## State duty to protect human rights

1. Does your State’s constitution, laws or national action plan on business and human rights require the integration of human rights provisions in IIAs concluded by your Government?

The respect for human rights is one of the founding values of the European Union (Article 2 of the Treaty on the European Union (TEU)) and underpins all aspects of the EU’s internal and external policies. In its external relations, the EU upholds its values, promotes sustainable development and the protection of human rights (Article 3 TEU).

The EU is committed to promoting human rights in all areas of its external action, including in trade and investment. Article 21(1) of the TEU establishes human rights considerations as one of the principles guiding the Union’s external action, including in the context of the negotiations and conclusion of international trade and investment agreements (Article 207(1) Treaty on the Functioning of the European Union (TFEU)). The EU Action Plan on Human Rights and Democracy 2020-2024 includes as a priority to strengthen the implementation of human rights provisions in EU trade policy.

EU international investment agreements are routinely part of comprehensive Free Trade Agreements (FTA). These FTAs feature a chapter on trade and sustainable development, which includes binding obligations on the parties to ratify and effectively implement fundamental International Labour Organisation (ILO) conventions. In case of standalone investment agreements (e.g. the not yet concluded EU-China CAI), there is a separate section on investment and sustainable development.

Furthermore, the EU’s bilateral agreements contain a clause on the protection of human rights as an essential element. This clause is either integrated into the FTA or made applicable to it through a reference to another agreement with the country concerned. A breach of such clause would allow the parties, pursuant to Article 60(1) of the Vienna Convention on the Law of Treaties, to suspend or terminate the agreement.

On a national level, the Greek Constitution contains a comprehensive set of civil, cultural, economic, political and social rights and freedoms, similar to those incorporated in the most important international and regional human rights treaties. It proclaims that respect for and protection of human dignity constitutes a primary obligation of the State and guarantees the rights of persons as individuals.

Furthermore, Greece is a party to the major international human rights treaties concluded under the auspices of the U.N. and regularly submits periodic reports to the main human rights treaty bodies. The Concluding Observations of the relevant treaty bodies provide valuable guidance in the endeavor of the Greek authorities to fill any gaps in the national system of protection of human rights and fundamental freedoms. It is for this reason that Greece is a strong supporter of enhancing and strengthening the treaty bodies system and actively participates in the ongoing intergovernmental process.

In the Greek IIAs there are provisions for the obligation of the parties to accord fair and equitable treatment and to provide full protection and security in their territory, on a non-discriminatory basis.

As a member of the European Union, Greece is directly bound by or has successively incorporated the European legislation related to the trade and human rights protection. Bearing in mind that the international investment policy falls under the exclusive competence of the EU, member-states ‘ability to start negotiations with a view to amend an old or to conclude a new IIA with Third countries is subject to an authorization by the European Commission, according to the Regulation 1219/12 (*Establishing transitional arrangements for bilateral investment agreements between Member States and third countries*). The authorization is subject to specific preconditions and shall not be given in case of incompatibility with the EU law or inconsistency with the Union’s principles and objectives for external action (art.9, par.1). As part of the authorisation process, the Commission may require the Member State to include or remove from its prospective bilateral investment agreement any clauses where necessary to ensure consistency with the Union’s investment policy or compatibility with Union law (art.9, par.2). Therefore, Greece is obliged to incorporate the legal framework and the basic principles related to the human rights and RBC included in the EU trade and investment agreements in its future IIAs. Specifically, Greece shall strive to include clauses that ensure that IIAs with third countries contain the necessary elements for the protection and promotion of human rights. This includes specific provisions concerning:

* the maintenance of adequate policy space as in the EU Agreements (Fair and Equal Treatment, Expropriation),
* safeguarding the state’s right to pursue legitimate public policy objectives such as social, environmental, human rights, security, public health and safety,
* prohibiting the enhancement of investment by lowering or relaxing domestic environmental or labour legislation and standards, or by failing to effectively enforce such legislation and standards,
* promoting international standards of corporate social responsibility.
* promoting transparency and providing for the effective investor-to-state dispute settlement mechanism incorporating either the UNCITRAL Rules on Transparency for Investor State Arbitration, or rules ensuring a comparable level of transparency which allows for submissions by third parties.

1. Are there any mechanisms or processes (e.g., inter-ministerial committee, ex ante human rights impact assessment) to assess and ensure that IIAs are compatible with international human rights obligations of your country?

