

Human rights due diligence framework distorted by EU's market competences

What must change in EU approach to corporate due diligence to make it to respect human rights

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Foreword

EU and its memberstates continue to maintain laws and policies that provide legal status for such European corporations' global business activity which repeatedly limits or affects adversely the realisation of economic, social and cultural human rights in ways which are not compatible with the nature of these rights as ICESCR articles 2 and 4 would require.

The laws, policies and measures which maintain corporations' rights and possibilities to profit in ways which adversely affect human rights must be changed in a manner which prevents such violations and adverse impacts.

1. EU's 'due diligence' agenda to protect corporations from the requirements of human rights

The EU has also not approved the ICESCR and other UN human rights treaties to bind EU laws, competences or policies. EU does not currently set for the corporations such obligations which would enable states to duly fulfil their UN human rights treaty obligations in respect to the corporations.

Member states' capacity to protect and fulfil human rights the EU plans oppositely to limit even further by bureaucratic EU regulation, which restricts peoples' democratic rights to require corporations to respect human rights.

As states can set for the corporations human rights due diligence requirements, the EU however is creating its law to restrict states' possibilities to fulfil their ICESCR obligations by requiring corporations to respect human rights.

Such EU-planned law which sets the EU's market competence and bureaucracy to regulate and restrict the ability of the states to fulfil their international UN human rights obligations, is named "regulation of companies' due diligence requirements" by an EU-ordered study. (1)

EU aims thus to regulate what can be required from the corporations so as to ensure that their EU provided business rights and priorities are not negatively affected by human rights requirements of the memberstates UN obligations.

Such new EU law would in the name of 'due diligence' protect corporations' profit making from that how it could be restricted by human rights if the memberstates would duly implement their UN human rights obligations.

EU would thus restrict all such human rights due diligence requirements by which its member states implement their UN human rights obligations in respect to corporations.

The EU helps the corporations to modify and redefine what universal human rights require by subordinating that under the regional commercial priorities of European corporations business activities without the EU approving itself to be obliged to respect and realise human rights recognised in compliance with the UN human rights treaties.

By these steps the EU further restricts people's rights in order to expand the rights of corporations by "freedom of establishment" (2), internal market, mergers and acquisitions, etc. (articles 50 and 114 of the Treaty on the Functioning of the European Union (TFEU) proposed as legal bases for the EU action in respect to due diligence requirements)

EU competence to secure the freedom of business establishment (TFEU 49-50) over human rights requires that the states are not allowed to take measures required by their international obligations on universal human rights but must ensure instead that any such measures must primarily not restrict profit interests of European businesses.

Proposed EU law would redefine human rights in the name of "due diligence" subordinated to serve global corporations' rights and globalised colonial structures of world economy where European corporations' competitiveness in global economy is not allowed to get restricted by human rights - which however will become restricted by such business interests.

This continues the European heritage of building European commercial law to rule outside European borders to create corporations to act there as legal actors in global economy. EU tries to build a type of colonial due diligence.

2. EU proposes to regulate any due diligence to be used primarily as a tool to benefit business.

More than one of EU's different commercial/market policies - which are set to prioritise their specific commercial tasks rather than human rights as exclusive power -, claims to be itself the only legal competence to decide what has to be done with the due diligence of corporations in respect to human rights.

The EU has been structured to have its law above the national legislations and to have its highest and strongest 'exclusive' competence in commercial, money and market policies. Still the EU does not have under the international law the competence to affect the rights and obligations which its member states have adopted with third parties before their EU accession under the international law.

The EU law violates thus the international law as far as the EU uses its law or competence in ways which affect adversely the member-states competence or ability to carry out their obligations under the UN Charter and treaties approved with the third parties in respect to human rights, because:

a) While on "international economic and social co-operation" states have to sustain stable "well-being", peaceful relations and "respect for the principle of equal rights and self-determination of peoples" states "shall promote" "in co-operation" such "solutions of international economic" problems and such "conditions of economic and social progress and development", which secure "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction" (3) in compliance with their UN obligations.

b) Regarding such obligations of "universal respect for, and observance of, human rights" to be secured under the UN Charter equally for all in "international economic and social co-operation", the Charter requires that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". (4)

c) As in "international economic and social co-operation" these UN Charter obligations also on human rights have to be respected and fulfilled thus as priorities under the international law (5) also in "application of successive treaties relating to the same subject matter" of international economic co-operation "the rights and obligations of States Parties to successive treaties [...] shall be determined" "subject to Article 103 of the Charter of the United Nations" and so that:

"When the parties to the later treaty do not include all the parties to the earlier one [...] as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations" like the Vienna Convention on the Law of Treaties require. (6)

d) The EU Treaty on Functioning of the EU also recognises this in principle under its article 351, under which "The rights and obligations arising from agreements concluded" by the EU member states "before the date of their accession" to the EU with "one or more third countries [...] shall not be affected by the provisions of the Treaties" of the EU. (7)

3. How Finland assumes its ESC human rights obligations to be limited by the EU law does not comply with ICESCR

Thus the EU member states remain obliged under the UN Charter to ensure such "solutions of international economic" problems and such "conditions of economic and social progress and development", which secure "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction" and "respect for the principle of equal rights and self-determination of peoples" also in "international economic and social co-operation". (8)

States approved this to be realised so that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" and "every organ of society" including also the corporations "shall strive [...] by progressive measures, national and international, to secure their universal and effective recognition and observance" (9) which Universal Declaration of Human Rights (UDHR) requirements were in 1948 agreed to be implemented as codified into legal obligations by the UN International Bill of Human Rights (10) - which most of the EU member states agreed already before their EU accession to include also the ICESCR obligations such as:

- "All peoples may, for their own ends, freely dispose of their natural wealth and resources" so that "any obligations arising out of international economic co-operation" whatever they are interpreted to require, shall be in such a way "based upon the principle of mutual benefit" that they can not limit or impair peoples' "inherent right [...] to enjoy and utilize fully and freely their natural wealth and resources" to realise peoples' economic, social and cultural rights so that "in no case may a people be deprived of its own means of subsistence" which constitute "an essential condition for the effective guarantee and observance of individual human rights". (11)

- Each State has to act also "through international [...] co-operation, especially economic" cooperation "to the maximum of its available resources, with a view to achieving progressively the full realization of the" economic, social and cultural human rights "by all appropriate means, including particularly the adoption of legislative measures" - so that "state may subject such rights only to such **limitations** as are determined by law only in so far as this may be compatible with the nature of these rights" to promote "the general welfare in a democratic society." (12)

But Finland and other EU member states have subjected these their ICESCR human rights obligations in global economy to such limitations which ICESCR prohibits as being not "compatible with the nature of these rights" - as member states have conferred upon the EU competences to act in international economy on their behalf without approving the EU to be bound by their ICESCR obligations or to verify that its activity on their behalf complies with their ICESCR obligations.(13)

Finland or other EU member states violate their ICESCR obligations when they claim that as they have conferred upon the EU their competence on trade, investment or other commercial market/business issues "therefore, an individual Member State **has a very limited** opportunity and **obligation to assess**" the human rights impacts of the activity which the EU takes on their behalf in international economy. (14)

For Finland to limit its ability to fulfill its ICESCR obligations in international economy by assuming that it has conferred away its competence to fulfill its obligations on economic and social rights upon the EU who has not approved ICESCR to bind it, is limitation of Covenant rights which violates Finland's obligations under the ICESCR articles 2.1 and 4.

