Workshop on Developing National Action Plans on Responsible Business Conduct and Human Rights

June 2015

KEY BUSINESS CONSIDERATIONS

Introduction

Human Rights are a high priority for the international business community. The UN Guiding Principles are the authoritative international framework on business and human rights. Business has been active in taking up the Principles, while at the same time, several governments have launched or are in the process of launching National Action Plans (NAPs) for their implementation.

A human rights chapter, which is consistent with the UN Guiding Principles on Business and Human Rights, was added to the OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines) when they were updated in 2011. The OECD MNE Guidelines, which are the most comprehensive government-endorsed instrument for promoting responsible business conduct, are supported by National Contact Points (NCPs) in all adhering countries, which provide a non-judicial grievance mechanism. They are thus of direct and practical relevance to the implementation of human rights.

It is important to recognize the substantial progress on human rights achieved in recent years within firms and industry initiatives. These range from public commitments, enhancement of corporate governance mechanisms through impact assessments and due diligence related to human rights, as well as training and capacity-building programs both within the company and with business partners.

Key Business Considerations

- **More states should develop NAPs**: More States should develop NAPs, since, at the moment, only a small number of mainly European countries have adopted NAPs. Therefore, we hope that countries – including developing and emerging ones – will take further steps to develop and implement NAPs.

- **The scope should be focused, but not prescriptive**: There is a temptation when a NAP is formulated to make it too broad. The Guiding Principles are broad enough and should be the main focus. It is also important to stick to the essence of the Guiding Principles, including their voluntary character, which can lead to very substantial benefits in the field. National Action Plans should also avoid proposing substantive elements that are too prescriptive to ensure the flexibility of governments to use the best suitable policy instrument.
• **The involvement of business should be systematic and representative:** While it is important to get feedback of individual companies, business should be consulted through its representative organizations. Only representative business organizations have the mandate to speak on behalf of the business community as a whole and are able to give comprehensive feedback. This also ensures that SMEs are given a voice in the process.

• **It is important to outline clear responsibilities:** NAPs should, in the spirit of the UN Guiding Principles, provide a clear and well-understood differentiation between the responsibilities of governments as the primary duty-bearers under international law, and those of non-State actors including business. It is the duty of states to enact and implement human rights. This task cannot be delegated to companies.

• **An enabling legal and political environment is key to a well-functioning NAP:** It is important to remember that human rights infringements are still to a large extent due to failing state structures or inaction. When there is an underlying lack of rule of law, passing additional laws and creating new institutional structures to uphold human rights do not prevent human rights violations.

• **The focus should be on implementation:** NAPs should focus on the implementation of the UN Guiding Principles. The perspective of SMEs must play an important role since SMEs are the essential backbone of all economies around the world. They have different resources and challenges when it comes to the implementation of the UN Guiding Principles.

• **Guidance on how to implement the UN Guiding Principles is needed, particularly in countries with a large informal sector:** All countries need support on implementation of the UN Guiding Principles. In particular, since countries with a large informal sector struggle to implement the UN Guiding Principles, these States should also assist companies in meeting their human rights obligations.

• **The role of NCPs and co-ordination mechanisms should be clearly defined:** The OECD MNE Guidelines play an important role in this area, in particular because of their unique implementation mechanism and the addition of the human rights chapter in 2011. It is of key importance that NCPs are functioning well, are sufficiently staffed and equipped, and maintain close links with the private sector. It is also important that there is a common understanding among stakeholders on the non-judicial nature of the NCP procedure.