The European Commission conducts four types of formal, published policy analyses during the life cycle (i.e., negotiation and implementation) of trade and investment agreements: In the lead-up to negotiations of an EU trade or investment agreement (Impact Assessment), during the negotiations (Sustainability Impact Assessment), an Economic Analysis of the Negotiated Outcome (EANO) and an ex post evaluation into the effects of the agreement between the EU and the partner country or region, after the Agreement has been in force. Besides those evaluation tools, the compliance of the EU’s trade and investment agreements with human rights is also achieved through other mechanisms, notably the checks performed by the EU legislative bodies, the European Parliament and the Council, which ensure that the negotiating outcome fits to the negative directives.

On national level, the compatibility with the EU obligations in an EU level is safeguarded by the European legislation. According to the article 11 of the Regulation 1219/12, any member of the EU, before signing a bilateral investment agreement, must notify the Commission of the outcome of negotiations and transmit the text of such an agreement to the Commission. The Commission will assess whether the negotiated bilateral agreement conflicts with the requirements of the compatibility with the EU law and investment policy principles. Any member state shall be granted authorization to conclude and sign the IIA only if the compatibility with the EU law and principles is confirmed. Therefore, the authorization process foreseen in the Regulation 1219/12 is a mechanism of ensuring that the future Greek IIAs are compatible with international human rights obligations at an EU level.

1. How does your Government ensure that IIAs do not impact negatively on the realisation of other important policy objectives such as achieving gender equality, protection of the environment, mitigation of climate change and implementation of the Sustainable Development Goals?

As explained in our reply to Q2, the EU resorts to a wide range of evaluation tools to assess the human rights and environmental impact of EU trade and investment agreements with a view to minimising any negative effects of those agreements on other important policy objectives. These evaluation tools are deployed throughout the life of the trade and investment negotiations and apply also after the entry into force of the agreements, during the implementation stage.

Moreover, the EU’s investment agreements contain a number of safeguards that ensure that public authorities can pursue their public policy objectives, including the protection of human rights and of the environment. In addition to references to international human rights in the preamble, EU investment agreements reaffirm, by means of a standalone clause, the right to regulate in the public interest, which informs the content of the investment protection standards. A non-stabilisation clause, that clarifies that investment protection should not be understood as a commitment that the regulatory environment for investment would not change, ensures that the necessary policy space for human rights and other policy actions is further preserved. Additionally, the investment protection standards are drafted in a way that ensures the incorporation of public policy considerations. For instance, the provision on expropriation provides that a government would normally not have to pay compensation if it took non-discriminatory measures in the public interest, except where a measure is manifestly excessive. Moreover, a security exception clause that applies horizontally ensures that Parties cannot be prevented from taking actions for the fulfilment of their international obligations under the UN Charter for the purpose of maintaining international peace and security, including UN sanctions on human rights.

On a national level, in Greece the IIAs enter in force after they are ratified according to the legislative procedure by the Hellenic Parliament. Any draft legislation in Greece, when submitted to the Parliament, has to be accompanied by the Impact Assessment Analysis, which specifically provides for the evaluation of the proposed legislation in accordance with the Sustainable Development Goals (SDGs), its necessity and its economic and social impact. Therefore, it has to be a specific reference to the IIAs compatibility with the SDGs and an assessment of their impact to the general societal goals in order to obtain the Parliaments approval for the ratification of any Bilateral Investment Agreement.

Moreover, in one of the recent Greek IIAs, *Agreement between the Government of the Hellenic Republic and the Government of the United Arab Emirates on the Promotion and Reciprocal Protection of their Investments*, in force since 2016, there is an explicit statement of each party’s right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives to protect the society, the environment, public health and safety (“right to regulate”clause). This means that the Greek state maintains its right to make laws in order to protect human and labor rights or the environment.

As stated above, Greece is obliged to include the basic principles and elements of the EU investment policy (Fair and Equal Treatment, non-discrimination clause, international RBC standards, transparency rules, right to regulate) in all its future investment Agreements.

1. How does your Government ensure that IIAs provide adequate human rights safeguards in cases where investments may take place in special economic zones or in conflict and post-conflict settings?

Greece, as the EU in general, takes a horizontal approach to investment protection in relation to human rights, considering that they apply in a universal manner and be of the highest level regardless of the circumstances. Nevertheless, recognizing the special challenges set by specific circumstances in targeted sectors, the EU has drafted the Regulation (EU) 2017/821 on chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (also known as ‘Responsible Minerals Regulation’), which aims to ensure that EU importers of 3TG (tin, tungsten, tantalum and gold) meet international responsible sourcing standards set by the OECD.