Particularly so as currently the activity which the EU takes in international economy on behalf of its member states does not verify that its activity on behalf of its member states would comply with the ICESCR in terms of the law or "general welfare in a democratic society" (15) as "human well-being to which the international human rights instruments give legal expression" as "the end which trade liberalization should serve" (16) keeping in mind that:

"The realms of trade, finance and investment are in no way exempt from human rights principles" and also states' all "international organizations with specific responsibilities in those areas" of business - including the EU has to respect human rights obligations which its member states have in international economy. (17)

If states could evade their obligations under the international law on human rights or on other issues as easily as Finland and other EU states are currently assuming they can do via the EU, the credibility of international law would disappear.

As far as European states violate their UN human rights obligations by conferring their competence to act to such an actor, which they do not bindingly oblige to respect those obligations, they cannot credibly urge non-EU countries to respect UN human rights. As ICESCR states parties European states can not confer their competence to act in international economic cooperation upon such their common union on whom they do not confer the competence or obligation to be bound to comply with their UN human rights obligations in acting on their behalf in international economic cooperation.

Otherwise also the rest of the world's states could equally confer their competence to act upon such their common Afro-Asian etc. union, which they would create to act on their behalf in ways which would not need to comply with their international human rights obligations when acting on their behalf. As EU member states have approved UN treaties with obligations on universal indivisible human rights already before their accession to the EU, thus "when the parties to the later treaty do not include all the parties to the earlier one [...], the treaty to which both States are parties governs their mutual rights and obligations" like the Vienna Convention on the Law of Treaties require. (18)

As the European states did not just prior to their EU accession have a competence to act in international economic cooperation without their international human rights obligations, they also cannot have legally conferred to the EU such competence which they did not even themselves have. Also the EU Treaty recognises this international law requirement:

As states are obliged to comply with the ICESCR in their acts and cooperation in international economy also in respect to how corporations as organs of society can act in international economy, the EU member states have to build measures by which they could comply with such their obligations under the ICESCR or other UN human rights treaties which most EU-states have concluded prior to their EU accession with nearly all other countries of the world - so that such their international obligations "shall not be affected by" EU treaty provisions - as also the EU treaty itself requires. (19)

As their competence to act in any international economic cooperation has been obliged to respect and implement equal human rights, their competence cannot have been legally conferred by their EU treaty upon their regional Union without obliging it to comply with their obligations on universal human rights in international economic cooperation. But the EU and its member states have not developed any mechanism by which they could be able to secure that member states can continue to carry out their legal human rights obligations under the international law.

4. To act legally on behalf of its member states in global economy EU has to comply with their human rights obligations

As upon the EU its member states can not have legally conferred any competence for the EU to affect adversely its member states' UN obligations to respect, protect and fulfil economic, social and cultural human rights in international economy, the EU is thus obliged to ensure that it can not by any of its commercial, market, competition or other competences affect member states' competences to implement their international UN human rights treaty obligations.

The EU can thus legally act in international economic cooperation on behalf of its member states only in ways which respect, protect and fulfil human rights compliant to its member states' UN obligations on human rights.

As most EU member states have agreed to be bound by the UN obligations on economic, social and cultural human rights before their accession to the EU, which has not approved to be obliged to comply with these ICESCR/ UN human rights obligations by itself and as EU's treaties, laws and use of its competences have not been proven to be "compatible with the nature of" economic, social and cultural human rights, the EU member states remain obliged to ensure that:

The EU law and member states' EU obligations shall not affect or limit the realisation of economic, social and cultural human rights which states have to ensure to be respected, protected and realised in international economic cooperation. Global corporate activity shall not be allowed to limit or adversely affect the realisation of economic, social and cultural rights.

While the EU Member States "shall take all appropriate steps to eliminate the incompatibilities established" (20), under the international law the appropriate steps do not include the possibility that the EU member states could leave non-implemented their such UN human rights obligations which they have agreed with the rest of the world already before their EU accession. EU's due competence to respect international human rights obligations of its member states is that it has to competently ensure that the realisation of international human rights in accordance with the UN obligations "shall not be affected by the provisions of the Treaties" of the EU (21) or by the EU competences they establish.

To secure this EU member states "shall take all appropriate steps to eliminate the incompatibilities established", taking "into account [...] that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States" (22) including that:

As the EU and all its member states equally "shall act only within the limits of the competences" they have (23) and as they do not have competence to change or affect states' international UN human rights obligations without approval of all states parties of the international UN human rights treaties including also the ICESCR, which provides "the same advantages" and requirements for all member states by all the other Member States". (24)

As it is not in the power of the EU memberstates for the purposes of EU's internal regional commercial interests to change the UN agreements without the consent of the world's ca. 150 other states who have concluded them, the EU memberstates need either to amend the EU law or to otherwise ensure that the EU shall "succeed to the obligations of its Member States under pre-existing treaties to the extent that it has been delegated powers necessary for their implementation by the Member States" like the OHCHR has noted. (25)

It belongs thus to the limits and basis of all EU competence that when the EU takes on behalf of its member states an activity in which they have obligations on human rights, also such EU activity on their behalf has to respect, protect and realise human rights according to the UN obligations of its member states - in a manner which is competent to protect and realise international human rights obligations. What is crucial and basic for any legal EU's competence to act in relation to human rights is thus that the EU has to competently refrain from affecting such UN human rights obligations of its member states or from limiting the realisation of the rights or obligations set by the ICESCR in ways which are not "compatible with the nature of" economic, social and cultural human rights which the member states have approved to respect, protect and fulfil under the ICESCR.

States' UN obligations require that towards world's peoples the EU "Member States remain responsible for the implementation of their human rights obligations [...] in respect of those powers delegated to the EU" so that "while these obligations do not directly bind the EU, if the Member States fail to give them effect in the EU's legal order, they will remain responsible for breaches committed by the EU." They thus "shall take all appropriate steps to eliminate the incompatibilities established" and "shall, where necessary, assist each other to this end". (26)

If EU member states allow such their regional Union - which has not even approved to be legally bound by those UN obligations - to affect, direct, regulate or limit the implementation of those their international UN human rights obligations in the name of due diligence by prioritising their European commercial interests over universal human rights, they violate and distort international human rights for the purposes of their own business interests.

EU law can not thus take effect to the extent to which it would prevent a member state from complying with its international UN or other agreements concluded with nearly all world countries. (27) And as "a treaty does not create either obligations or rights for a third State without its consent" (28), the EU treaties by the EU countries cannot also oblige African or Asian states to comply with common UN treaty obligations which the EU member states themselves evade and breach by conferring their own competence (to act in international economic cooperation as bound by human rights) away to the EU without obliging it to comply with their UN human rights obligations in acting on their behalf.

