Shaping the EU's position on the UN binding instrument on business and human rights, in particular on access to remedy and the protection of victims

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The European Parliament adopted by 426 votes to 43, with 86 abstentions, a resolution on shaping the EU’ s position on the UN binding instrument on business and human rights, in particular on access to remedy and the protection of victims.

The UN Human Rights Council (UNHRC) adopted a resolution on 26 June 2014 establishing an open-ended intergovernmental working group (OEIGWG) to develop an international legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The OEIGWG, which has been chaired by Ecuador since its inception, has, to date, held nine sessions and a number of regional and other consultations with stakeholders, including from civil society and the private sector. In July 2023, the Chair circulated an updated draft of the instrument ahead of the OEIGWG’s ninth session scheduled for 23-27 October 2023.

The EU has been working on ambitious legislation regarding corporate due diligence, among other kinds of legislation, which would serve as a basis for its negotiating mandate. In the absence of a negotiating mandate, the EU representative only participated in the OEIGWG’s sessions as an observer and only contributed general statements.

Parliament has repeatedly expressed its support for the UN discussions on the LBI, including by adopting a number of resolutions calling for the EU and the Member States to engage constructively in the negotiations.

General comments and the international framework on business and human rights

The resolution stressed that the overall level of enjoyment of human rights worldwide is contingent, among other things, on the behaviour of corporations, given the current scale of globalisation and the internationalisation of business activities and value chains. It emphasised, in this context, the importance for business enterprises to be able to rely on good public governance and a comprehensive and well-functioning legal system and framework in order to fulfil their human rights obligations.

Parliament strongly supports the full implementation, within and outside the EU, of the international standards on responsible business conduct to complement and strengthen the implementation of the UN Guiding Principles (UNGPs). It stressed that since corporate social responsibility is solely on a voluntary basis and is therefore not embodied in enforceable instruments, it risks creating market distortions and unfair competition for the enterprises that choose to comply with international standards or that are subject to national or regional obligations. While some progress has been achieved, human rights violations continue to occur. It welcomes therefore,

efforts to create a level playing field and the pursuit of a globally supported commitment to responsible business conduct.

Parliament underlines the importance of **closing the legal and regulatory loopholes** which are being exploited by some business enterprises, including investors, **at the cost of human rights** and the environment. Moreover, it highlighted, in particular, the need to define clear obligations for transnational corporations in relation to **eradicating child labour and forced labour** from their supply chains and operations.

EU and Member States' engagement with the UN process

Parliament recalled that the EU has a Treaty-based commitment to promote human rights worldwide and multilateral solutions within the UN to common problems, which has yet to be reflected in its participation in the OEIGWG with a negotiating mandate.

Acknowledging the OEIGWG as the only global and multilateral forum where mandatory rules on business and human rights are being discussed, Parliament considered it **crucial for the EU to actively engage in this process**, alongside a critical mass of UN members, in order to reach a consensus-based outcome that can rely on broad support globally. It also believes that the EU should actively engage in the **ongoing negotiations**, in particular to further develop the draft LBI.

The Council is urged to adopt an **ambitious mandate for negotiations** as soon as possible so that the EU is able to actively participate in the negotiations with a view to shaping the future LBI.

Parliament called on the Member States, in the meantime, to engage in the process individually while coordinating their positions throughout the negotiations, so as to defend a strong, common and clear EU position, presenting in a constructive manner the legislative initiatives aimed at regulating business activities in relation to human rights and climate-related obligations, while showing appreciation for the progress made to date. It expects the European External Action Service (EEAS) and the Commission, in particular the EU Delegation to the UN in Geneva, to play a proactive and constructive role in this process.

Elements for an EU position on the LBI

Parliament welcomed the updated draft LBI, published in July 2023, and considered that it offers a solid and promising basis for advancing negotiations, while also recognising the need for improvement and alignment with the UNGPs, the OECD Guidelines and other current international standards. It believes that the EU should strive for an LBI that is compatible with and complementary to the ongoing normative developments at EU level, and thus contributes to creating a more **coherent global legal framework** on business and human rights. It supports a broad scope for the LBI that would ensure that responsibility applies **throughout the global value chains**.

The resolution stressed that the LBI should provide for an ambitious, comprehensive, responsive and compulsory framework for the prevention of human rights abuses by corporations, in particular by establishing the obligation for states parties to adopt appropriate and effective legislative, regulatory and other measures to prevent corporate abuse and to ensure the practice of environmental due diligence and respect of human rights by all business enterprises.

Parliament called for the EU and the Member States to ensure, in line with the provisions under the UNGPs, that the LBI prevention framework obliges corporate actors to conduct **enhanced due diligence** when operating in areas where the risk of **gross human rights violations is heightened**, such as conflict-affected areas or territories under occupation or annexation, including by adding references to international humanitarian law, international criminal law and customary international law in the scope of the LBI.

Parliament expects the EU and the Member States to promote robust provisions on access to justice, including access to state-based judicial remedy, within the LBI, in line with their commitment to protecting victims, fighting impunity and upholding the UNGPs.

The proposal for the establishment of an international fund for victims under the LBI that would provide legal and financial aid to victims seeking access to remedies has been welcomed.

Lastly, Parliament called on the Commission to step up its financial and technical support to national authorities in non-EU countries concerning business and human rights.