

Consultations by the UN Working Group on Business and Human Rights on “Corporate human rights due diligence – identifying and leveraging emerging practice”

Contribution of the European Union (20.06.2018)

The European Union welcomes the consultations by the UN Working Group on Business and Human Rights, which is mandated by the Human Rights Council to promote worldwide dissemination and implementation of the UN Guiding Principles on Business and Human Rights, in view of its 2018 report to the UN General Assembly *"on emerging practice and innovations of corporate human rights due diligence across sectors"*. We particularly welcome the fact that the consultations held on 17 May 2018 in Geneva were open to all stakeholders and allowed for a rich exchange of practices and expectations in this area of work.

Building on its intervention during the consultations, the European Union is pleased to share a written contribution. A number of policy and regulatory developments in the European Union are a testimony to progress on due diligence.

At the policy level, the Foreign Affairs Council Conclusions on Business and Human Rights of 20 June 2016 came with a clear call on *"all business enterprises, both transnational and domestic, to comply with the UN Guiding Principles, the ILO Tripartite Declaration and the OECD Guidelines, inter alia by integrating human rights due diligence into their operations to better identify, prevent and mitigate human rights risks"*¹.

Among the several steps at a regulatory level, we would like to highlight specific provisions on due diligence in the following regulations:

1 – EU Directive as regards disclosure of non-financial and diversity information

The EU Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups of undertakings contains clear provisions requiring companies to *"prepare a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters."*². The non-financial statement should also include information on the due diligence processes implemented by the undertaking, and also on *"the principal risks linked to the undertaking's operations, including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts [...] and how the undertaking manages those risks."*

¹ https://ec.europa.eu/anti-trafficking/publications/council-conclusions-business-and-human-rights-foreign-affairs-council_en

² Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

According to the Directive, companies may rely on national, EU or international frameworks to produce their statements, and if they do so, they should specify which frameworks they have relied on. In June 2017 the European Commission published guidelines to help companies to disclose relevant non-financial information, as required by the Directive. These include more detailed provisions on due diligence.³ The large undertakings and groups started reporting in 2018 about the 2017 financial year. By mid-2019, the European Commission will publish a fitness check of EU legislation on public corporate reporting, including the Directive on non-financial reporting.

2 – EU Timber Trade Regulation (Regulation (EU) 995/2010)

The Regulation adopted in 2010 and applicable since 2013 prohibits the placing on the EU market of illegal timber and obliges operators putting timber and timber products on the EU market for the first time to set up and implement a due diligence system to minimise the risk that the timber might have been harvested in violation of the applicable laws in the country of harvest. Inter alia, timber is considered illegal if harvested in violation of legislation covering “*third parties’ legal rights concerning use and tenure that are affected by timber harvesting*”. The due diligence system includes the obligation to assess and, where relevant, mitigate the risk of illegal harvest to a negligible level, by applying risk criteria like “*the prevalence of armed conflict*” and “*sanctions imposed by the UN Security Council*”⁴.

3 – EU Regulation on conflict minerals

The Regulation adopted in 2017 is significant as it lays down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The Regulation establishes a “*Union system for supply chain due diligence [...] in order to curtail opportunities for armed groups and security forces to trade in the minerals*”.⁵

Other policy developments

The European Commission strongly supported to underline business responsibility to exercise due diligence in the 2017 G20 Leader's Declaration⁶ and G20 Labour and Employment Minister's Declaration⁷ and the 2016 ILO resolution concerning decent work in global supply chains.⁸

³ https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0995>

⁵ <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/>

⁶ http://www.consilium.europa.eu/media/23955/g20-hamburg-leaders_-_communiqu%C3%A9.pdf

⁷ <http://www.g20.utoronto.ca/2017/g20-labour-ministerial-declaration.pdf>

⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf

Furthermore, the European Commission adopted on 8 March 2018 an ambitious **action plan on financing sustainable growth**.⁹ Most of the future measures to foster better financing of the sustainability transition target the finance sector, but one of the key objectives is to promote more sustainable corporate governance i.e. of all non-financial companies. Corporate governance can significantly contribute to a more sustainable economy, allowing companies to take the strategic steps necessary to develop new technologies, to strengthen business models and to improve performance. We consider human rights as being an important part of the sustainability. In its Communication on the Action Plan on Sustainable Finance, the Commission announced that in 2019, it will carry out analytical and consultative work with relevant stakeholders to assess the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets. The European Commission will be analysing by means of a comprehensive impact study or by other means of collecting information whether/how a possible mandatory approach on supply chain due diligence could be adopted in the future.

Policy and regulatory developments at the EU level are translated at the national level by EU Member States and Member States also develop their own regulatory or voluntary measures. One such example is the fact that 14 EU Member States have adopted **National Action Plans** on Business and Human Rights, thus promoting the implementation of the UN Guiding Principles on Business and Human Rights. Actions plans line out inter alia expectations towards business regarding corporate human rights due diligence.

The EU now continues to promote Corporate Social Responsibility (CSR)/Responsible Business Conduct (RBC) as part of the wider work on **SDG implementation**. It is important to ensure that the implementation of the SDGs and Agenda 2030 is intertwined with the implementation of the UN Guiding Principles on Business and Human Rights and we are exploring how best to do it. It is important to identify the gaps in the implementation of the UNGPs. As part of the SDG implementation exercise, we are working with stakeholders to identify any gaps and areas for improvement.

The EU is also raising awareness throughout the world and **promoting the implementation of the UN Guiding Principles (UNGPs) on Business and Human Rights through policy dialogue and development cooperation** with third countries. At bilateral level, the EU is increasingly discussing and exchanging experience on Business and Human Rights, including due diligence, in EU human rights dialogues and dedicated seminars and workshops. We are providing technical support to develop National Action Plans in Latin America and to improve responsible supply chains in six countries in Asia. In Africa, the EU is also supporting the African Union Commission to develop an African Union Policy Framework on the Implementation of the UN Guiding Principles on Business and Human Rights at the National Level in Africa. The EU also provides support to civil society and social partners in the implementation of the UNGPs through the European Instrument for Democracy and Human rights (EIDHR).

Development cooperation plays a particular role in promoting responsible management of value chains and compliance with social and environmental standards and human rights in non-EU countries, as set

⁹ https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en

out in the Communication "A stronger role of the Private Sector in achieving inclusive sustainable growth in developing countries" (COM(2014)263), through a wide range of projects related to CSR/RBC and sustainable production and consumption, supporting key actors in developing countries, including through multi-stakeholder partnerships.

After the 2017 **Forum on Business and Human Rights** focussing on "*Realizing Access to Effective Remedy*" , we look forward to the forthcoming Forum on Business and Human Rights on 26-28 November 2018 with the central theme chosen by the UN Working Group: "*Business respect for human rights – building on what works* " to "*drill down on what has been working to date in terms of government, civil society and business practice, but also on what is not working and where current efforts are falling short, and how to fill the gaps*"¹⁰. The EU is looking forward to actively participate and has submitted a proposal for a session on "*Progress on due diligence at the EU regulatory and policy levels, and their potential impact globally*".

¹⁰ <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2018ForumBHR.aspx>