5. EU's approach to capture 'human rights' for its commercial purposes which sideline UN competence

As the competence to implement the international human rights obligations by due diligence is based on international law and belongs to the parties of the UN human rights treaties, including the EU memberstates, the competence to determine how due diligence can best realise such international UN human rights obligations can certainly not come

from the EU, which has not even approved itself to be legally bound to implement those obligations.

But as the EU law sets itself above its member states' laws and has not approved itself or its law to be bound by their UN human rights obligations, how will the compliance with the UN human rights obligations be ensured in EU's treatment of due diligence - as no EU body, not even the EU Court of Justice, has competence to judge or determine what is necessary to implement UN obligations in respect to the EU competences ?

Only by making the EU action to comply with those international human rights obligations - which has not been secured.

Under the UN human rights obligations the respective UN treaty monitoring bodies - not the EU by its commercial competences - have been authorised to be competent to assess, monitor and guide whether and how the international human rights obligations have to be respected in context of global business activity.

As the UN Committee on Economic, Social and Cultural Rights has provided General Comment 24 "State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities" (29), the EU has to ensure - also in terms of legislation - that the memberstates shall act compliant to the TFEU article 351 and thus in accordance with the CESCR guidance ensuring that its memberstates' activity implement their UN human rights obligations and "shall not be affected" by the EU laws, competences or activities (30) in any restrictive manner.

The EU and its memberstates are particularly obliged to correct their activities to respect the UN human rights obligations now because:

- As the EU's competences on commercial and market policies, objectives and tasks have so far not been transparently verified to comply with the UN human rights obligations which the memberstates had already before their EU accession and which determined, shaped and delimited all the competence which they had on international economy.

- While the EU treaty recognises this in principle, in practise the EU and its member states do not have and are not building any competent monitoring on how human rights provided by the UN treaties and EU member states' ability to fulfil them are affected by the EU law and EU's use of its commercial competences.

- The EU is now increasingly involved in efforts to start to legislate how international human rights have to be redefined and applied by corporations' due diligence in international commercial activities - without complying with the UN obligations which its member states have

There prevails thus a vast structural violation in that how the EU manages corporations' global activity in a way how:

"Adverse human rights and environmental impacts in global value chains" result from "regulatory gap between existing legal framework and Member States' obligations" on human rights, "failure of corporate risk assessment" of the risks "affected by its supply and value chain", "lack of access to remedy for those affected by the adverse human rights [...] impacts of EU companies" - as recognised also by the study produced for the EU commission under its DG Justice. (31)

But "to address the problems" described above, the due diligence study produced for the EU Commission under the DG Justice assessed however in practice on the contrary only that "any possible future EU intervention would be based on the following legal basis:

The regulation of companies' due diligence requirements is a matter of company law which falls within the EU shared competences [...] to harmonise national company laws so as to attain freedom of establishment" of corporations for profit and "to approximate legislation with the object of ensuring the proper functioning of the internal market". (32)

6. EU 'due diligence' law subordinates human rights under corporations' commercial profit rights

Instead of obliging companies to respect human rights via due diligence, the EU would thus rather on the contrary regulate and restrict its member states' rights and possibilities to fulfil their UN human rights obligations to make the firms and companies to respect and realise human rights through such "companies' due diligence requirements".

EU would thus "harmonise national company laws so as to attain freedom of establishment" of "companies or firms" to make private profit - so that such companies' freedom will not be impaired by "due diligence requirements" by which the states fulfil their UN obligations to make companies responsible to respect and realise human rights. (33)

EU assumes and presents its commercial and market competences as self-expanding in-built powers to form the legal basis to restrict international human rights from being respected, protected and fulfilled in the name of 'due diligence'.

For some actors in EU's common commercial policy "any future design of such norms will go far beyond human rights angle" to secure other EU interests in "management of business operations and industrial processes" as "integral part of international trade and economic" competences "guaranteeing the level playing field for European businesses in competitive global economy" "strengthening Europe's place in global value chains, which is an essential task". (34)

EU seems to have known already in advance that on 'due diligence' which covers also human rights "a European legislative proposal [...] could have beneficial effects for businesses". (35)

But how can it be that the only explicated purpose for which the EU would act on due diligence would be 'beneficial effects for businesses' as the only reason for which due diligence is needed is on the contrary just because that what businesses see as beneficial often and repeatedly leads to violations of human rights and environmental integrity ? Is not there a need to respect and protect human rights and environment even more where that may reduce some business benefits ? Why would the EU competence on "due diligence requirement for human rights and environmental impacts" is already in advance pre-determined to be limited only to what would be "beneficial [...] for businesses". (36)

EU Commission indeed demands universal human rights to become subordinated under regional commercial priorities of the European business so that "any possible future EU intervention would be based on the following legal basis":

"The regulation of companies' due diligence requirements" - requirements which the UN human rights obligations set for the EU member states to realise - would be done by EU's market competences to subordinate universal human rights under regional business priorities based on how "Article 50(1) and (2)g of the Treaty[...] (TFEU) gives competence to the EU to act [...] to harmonise national company laws so as to attain freedom of establishment" of private profit businesses and how "Article 114 TFEU, in conjunction with Article 50, allows the EU to approximate legislation with the object of ensuring the proper functioning of the internal market". (37)

So, while the states can advance the implementation of human rights by obliging corporations to respect human rights by 'due diligence', the EU ordered study urges on the contrary the EU to restrict such states' human rights due diligence requirements by regulating them so as to prioritise corporations' commercial rights as required by TFEU articles 50 and 114. These articles do not however give for the EU any legal competence to change international UN human rights obligations which the EU memberstates must implement as agreed with the rest of the world in the UN.

These TFEU 50 and 114 articles concern on the contrary only such laws and policy causes which the EU member states individually or together require to maintain to protect health, life, environment, consumers, etc., so that:

"In order to attain freedom of establishment as regards a particular activity" of private profit aiming companies, the EU would ensure - "by coordinating to the necessary extent the safeguards [...] required by Member States" on health, safety, environment, etc. (38), - that "restrictions on the freedom of establishment" of private "companies or firms", "agencies, branches or subsidiaries" from one member state "in the territory of another [...] shall be prohibited". (39)

This "right to freedom of establishment is guaranteed" (40) by EU's competence to prevent memberstates' public policy from restricting such rights of corporations to expand their private profit making, which have contributed to corporate capacities to act globally in ways which affect human rights without their impacts duly monitored, including:

- private "right to set up and manage [...] companies or firms" to do business in other states "through a subsidiary, a branch or an agency" (41) as "free to choose the appropriate legal form" (42) without any state "prohibiting, impeding or discouraging a company" from business expansion over the borders by taxes (43) or by restricting its "effective exercise of [...] economic activities" as "a subsidiary with a legal personality". (44)

- corporations' "right to acquire, use or dispose of immovable property on the territory of" another state (45), "to purchase, exploit and transfer [...] property" (46) "and to profit therefrom" freely (47) so that "all measures which prohibit, impede or render less attractive" such business "must be regarded as obstacles" to be removed. (48)

- for "ensuring the functioning of the internal market [...] in which the free movement of goods, persons, services and capital is ensured" "the Commission shall [...] approve or reject" protective measures on "health, safety, environmental protection and consumer protection" by deciding "whether or not they are a means of [...] a disguised restriction on trade" or "an obstacle to the functioning of the internal market." (49)

