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TEXTS ADOPTED

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**P8\_TA(2018)0382**

**The EU's input on a UN binding instrument on transnational corporations with respect to human rights**

**European Parliament resolution of 4 October 2018 on the EU's input to a UN Binding Instrument on transnational corporations and other business enterprises with transnational characteristics with respect to human rights (2018/2763(RSP))**

*The European Parliament,*

- having regard to Articles 2, 3, 21 and 23 of the Treaty on European Union (TEU),
- having regard to its resolution of 5 July 2016 on implementation of the 2010 recommendations of Parliament on social and environmental standards, human rights and corporate responsibility<sup>1</sup>,
- having regard to its resolution of 30 May 2018 on the Annual Report on the implementation of the Common Commercial Policy<sup>2</sup>,
- having regard to Articles 207 and 208 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the EU Strategic Framework on Human Rights and Democracy as adopted by the Foreign Affairs Council on 25 June 2012, and to the Action Plan on Human Rights and Democracy 2015-2019 adopted by the Council on 20 July 2015,
- having regard to the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in its resolution 17/4 of 16 June 2011,
- having regard to the Commission's Trade for All Strategy,
- having regard to the Commission's Sector Guides on Implementing the UNGPs<sup>3</sup>,
- having regard to the Commission staff working document of 14 July 2015 on 'Implementing the UN Guiding Principles on Business and Human Rights – State of

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<sup>1</sup> OJ C 101, 16.3.2018, p. 19.

<sup>2</sup> Texts adopted, P8\_TA(2018)0230.

<sup>3</sup> [https://ec.europa.eu/anti-trafficking/publications/european-commission-sector-guides-implementing-un-guiding-principles-business-and-hum-0\\_en](https://ec.europa.eu/anti-trafficking/publications/european-commission-sector-guides-implementing-un-guiding-principles-business-and-hum-0_en)

Play' (SWD(2015)0144),

- having regard to the opinion of the European Union Agency for Fundamental Rights (FRA) entitled 'Improving access to remedy in the area of business and human rights at the EU level'<sup>1</sup>,
- having regard to the UN Human Rights Council resolution 26/9 of 26 June 2014, whereby it decided 'to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises',
- having regard to General comment No 24 (2017) of the UN Committee on Economic, Social and Cultural Rights (CESCR) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24),
- having regard to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights<sup>2</sup>,
- having regard to the United Nations Global Compact<sup>3</sup>,
- having regard to the OECD Guidelines for Multinational Enterprises,
- having regard to the International Labour Organisation's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, revised in 2017,
- having regard to the OECD Due Diligence Guidance for the garment and footwear sector,
- having regard to the Children's Rights and Business Principles developed by UNICEF,
- having regard to the Council conclusions on Business and Human Rights adopted on 20 June 2016,
- having regard to the ISO 26000 Guidance Standard on Social Responsibility,
- having regard to the OECD Due Diligence Guidance for Responsible Business Conduct,
- having regard to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>4</sup>,
- having regard to Directive 2014/95/EU of the European Parliament and of the Council

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<sup>1</sup> [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-opinion-01-2017-business-human-rights\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdf)

<sup>2</sup> [http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23)

<sup>3</sup> <https://www.unglobalcompact.org/>

<sup>4</sup> OJ L 351, 20.12.2012, p. 1.

of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups<sup>1</sup>,

- having regard to Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying 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<sup>2</sup>,
- having regard to the Council of Europe recommendation to Member States on human rights and business, adopted on 2 March 2016,
- having regard to its resolution of 13 March 2018 on gender equality in EU trade agreements<sup>3</sup>,
- having regard to its resolution of 13 December 2017 on the Annual Report on Human Rights and Democracy in the World 2016 and the European Union’s policy on the matter<sup>4</sup>,
- having regard to its resolution of 16 November 2017 on the EU-Africa Strategy: a boost for development<sup>5</sup>,
- having regard to its resolution of 27 April 2017 on the EU flagship initiative on the garment sector<sup>6</sup>,
- having regard to its resolution of 14 February 2017 on the revision of the European Consensus on Development<sup>7</sup>,
- having regard to its resolution of 12 September 2017 on the impact of international trade and the EU’s trade policies on global value chains<sup>8</sup>,
- having regard to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market<sup>9</sup>,
- having regard to its resolution of 25 November 2010 on corporate social responsibility in international trade agreements<sup>10</sup>,
- having regard to its resolution of 14 December 2016 on the Annual Report on human rights and democracy in the world and the European Union’s policy on the matter

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<sup>1</sup> OJ L 330, 15.11.2014, p. 1.

