

Implementation Group for the Business and Human Rights National Plan

Minutes of Meeting

10.30 am, Tuesday, 30 March 2021

In attendance:

Ms. Breege O'Donoghue, Chairperson of Implementation Group
Mr. Gerry Cunningham, Department of Foreign Affairs (DFA)
Mr. Simon McKeever, Irish Exporters Association (IEA)
Ms. Siobhán Curran, Trócaire
Ms. Mairead Keigher, Shift
Mr. Tomás Sercovich, Business in the Community Ireland (BICI)
Dr. Martha O'Hagan Luff, Trinity College Dublin (TCD)
Mr. Matthew Sewell, Department of Justice (DoJ)
Mr. Fergal Grogan, Office of Government Procurement (OGP)
Ms. Emma Jane Joyce, Irish Strategic Investment Fund (ISIF)
Ms. Orlagh Collison, Department of Finance (D/Fin)
Ms. Meadhbh Costello, Irish Business and Employers Confederation (IBEC)
Ms. Emma Kerins, Chambers Ireland
Mr. Michael McCarthy Flynn (Oxfam)
Mr. Niall Brady, Department of Foreign Affairs (DFA)
Mr. Brian Gray, ESB Group
Dr. Shane Darcy, National University of Ireland Galway (NUIG)
Ms. Ann Marie O'Brien, Irish Exporters Association (IEA)
Mr. Brian Dawson, Irish Human Rights and Equality Commission (IHREC)
Ms. Stacy Wrenn, Department of the Environment, Climate and Communications (DECC)
Ms. Sandra Conway, National Women's Council of Ireland (NWCI)
Secretariat Officials (DFA): Ms. Sarah Kavanagh, Mr. Ciaran Potter
Guest speaker: Dr. Max Schormair, Trinity College Dublin (TCD)

Apologies:

Ms. Celine McHugh (Department of Enterprise, Trade and Employment)
Mr. Sorley McCaughey (Christian Aid)
Ms. Jean O'Mahony (IHREC) (represented by Mr. Brian Dawson at the meeting)
Ms. Fiona Crowley (Amnesty International)
Ms. Emer Griffin, Department of the Environment, Climate and Communications (DECC)

Dr. John Geary, University College Dublin (UCD)

1. Adoption of the Agenda; Minutes and Matters Arising

The agenda and minutes of the previous meeting (on 8 December) were also adopted and there were no matters arising.

2. Update on Toolkit

Ms. Sarah Kavanagh of the HRU provided an update on progress being made on the toolkit as follows:

- Additional case studies have been provided by Kerry Group and Unilever.
- The final iteration of the 'toolkit' – titled "Business and Human Rights – guidance for business enterprises" is now with the web designers.
- The Department will avail of the opportunity of the TCD practical webinar for business enterprises, to launch the new guidance.
- Everyone is asked to share details of the launch, which will be circulated by email following the meeting, with their networks and to include a link to the guidance in due course on their own websites.

Simon McKeever intervened to indicate that IEA will highlight the event to their members and will support their participation.

Dr. Max Schormair, Assistant Professor in Business Ethics at Trinity Business School, gave further details of the Webinar due to take place at 11 am on 15 April, following the launch of the guidance:

- The webinar will build on the momentum of the benchmarking report and the new Guidance.
- Business enterprises are the target audience.
- The Global Business Initiative on Human Rights will provide the workshop aspect of the webinar.
- The focus will be on how to get started.
- The webinar should help to promote the Guidance and start a conversation on implementation on UNGPs.

Two further webinars are also planned – one in May involving a collaboration with Business in the Community Ireland and one in June examining regulatory developments at EU level.

The chairperson thanked everyone involved in the development of the guidance and the proposed launch, in particular Sarah Kavanagh and Mairead Keigher.

3. Update on preliminary review of implementation of National Plan commitments

The Chair invited Sarah Kavanagh to give an update on the preliminary review of implementation of National Plan commitments and the proposed Multi-stakeholder Forum to be held later in the year.

Ms. Kavanagh outlined that the preliminary review of implementation is at a very advanced stage of drafting and the intention is to circulate a draft to members of the Implementation Group in the next couple of weeks for feedback. It is hoped to have a Multi-stakeholder Forum in H1 2021.

The Chair acknowledged the significant work that had gone into the Guidance and the significant achievement of obtaining the case studies from business enterprises.

Siobhan Curran raised the following points:

- Does the drafting relate to the process for a review or the review itself?
- What re the plans for a new National Plan?

Ms. Kavanagh indicated that:

- The review is of the implementation of the specific commitments of the Plan rather than a review of the Plan itself. The terms of reference of the Implementation Group require an analysis of the delivery of commitments.
- The development of a new Plan would require an extensive consultative process and is separate to the review of implementation.
- The European Commission legislative initiative on sustainable corporate governance was expected in Q2 of this year while the UN Working Group on BHR is due to publish a major review of implementation of the UNGPs in June. The HRU therefore saw H2 2021 as a logical point for starting the process of developing a new Plan, but these are not decisions for the DFA Human Rights Unit to make.