- rights for "cross-border merger operations" to carry out business as easily as local actors do can not be prevented for common interests in required restriction-less "proper functioning of the internal market" (50) "even if their business in

that State consists of services directed to non-member countries" (51)

- corporations' rights "to bring legal proceedings before [...] national courts for [...] enforcing rights" to expand their profit making against public health, safety or environmental measures which may restrict their profits (52) and "to obtain financial compensation" (53) are priority for judicial redress set up under TFEU articles 50 and 114 as their legal bases

-"priority treatment to activities where freedom of establishment" of business makes "contribution to the development of production and trade" (54) also by "progressive abolition of restrictions on freedom of establishment in every branch of activity" (55), where "supply of raw materials and semifinished goods" and "free movement of goods, persons, services and capital is ensured" for European business' global "competitive capacity" for "expansion of consumption" in the EU. (56)

7. How EU requires 'due diligence' to serve its business interest even where that adversely affects human rights

As the EU can act only to fulfil primarily the tasks of the competences conferred upon it and as it does not have realisation of human rights as the primary task of any of its competences, thus the EU applies 'human rights' to become fulfilled only according to what promotes its other tasks which it has direct competence to fulfil as main tasks of its action.

Such EU 'due diligence' reduces human rights into something which can be respected, protected and realised legally only to the extent to which the realisation of European commercial interests and competitiveness could be somehow presented as if that were respect for human rights. Thus such EU 'due diligence' violates and distorts human rights.

As EU's strongest tasks are determined by its strongest commercial competences and its market's competitiveness and differ crucially from what its member states' UN obligations on economic, social and cultural rights would require, the EU sees it as danger that "a growing number of Member States may introduce mandatory horizontal due diligence schemes or initiatives related to corporate governance leading to extra costs and lack of level playing field." (57)

As EU member states have all mutually corresponding obligations under the UN human rights treaties, as human rights they all have already mutually corresponding obligations and implementation guidance by the UN treaty bodies.

While in states' UN obligations there is in terms of human rights thus not much to 'harmonise' for the EU, who does not even recognise those obligations to bind itself, still the EU aims to 'harmonise' "the goals of relevant international conventions" to make them comply with the "EU goals" on such rights so that EU would set "company directors to define and integrate stakeholders' interests and corporate sustainability risks, impacts and opportunities into the corporate strategy"(58)

This EU approach on 'due diligence' distortingly limits the implementation of economic, social and cultural human rights to what can serve EU's regional commercial interests and priorities of the European corporations. EU's use of the concept 'due diligence' is shaped by the EU commission asking from the corporations what they would like to see being meant by 'due diligence' in respect to human rights, environment and governance.

For EU commission consultations on "sustainable corporate governance" in respect to "justice and fundamental rights" the "stakeholders include, in particular, businesses and their directors, [...] investors and their organisations". The consultations and questions are structured to find out what kind of 'due diligence' would best serve the corporations.(59)

So the implementaton of states' UN human rights obligations the EU wants thus to 'harmonise' with "EU goals" so that the resulting "new sustainable corporate governance framework would bring benefits to companies as well as to the economy as a whole" and "would positively contribute to the productivity, profitability and attractiveness of EU businesses due to a better management of sustainability-related risks, reaping opportunities". (60)

"The majority of a large sample of surveyed companies (mostly large) expect significant or very significant economic benefits arising from a corporate due diligence duty." "As first movers in the sustainability transition, EU companies could gain remarkable competitive advantages on global markets" through such neocolonially distorted 'due diligence'. (61)

The EU has thus decided to create 'due diligence' 'corporate governance framework' legislation to serve regional market/ business priorities in order to restrict the competence of member states to legislate any 'due diligence' where the ICESCR obligations could restrict the corporate 'freedoms' and EU's global business competitiveness.

EU says that the purpose of EU law on 'due diligence duty' will be to "help companies' directors to establish longer-term time horizons in corporate decision-making" and "to take measures to address their [...] human rights (including workers and child labour) harm in their own operations and in their value chain by identifying and preventing relevant risks". (62)

8. Priority of business rights as legal basis to regulate human rights due diligence violates human rights

If such EU's ways to prioritise the rights of private profit making over the rights of life, health, consumers, environment etc, would be extended from the domestic policies also to the international human rights obligations required due diligence, like the EU Commission ordered 'study' proposes, such EU proposed 'legal bases' for 'due diligence' is itself a human rights violation because:

"Obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over" these human rights without transparently verifying how states would by such limitation of these rights duly respect, protect and fulfil them also in international economic cooperation "to the maximum of [...] available resources" by "the adoption of legislative measures" and "all appropriate means". (63)

The way how the EU treaty prioritises the rights of private profit making corporate business to be not restricted by the EU memberstates' requirements on policy interests on health, safety, environment, etc. can not affect the measures which the international implementation mechanisms of UN human rights obligations require these states to take to implement their international obligations agreed with the third parties of the rest of the world, also because:

"The rights and obligations arising from agreements concluded" by the EU member states before their EU accession, with the third parties in the UN or elsewhere for example on human rights "shall not be affected by the provisions of the Treaties" of the EU - like the EU treaty itself requires in accordance to the international law, including the Vienna Convention of the Law of Treaties article 30. (64)

The EU remains thus obliged to respect such UN human rights obligations as limits of the EU's competences also as far as the EU and its memberstates respect "the principle of proportionality" under the international law so "that the measures adopted be appropriate for ensuring attainment of the objective which they pursue and do not go beyond what is necessary for that purpose". (65)

9. EU makes human rights proportional to what serves rights of business

To implement and strengthen these corporations' rights the EU has competence to restrict also in terms of proportionality state's public measures which are similar to those required by the realisation of human rights so that the rights of corporations to expand their business beyond the states' legislative control are also "directly applicable in the Member States" (66) even without "the existence of such harmonisation rules". (67)

Even any non-discriminatory measure which directs business activity by "prior authorisation" requirement or based on "economic or social needs for that activity", (etc) and can "hinder or render less attractive the exercise by Community nationals of the freedom of establishment [...] constitutes a restriction" of establishing business and must be avoided - with an exception that:

"Restrictions on freedom of establishment which are applicable without discrimination [...] may be justified by overriding reasons in the general interest" - such as "the protection of public health" - "provided that the restrictions are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for" that in terms of its impact to such freedoms guaranteed for business in the EU. (68)

Such justification depends on "whether such legislation is appropriate to the attainment of that objective" (for example of ensuring reliable, quality health services) or "whether the restriction [...] goes beyond what is necessary" for that so that the objective could "be attained just as effectively" in terms of "the level of reliability and quality" (of health service provision etc.) with measures less restrictive for freedom of corporate business. (69)

While the member states can take "provisional measures" for "the protection of health and life", the EU shall harmonise memberstates' laws and measures so that these "shall not, however, constitute a means of [...] a disguised restriction on trade" and must remain in such a way "subject to a Union control procedure" to ensure this. (70)

It remains thus for the EU to determine through its market priorities/competences in which way its member states' public measures to protect health, environment, consumers, etc. could be only provisional to be "appropriate for ensuring attainment of the objective" (of products being "reliable and of good quality") (71) and whether and how in this respect "a Member State should be able to take protective measures without having to wait until the reality of those risks becomes fully apparent". (72)

10. UN obligations require to make commercial objectives proportional to what protects and fulfils human rights

While the application of the international principle of proportionality within the limits of the EU law requires the EU memberstates to take their national policy measures proportionally, correspondingly however the same principle under the international law requires also that the regional means and measures of the EU must be duly proportionate so that they shall not affect or restrict the implementation of the international UN obligations.