1. Is your Government considering to reform or replace the Investor-State Dispute Settlement (ISDS) mechanism in your old or new IIAs? If so, please provide details about the proposed alternatives.

The EU agreed, since 2015, on a reformed bilateral approach on investment dispute settlement (Investment Court System) to be included in EU trade and investment agreements. The Investment Court System (ICS) has been so far included in the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA), the EU- Singapore and the EU-Viet Nam Investment Protection Agreements and the EU-Mexico Agreement.

In parallel, the EU supports efforts towards a multilateral reform of ISDS by engaging in the ongoing negotiations in Working Group III of the United Nations Commission on International Trade Law (UNCITRAL). In these negotiations, the European Union and its Member States support the creation of a permanent Multilateral Investment Court, which would settle investment disputes under existing and future treaties and would, once operational, replace the Investment Court Systems included in the EU’s bilateral agreements and the ISDS mechanisms in EU Member States bilateral investment treaties with third countries.

Apart from its participation in the consultations for the review of the current ISDS mechanism as member of the EU, Greece will strive to incorporate a code of conduct for the arbitrators in the arbitral tribunals in its future IIAs, with a view to foster the legitimacy and the integrity of the ISDS process.

1. Has the COVID-19 pandemic affected your Government’s approach to IIAs and/or ISDS?

The covid-19 pandemic has enhanced the EU’s and the Greek Government’s approach to IIAs and ISDS, as it has highlighted the need to maintain adequate policy space for the states to regulate to achieve legitimate policy objectives and protect the valuable parts of the society. The EU’s and Greece’s approach has always been that investment agreements should strike a balance between protecting investors and safeguarding a state’s right to regulate in the public interest, including by taking measures to protect public health and safety or the environment as public good, and the suitability of this approach has been further evidenced by events such as the COVID-19 pandemic.

Moreover, both at an EU and a national level, there has been a strong commitment to the prohibition of attracting investments by lowering the environmental, human and labor rights or social standards.

## Investors’ responsibility to respect human rights

1. Do IIAs concluded by your Government (including your Model Bilateral Investment Treaty) include human rights provisions addressed directly to investors and their investments? Are these provisions soft law recommendations or legally binding?

Specific corporate social responsibility provisions are included in the Trade and Sustainable Development provisions of EU free trade agreements or investment agreements. Therein, the Parties undertake to promote responsible business practices, including by encouraging the voluntary uptake of such practices by businesses. These chapters further contain a special dispute resolution mechanism.

The Greek model BIT, according to the requirements of the authorization process in the context of the 1219/12 Regulation, includes an explicit reference to the encouragement of the enterprises to respect internationally recognised standards of corporate social responsibility, such as OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Right.

1. Does IIAs concluded by your Government expressly require foreign investors to comply with domestic laws relating to human rights, labour rights, and the environment? According to the laws of every party ???

Investment protection provisions in EU investment agreements and Greek BITs only apply to investments made in accordance with the laws and regulations of the host country. The Greek constitution and domestic laws overwhelmingly provide for the protection of human rights, labour rights and the environment. When such laws are not complied with at the making of the investment, an investor may not benefit from the protection of the investment agreement, including from recourse to investment dispute settlement. Therefore, under EU IIAs and the Greek BITs, investors cannot submit to dispute settlement claims relating to investments made through corruptive, abusive or deceptive means.

1. Does your Government require – under IIAs or otherwise – investors to conduct human rights due diligence (HRDD) or environmental and human rights impact assessments prior to their investment? If so, what mechanisms exist to ensure that investors comply with this obligation?

EU Timber Regulation (Regulation (EU) No 995/2010) prohibits the placing on the EU market of illegal timber and requires operators to set up and implement a due diligence system to minimise the risk.

The EU Responsible Minerals Regulation (Regulation (EU) 821/2017) lays down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas with the aim to break the nexus between mineral trade, armed conflict and human rights abuse. The Greek administration, as foreseen in the Regulation, is about to set the specific rules applicable in case of infringements.

The Directive 2014/95/EU (also called “the non-financial reporting Directive”) which has been incorporated in the Greek legislation by the law 4403/2016, requires large companies to disclose certain information on the way they operate and they manage social and environmental issues. Specifically, the law 4403/2016 foresees the company’s obligation to report about the performance and the impact of its activities related to environmental, social and labor issues, human rights’ protection, as well as combating fraud and bribery.

