

Brussels, 20 November 2017

To:

Commissioner Věra Jourová, Justice, Consumer and Gender Equality, European Commission

Ms Renate Nikolay, Head of Cabinet

Mr Daniel Braun, Deputy Head of Cabinet

Subject: Seizing the opportunity to uphold human rights in the context of business operations

Dear Ms Jourová,

The EU took a leading role when endorsing the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, and committing to work towards their implementation. Access to remedy is a core pillar of the Principles but it has so far received insufficient attention by Member States and the EU. Meanwhile, victims of human rights abuses linked to global business operations face major obstacles when they seek justice. This represents a pivotal challenge to the promotion and protection of fundamental rights, which lies at the centre of the EU values.

As acknowledged by the EU Fundamental Rights Agency,ⁱ victims of human rights abuses involving European companies face **multiple legal, procedural and practical obstacles to access judicial remedies**. These include difficulties on admissibility; high costs associated with judicial procedures; restrictive procedural rules related to the disclosure of evidence in civil litigation and the absence of clear liability standards for parent companies. While some barriers concern the judicial or legal systems of Member States, others arise from EU legislation or are difficult to address at the Member State level due to the need for a harmonized approach in the EU.

European institutions, including the European Parliament, the Fundamental Rights Agency and the Council of Europe, as well as international bodiesⁱⁱ, have placed emphasis on the need to remove the aforementioned obstacles. These institutions have considered **developing human rights due diligence legislation** and **collective redress** as important avenues in this respect.

Embedding human rights due diligence into a corporate duty of care

A number of national legal initiatives in the past few years have paved the way towards greater corporate responsibility and accountability. **France** adopted the “duty of vigilance” law in 2017, a landmark legislation that requires large companies to identify and prevent negative human rights and environmental impacts throughout their operations. **The Netherlands** is in the process of adopting a Child Labour law which will require companies to take steps to prevent child labour in their global supply chains. **Switzerland** is expecting a referendum on a Responsible Business Initiative that would create a duty of care for companies based on human rights due diligence obligations. Other countries such as **Germany** have also foreseen the possibility to legislate on human rights due diligence as part of their Action Plans to implement the UNGPs.

These developments are unequivocal signals that the process of creating clearer obligations for parent companies to prevent adverse human rights impacts in their supply chains is already in motion. **The time is ripe for the Commission to lead and present a legislative proposal** that levels the playing field for all companies operating in different Member States.

Making collective redress reforms work towards the realisation of a fundamental right to effective remedy

The activities of multinational companies affect the life of communities and individuals worldwide. Very frequently, victims of companies' adverse impacts belong to impoverished communities or vulnerable groups. Yet even average citizens suffer notable power imbalances when facing business misbehaviour. Collective redress can make an essential difference in terms of access to legal remedies when a company's misconduct affects many people in a similar way, as it counterbalances the powerlessness of individual claimants by allowing them to join forces and bring resources together.

We welcome the fact that the Commission is looking into introducing EU-wide civil remedies for consumers harmed by unfair or illegal commercial practices, as part of its 'New Deal for consumers' expected for 2018. Nonetheless, as the *Dieseltgate* textbook case shows, the implications of companies' behaviour go beyond its impacts on consumers. The European Environment Agency concluded in a recently published report that near 400.000 EU citizens died prematurely in 2014 because of high levels of particulate matter in the air.ⁱⁱⁱ

A collective redress mechanism can provide effective access to justice and compensation for victims and create an incentive for greater diligence. We encourage the Commission to take decisive action and include **the protection of Fundamental Rights** in the scope of a future collective redress mechanism as suggested by the EU Fundamental Rights Agency^{iv}. This can be achieved by returning to the "rights granted under EU law" approach laid down in its 2013 Recommendation on Collective Redress. Only such a horizontal approach can effectively guarantee effective enforcement of EU law and ensure fair competition for responsible companies in the EU Single Market.

The documents attached show the momentum to implement reforms in the right direction. We encourage the Commission to seize the promising opportunities that lie ahead and take decisive action to balance the equation in favour of victims of negative corporate impacts. We hope and trust that you will take our recommendations into consideration and we look forward to continuing our discussions.

Yours sincerely,



Jerome Chaplier,
Coordinator,
European Coalition for Corporate Justice (ECCJ)

With 21 member groups, representing over 250 organisations from 15 countries, the **European Coalition for Corporate Justice (ECCJ)** is the only European coalition bringing together European campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote corporate accountability.

ANNEX: Recent calls and commitments to address gaps in the protection of human rights from negative business impact

European developments:

- [Council Conclusions on Global Value Chains](#) (2016) call on the European Commission (EC) and Member States to enhance the implementation of due diligence in order to achieve a global level playing field.
- [Council Conclusions on Business and Human Rights](#) (2016) call on the EC to launch a EU Action Plan on Responsible Business Conduct addressing due diligence and access to remedy, including at EU legislative level, as appropriate; they endorse the 2016 Council of Europe Recommendations and call for their implementation.
- [European Parliament report on corporate liability for serious human rights abuses in third countries](#) (2016) calls on the EU and Member States to take note of existing developments towards mandatory human rights due diligence; it asks for urgent binding and enforceable rules, related sanctions and monitoring mechanisms.
- [European Parliament report on EU Flagship initiative for the garment sector](#) (2017) calls on the EC to propose binding legislation on due diligence obligations for supply chain.
- [European Parliament report on Global Value Chains](#) (2017) stresses that the EU should swiftly consider developing binding and enforceable rules, remedies and monitoring mechanisms; it reiterates its call for the EU and Member States to tackle obstacles to access to justice.
- [Council of Europe Recommendations](#) (2016) include a number of measures to secure victims of business-related human rights abuses access to court and proper remedies, even when the company is not domiciled within the courts' State jurisdiction, as well as collective redress.
- [Fundamental Rights Agency Opinion on Access to Remedy](#) (2017) recognizes the need to lowering barriers to access to justice for victims of business-related human rights abuses; it explores a set of recommendations, including collective redress, facilitating the burden of proof, or the revision of the EU Rome II regulation among others.

