



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND  
www.ohchr.org • TEL: +41 22 928 9355 • FAX: +41 22 928 9010 • E-MAIL: wg-business@ohchr.org - registry@ohchr.org

**Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

REFERENCE: PJS/AG/RH/ff

8 February 2013

**Subject: Commentary on the European Commission's work on sectoral guidance to business based on the UN Guiding Principles on Business and Human Rights**

Submitted by the UN Working Group on Business and Human Rights,  
February 2013

The Working Group welcomes the European Commission's project on the development of sectoral guidance for Small and Medium Enterprises (SMEs) as well as for oil and gas, telecommunications, and employment and recruitment agencies based on the Guiding Principles. The process of elaboration of these tools, based on open public consultations, as well as interviews and roundtables with experts and practitioners, business representatives, relevant industry associations, civil society, and government agencies from Europe and other regions is consistent with the approach of the Guiding Principles, and the Working Group's method of work.

The Working Group recognizes that this sectoral guidance has the potential to contribute to the global advancement of the Guiding Principles in many ways, by: making visible the types of business transactions involved in an industry and often performed by different types of companies, thereby enabling further understanding of the day-to-day risks of business involvement in human rights violations; spelling out the expectations of companies and making such expectations public, thereby increasing both collaborative efforts among actors and accountability; addressing impacts and issues potentially occurring inside as well as outside the European Union that are connected to European companies and capital; and finally, by contributing towards convergence in the global implementation of the Guiding Principles, thanks to the global reach of its consultations.

Mr. Thomas Dodd  
Policy Adviser on CSR  
Directorate General for Enterprise and Industry  
European Commission  
Directorate-General for Enterprise and Industry  
Office: B100 03/011  
B-1040 Brussels  
Belgium

Working Group members have had the opportunity to participate in several of the meetings of this project, offering recommendations on process and technical content. Alexandra Guáqueta is a member of the Expert Advisory Committee, Michael Addo and Alexandra Guáqueta participated in the 2012 Roundtables, and Margaret Jungk participated in the 2013 Roundtables. In 2012 the Working Group formally commended the European Commission's work at the EU Corporate Social Responsibility Conference in Copenhagen and reiterated the importance of consultations with States, State-owned companies and private companies, especially large players in the global energy, telecommunications, and employment markets, based outside Europe, to reduce potential fragmentation in the global implementation of the Guiding Principles.

The Working Group encourages the European Commission to plan for next steps in this work stream, with a focus on:

- Ensuring an ongoing multi-stakeholder dialogue to identify and exchange information on lessons learned on the implementation of the sectoral guidance, and sharing those lessons at the UN Annual Forum on Business and Human Rights.
- Embedding the guidance in national, regional and international industry bodies, and in EU and national level policies, programs and regulation as required. Integrating the implementation of the sectoral guidance into National Action Plans in the EU would be a concrete way to proceed at the national level.
- Developing practical approaches to measure the level of uptake of the guidance by European-based corporations. Such approaches can include, but should not be reduced to, reporting and communication.
- Identifying capacity-building opportunities for regulators inside and outside the European Union based on the sectoral guidance.
- Integrating the sectoral guidance in EU-level policies and programs related to investment and trade.

Moreover, the Working Group asks the European Commission to reflect on its experience and the strengths and weaknesses of its approach, and to share that learning with the Working Group and others.

The following are general comments to the sectoral guidance drafts posted for open consultation in November and December 2012.

- *Develop further the implications for business of the inter-connected nature of the three pillars of the Guiding Principles.* The sectoral guidance drafts acknowledge the interconnected nature of the three pillars of the Guiding Principles: the State Duty to Protect, the Corporate Responsibility to Respect and Access to Remedy, which itself contains both principles that refer to States and principles that refer to businesses — but fail to develop its practical implications. While practical implementation guidance, tools and “how to” manuals based on the Guiding Principles are bound to take various forms – and some will inevitably focus on one particular aspect of the Guiding Principles – all guidance should strive to elaborate on the implications of

the inter-connections of the three pillars. For example, the sectoral guidance could elaborate on the State-business nexus from a business perspective as they are meant to provide guidance on what is expected of corporations and how they should act. Likewise, they could elaborate on the expectations of business with regards to regional, national and subnational-level authorities during the various due diligence activities.

