

Check against delivery



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**Implementing the 3 pillars of the UN Guiding Principles on Business and Human Rights
EU Human Rights and Environmental Due Diligence in Global Value Chains, hosted by
the RBC Working Group of the European Parliament**

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(via videoconference)

Excellencies, Ladies and Gentlemen, Commissioner Reynders, Colleagues,

Greetings from Seattle. I speak today on behalf of the UN Working Group on Business and Human Rights.

Thank you to the European Parliament and to MEPs Heidi Hautala and Lara Wolters for the invitation to speak briefly today. I add my congratulations to you and to Commissioner Reynders on this current milestone and achievement.

The Working Group is glad to see that a draft of a new Directive on corporate sustainability due diligence has been published and looks forward to the dialogue that will take place. We are all working towards the same broad goal of addressing harms to people, and the planet which sustains us all, and to do so in a way that puts rights holders at the centre of a resilient economic order. The Working Group will, of course, submit more extensive comments but wanted to share some preliminary messages today.

The role of the Working Group, which is a group of five independent experts, appointed by the UN Human Rights Council, is to promote implementation of the UN Guiding Principles globally, in partnership with civil society, business and States. We have worked and endeavoured, for more than a decade, to support State-based initiatives focused on the role of States in regulating business entities to ensure business respect for human rights globally. As we note in our released Roadmap for the next decade of action, under the UN Guiding Principles voluntary initiatives are not sufficient, and the time for binding rules has come.

First, the Directive should align with the UN Guiding Principles, as part of a larger goal of policy coherence. This is not only to create coherence among EU Member States but also with the laws and processes under consideration in other parts of the world. To create new norms, that are inconsistent, or which lower the threshold, would bring us backwards not forwards. In our Roadmap we noted that “emerging mandatory human rights due diligence regulations [need to be] aligned with the UNGPs and supported by effective exchange, collaboration, capacity-building and sharing across jurisdictions regarding administrative enforcement to ensure policy coherence”.

Second, the scope of application of the current proposal is limited and not fully aligned with the UN Guiding Principles, in addition to placing a threshold in terms that limits general application of the Directive to “very large” companies. Furthermore, the current draft encompasses only a select group of “large” companies in only three sectors - textiles, agriculture, and extraction of minerals. The decision to exclude other sectors from this category means that companies that may not be large but that may be linked to significant adverse impacts (e.g. technology firms that design and export software, professional services, renewable energy firms, defense/arms brokers) may be excluded from the proposed Directive. There is also no clear reference to state owned companies, missing the opportunity for States to lead by example, by applying due diligence requirements to their own companies. While there may need to be a phased-in approach, the blanket exclusion of a large proportion of business entities, means that there is not as of yet a full ambition of levelling the playing field. To exclude key actors, and to not approach this in a way that will include all businesses within a foreseeable time, means that this endeavour becomes incomplete and may encourage other jurisdictions to follow suit.

Third, the Working Group’s Roadmap for the next decade of action emphasizes that States need to “clarify that meaningful and ongoing consultation with potentially affected groups and other relevant stakeholders is integral to human rights due diligence”. The current draft Directive does mention engagement with affected rights holders but does so in a way that is inconsistent with the UN Guiding Principles. Draft Article 6 for example states that “Companies shall, where relevant, carry out consultations with potential affected groups including workers and other relevant stakeholders.”

Companies should embed ongoing stakeholder and rights holder engagement as part of any due diligence obligation. This should never be optional. There is no specific mention of vulnerable populations who may be particularly affected by corporate abuse (e.g. indigenous peoples or communities of African descent), including their right to be consulted, protected as human rights defenders and provided with adequate mechanisms that facilitate their access to remedy. Additionally, the gender perspective is completely absent. The Working Group has stated that incorporating the gender dimension in identifying specific impacts and implementing preventive measures is essential.

Fourth, the scope of the draft Directive in terms of the nature and extent of human rights due diligence, is also inconsistent with the UN Guiding Principles and is narrow. Under the UN Guiding Principles, the concept of human rights due diligence is meant to occur in relation to a business's direct linkage to adverse human rights impacts, not based on a new concept such as an "established business relationship", as suggested in the current draft. This runs counter to the idea that a business has a responsibility to address adverse impacts to which it is connected at any point in its value chain.

The scope of due diligence is severely curtailed for businesses in the financial services sector. As the Working Group points out in its Roadmap, addressing the role of the financial sector is critical, given its role in fuelling economies and the behaviour of companies within them. The financial sector has significant leverage and needs to be part of a strong and effective regulatory system. At present, the draft Directive requires firms providing credit, loans or other financial services to identify adverse human rights impacts only before providing the service.

Our final points relate to the important need for the draft Directive to address access to remedy and civil liability. While it is important for the Directive to have provisions for victims to seek access to remedy, the current draft is still in need of improvement. The current draft does not advance access to remedy in terms of removing many of the structural barriers that have been identified by the European Union Agency for Fundamental Rights, the Council of Europe, OHCHR and the Working Group itself, where barriers including issues of burden of proof, statutes of limitations, collective redress, and other procedural barriers create real barriers to access to an effective remedy.

Thank you again for this opportunity.