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Human rights and Business
- Promoting the effective implementation of global and regional instruments

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Speech by Nils Muiznieks
Commissioner for Human Rights of the Council of Europe

Excellences, ladies and gentlemen,

I came to the topic of business and human rights in a very roundabout way. I started by looking at the outsourcing of certain government services: private border guards, private prisons, private security companies, and the human rights implications of this outsourcing of government services. Then, when I began to look at the Internet and human rights, I realised that if I did not engage with the private sector, I would be missing the boat completely.

More recently, my Office and I have begun to do a lot of work on national human rights action plans. I started hearing from governments that they do not have a human rights action plan per se, but they do have an action plan on business and human rights or an action plan on the sustainable development goals. Then I realised that we're missing part of the picture.

Recently, I began to look at the issue of business and human rights in general and I just had occasion to examine and discuss a plan on business and human rights on a visit to Switzerland. What this means for me and my team in practice is that we have to broaden the circle of people that we engage with on a regular basis to include representatives of business. I think we are very focused on governments and NGOs, but we almost never talk with business. We have to change our modus operandi during country visits.

Although I am a relative newcomer to this field, there are some things that seem pretty clear to me already.

First is that I fully support the effort to create a legally binding instrument to regulate transnational corporations and other business enterprises, and I think that the Council of Europe with its expert bodies and monitoring mechanisms can provide a lot of valuable input to this process.

Second, I think we need to have robust follow-up to our own Committee of Ministers Recommendation of 2016. This field to me seems to be very fast moving and if we have an implementation review only after five years, the world will have changed completely. So I very much think that we have to sit down and do an implementation review before the five-year period is up - perhaps halfway through the process, or even sooner.

I sense a significant amount of public dissatisfaction with self-regulation and a pretty strong public appetite for hard law regulation on at least some key human rights responsibilities of businesses. I think there are a number of signs of this: you have a popular initiative in this direction in Switzerland which is shaping debate there; countries such as France, the Netherlands and the UK have already taken some legislative steps in this direction. We see movement at EU level with the directive on non-financial reporting concerning certain large companies and the just-adopted EU regulation on due diligence obligations on conflict minerals. So, there is some movement already at the European and national level to have more legislation in this field.

What more should we be doing? I think first of all we need to analyse implementation of the national action plans for business and human rights to identify the optimal mix of binding and voluntary measures. I was struck to learn that 12 countries in the Council of Europe already have national action plans and 9 are in the process of developing them: that means significant experience at the national level already exists, and I think that we're not fully aware of this experience and we need to convene experts from these countries to exchange information. The Committee of Ministers Recommendation urged member states to adopt these action plans and to share good practices, including through a Council of Europe-maintained information system. I do not know how far we are towards creating this information system, which could be a good resource for us all.

I hope that member states will be ambitious in developing their national action plans, go beyond the existing toolboxes and define new areas for legislation and incentivising businesses. I think we need to involve civil society in the development, implementation and review of those plans, and we need to put much greater effort into bringing businesses on board - and not just big multinational businesses, but small and medium sized enterprises as well. Because I think that the business and human rights agenda is not just about international development and global supply chains - it also has to encompass the impact of businesses on human rights in the Council of Europe space. Many of the violations of labour rights, child labour, trafficking in human beings, infringements of the right to privacy and freedom of expression by some businesses are not taking place far away: they are taking place here, in the Council of Europe space.

What might be the role of my office? One possible direction of work is awareness-raising, research and communications work. I already wrote one human rights comment on this topic. I already mentioned our first effort to integrate business and human rights into the agenda of my country visits. We will have to do this more systematically. I'd be happy to participate in workshops with representatives of member states conveyed to exchange experiences and good practices.

One theme that also came up which I think might be interesting to pursue as well is to try to assess the economic costs of human rights violations. Because if we can talk to businesses in the language they understand, they will listen. I know that there are some efforts going on in this area, for instance the European Institute for Gender Equality has done some work on the economic costs of the gender pay gap, of domestic violence, and so on. I think if we can talk to businesses about the bottom-line and how much human rights violations cost, we could be having a far more interesting discussion with them, but then we need to learn about this area and apply more sophisticated methodologies.

Overall, I think this is an exciting new area of work. It requires engaging with new stakeholders, it requires us to look at human rights impacts not only in the Council of Europe space, but globally. And it requires us to engage much more systematically with colleagues at the EU, the OSCE, the OECD and the UN – and I think it's very good for us to get out of our comfort zones.

Thank you.