<sup>2</sup> OJ L 130, 19.5.2017, p. 1.

<sup>3</sup> Texts adopted, P8\_TA(2018)0066.

<sup>4</sup> Texts adopted, P8\_TA(2017)0494.

<sup>5</sup> Texts adopted, P8\_TA(2017)0448.

<sup>6</sup> OJ C 298, 23.8.2018, p. 100.

<sup>7</sup> OJ C 252, 18.7.2018, p. 62.

<sup>8</sup> OJ C 337, 20.9.2018, p. 33.

<sup>9</sup> OJ L 295, 12.11.2010, p. 23.

<sup>10</sup> OJ C 99 E, 3.4.2012, p. 101.

2015<sup>1</sup> ,

- having regard to its resolution of 22 November 2016 on increasing the effectiveness of development cooperation<sup>2</sup> ,
  - having regard to its resolution of 25 October 2016 on corporate liability for serious human rights abuses in third countries<sup>3</sup> ,
  - having regard to its resolution of 5 July 2016 on the fight against trafficking in human beings in the EU’s external relations<sup>4</sup> ,
  - having regard to its resolution of 14 April 2016 on the private sector and development<sup>5</sup> ,
  - having regard to its resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union’s policy on the matter<sup>6</sup> ,
  - having regard to the study commissioned by its Subcommittee on Human Rights on ‘Implementation of the UN Guiding Principles on Business and Human Rights’<sup>7</sup> ,
  - having regard to the questions to the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, to the Commission and to the Council on the EU’s input to a UN Binding Instrument on transnational corporations and other business enterprises with transnational characteristics with respect to human rights (O-000074/2018 – B8-0402/2018, O-000075/2018 – B8-0403/2018 and O-000078/2018 – B8-0404/2018),
  - having regard to the motion for a resolution of the Committee on Development,
  - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights; whereas its actions on the international scene (including its development and trade policies) must be guided by these principles and must be consistent with the principle of Policy Coherence for Development (PCD), as enshrined in Article 208 of the Treaty of Lisbon; whereas according to Article 208 of the TFEU the principle of PCD must be respected in all EU external actions;
- B. whereas the European Union is both a normative power and an economic power; whereas, as such, it needs to position itself as a leader in the dissemination of best practice and the development of global standards;

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<sup>1</sup> OJ C 238, 6.7.2018, p. 57.

<sup>2</sup> OJ C 224, 27.6.2018, p. 36.

<sup>3</sup> OJ C 215, 19.6.2018, p. 125.

<sup>4</sup> OJ C 101, 16.3.2018, p. 47.

<sup>5</sup> OJ C 58, 15.2.2018, p. 209.

<sup>6</sup> OJ C 399, 24.11.2017, p. 151.

<sup>7</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO\\_STU\(2017\)578031\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf)