- *Develop further the guidance on integration into corporate management systems and functions.* Principle 16 of the Guiding Principles says, among others, that a company's human rights policy needs to be integrated into operational policies and procedures. Principle 19 of the Guiding Principles says that in order to prevent and mitigate adverse impacts, business should integrate the findings of impact assessments into internal functions and processes. Without a robust integration of business and human rights standards into corporate management systems, companies are likely to fail in their responsibility to prevent and mitigate human rights impacts abuses and instead fall into a reactive mode of only remediating harm caused or contributed to. Integration is thus a fundamental aspect of the implementation of the Guiding Principles. Implementation would be considered inadequate without an integration plan, and any reporting or communication of alignment with the Guiding Principles that does not refer to integration would be rendered incomplete. The sectoral guidance as drafted thus far, fails to provide useful guidance to business on how they can integrate human rights into their functions. For example, the oil and gas guidance should explicitly refer to:
  - How Head Quarter-level offices should relate to site-level business units with regards to the assessment of impacts and risks and the monitoring of prevention, mitigation and remediation management plans.
  - Expectations on key functions such as exploration and production, human resources, health and safety, environment, sustainability, procurement and contracts, finance, security, land, sales and marketing, legal counsel, and compliance and assurance.
- *Develop further the guidance on mitigation in situations of heightened risk, including areas affected by conflict.* The guidance drafts rightly note that when companies enter, operate or have business relationships in areas of heightened risk, their responsibility to respect human rights does not change, but rather requires greater attention, efforts and resources. The sections on mitigation in situations of heightened human rights risk are primarily focused on situations where national law is silent or falls short of international standards. These sections would benefit from also discussing situations of conflict, including possible steps to take, good practices and tools. The above-mentioned issue of integration into corporate management systems would be particularly important in situations of heightened risk, including conflict, and it would be helpful to also discuss integration in the context of those situations.
- *Address the issue of corporate lobbying.* While the sectoral guidance is not specifically aimed at companies that provide lobby services, which are subject to national policies and laws, they should explicitly acknowledge the fact that many businesses, either individually or in associations, communicate their preferences and interests to States, legislators, regulators and other actors with the intention of shaping regulation and policies that have an effect on their operations. These activities should be consistent with the Guiding Principles.

- *Maintain the transformative intent of the Guiding Principles alongside practical guidance.* The usefulness of a tool will depend on whether it meets the concrete needs of the particular audience it seeks to reach. Some tools will be aimed at corporate decision-makers, others at practitioners who interact on a daily basis with communities on the ground. Consequently, their exact contents and formats will vary. The Guiding Principles do not take a prescriptive approach on this; they are meant to act as a single coherent body of guidance for all businesses and all States and in that respect they offer principled guidance. While the role of practical implementation tools is to translate the Guiding Principles into more concrete, action-oriented language that is relevant to a particular industry, business function, location or issue area, such tools will be more effective at promoting profound cultural change (organizational re-engineering) when they explain the rationale behind the guidance to its users. The draft sectoral guidance performs this function well.
- *Review the scope of the information, communication and technologies (ICT) guidance.* While the ICT sector guidance highlights various human rights challenges along the ICT supply-chain, it fails to address some key themes and impacts such as the impacts of terms of licensing on the operational parameters for telecommunications companies, sourcing of raw materials, and e-waste.

The Working Group welcomes the opportunity to comment on this valuable EC project and is looking forward to ongoing collaboration.

Yours sincerely,



Puvan J. Selvanathan  
Chairperson  
Working Group on the issue of human rights and  
transnational corporations and other business enterprises