National developments:

- [France "duty of vigilance" law](#) (February 2017) obliges large companies to carry out a vigilance plan to identify and prevent risks associated with their activities, throughout their supply chains. Liability would apply when companies default on their obligations, including the presence of faults in the plan and its implementation, or the absence of a plan.
- [Transparency in Supply Chains Clause of the UK Modern Slavery Act](#) (2015) requires companies domiciled or conducting business in UK, exceeding certain annual turnover, to report on their measures to prevent slavery or human trafficking from taking place in their supply chains.
- [The Netherlands Child Labour Due Diligence Law](#) (ongoing process) requires companies to report on and carry out due diligence to ascertain whether child labour is present in their supply chains and to draw up an action plan to eradicate it, when necessary. It provides for third party complaints and prison sentence for company directors in cases of ongoing non-compliance.
- [Switzerland will hold for a referendum on mandatory Human Rights Due Diligence legislation](#), supported by over 120.000 signatures. The bill would introduce a duty of care for companies based on Human Rights Due Diligence obligations.
- Twelve Member States have adopted [National Action Plan on Business and Human Rights](#) (NAPs): The United Kingdom, The Netherlands, Denmark, Finland, Sweden, Lithuania, Italy, Germany, France, Poland, Spain and Belgium. Switzerland and Norway have also adopted NAPs. Other states have drafts (Greece, Ireland, Scotland, Slovenia, Czech Republic and Portugal).
- [German NAP](#) (2017) includes a Government commitment to consider legislative measures if fewer than half of major German companies adopt Human Rights Due Diligence processes by 2020.
- [Italian NAP](#) (2016) sets the Government commitment to look into enhancing enforcement of laws requiring corporate respect of human rights. The review will assess if legislative reforms could introduce provisions on duty of care or due diligence for companies.

- [Eight Member State Parliaments](#) (France, UK, Italy, Estonia, Lithuania, Slovakia, Portugal, the Netherlands) have launched a **Green Card Initiative** (July 2016) asking the European Commission to initiate a legislative procedure for corporate accountability legislation at EU level.

International developments:

- [OHCHR Access to Remedy Project](#) (2016) recommended States to develop policies and legal reforms that respond to the challenges of complex global supply chains, including by assessing whether their principles for assessing civil corporate liability are properly aligned with the companies' responsibility to exercise Human Rights Due Diligence, and to tackle obstacles to access justice, by means of enabling collective redress among other mechanisms.
- [UN Committee on Economic, Social and Cultural Rights General Comment 24](#) (2017) confirmed that States have the duty to establish human rights due diligence obligations for companies, and to remove barriers to access to remedies, including by establishing corporate liability regimes and enabling human-rights related class actions and public interest litigation, among others.
- [UN Working Group on BHR, in its Recommendation to the G20](#) in 2017, recalled that regulation provides one means to drive business respect for human rights, including throughout supply chains, often by means of human rights due diligence and related reporting requirement, and acknowledged the importance of the French duty of vigilance law and the UK Modern Slavery Act as a trend towards human rights due diligence requirements.
- [Sustainable Development Goals \(SDGs\)](#): the private sector has been recognized as providing a major contribution to the realization of the SDGs. John Ruggie, author of the UN Guiding Principles on Business and Human Rights, expressed in an [open letter](#) that "*companies' social development initiatives cannot substitute for measures to address the negative human rights impacts their operations and relationships may have*".
- [UN Treaty on Business and Human Rights](#): the third session of the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises, taking place in Geneva in October 2017, focused on possible contents of the Treaty, including mandatory human rights due diligence and improving access to justice for victims.
- **OECD** is working on a [general guidance for responsible business conduct](#) to implement the due diligence recommendations of the OECD Guidelines for Multinational Enterprises.

Support from business community:

- Dutch companies signed an [open letter](#) supporting the Dutch Child due diligence Bill (2017).
- Senior corporate executives, in a [global survey by the Economist](#), have ranked "make human rights due diligence a legal requirement" in the top 3 out of 10 measures to enable companies to fulfil their responsibility to respect human rights.

ⁱ European Union Agency for Fundamental Rights, "Improving access to remedy in the area of business and human rights at the EU level", FRA-Opinion 1/2017 [BHR], 10 April 2017.

ⁱⁱ *European Parliament Report on "Corporate liability for serious human rights abuses in third countries"* (2016); the *EU Council Conclusions on Business and Human Rights* (2016); the *EU Council Conclusions on Global Value Chains* (2016); the *Report of the UN Office of the High Commissioner for Human Rights on improving accountability and access to remedy* (2016); the *Council of Europe Recommendations on Human Rights and Business* (March 2016); European Union Agency for Fundamental Rights, *Opinion 1/2017*, op. cit.

ⁱⁱⁱ <https://www.eea.europa.eu/publications/air-quality-in-europe-2017> <https://www.politico.eu/article/air-pollution-linked-to-nearly-400000-premature-deaths/>

^{iv} European Union Agency for Fundamental Rights, "Improving access to remedy in the area of business and human rights at the EU level", op. Cit. Opinion 2.