Also in respect to ensuring the corporate activities to duly respect human rights each state is obliged under the ICESCR:

a) to comply with how it shall act - also by international economic co-operation - "by all appropriate means, including particularly the adoption of legislative measures", "to the maximum of its available resources, with a view to achieving progressively the full realization" of the economic, social and cultural human rights. (73)

b) "to allocate available resources [...] in accordance with international human rights standards" "to ensure the widest possible enjoyment of economic, social and cultural rights" by measures which "least restricts" these rights and is "justified by [...] full use [...] of available resources" for most efficiently realising "the totality of the rights provided for in the Covenant". (74)

c) to "modify the domestic legal order as necessary in order to give effect" to its ICESCR obligations by "the means of implementation" including legal remedies "appropriate in the sense of producing results [...] consistent with the full discharge of its obligations", as "subject to review" by "Committee's examination of the State party's compliance". (75)

d) "to ensure that economic, social and cultural rights [...] are not undermined" but "are fully taken into account in its actions as a member of international organizations [...] as well as when negotiating and ratifying" treaties - including the EU and its treaties - and protected by "the judicial and other appropriate remedies in place enabling victims to obtain redress in case their Covenant rights have been violated". (76)

e) if such remedies are not provided, "to justify its failure to provide legal remedies for violations of economic, social and cultural rights" by showing "either that such remedies are not "appropriate means" within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this". (77)

f) to "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" and on what basis the used means "are considered to be the most "appropriate"" to fulfil ICESCR obligations, compliant to how "the ultimate determination as to whether all appropriate measures have been taken remains one for the Committee to make" on the basis what the state demonstrate. (78)

11. EU has no competence to re-define international human rights obligations to serve its regional business interests

Thus what the EU sets as conditions for its memberstates to protect life, health, environment, consumers, etc. by proportionate and appropriate ways and means in relation to the business rights of corporations, contradict with what its memberstates' UN human rights obligations require for their proportionate and appropriate implementation.

The EU does not however have competence to affect, change or re-determine what are appropriate measures which the UN human rights treaties oblige the EU memberstates to take - and not even to duly know by itself how exactly its decisions may affect the appropriate implementation of the UN obligations on which "the ultimate determination as to whether all appropriate measures have been taken remains one for the (UN) Committee to make". (79)

But as within the EU system, the exceeded use of competence gets addressed by the EU Court of Justice only through the complaints of the EU memberstates or the EU institutions, none of these - also not the EU court - can ultimately determine on behalf of the UN implementation system whether and how the implementation of the memberstates' UN obligations is affected. As the memberstates do not thus have the certainty to challenge the EU for exceeding its competence, the EU action may continue to affect the implementation of the UN human rights obligations in ways which exceed EU's competence and violate its memberstates' UN obligations.

Under the UN human rights obligations each state must however show how it takes "all appropriate means" "to the maximum of its available resources" to realise economic, social and cultural human rights and "must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations" and on what basis the used means "are considered to be the most "appropriate"" to fulfil

ICESCR obligations. (80)

12. EU undermines human rights obligations on use of economic resources and taxation in respect to corporations

"The obligation to fulfil requires States parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights" "including by enforcing progressive taxation schemes" in order to make business ti "support to implement the Covenant rights and comply with other human rights standards" , "directing the efforts of business entities towards the fulfilment of Covenant rights". (81)

States are responsible in respect to the corporations from their area to "ensure that they do not undermine the efforts of the States in which they operate to fully realize the Covenant rights — for instance by resorting to tax evasion or tax avoidance". (82) But under the EU law however while "taxation falls within the competence of the Member States", they must still "exercise their direct taxation powers consistently with Community law" (83) so that:

States are not allowed "to prevent a risk of tax avoidance" by raising taxes for business actor who "transfers his tax residence outside that State" (84) as that does "not constitute [...] justification for a tax restriction on freedom of establishment" of corporations or "a matter of overriding general interest". (85)

Freedom of establishment allows for the TNCs the freedom "of benefiting from more favourable legislation" on taxes etc. in other countries and "the mere fact that a resident company establishes a secondary establishment, such as a subsidiary, in another Member State cannot set up a general presumption of tax evasion" (86) or justify further authorisation requirements.

To fulfil their human rights obligations states may however need "to tax multinational groups of companies as single firms [...] imposing a minimum corporate income tax rate during a period of transition" and to "revoke business licences and subsidies, if and to the extent necessary, from offenders; and revise relevant tax codes, public procurement contracts" to ensure that corporate activities can not negatively affect or violate human rights.(87)

"Providing excessive protection for bank secrecy and permissive rules on corporate tax may affect the ability of States where economic activities are taking place to meet their obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights." "Lowering the rates of corporate tax" for "attracting investors encourages a race to the bottom that [...] undermines the ability of all States" to fulfil human rights. (88)

But under the EU law Member states are obliged to "remove [...] legal uncertainty in so far as it might affect rights" provided for corporations under the EU law (89) and states' laws shall not determine taxation of corporations based on how they are "remaining liable to that tax for the next five tax years" (90) or by measures for "safeguarding fairness in business dealings or the efficiency of tax inspections" - which can be prohibited as "impediment to the freedom of establishment". (91)

As far as the EU may assume its memberstates' measures to protect health or environment - for example by taxing a company - to "go beyond what is necessary" for such protection, the EU can prohibit state from "denying the company legal capacity". Then the company would have "capacity to bring legal proceedings before [...] national courts for the purpose of enforcing rights" for companies (92) with "the right to obtain financial compensation" for restrictions. (93)

When public tax assets which protected human rights are bindingly judged to become transnational investors' private property to be used for other purposes, this can prevent the realisation of human rights and violate them. UN human rights obligations do not allow states to make the implementation of universal human rights restricted in order to expand corporations' rights to private profit making.

13. EU violates peoples' right to self-determination of legislative and executive powers to shape corporations

On "matters which have important resource implications" legislation is obliged to ensure that courts have to "take account of Covenant rights [...] to ensure that the State's conduct is consistent with its obligations under the Covenant". "Neglect by the courts of this responsibility is incompatible with the [...] respect for international human rights obligations". (94)

Taking away the public resources by which the state has protected and realised human rights, court judgements can violate human rights without otherwise formally prohibiting a state from protecting them - for example when

"judgments deprive Governments of funds essential to meet their health, housing and education obligations." (95) Under their international human rights obligations, states are however obliged also regarding international order of economic cooperation and treaties to ensure primarily that:

"All peoples have the right of self-determination" (96) as such "an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights" (97) that "in no case may a people be deprived of its own means of subsistence" which secure and realise their universal human rights. (98)

People have inalienable equal right "to vote [...] guaranteeing the free expression of the will of the electors" (99) as "essential to ensure the accountability of representatives for the exercise of the legislative or executive powers" to determine "the legislative or executive powers" by the results of people's democratic vote. (100)

This is violated by EU's functioning if EU's legislative and executive competences are not determined by any peoples' democratic votes or elections but by commercial priorities fixed "to promote trade" and "supply of raw materials and semi-finished goods" for the European business and its corporations' "competitive capacity" globally so that "the free movement of goods, persons, services and capital is ensured" for "expansion of consumption within the Union" (101) even if such competences deprive peoples of their own means of subsistence and violate human rights.