- C. whereas the implementation of Agenda 2030 implies that economic development should go hand in hand with social justice, good governance, respect for human rights, including social rights and the right to human dignity and freedom for all, as well as high labour and environmental standards; whereas sustainable development, trade and human rights can have an impact on each other and may reinforce one another;
- D. whereas human rights obligations rest primarily with States; whereas although States are not per se responsible for human rights violations by private actors, they may breach their international human rights law obligations where such violations can be attributed to them, or where they fail to take appropriate due diligence to prevent, investigate, punish and redress private actors' abuse; whereas States generally have discretion in deciding what measures to take, making use of policies, legislation, regulations and adjudication;
- E. whereas due diligence is a concept referred to in the OECD Guidelines for Multinational Enterprises<sup>1</sup>;
- F. whereas States should fulfil their human rights obligations within their territory and/or jurisdiction; whereas States should set out clearly the expectation that obligation to protect implies regulating to ensure that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, including through their subsidiaries, controlled companies and entities in their supply chain worldwide;
- G. whereas the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by consensus in the Human Rights Council, remain the authoritative framework for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and whereas the 2017 study commissioned by Parliament's Subcommittee on Human Rights and entitled 'Implementation of the UN Guiding Principles on Business and Human Rights' shows clearly that EU Member States are the most advanced in the global context in the implementation of the UNGPs, having the highest number of National Action Plans adopted or in progress;
- H. whereas the UNGPs apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure, and are grounded in the three pillars of the UN 'protect-respect-remedy' framework, namely: 1) the State's duty to protect against human rights abuses by third parties, including business; 2) the corporate responsibility to respect human rights; and 3) greater access for victims to effective remedy, both judicial and non-judicial; stresses that although the UNGPs are not legally binding, they are widely recognised and supported, and serve as the basis for policy approaches towards business and human rights internationally, as well as recognition of States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms, of the role of business enterprises as specialised organs of society performing specialised functions which are required to comply with all applicable laws and to respect human rights, and of the need for rights and obligations to be matched to appropriate and effective remedies when breached; whereas available evidence suggests that where the UNGPs are implemented, the incidence of corporate-related human rights harm is reduced;

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<sup>1</sup> <http://www.oecd.org/corporate/mne/48004323.pdf>

- I. whereas the UN Global Compact calls on corporations to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and the fight against corruption, making a commitment to those values and integrating them into their business operations on a voluntary basis;
- J. whereas corporations are one of the major players in economic globalisation, financial services and international trade, and are required to comply with all applicable laws and international treaties in force and to respect human rights; whereas these business enterprises as well as national corporations may at times cause or contribute to human rights violations or abuses and affect the rights of vulnerable groups such as minorities, indigenous people, women and children, or contribute to environmental problems; whereas they may also have an important role to play in offering positive incentives in terms of promoting human rights, democracy, environmental standards and corporate social responsibility;
- K. whereas there is an asymmetry between the rights and obligations of transnational corporations (TNCs), particularly in investment protection treaties, where investors are being granted broad rights, such as ‘fair and equitable treatment’, that are not necessarily matched by binding and enforceable obligations in terms of compliance with human rights and labour and environmental law throughout the whole supply chain;
- L. whereas the long-term positive impact on human rights of European businesses operating globally and leading by example through a non-discriminatory corporate culture is acknowledged;
- M. whereas the EU, with regard to the internal/external coherence of its policies, has played a leading role in negotiating and implementing a number of initiatives for global responsibility which go hand in hand with the promotion and respect of international standards in relation to business and human rights; whereas the EU and its Member States have also committed to a number of instruments, in particular the 2011 UNGPs and the 2016 Council of Europe recommendation on human rights and business;
- N. whereas in recent years, the EU and its Member States have started to adopt legislation to enhance corporate accountability and embed elements of Human Rights Due Diligence (HRDD) into legislation; whereas these measures are now helping to set global standards but can still be developed further, examples being the EU Conflict Minerals Regulation and the EU Non-Financial Reporting Directive (NFR), as well as the Timber Regulation (EUTR); whereas the Commission, however, has been reluctant to put forward further legislation for other sectors, such as garments, despite repeated calls from Parliament; whereas the multitude of national legislative initiatives might lead to an inefficient and unfair playing field within the EU; whereas a binding UN treaty could be a meaningful step forward in this regard;
- O. whereas victims of human rights violations in which EU businesses are involved may claim compensation before domestic courts in the EU under Regulation (EU) No 1215/2012; whereas the provisions laid down in this regulation require a stronger international framework in order to improve their efficiency with regard to the affected parties, while ensuring a level playing field between corporations domiciled in the EU and those which are not;
- P. whereas a global holistic approach to corporate liability for human rights abuses is still

lacking; whereas victims of human rights abuses involving transnational companies face multiple obstacles to accessing remedies, including judicial remedies and guarantees of non-repetition; whereas such obstacles to access to remedies constitute a further serious violation of human rights; whereas a holistic approach would provide legal certainty to both businesses and individuals, in the context of the proliferation of national due diligence initiatives;

