Open-ended intergovernmental working group on transnational corporations
and other business enterprises with respect to human rights
5th session (14-18 October 2019)

Opening remarks by the European Union

Geneva, 14 October 2019
Dear Chairperson-Rapporteur,

The EU and Member States congratulate you on your appointment, on your commitment and investment.

The EU acknowledges the urgent need to strengthen prevention and mitigation of adverse human rights impacts related to business activities and to provide access to effective remediation. The added value of any possible legally binding instrument should be to enhance the protection of and respect for human rights as well as to ensure a level playing field for companies globally. Any instrument needs to be fit for purpose and to be able to be effectively implemented and enforced. It is also important for it to enjoy strong cross-regional support from both developing and developed countries.

The UN Guiding Principles on Business and Human Rights provide the authoritative framework for immediate practical action around the world and policy coherence for Governments on this important and pressing agenda of protecting human rights in the business “environment”. We recognise that the UNGPs are widely supported in this context.

We would like to thank the Chair-Rapporteur for presenting a revised draft instrument on 16 July this year and for addressing some of the concerns expressed by the EU and its member states as well as many other delegations.
While our in-depth analysis is still ongoing, we already noted that the text still raises a considerable number of questions. For example, in the scope (article 3), there is no clear definition of "all human rights" to which the draft treaty would apply, with otherwise there being only a reference made to them in the preamble.

A number of elements also seem absent from the draft treaty: for instance, non-judicial remedies by businesses, compensations are not adequately addressed and there is no data protection provision. In addition, a number of elements need much greater clarifications such as the provisions in Article 12 on Consistency with International Law. Also the way in which the state duty to protect human rights is and should be addressed merits further discussion.

The new draft appears to address a key EU concern about the scope of the Instrument, given that the scope is no longer limited to transnational corporations and activities. However, there is a need for greater clarification on the definition of the scope. The treaty should not distinguish between transnational corporations and other business enterprises.

As to another of the EU's key concerns, the consistency with and complementarity to the UN Guiding Principles on Business and Human Rights, the EU notes that the preamble now mentions the role played by the Guiding Principles and paraphrases parts thereof, and the due diligence requirements set out in article 5 also appear to be better targeted and more in line with the UNGPs. However, there is still scope for the text to be more closely aligned with the UNGPs.

While in some respects the document is thus an improvement, further in-depth analysis is needed before a solid conclusion can be drawn as to whether we see it as a workable basis for a legally sound, implementable and enforceable instrument. An important element of this analysis will be the compatibility with other treaties to which the instrument relates.

Mr. Chairperson-Rapporteur,

We believe the added value of any possible legally binding instrument should be to enhance the protection of and respect for human rights, to ensure victim’s access to effective remedy when violations occur as well as to ensure a level playing field for companies globally. It is also important to ensure policy coherence and avoid any duplication of efforts. Therefore, it is essential for any proposal to reach the necessary traction amongst UN member states. It is clear that a
number of States are not in the room, and that others are not ready to engage in negotiations in the current format or on the basis of the current draft.

We encourage engagement with a wide range of stakeholders - including civil society, trade unions and business - which should be enabled to participate in the negotiation process to ensure that any proposal is implemented effectively.

For the EU to be in a position to engage in these negotiations a formal negotiation mandate is required by Union law. Given that the next European Commission takes office in November, and as we don’t have such mandate, the EU has to reserve its position on the draft legally binding instrument presented in this session and request that this reservation be reflected on Friday when the report of the session will be adopted. This being said, we look forward to hearing the positions expressed by all and we will – whenever necessary – ask for clarifications during this week's discussions.

In closing, the EU is committed to building on our solid body of legislation and policies and to working with all States and stakeholders to make genuine progress on the Business and Human Rights agenda. I sincerely expect that this will be high on the agenda of the European Commission, including the new Commission as you have learned in the hearings in the European Parliament. We are committed to continuing to engage at the UN level to consider the best way to ensure that any further legal development addresses the real and urgent need to identify, prevent and mitigate adverse human rights impacts and to ensure victim’s access to remedy when violations occur. We are committed to a meaningful and tangible progress on Business and Human Rights, and this agenda is connected to other global issues: trade, investment, environment, social and labour protection, tax evasion, corruption, and sustainable development more broadly.

I thank you Mr. Chairperson-Rapporteur