Peoples have right to determine by their democratic vote the legislative and executive competences, by which corporations are formed, shaped and maintained. As "companies are creatures of the law" (102) and "a company established in accordance with national law exists only on the basis of the national legislation which 'permits' the incorporation of the company" (103), thus the states could easily require by the laws which form the legality of corporations, how corporations' activity must respect human rights and promote their realisation in accordance with the states' human rights obligations.

But the EU competence to secure the 'freedom of establishment' requires on the contrary the states to be not allowed to take measures as required by their human rights obligations but to be required to ensure instead that any such measures must become ensured to not restrict corporations' expansion of their private profit making.

Securing for the corporations rights like 'freedom of establishment', this EU competence takes away people's rights to control profit making by preventing the corporations from taking out of the country the profits exploited from there to be invested elsewhere whenever a state would try to restrict by laws the corporations from violating people's rights.

Competence to legalise such corporation rights like 'freedom of establishment' has provided legal basis for such growth of corporations' transnational powers by which they can make profits by the cost of violating people's rights and by the cost of overconsuming and polluting environment without becoming accountable as they can freely shift such profits elsewhere as soon as a state starts to demand them to pay the damages which their profits caused.

14. Regional sectoral policy competences can not re-define universal human rights but must be determined them

The EU has been provided ca. 30 different realms of competences in TFEU articles 3-6 to be such bases of its functioning that each of those 30 policy sectors have their own priority tasks which they are primarily set to carry out.

While human rights have not been provided in the EU their own specific realm of human rights competence, the EU assumes that in using such its 30 sectoral policy competences to fulfil in each primarily their sectoral priorities, the EU would somehow also promote its "values of [...] respect for human rights" and "protection of human rights" also internationally "by appropriate means commensurate with the competences which are conferred upon it". (104)

The EU treats human rights as if they were a kind of policy values without competence to be legislated or implemented as legally binding international rights. At the same time when it deprives human rights of competent implementation, it gives to such commercial rights of corporations - for which it has already provided a strong implementation - also a status as 'fundamental rights' - affecting thus what is publicly meant by 'human rights'.

Human rights are however not just EU's 'values' but indivisible totality of internationally recognised rights which states have agreed under the UN human rights treaties and international law to be obliged to respect, protect and realise.

States have agreed to respect, protect and realise human rights compliant to the UN obligations - not as subordinated to the execution of such other sectoral priority tasks of different policy competences, subordinated to which the EU

requires human rights to be conducted. The EU has however nowhere shown how such treatment would respect or implement the international human rights in compliance with the obligations of the UN human rights treaties.

The EU is not a party to the UN human rights treaties (other than UN Convention on the Rights of Persons with Disabilities). EU has not agreed its activity to be directly bound by the UN human rights obligations or internationally monitored by the UN human rights system regarding whether and how the EU respects, protects and realises human rights as legal rights compliant to the UN obligations (rather than as something which EU promotes as its 'values').

15. The nature of EU's competence to respect the international law on human rights

As the competence to implement the obligations on human rights due diligence is based on international law and belongs to the parties of the UN human rights treaties, including the EU memberstates, the determining competence - to determine how such due diligence on UN obligations of international human rights shall be implemented - can in no way come from the EU, which has not even approved itself to be legally bound to implement those obligations.

If EU member states allow such their regional Union - which has not even approved to be legally bound by those UN obligations - to affect, direct, regulate or limit the implementation of those their international UN human rights obligations on due diligence, for prioritising their European commercial interests over universal human rights, they violate internationally approved human rights.

As no competence to affect negatively international human rights has been conferred upon the EU, the EU is thus obliged to ensure that it can not by any of its competences affect member states' UN based competences to implement fully their international UN human rights obligations and so:

It belongs to the limits and basis of all EU competence that when the EU takes on behalf of its memberstates an activity in which they have obligations on human rights, also the EU shall protect and realise human rights accordingly - in a manner which is competent to protect and realise international human rights obligations.

How that will be ensured in EU's treatment of due diligence, as no EU body - not even the EU Court of Justice - has competence to judge or determine what is necessary to implement UN obligations? Only by making the EU action to follow those international human rights obligations.

As the UN human rights obligations - in which the competence to define their implementation belongs to the UN system and not to the EU -, contribute to limit the EU competences, thus: EU's due competence to respect international human rights is that it has to competently ensure that their implementation in accordance to the respective UN obligations "shall not be affected by the provisions of the Treaties" of the EU (105) or by the various specific other competences which the EU treaties provide.

All EU's measures to act in respect to the global economy or to regulate the ways how the international human rights obligations are implemented must be carried out with such human rights competence in respect to the international human rights which acts fully compliant to the respective international human rights obligations.

This competence is required from all EU activity (by the TFEU article 351, by the TEU articles 2, 3(5), 4.1, 5.1-2 and 21 and by the EU Charter on Fundamental Rights article 53) no matter what is their sectoral character and can not thus come from any of the specific sectoral competences provided in TFEU articles 3-6 - because it rather concerns obligations which set the limits of those specific competences from outside.

It is the EU's competence to respect the international law, particularly also in respect to human rights as internationally recognised legal order which is not determined by any regional or EU-specific competences but which contribute crucially to determine the limits of all specific EU competences.

It is EU's such competence to exist and act as a relatively autonomous legal order under the international law which comes from its ability to know and address competently the contents of the international obligations which constitute limits of EU's competences.

As the EU "shall act only within the limits of the competences conferred upon it" (106) which do not cover competence to affect the implementation of the international UN human rights obligations of its memberstates, thus, what is crucial for EU's competence is to refrain competently in all EU activity from affecting such UN human rights obligations.

