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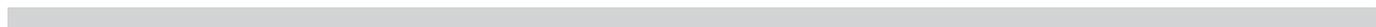
Agenda for Action on Business and Human Rights

Outcome Paper of the Business and Human Rights Conference organized by Finland's
Presidency of the Council of the European Union

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FINNISH
GOVERNMENT



I – INTRODUCTION

1. In 2015, the United Nations adopted the Agenda 2030 and the Sustainable Development Goals (SDGs). The Agenda 2030 is grounded in the Universal Declaration of Human Rights, international human rights treaties, and other human rights instruments. The Agenda 2030 emphasizes the critical role that human rights play in the achievement of sustainable development in all its three dimensions – economic, social and environmental. The ILO Centenary Declaration for the Future of Work adopted in June 2019 affirmed that the diverse forms of work arrangements, production and business models that are emerging should leverage opportunities for social and economic progress and provide for decent work, in line with the ILO core labour standards.
2. It is widely recognised that the role of the private sector is central in reaching the SDGs. This is also acknowledged by the European Commission’s Reflection Paper on Agenda 2030 and the Commission’s Action Plan on Financing Sustainable Growth. Solutions, goods and services provided and produced by companies will be essential in efforts to resolve our common and burgeoning challenges such as climate change and violations of human rights, including labour rights. The new Commission President aims to strengthen Europe’s unique brand of responsible global leadership and she is committed to the highest standards of climate (European Green Deal), environmental and labour protection, with a zero-tolerance policy on child labour.
3. The positive contribution of enterprises to help to achieve the SDGs can only be fully realised if all companies fulfil their responsibility to respect human rights across their operations and global value chains in line with the UN Guiding Principles on Business and Human Rights (UNGPs). By systematically addressing the most severe risks to people connected to their business, enterprises can have a transformative effect on enhancing equality and human dignity. UNGPs were endorsed unanimously by the UN Human Rights Council in 2011 and the EU has been strongly committed to the UNGPs since their adoption.
4. There has already been important efforts to implement and promote the UNGPs, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and other relevant instruments on business and human rights by Member States and the EU institutions, which are widely appreciated. However, more needs to be done in order to maximise the role businesses can play in respecting human rights and promoting sustainable development. A more strategic, coherent and integrated EU approach is called for.
5. This outcome document is our proposal for an Agenda for Action on Business and Human Rights for the EU, it is issued on behalf and under the responsibility of the hosts of the Conference. It is intended to reflect the main points that emerged during the Conference and we hope that participants and different stakeholders will support the content.

II – ACTION POINTS

Developing an EU Action Plan on Business and Human Rights

6. The European Commission, the European External Action Service (EEAS) and the Council of the EU, should put in place a Joint Action Plan on Business and Human Rights in order to facilitate more strategic, comprehensive and effective EU action. It is important that the Plan will be developed through a transparent and inclusive process involving consultation with all key stakeholders, including business, trade unions and civil society. The Action Plan should be based on the state duty to protect, the responsibility of business to respect human rights and the need for access to effective remedy, as set out in the UNGPs.
7. This Plan should be a joint effort by the EU Institutions and Member States, based on an agreed division of labour. It would set out a clear set of proposals for EU institutions and Member States to support, enable, incentivise and require business respect for human rights. The Action Plan should be updated periodically and be flexible in nature.
8. Action-oriented, time-bound commitments and activities should be an important part of the Plan. It should also establish an appropriate mechanism at EU level to coordinate and monitor action and define the role of stakeholders in evaluating progress.
9. The Plan should include appropriate gender-responsive measures throughout the action points and commitments contained in it. The particular circumstances, challenges and opportunities of SMEs should also be taken into account.
10. In implementing the Plan, EU Institutions and Member States should deepen their engagement and cooperation with international organisations, in particular, the UN, ILO, OECD and International Financial Institutions. Areas of potential cooperation include normative developments, voluntary initiatives and technical cooperation.
11. The Plan could include, among others, the topics and measures outlined in this Agenda for Action.

Advancing Human Rights Due Diligence through a Mix of Measures

12. There is a need for a review of the available evidence of the effectiveness of different voluntary and mandatory measures on responsible business conduct at the level of Member States and the EU, including evidence of current EU due diligence practices. Such a review should be used to provide information for legislative measures.
13. The fragmented landscape of (existing and envisaged) regulatory measures governing responsible management of supply chains and due diligence has led to the need for further EU-wide initiatives, including regulation on mandatory human rights due diligence.
14. Proposals for possible measures at EU-level should be aimed at improving human rights outcomes, be developed in full consultation with all key stakeholders, and be guided by the need to enhance the predictability and legal certainty for business, and promote a level playing field, both within the EU and in global markets.
15. In order to support companies in exercising human rights due diligence the Plan should launch a review of lessons from Member States that have developed or facilitated multi-stakeholder initiatives to advance due diligence on a sectoral or commodity basis. Possible new initiatives should build on these experiences.