Gerry Cunningham added that:

- It is important to follow process and to learn lessons and the review of implementation would assist with that. There are a number of steps envisaged and the first is the review of the current commitments. This will be shared with the Implementation Group and the Stakeholder Forum.
- The first National Plan is a benchmark in itself but it is recognised that there are ways to improve it.
- The external environment is changing with the EU legislative initiative and the UNGP review.

Michael McCarthy Flynn asked for detail on the proposed multi-stakeholder Forum and Ms. Kavanagh indicated that this would be forthcoming in due course.

Dr. Shane Darcy asked who will undertake a review of the National Plan and stressed the need for a second Plan.

In response, Ms. Kavanagh clarified that the review referred to simply examined the status of implementation of the commitments in the National Plan, in line with the terms of reference of the implementation group, it was not a review of the National Plan per se.

Mr. Cunningham added that while the current Plan is titled “2017-2020”, it was only published at the end of 2017 (November) and that it was January 2019 before the Implementation Group had its first meeting. Mr. Cunningham indicated that he doesn’t doubt that there will be a second National Plan but the question is how to go about the process. It is important to have the review of the first Plan and a full picture of external requirements.

4. Forthcoming events

The chairperson invited Dr. Shane Darcy to brief members on the forthcoming NUIG Symposium taking place on 29 April.

Dr Darcy indicated that the Business and Human Rights Symposium was titled “Taking Stock, Looking Forward”. EU SR on Human Rights, Eamon Gilmore, will give the opening remarks and there will be two panels, the first will examine the proposal for a UN Treaty on Business and Human Rights, the second will examine the UNGPs at 10. A number of high profile speakers will take part including the Anita Ramasastry and Surya Deva from the UN Working Group on Business and Human Rights; the Ecuadorian Ambassador who Chairs the Open Ended Intergovernmental Working Group examining a

possible Treaty; Dr Claire Methven O'Brien of the Danish Institute for Human Rights; Trócaire CEO, Caoimhe de Barra; and Human Rights Unit Director, Gerry Cunningham.

The symposium will take stock and also look at moving forward. The voluntarist approach to the second pillar of the UNGPs hasn't really lived up to expectations and it has been difficult to get business engagement.

Dr. Darcy shared a link to the event.

5. AOB

Michael McCarthy Flynn raised two items under AOB – one in relation to EU proposals on sustainable corporate governance, the other in relation to publication of Dr Widdis' Access to Remedy report.

5.1 Sustainable Corporate Governance

Mr. McCarthy Flynn indicated that the sustainable governance initiative should frame the discussions of the Implementation Group and asked which Government Department leads.

Ms. Kavanagh indicated that she had consulted the EU Commission website in advance of the meeting and it indicated that publication was expected in Q2 2021. She provided a brief outline of remarks by Commissioner Reynders at a recent seminar at which he indicated that:

- The Commissioner said he was working towards having something ready to publish in the coming weeks.
- The public consultation ended on 8 Feb. Almost half a million responses were received and the Commission has had to work through these submissions, all of which will be carefully assessed.
- A majority of respondents support a mandatory legal framework for human rights due diligence and there [is a strong] desire for a level playing field.
- All companies with limited liability in all sectors can be covered but some activities present higher risks than others – this is being analysed.
- On size, the Commission is attentive to the needs of SMEs and is examining if it can identify "High risk SMEs".
- It is examining whether we can include companies in third countries that operate in the EU

- The Commissioner is of the view that there needs to be a proper enforcement regime, possibly including administrative fines and civil liability.

Ms. Kavanagh responded that it was her understanding that the Department of Enterprise, Trade and Employment lead on the file on sustainable corporate governance in Brussels.

5.2 Access to Remedy Report

In response to a question about the publication of the Access to Remedy report, Sarah Kavanagh indicated that intention remained to publish the report to coincide with the multi-stakeholder Forum as previously indicated.

5.3 Membership of Implementation Group

Siobhan Curran raised another item under AOB requesting an update on nominations for membership of the Implementation Group.

Mr. Cunningham indicated that as the tenure of the existing group was almost at an end, some thought would be given to future membership.

5.4 Proposed Legally Binding Instrument

Siobhan Curran asked for an update on the proposed Legally Binding Instrument and for the issue to form part of the agenda of the Implementation Group for the National Plan.

Sarah Kavanagh indicated that Ireland had been working with a number of EU Member States on the issue and the European External Action Service has agreed to have a special session on the topic of UN Treaties.

Conclusion

The Chair concluded that it is hoped to have a further meeting in May and that more details will follow in due course.

ENDS