

REPORT OF THE THUN GROUP OF BANKS' ANNUAL MEETING 2019

- More than 50 participants attended the two day annual meeting in Thun. Representatives from banks, governments, academia, civil society, international governmental organizations, law firms, and other business organizations came together to **discuss current banking and human rights focus areas** with a special attention to key legal and regulatory issues as well as **evolving developments pertaining to banking and human rights**. The significance of the meeting for advancing, both in formal and informal conversations, the discussion on banks and human rights was widely acknowledged by participants.
- The **OECD Responsible Business Conduct (RBC)** project was debated intensely during this year's meeting. The RBC has been taken up broadly by industry stakeholders and governments, which is mainly attributed to the fact that the RBC aims at operationalizing existing standards such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Equator Principles (EP). Currently, the OECD Working Party is finalizing the paper on **Due Diligence for RBC in General Corporate Lending and Securities Underwriting**. It will subsequently develop a guide for due diligence guidance in asset trade and project finance. **Key principles of the OECD paper on general corporate lending** include the need for banks to:
 - Prioritize clients, sectors and products based on assessment of RBC risks
 - Consider whether they have appropriate capacity to appropriately manage RBC risks
 - Coordinate across multiple departments in order to manage RBC risks (not only ESRM teams)
- With regard to **human rights due diligence** it was emphasized several times during the meeting that it is crucial to **effectively translate policies into business practice** and engage all parts of the organization. Banks acknowledged that further efforts are needed to help the business lines to understand their responsibilities and the complex human rights concepts in a way that is suitable for the practical application in their daily work. It was also acknowledged that human rights are being considered under the ongoing EP 4 review. Another aspect concerning due diligence was the suggestion to identify 'high risk business models'; those beyond typical high risk sectors (such as defense or mining) that have inherent features – such as franchise models, consumption of personal data etc. – that may present higher human rights risk. Taking an issue-based approach instead of an exclusively sector-focused view was considered useful for internal due diligence. However, the issue of practicability for the business was raised. The group concluded that it would be most beneficial when the issue focus complements the sector view.
- On the topic of **human rights performance measurement** an approach to identify and evaluate human rights impacts was presented and discussed. By exploring 'causal pathways' (e.g. input, activity, output, outcome and impacts models) organizations can better understand how human rights interventions are driving positive behaviors and decision making at an organization.
- On the current **legal and regulatory landscape** pertaining to the financial services industry and human rights there was a general acknowledgement of an increased focus towards hard law. This derives from the assumption that when regulating banks these new standards can be passed on to the real economy. At the same time, policy coherence remains a major challenge. Meeting participants noted an increasing gap between existing international guidelines and national implementation. Furthermore, new legislations such as France's 'Loi Vigilance' and its implications for banks were debated. It was advised that banks take a proactive approach and establish strong policies and processes that anticipate upcoming binding regulations. Another development noted by several speakers is a trend towards strategic litigation, where the claimant is using an individual case in order to raise awareness on a broader issue, and to potentially set a legal precedent.

- This meeting also considered an overview on measures to combat **modern slavery and human trafficking** including the work of the Joint Money Laundering Intelligence Taskforce in the UK (JMLIT).
- A further discussion focused on the experiences and approaches of non-financial sector companies and institutions as regards **human rights prioritization, remediation, and increasing mandatory regulation**. Comments included that investors can play an important role to encourage companies to foster remediation and to work jointly to find a solution; that companies often do not need to create new grievance mechanisms but could help rightholders more easily access existing mechanisms. In addition, investors stressing the importance of human rights was seen as a very effective case to create internal awareness for the topic. Furthermore, the perceived lack of policy coherence was also mentioned as a concern for non-financial companies.
- The following **evolving developments** in the area of banking and human rights were discussed in different sessions:
 - Participants noted repeatedly that the topic of **climate change** dominates the public debate. This seems to reduce focus on human rights. In this context, it was also highlighted that OECD National Contact Points have seen an increase in cases related to climate change. It was suggested to further explore the relation between climate change and human rights.
 - On the topic of **artificial intelligence (AI)**, common misperceptions were pointed out such as cultural bias in data models which can for example lead to discriminatory results in credit scoring. Some use cases were mentioned, for instance in anti-money laundering. When working with AI technologies an organization should focus on the development process and potential biases as well as their outcomes. It was also stressed that there is a need for education in society to be able to adequately interpret and act on AI outputs. For AI, referred to as **3rd Generation human rights**, the meeting considered opportunities and challenges in human rights due diligence. It recognized the potential for 'big data' techniques to help increase transparency in human rights reporting.
 - It was acknowledged that for **small and medium-sized enterprises (SMEs)** there appears to be a need for capacity building, awareness, and financing to achieve necessary improvements with respect to human rights. It appears that for SMEs higher ethical standards are passed along the supply chain mainly imposed by the due diligence requirements of multinational enterprises. Considering that SMEs can make up more than 90% of the workforce in many economies it is important not to forget their crucial role to realize the corporate responsibility to respect human rights as stated in the UNGPs.
 - Furthermore, it was pointed out that there is a tendency to underestimate the importance of **common language** and same understanding of human rights concepts. This becomes even more important as the human rights issues gain in complexity considerably. To build this capacity, peer learning groups were suggested.

These evolving and other topics as well as the role of banks therein will be further elaborated by the Thun Group in forthcoming discussions.

The next annual meeting of the Thun Group of Banks is scheduled for **9-10 July 2020**.