16. EU can not displace international human rights by 'fundamental rights' set to comply with its regional interests

In the EU the "fundamental rights form an integral part of the general principles of law the observance of which the Court ensures" and "for that purpose, the Court draws inspiration [...] from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories." UN human rights obligations remain only a source of 'inspiration' - respected only according to what is "necessary for the protection of the interests which they are intended to guarantee and only in so far as those objectives cannot be attained by less restrictive measures" in respect to the rights the EU provides for business. (107)

The EU has built thus its own human rights system, which crucially differs from the internationally recognised human rights so that in EU Charter of Fundamental Rights, compared to internationally recognised human rights, the EU has:

- a) Removed the crucial means and obligations internationally agreed for people as basis to guarantee the protection and realisation of human rights as provided in the articles 1, 25-27 of the ICCPR and by the articles 1, 2(1), 4 and 5 of the ICESCR - including also people's rights to self-determine through democratic vote the legislative and executive competences which affect their human rights so that people can shape those competences to secure their rights
- b) Removed many of the human rights recognised in the UN human rights treaties - for example the right to food - and put instead various rights of business to property and profit making, giving them a kind of human rights status. (108)
- c) Set the respect for those rights, their protection and implementation to be subordinated in the EU activity to other priority tasks of EU's ca. 30 sectoral competences, dominated by its regional commercial priorities.
- d) Recognised only formally that the international law does not allow the EU to affect its memberstates UN human rights obligations, while in practice the EU has no due mechanisms to monitor and guarantee in practice that the EU competences and activity shall not affect its memberstates' UN human rights obligations' implementation.
- e) Allowed that "any limitation on the exercise of" "the fundamental rights" recognised by the EU's Charter "may be made [...] if they are necessary and genuinely meet objectives of general interest recognised by the Union" (including its commercial business priorities) or protect such other people's rights and freedoms, to which the EU has included also commercial rights of business (109) even though under the UN obligations such limitations are not allowed to limit the implementation of human rights.

But while the EU has imposed generalised specific regional commercial corporate interests to be treated as if they were general public interests, that is not due justification to limit states' competence and obligations to realise universal human rights equally for all in international economy. While memberstates' EU obligations to "comply with the rules of Community law [...] cannot be invalidated by [...] United Nations Conventions [...] signed after the accession" (110) their EU obligations shall be limited by all UN human rights treaties insofar as memberstates have signed and ratified those UN treaties prior to their EU accession. (111)

But "where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction". (112)

Even where measures for protection of health or safety are allowed, the protection in the EU tend often to be allowed and carried out rather under other rules of commercial or other national policy interests set by the EU like for example:

"the health and life of humans rank foremost among the assets and interests protected by the Treaty and that it is for the Member States to determine the level of protection which they wish to afford to public health and the way in which that level is to be achieved." This "can justify restrictions on the freedoms of movement guaranteed by the Treaty such as the freedom of establishment" (113) and "a Member State may take the measures that reduce, as far as possible, a public-health risk" even before such "risks becomes fully apparent". (114)

But still the criteria for justifying such protections remain subject to the interests assessments by the commercial competences and their proportionality requirements, which do not comply with the UN human rights obligations. In using their competence "to organise their social security systems and [...] health services" in their own ways, "the Member States must comply with [...] freedom of establishment" of firms and companies in the EU, prohibiting states "from introducing or maintaining unjustified restrictions on the exercise of" such business freedoms in healthcare. (115)

The importance of that objective is confirmed by Article 168(1) TFEU and Article 35 of the Charter of Fundamental Rights of the European Union, under which, inter alia, a high level of protection for human health is to be ensured in the definition and implementation of all policies and activities of the European Union. (116)

17. Non-Financial Reporting Directive does not comply with human rights obligations

In all these EU's arrangements and positioning the main impact on internationally recognised human rights has been to derogate the EU practices from the international human rights obligations of monitoring and ensuring the European business and investments to be conducted and governed in a manner that respects, protects and realises the internationally recognised human rights.

Violations of and negative impacts on human rights are caused and maintained by how corporations have been created and allowed to act with rights as legal persons/entities as provided by the company laws, property laws, trade, investment and competition laws in Europe and in other rich powers carrying such European commercial law heritage.

But the EU can not in compliance with the international law achieve competence or rights to affect or assume to carry out the implementation of the UN human rights obligations by adopting directives like the "Non-Financial Reporting Directive", - to which the commission study on due diligence referred as a model for its legal basis and - which does not focus or act in a way which would implement the obligations set by the UN human rights, but on the contrary:

"Non-Financial Reporting Directive" was enacted "in order to attain freedom of establishment as regards a particular activity" of companies or firms (117) to make profit so as "to boost growth and strengthen confidence [...] to create new growth" for the EU single market purposes. (118)

That directive is purposed to coordinate states' laws on procedures by which corporations can inform how they would prefer to describe and define their own business and its impacts as 'due diligence' and "prevention of human rights abuses" also by "identifying sustainability risks and increasing investor and consumer trust" to maintain market confidence in ways which help the "long-term profitability" of their business and are thus "of importance for the interests of undertakings, shareholders and other stakeholders alike". (119)

While such procedures facilitate the corporations to produce public stories on how the practices by which they profit would be most beneficial for human rights, such reporting differs crucially from such due diligence which the UN human rights treaties' obligations require states to set corporations to carry out - to ensure that international human rights become respected, protected and realised as equal for all. Such UN human rights obligations differ crucially from such "Fundamental Rights of the European Union" for Europeans "including freedom to conduct a business, respect for private life and the protection of personal data" in accordance to which "this Directive has to be implemented". (120)

The EU can create new self-advertising systems for business by which it authorises the business to regulate the implementation of human rights obligations to ensure that human rights can not restrict the business profits and to call this 'harmonised' 'due diligence' but that does not fulfil the international human rights obligations in respect to corporate activities in global economy as required by in compliance with our UN human rights obligations and 'due diligence' which they require.

As the UN human rights obligations which the EU memberstates have agreed before the EU accession with nearly all countries of the world can not be changed by any cooperation or agreement merely between the EU member states - if all other UN states parties do not approve changes to those agreements -, therefore:

The only logical way how the EU memberstates can by their common efforts "eliminate the incompatibilities" between the EU law and the UN human rights treaties - as states and the EU are obliged to do under the TFEU article 351 (121) - is that the EU member states change the EU law or its implementation to comply with the UN human rights obligations. If they do not comply with their UN human rights obligations they violate the international law.

And none of the tasks which TFEU articles 50 and 114 give to the EU as powers to restrict its memberstates' safeguards policies which protect health, life, environment or consumers, can provide for the EU any competence to restrict memberstates from carrying out what their human rights obligations' international UN implementation mechanisms require them to do to implement their international obligations as they have agreed with the whole world.

18. How could EU act on due diligence complying both with the UN human rights obligations and the EU treaties

The EU is obliged to act so that the implementation of its member states' UN obligations on human rights "shall not be affected by" EU's treaties, competences or laws (122) including the company laws - no matter how much the EU may like to create its alternatives for universal human rights by allowing European corporations or regional commercial interests to re-define human rights in alternative ways according to the European business priorities.

As the EU and its memberstates do not have competence to change or re-define without the consent of world's other countries the international human rights obligations which bind its memberstates also in all activities which the EU takes on their behalf, therefore:

- The only competence the EU has in this respect is its competence to do everything it can to ensure that it acts without exceeding those limits which the international law sets for all its competences

- The only way to act compliant to its competence is thus that the EU ensures that all its activity follows the guidance of that how its memberstates are obliged to shape their legislation according to their human rights obligations under the UN treaties as authorised to be assessed, monitored and guided by the UN human rights treaty bodies.

- As the UN Committee on Economic, Social and Cultural Rights has provided General Comment 24 "State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities" (123), the EU has to ensure - also in terms of legislation - that the memberstates shall act compliant to the TFEU article 351 and thus fully in accordance with the CESCR guidance ensuring that its memberstates' activity implement their UN human rights obligations and "shall not be affected" by the EU laws, competences or activities (124) in any restrictive manner.