In a non-binding context, Greece, as an adherent country to the OECD Guidelines for Multinational Enterprises, promotes, via its National Contact Point (NCP), the risk-based due diligence, which focus on the obligation of the companies to identify, prevent and mitigate the adverse impacts that may arise from their operations[[1]](#footnote-1).

1. What measures exist to ensure that HRDD or impact assessments conducted by investors are gender-responsive and involve a meaningful participation of impacted communities, particularly marginalized groups and individuals?

The draft legislation in Greece is publicly available for open consultations with stakeholders and individuals on the web platform [www.opengov.gr](http://www.opengov.gr) in order to ensure transparency, deliberation, collaboration and accountability.

Moreover, the Greek NCP has the role to promote and provide guidance to the economic operators to implement the Due Diligence Principles adequately, including in a sector-specific approach. Especially for the protection of the human rights, the Greek NCP has participated in an international webinar presenting the possibilities offered to the Greek companies which seek guidance about the implementation of the OECD’s due diligence even when they operate abroad[[2]](#footnote-2).

Furthermore, in Greece there are institutions established to supervise the implementation of the legislation concerning gender equality and the integration of marginalized groups horizontally[[3]](#footnote-3).

From a sectoral perspective, the Law 4403/2016 provides for the publication of the report concerning the disclosure of non-financial information.

## Access to remedy

1. Do IIAs concluded by your Government include processes or mechanisms to allow affected individuals or communities to seek remedies, in host or home countries, against investors for human rights abuses linked to investment-related projects?

In the context of the Greek IIAs each contracting party ensures to investors of the other contracting party the right of access to its courts of justice, administrative tribunals and agencies and all other bodies for the purpose of the enforcement or their rights with respect to their investments. .

1. Has your Government pursed counterclaims against investors for human rights abuses linked to their investments? If yes, please provide details.

No counterclaims have been pursued from the Greek state against investors for human rights abuses.

1. Do IIAs concluded by your Government allow affected individuals or communities to file amicus briefs before ISDS or another dispute settlement process?

EU trade and investment agreements include high standards of transparency building on the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (UNCITRAL Transparency Rules). These rules allow interested third persons (such as individuals, civil society organisations, trade unions, consumer organisations and other types of affected communities) to intervene in investment dispute settlement proceedings before the Tribunal and the Appellate Tribunal. The UNCITRAL rules of Transparency shall apply to international arbitration proceedings initiated under the future Greek IIAs (those to be concluded) as an obligation under the authorization process of the Regulation 1219/12.

1. Does your Government require – under IIAs or otherwise – investors to establish, in meaningful consultation with affected communities, operational level grievance mechanisms that are effective in terms of process and remedial outcomes? If so, please provide details.

Greece has established a National Contact Point (NCP), the role of which is a) raising awareness and providing guidance for the implementation of the OECDs Guidelines for MNEs and b) acting as a mechanism of amicable resolution between the companies and the complainant (NGOs, trade unions or individuals) in cases where the proper implementation of the GLs is in doubt. In the current version of the OECD GLs, a dedicated human rights chapter has been incorporated, replicating the promotion of the Protect, Respect and Remedy framework in consistency with the UN Guiding Principles for Business and Human Rights

From a sector – specific point of view, the Responsible Minerals Regulation requires Union importers of minerals and metals covered under its scope to establish a grievance mechanism as an early-warning risk- awareness system or provide such mechanism through collaborative arrangements with other economic operators or organisations, or by facilitating recourse to an external expert or body, such as an ombudsman.

## Good Practices

1. Are there any good practices regarding the integration of human rights issues in IIAs that you would like to share with the Working Group? Any other comments or suggestions are also welcome.

\*\*\*

1. It should be noted that, the European Commission is currently working on a legislative initiative on horizontal due diligence for European companies. The proposal could introduce mandatory human rights and environmental due diligence based on existing international due diligence standards and guidelines, such as the UN Guiding Principles on Business and Human Rights, the ILO Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct [↑](#footnote-ref-1)
2. <https://www.biicl.org/events/11452/webinar-series-episode-5-business-and-human-rights-developments-in-greece?cookiesset=1&ts=1616163947>  [↑](#footnote-ref-2)
3. For instance, according to the Action Plan for Gender Equality (2016-2020) the Research Center for Gender Equality, supervised by the Ministry of Labor, is responsible for the promotion and implementation of the legal and substantial gender equality in any political, social, and economic aspect. [↑](#footnote-ref-3)