Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

2\textsuperscript{nd} session (24-28 October 2016)

Opening remarks by the European Union

Geneva, 24 October 2016

- CHECK AGAINST DELIVERY -
Madam Chairperson-Rapporteur,

The European Union would like first to congratulate you on your election today, and we would like to thank the speakers in the opening statements. We would like to thank the Secretariat for its work in preparation of this second session.

Business and Human Rights continues to be very high on the European Union's agenda. The Council Conclusions of 20 June 2016 are a testimony of the renewed commitment of the European Union and all its Member States with clear directions of work to implement the UN Guiding Principles on Business and Human Rights as we mark the 5th anniversary of their adoption by consensus in the Human Rights Council*. As we mark this anniversary, we were also pleased to witness and support consensus on the resolution 32/10 by the core group (Argentina, Ghana, Norway, the Russian Federation) on "Business and Human Rights: improving accountability and access to remedy", a remarkable progress since resolution 26/22. Following-up on the solid High Commissioner's report [A/HRC/32/19 and Add.1] and the OHCHR-led Accountability and Remedy Project, resolution 32/10 sends the needed signal and commitment from all States that effective and pragmatic steps can be taken without delay to ensure accountability and access to remedy. We owe it to the victims. We owe it to human rights defenders active in this sensitive area.

The European Union has constantly argued that we need consensus to progress in the area of Business and Human Rights. While we deeply regretted that resolution 26/9 undermined this consensus, we spared no effort over the past two years to engage with the sponsors of this resolution, States from across regions and civil society to explore ways to address our concerns. While we left the room of the first session due to the lack of agreement on the Program of Work, we are pleased that, at the last hour, agreement was found on the Program of Work for the second session allowing us to participate. We appreciate the efforts of the Chairperson-Rapporteur and the Mission of Ecuador as well as the flexibility of all sides to allow this compromise.

The Program of Work provides the reassurance that this process does not undermine the much needed continued implementation of the UN Guiding Principles. This assurance is vital as, on several occasions over the past period, we were under the impression that references to the UN Guiding Principles were challenged in important negotiations. We are especially pleased that the Program of Work widens the scope of the Intergovernmental Working Group beyond transnational corporations so that the discussion can also cover all other enterprises. It is indeed the view of many, including States, national human rights institutions, civil society that the discussion cannot be limited to transnational corporations as many abuses are committed by enterprises at the domestic level. It is also a fact that, in today's globalized world, there are complex business networks and many different modes of operation between transnational corporations and a vast number of other enterprises operating at the domestic level.

Civil society organisations and human rights defenders worldwide are mobilized to remind the international community that more remains to be done to prevent abuses in connection with activities by transnational corporations and other enterprises, and to enable access to remedy when abuses occur. We are fully aware of these calls and want to ensure that the international community responds in a responsible and effective manner – this is consistent with our concerns when this Intergovernmental Working Group was established instead of considering other options, including the use of existing UN fora. In this context, we should all be guided by the wider discussions on the efficiency and effectiveness of the Human Rights Council. It is also of upmost importance to ensure that all relevant stakeholders, including NGOs, trade unions and the business community, are given a chance to contribute their views and expertise.
As discussion on possible further legal developments begins, we would like to reiterate that we do not currently operate in a legal vacuum. It is enough to quote the first UN Guiding Principle as an illustration of existing obligations: "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication". During upcoming discussions, the motto should continue to be: implementation, implementation and implementation. We stand ready, including during this session, to share our experience in the development of a smart mix of voluntary and regulatory measures, and to continue to cooperate with States and stakeholders from across regions. At the national level, the EU Member States have taken a clear commitment, and are at the forefront as regards the elaboration and publication of National Action Plans.

As discussion on possible further legal developments continues we would like to conclude with a quote from the architect of the UN Guiding Principles, Prof. John Ruggie, former Secretary-General’s Special Representative for Business and Human Rights: "Let there be no misunderstanding: this debate is not about legalization as such. Nor is it about the tired dichotomy between voluntary and mandatory measures. Treaties, after all, are voluntary in that no state can be forced to adopt one, while the Guiding Principles, which are typically described as being voluntary, embody existing mandatory requirements and have given rise to new ones. The debate instead is about carefully weighing the extent to which different forms of legalization are capable of yielding practical results where it matters most: in the daily lives of people around the world—and in the here and now, not some far-off idealized state of being. From the vantage of victims, an all-encompassing business and human rights treaty negotiation is not only a bad idea; it is a profound deception. In contrast, international legal instruments as precision tools, reinforcing and building upon foundations that have been painstakingly established, offer far greater promise."

This is food for thought for future discussions. The European Union recalls the global consensus reached on the UN Guiding Principles five years ago and stresses that any possible further steps regarding the international legal framework for business and human rights at UN level must be inclusive, firmly rooted in the UN Guiding Principles and address all types of companies. We look forward to meaningful discussions with all relevant stakeholders, including NGOs, trade unions and the business community.

I thank you Madam Chairperson-Rapporteur