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53. Case C-186/87 Cowan [1989] ECR 195 § 17
54. TFEU article 50.2 (a)
55. TFEU articles 50.2(c) and 50.2 (f), see also 49
56. TFEU articles 26.2 and 32, b-d
57. EU commission: Sustainable corporate governance INCEPTION IMPACT ASSESSMENT, Ref. Ares(2020)4034032 - 30/07/2020, DG JUSTICE, A3 Company law unit, page 3
58. EU commission: Sustainable corporate governance INCEPTION IMPACT ASSESSMENT, Ref. Ares(2020)4034032 - 30/07/2020, DG JUSTICE, A3 Company law unit, page 3
59. <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation>
60. EU commission: Sustainable corporate governance INCEPTION IMPACT ASSESSMENT, Ref. Ares(2020)4034032 - 30/07/2020, DG JUSTICE, A3 Company law unit, page 4
61. EU commission: Sustainable corporate governance INCEPTION IMPACT ASSESSMENT, Ref. Ares(2020)4034032 - 30/07/2020, DG JUSTICE, A3 Company law unit, page 4
62. EU commission: Sustainable corporate governance INCEPTION IMPACT ASSESSMENT, Ref. Ares(2020)4034032 - 30/07/2020, DG JUSTICE, A3 Company law unit, page 3
63. ICESCR articles 2.1 and 4 and CESCR, E/C.12/GC/24, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraph 12
64. TFEU article 351
65. Case C-299/02 Commission v Netherlands [2004] ECR I-9761 §18, 39
66. Case C-253/03 CLT-UFA [2006] ECR I-1831 §12
67. Case C-411/03 SEVIC Systems [2005] ECR I-10805 §26, 27
68. Joined Cases C-570/07 and C-571/07, ECLI:EU:C:2010:300 § 53-55, 61 & 63 and Joined Cases C-171/07 and C-172/07, ECLI:EU:C:2009:316, § 22, 25 & 27, see also . Case C-140/03 Commission v Greece [2005] ECR I-3177 § 34, Case C-299/02 Commission v Netherlands [2004] ECR I-9761 § 17, 18
69. Joined Cases C-171/07 and C-172/07, ECLI:EU:C:2009:316, § 52 & 57 and Joined Cases C-570/07 and C-571/07, ECLI:EU:C:2010:300 § 67 and 94
70. TFEU articles 26, 114.10 and 36
71. Joined Cases C-570/07 and C-571/07 ECLI:EU:C:2010:300 § 94
72. Joined Cases C-171/07 and C-172/07, ECLI:EU:C:2009:316, § 30
73. ICESCR article 2.1
74. CESCR statement E/C.12/2007/1, on "An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant", paragraphs 4, 8 (a), (c)-(d) and 9 and CESCR, General comment No. 3: The nature of

States parties' obligations, 4, 10 and 11

75. E/C.12/1998/24, Draft general comment No. 9: The domestic application of the Covenant, paragraphs 3, 5 and 7
76. E/C.12/2008/2, Guidelines on treaty-specific documents to be submitted by states parties under articles 16 and 17 of the international covenant on economic, social and cultural rights, paragraph 3 c & e
77. E/C.12/1998/24, Draft general comment No. 9: The domestic application of the Covenant, paragraph 3
78. CESCR, General comment No. 3: The nature of States parties' obligations, paragraphs 4 and 10
79. CESCR, General comment No. 3: The nature of States parties' obligations, paragraphs 4 and 10
80. CESCR, General comment No. 3: The nature of States parties' obligations, paragraphs 4 and 10
81. CESCR, E/C.12/GC/24, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraphs 23-24
82. CESCR, E/C.12/GC/24, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraph 37
83. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business,, paragraphs 61-62
84. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business, paragraph 69
85. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business, parag. 63-64 & 66
86. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business, paragraphs 71-72
87. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business, paragraph 15 & 37
88. CESCR, E/C.12/GC/24, General comment 24 on State obligations under the ICESCR in the context of business, paragraph 37
89. Case C-264/96 ICI [1998] ECR I-4695 § 19, 34
90. Case C-380/11 DI. VI. Finanziaria di Diego della Valle & C [2012] § 52
91. Case C-167/01 Inspire Art Ltd [2003] ECR I-10155 §105, 142
92. Case C-208/00 Überseering BV [2002] ECR I-9919 § 94
93. Case C-186/87 Cowan [1989] ECR 195 § 17
94. CESCR, E/C.12/1998/24, Draft general comment No. 9: The domestic application of the Covenant, paragraphs 10 and 14
95. A/HRC/33/40, UN Independent Expert of the International Democratic and Equitable Order 2016, paragraphs 30 and 36
96. ICCPR article 1.1
97. CCPR, General comment No. 12: Article 1 (Right to self-determination)) paragraph 1
98. ICCPR article 1.2 and CCPR, General comment No. 12
99. ICCPR article 25. b
100. CCPR, General Comment No. 25 CCPR/C/21/Rev.1/Add.7 paragraph 9
101. TFEU articles 26.2 and 32, b-d
102. Case C-81/87 Daily Mail [1988] ECR 5483 §19, 21, 23
103. Case C-378/10 VALE Építési [2012] § 32, 33
104. TEU, articles 2-3
105. TFEU article 351
106. TEU articles 4.1, 5.1 and 5.2
107. Case C-36/02 Omega [2004] ECR I-9609 § 33, 35, 36
108. Among the fundamental rights and freedoms, the EU charter has included in articles 15.(2), 16 and 17 the "freedom to conduct a business in accordance with Community law" and "to exercise the right of establishment and to provide services in any Member State" with commercial property rights and the EU has provided for these commercial rights stronger and more direct competences for the EU to protect and implement these rights than universal human rights under the UN human rights obligations
109. EU Charter of Fundamental Rights, article 52.
110. Case C-62/96 Commission v Greece [1997] ECR I-6725 § 22
111. TFEU article 351
112. Case C-483/12 Pelckmans Turnhout [2014] § 17, 19, 20, 21
113. Joined Cases C-171/07 and C-172/07 Apothekerkammer des Saarlandes [2009] ECR I-4171 § 19, 27
114. Joined Cases C-171/07 and C-172/07 Apothekerkammer des Saarlandes [2009] ECR I-4171 §19, 27, 30, 34, 35
115. Joined Cases C-171/07 and C-172/07, ECLI:EU:C:2009:316, § 18-19
116. Joined Cases C-570/07 and C-571/07, ECLI:EU:C:2010:300 § 65
117. Study on due diligence requirements through the supply chain, EU Commission 2020 under the DG Justice, Final report, IV. Problem analysis and options for regulatory intervention, section 3.1, page 231 and TFEU article 50.1
118. Directive 2014/95/eu of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
119. Directive 2014/95/eu of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, sections 1, 3, 4, 7, 9 and 22
120. ibid
121. TFEU article 351
122. TFEU article 351 and EU Charter of Fundamental Rights, article 53
123. CESCR, E/C.12/GC/24, General Comment 24 "State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities
124. TFEU article 351 and EU Charter of Fundamental Rights, article 53