16. In order to support businesses, new initiatives should include providing issue and/or country-specific capacity building and guidance. These initiatives should be elaborated and delivered, in close cooperation with key stakeholders and communities, including groups in a vulnerable position such as children, to ensure they address real areas of need and take advantage of existing resources.
17. Member States and Commission/EEAS could consider piloting a system of peer reviews for assessing the effectiveness of implementation of Member States' National Action Plans (NAPs) on the UNGPs. As about half of the EU Member States have published their NAPs, this process would also support the elaboration of NAPs by the Member States that have not yet done so. An EU peer review process could also support conducting a more rigorous review of NAPs at the UN level. In addition, the Plan could also include support to the development of NAPs on the UNGPs in third countries, including support for the evaluation of their effectiveness and sharing of the lessons learned.

Integrating Human Rights Due Diligence through State Financing and Public Procurement

18. The Action Plan should launch a review of national experiences in integrating the UNGPs into Member States' export credit, development finance and other forms of public financial support in order to identify lessons and disseminate them. Member States and the EU institutions, including the European Investment Bank could build on this experience in incorporating UNGPs into their public financing instruments.
19. The Plan should launch a review of how widely and systematically human rights are taken into consideration in public procurement procedures by Member States. Based on this review, Member States and the Commission could take appropriate action in order to ensure that public procurement practices are helping to incentivise businesses to meet their responsibility to respect human rights.

Improving Human Rights Outcomes Through Development Cooperation, Trade and Collective Initiatives Involving the Private Sector

20. The Action Plan should launch an identification of leading examples of cooperation programs involving states, international organizations, civil society, trade unions and the private sector that are implemented in third countries with the aim of addressing business-related human rights risks. Appropriate funding should be provided for stepping up such cooperation, recognizing that all actors thrive in an open and enabling environment based on participation, transparency and accountability.
21. The Plan should stress the importance of support for the ratification and effective implementation of the core international human rights instruments and ILO labour standards through development, trade and other forms of cooperation. The Plan should include support for the implementation of the Trade and Sustainable Development (TSD) provisions (with respect to human rights, including labour rights) and responsible business conduct included in the EU's trade agreements and in line with the European Commission's 15-point Action Plan. EU Institutions and Member States could explore possibilities for further cooperation, including joint programs, in order to pool resources and enhance impact on the ground for affected stakeholders.
22. The Plan should aim to further improving the monitoring of the implementation of the TSD provisions and their effect on the ground. The possibilities for introducing a more streamlined complaint mechanism with clear timelines and procedures on how non-state actors could raise their concerns within the current dialogue, consultation and dispute settlement process provided for in the TSD chapters of EU Free Trade Agreements should be explored.

23. Human rights defenders can have a key role in advocacy on the state duty to protect, the corporate responsibility to respect and the need for access to effective remedy and in enabling private sector actors to understand the concerns of affected stakeholders, including in fragile contexts. Building on the EU's broader commitments to protect and promote the work of human rights defenders, stakeholders should be consulted on where increased financial, political and moral support can be provided to human rights defenders working to address adverse business-related human rights impacts. In this context, specific risks and challenges facing women, and indigenous peoples as well as environmental human rights defenders should be considered.
24. As part of the implementation of the Action Plan synergies should be enhanced between relevant EU technical working groups such as the Expert Group of Trade and Sustainable Development and the National Contact Points for the OECD Guidelines for Multinational Enterprises. Establishment of an expert group on business and human rights and/or the revival of the high-level group on CSR or similar, could be considered with a clear mandate to work on the implementation of the UNGPs.

Access to Judicial and Non-Judicial Remedy

25. Access to remedy – the third pillar of the UNGPs – underpins both the state duty to protect human rights and the corporate responsibility to respect human rights. It is essential for meaningful progress towards full implementation of the UNGPs. The EU has measures in place to ensure access to justice for victims, which under certain conditions, also benefit victims of corporate abuses in third countries, such as the Brussels I (recast) Regulation on jurisdiction and recognition and enforcement of judgements in civil and commercial matters, and the Rome II Regulation on the law applicable to non-contractual obligations.
26. Building on the work by the EU Fundamental Rights Agency on access to justice in cases of business-related human rights abuses, and other available studies and recommendations on enhancing access to state-based remedy with relevance to the EU, the Commission should identify proposals for addressing possible gaps in the EU legal framework. This should include identifying how access to remedy may be enhanced through broader regulation on human rights due diligence.
27. In addition, it should also be determined what practical steps are needed at EU and Member State level. These steps should strengthen procedural and substantive aspects of remedy and support to victims, with a special focus on situations which relate to more than one jurisdiction.
28. Member States and the Commission should explore how to strengthen incentives to use mediation (including through OECD's National Contact Point system) at an early stage in business and human rights disputes in order to tailor remedy to the specific circumstances of individuals and communities who are adversely impacted.
29. Member States and the Commission should promote and consider supporting the use of the Company-Union Dialogue procedure, an operational tool of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Through the procedure, the ILO facilitates neutral and meaningful dialogues of issues of mutual concern between multinational enterprises and the representatives of the workers.