountability and access to remedy for victims of business-related human rights abuse" [A/HRC/32/19]. In its Council Conclusions, the European Union recognizes that this initiative may provide best practices that can be implemented at EU and Member State level, including on improved cooperation between States in cross-border cases.

The Council Conclusions have also called on the Commission to address remedies in the forthcoming EU Action Plan on Responsible Business Conduct, including at EU legislative level as appropriate, and to consider providing guidance to Member States in this regard. In this context, the EU Fundamental Rights Agency was requested to issue an expert opinion on possible avenues to lower barriers for access to remedy at the EU level, taking into account existing EU legal instruments and competences at EU and Member States' levels. In the same Council Conclusions, the European Union also welcomed the recent adoption of the Council of Europe's Committee of Ministers' Recommendation on Human Rights and Business with a particular focus on access to remedy. The EU Institutions and Member States were encouraged to implement this recommendation.

Beyond these specific, we would like to elaborate further steps taken to implement the UN Guiding Principles. The 2015 European Commission "Staff Working Document on Implementing the UN

Guiding Principles on Business and Human Rights - State of Play"[†] provides a useful analysis of existing provisions in the EU regarding the three pillars of the UN Guiding Principles, including Access to remedy: there is a well-established body of law and practice in civil justice, criminal justice as well as non-judicial remedies [SWD(2015) 144 final; 14.7.2015 – pp. 23-33 on Access to remedy].

The EU smart mix of voluntary and regulatory measures is indeed our recipe to implement the UN Guiding Principles. Recent regulatory measures include the EU Directive on disclosure of non-financial and diversity information by certain large companies and groups and the revised Directive on public procurement - both are due to be transposed in national legislation by EUMS by the end of 2016. In June 2016, the EU has also agreed on a framework to stop the financing of armed groups through trade in conflict minerals[‡].

The High Commissioner's report and its Guidance reminds us of the need for companies to have a clear and predictable legal framework which, if need be, can act as "effective deterrence" – policy objective 1 [A/HRC/32/19 – p.12]. It is equally essential that all enterprises take all appropriate due diligence measures throughout their operations to prevent abuses, and allow access to remedy when abuses occur. Some leading enterprises have shown a remarkable progress over the past years, and others still need to see the full benefit of ensuring respect for human rights.

We value the role of civil society organizations and human rights defenders as they often bring to our attention concrete cases of abuses. We are concerned that, in too many instances, human rights defenders working for the implementation of the UN Guiding Principles are subjected to harassment, persecution and retaliation. Human rights defenders and civil society actors in this sensitive area of work need particular attention and protection. As one of the means to provide support to civil society and human rights defenders in the field of Business and Human Rights, a specific budget line has been allocated for the first time under the European Initiative for Democracy and Human Rights.

[†] https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/swd_2015_144_f1_staff_working_paper_en_v2_p1_818385.pdf

[‡] <http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-conflict-minerals/>

Because of the nature of business today, the UN Guiding Principles need to be implemented at the global level, which requires a cross-regional commitment of all, States, enterprises and civil society. This Forum provides a unique opportunity to identify what more could be done to further incentivize stakeholders to move forward in implementing the Guiding Principles. This Forum also gives special attention to the world of finance and financial institutions and how they could be better used as a vehicle to boost the implementation of the UN Guiding Principles. We are also pleased to see progress in discussion on how to better embed the UN Guiding Principles in the implementation of the 2030 Agenda.

The EU and EU Member States stand ready to share their experience, to listen to and engage with all stakeholders. As we mark their 5th anniversary, the Guiding Principles on Business and Human Rights continue to guide our policy and action to better prevent abuses connected to the activities of business enterprises, and to provide remedy when abuses occur.