- Q. whereas gender inequality implies that women are often particularly vulnerable to human rights violations, and face special burdens when seeking access to remedy;
  - R. whereas the 2017 opinion of the Fundamental Rights Agency (FRA) found that more could be done to ensure effective judicial and non-judicial access to remedy for business-related human rights abuses within or outside the EU, including by providing victims with more assistance in accessing courts and the possibility to file class actions, facilitating the burden of proof, and incentivising due diligence obligations for companies, including for parent companies linked to human rights performance in subsidiaries or supply chains;
  - S. whereas the EU Charter of Fundamental Rights imposes both domestic and extraterritorial obligations on States regarding their duties to provide access to judicial remedies for victims of human rights violations;
  - T. whereas a system of corporate liability for human rights abuses is currently being negotiated in the UN, within the UNHRC's open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), established by the UN General Assembly in 2014; whereas both the EU and its Member States play a role at the OEIGWG, but the Commission has no mandate from the Council to conduct negotiations on behalf of the EU concerning its participation in the OEIGWG;
1. Notes that the globalisation and increasing internationalisation of business activities and supply chains make the role that corporations play in ensuring respect for human rights more important, having already created a situation in which international norms, rules and cooperation are crucial to avoid human rights abuses in third countries;
  2. Is of the opinion that transnational corporations should refrain from financing or engaging in activities, commercial or non-commercial, that might fuel radicalism or extremism, in particular when it entails the manipulation of a religious creed, as well as from any direct or indirect support to any group promoting, advocating or justifying violence;
  3. Firmly believes that the private sector is an important partner in achieving the Sustainable Development Goals (SDGs) and in mobilising additional resources for development; stresses that, given their increasing role in development cooperation, private sector actors must align with development effectiveness principles and abide by the principles of corporate accountability throughout the whole life cycle of projects;
  4. Recalls that due diligence is a key component of the UN Guiding Principles' second pillar regarding corporate responsibility and respect for human rights; stresses that effective due diligence practices can also help strengthen access to remedy; encourages the EU and its Member States to pursue the adoption of a coherent framework

establishing mandatory human rights due diligence requirements for companies;

5. Recalls that the NAP (National Action Plan) development process, if well-designed and adjusted to the local context, can contribute not only to ensuring an efficient implementation of the UNGPs but also to the strengthening of national human rights protection mechanisms;
6. Reiterates its call for the UNGPs and other international corporate responsibility standards to be consistently raised by EU representatives in human rights dialogues with third countries;
7. Strongly supports the full implementation, within and outside the EU, of the UNGPs, as unanimously endorsed by the Council in June 2011, and calls for the EU and the Member States to elaborate and adopt ambitious and operative action plans at both EU and national level that set out clear expectations for governments and all types of business enterprises for the swift, effective and comprehensive implementation of the said principles; takes the view that the NAPs should include indicators to measure achievement; stresses also that the EU should ensure independent and regular peer review of Member States' NAPs and the progress made, particularly to facilitate access to remedy; recalls that the UNGPs can be complemented with parallel binding initiatives to cover their shortcomings;
8. Considers it regrettable that a global approach is still lacking to the way in which transnational corporations abide by human rights law and ensure other remedy mechanisms, which may contribute to TNCs' impunity for cases of human rights abuses and thus be detrimental to people's rights and dignity; regrets that the UNGPs are not embodied in enforceable instruments; recalls that the poor implementation of UNGPs, as in the case of other internationally recognised standards, has been largely attributed to their non-binding character;
9. Notes with concern that many obstacles persist regarding access to judicial remedy, particularly in case of transnational corporations, due to, for example, difficulties encountered by victims in identifying the competent court, lack of codification of certain human rights abuses in penal codes, or corruption, which can undermine legal proceedings in developing countries; recalls that appropriate non-judicial remedies are also of crucial importance, but are often lacking; calls on national governments to reinforce their efforts to ensure, through judicial, administrative, legislative or other appropriate means, that when human rights abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy;
10. Reaffirms the urgent need to act in an effective and coherent manner at all levels, including national, European and international, in order to effectively address human rights abuses by transnational corporations, to provide for access to remedies, to address legal problems resulting from the transnational character of the activities of business enterprises and TNCs and the growing complexity of global value chains and the extraterritorial dimension of transnational companies, as well as the related uncertainty as to where liability for human rights violations lies; reaffirms the need to fully implement the extraterritorial obligations of States, as set out in the Maastricht Principles and building on the various instruments of the Council of Europe, in particular the European Convention on Human Rights (ECHR); more broadly, urges the EU to take initiatives to improve access to remedy in extraterritorial cases, in line with



the recommendations set in the 2017 FRA opinion;

11. Reaffirms the primacy of human rights in international law, in accordance with Article 103 of the Charter of the United Nations, and the need to consolidate it through a clear system whereby human rights obligations effectively take precedence over other types of conflicting obligations, and provision is made for suitable mechanisms to enforce human rights law, for monitoring and for remedies, combined with appropriate penalties and compensation in the event of violations; insists that this is essential for overcoming globalisation imbalances and putting people's rights and the planet first; stresses that coordination and the exchange of information and good practices will contribute positively to initiatives taken by businesses which have decided to respect human rights and social and environmental standards;
12. Stresses that corporate social responsibility on a voluntary basis risks creating unfair competition for those who choose to comply with international standards; stresses that it is not sufficient for ensuring, in connection with the implementation of the duty of care, full conformity with international standards and obligations;
13. Warmly welcomes in this context the work initiated in the United Nations through the OEIGWG to create a binding UN instrument on transnational corporations and other business enterprises with respect to human rights, and considers this to be a necessary step forward in the promotion and protection of human rights;
14. Stresses that the binding treaty should build on the UNGP's framework and encompass: the definition of mandatory due diligence obligations for TNCs and other business enterprises, including with respect to their subsidiaries, the recognition of the extraterritorial human rights obligations of States, the recognition of corporate criminal liability, mechanisms for coordination and cooperation among states on investigation, prosecution and enforcement of cross-border cases, and the setting-up of international judicial and non-judicial mechanisms for supervision and enforcement; is of the opinion that the new instrument should impose on States the obligation to adopt regulatory measures requiring companies to apply human rights due diligence policies and procedures, and proposes that this obligation should be enforced by means of companies being accountable in either the forum where the harm was caused, or the forum where the parent company is incorporated or where it has a substantial presence;
15. Calls on the UN member states to protect the negotiations from commercial and other vested interests, following the example of the World Health Organization (WHO) and Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC), including strong ethical rules to prevent conflicts of interest and unethical lobbying, and requiring full transparency regarding industry interactions with parties to the negotiations;
16. Recalls the need to adopt a gender-sensitive approach throughout the process and to pay special attention to vulnerable groups such as indigenous people and children;
17. Recalls that Parliament has voiced its unequivocal support for this multilateral OEIGWG process in eight different resolutions;
18. Stresses the importance of the EU and its Member States being actively involved in this intergovernmental process through the creation of a working group including all the

relevant departments of the Commission, the EEAS, the Council Working Group on Human Rights (COHOM) and the relevant committees of Parliament, on the basis of the principle of PCD;

19. Reiterates once more its call for the EU and its Member States to engage genuinely and constructively in these negotiations and in the intergovernmental process aimed at the completion of the OEIGWG's mandate; highlights the paramount importance of the EU constructively contributing to the achievement of a Binding Treaty which will effectively address the issue of corporate liability for human rights violations and related challenges;
20. Calls on the UN member states to ensure that the negotiations leading to the treaty are conducted in a transparent fashion, with consultation of a broad range of rights-holders potentially impacted by the treaty, including civil society organisations and victim platforms; calls on the EU and its Member States to mainstream a meaningful gender approach in their negotiating position;
21. Calls for the EU to ensure that any revision or future strategy document linked to the EU Strategic Framework and Action Plan on Human Rights and Democracy includes clear objectives and measurable benchmarks for the EU's participation in the UN treaty negotiations;
22. Decides to continue to closely follow the OEIGWG negotiation process;
23. Instructs its President to forward this resolution to the Council, the Commission and the European External Action Service.