

Corporate social responsibility at EU level

Proposals and recommendations to the
European Commission and the European Parliament

The European Coalition for Corporate Justice (ECCJ)
ADVOCACY BRIEFING

November 2006

INTRODUCTION

The European Coalition for Corporate Justice (ECCJ) represents a diverse range of civil society organisations from across Europe. ECCJ has a vision of a sustainable world in which corporations' drive for profit is balanced by the interest of society at large and respects human, social and environmental rights.

The ECCJ is a European wide coalition which includes national level coalitions, such as CORE UK, the Dutch CSR Platform, the French Forum Citoyen pour la RSE, and the German CORA. Through these national level networks as well as international NGOs and Brussels based NGOs, the coalition brings together a wide range of societal concerns (social, human and environmental) from all over Europe. For the purpose of drafting this paper ECCJ has cooperated closely with the International Secretariat of the Clean Clothes Campaign (CCC) and the OECD Watch network.

This paper outlines the view of ECCJ on recent policy developments in the area of CSR at EU level, and provides recommendations for the European Commission to enhance the contribution of the EU, through CSR, to improving social and human rights conditions and the environment affected by corporations. These recommendations are also submitted to the European Parliament's Committee on Employment and Social Affairs in the light of their report on the recent CSR communication (COM (2006)0136)

Since the publication of the Commission's Green Paper on CSR (2001) on several occasions NGOs, many of which are part of ECCJ, made or supported concrete proposals to the Commission to:

- set standards for codes and voluntary initiatives
- expand its mandatory and legislative role regarding public procurement;
- ensure transparency (mandatory public reporting, labelling);
- safeguard consumer interests (penalizing companies who provide false information);
- implement extra-territorial application of core labour standards and human rights (allowing national courts to apply norms of international law in transnational litigation)

A number of these initiatives and proposals received the support of the European Parliament in various resolutions. We believe all of these are still valid and deserve serious consideration.

EU CSR COMMUNICATION 2006

The EU CSR communication that was presented in March 2006 is the Commission's answer to the outcomes of the European Multi-Stakeholder Forum on CSR that ended in 2004. The result is dramatic and neglects developments in the international CSR debate over the past ten years.

A large number of different stakeholders, including Non Governmental Organisations (NGOs), trade unions, and businesses, have spent considerable amounts of time and resources on the multi-stakeholder forum, which took almost two years to complete. The aim of this exercise was to come to a common understanding among stakeholders and to lay the groundwork for a European framework for CSR.

The NGOs that entered into the process did so in the light of the urgent need to increase positive and reduce negative impacts of business on society and the environment, and in recognition of the important role the EU could play to this effect. A number of substantive recommendations came out of the forum, which would if fully implemented by the relevant actors help to generate significant impact. For that to happen, however, NGOs believe that regulatory measures are needed to complement the many voluntary CSR initiatives that only work for the well-intentioned, and could work much better and be mainstreamed at a much higher pace if supported by clear and fair regulatory measures.

NGOs called on the EU to take the lead in the development of an effective European CSR framework. Such a framework should be based on internationally agreed standards and principles such as the OECD Guidelines and ILO Conventions, involve all stakeholders from the early stages of development and include credible provisions for monitoring and verification of the standards, codes of conducts and other ethical claims.

The publication of the Commission's response to the EMSF was announced several times, but kept being postponed. It came be known that the Commission, DG Enterprise and Industry, was holding talks with European business representatives, such as UNICE and CSR Europe. A multi-stakeholder approach, recognized as a core principle of CSR and promoted by the EU in the past, has been outright abandoned with this approach. The "European Alliance on CSR" which is presented in the communication, has been developed without any involvement of stakeholders other than the business community itself. And presently does not include any other stakeholders.

Why does the Commission give its 'full support' to an entity that involves only one party? In the communication, the Commission's decision to take sides is clearly stated: "The Commission continues to attach importance to dialogue with all stakeholders, but also wishes to give recognition to enterprises as the primary actors in CSR"

All European businesses are invited to become part of the European Alliance on CSR without any commitments to existing CSR standards and principles. The initiative is therefore perfectly suit to become a major greenwash operation, and thereby poses a great danger to serious CSR initiatives than have been evolving all over the world, in regulatory as well as voluntary spheres.

There is no single evidence that the European companies signing up to the Alliance on CSR comply with minimum social and environmental standards like the ILO Conventions and the OECD Guidelines. In fact there are many cases involving some of the most well-known European companies part of the Alliance that are under serious scrutiny by civil society organizations for violations of basic human, social and environmental rights. Among the companies supporting the Alliance are Bayer, BP, Shell and Nestlé, all of which currently have complaints raised against them at European National Contact Points for alleged violations of the OECD Guidelines.

The credibility of CSR initiatives is high dependent on a number of basic criteria, such as the level of the standard and commitment, the involvement of stakeholders, transparency requirements, and the quality of the monitoring and independent verification. The European Alliance disqualifies on all

these points, while making it possible for companies to use their participation as a public relations tool.

The experience over the past decade with CSR shows that involvement of relevant stakeholders from the early stages of CSR strategy development is essential for the effectiveness and credibility of CSR. The EU has obviously neglected this experience when drafting the alliance with business representatives.

A leaked letter from UNICE, 'The voice of business in Europe', revealed the true face of the European business representatives drafting the Alliance with the Commission. It shows that their only political interest in CSR at EU level is to ensure that EU initiatives or policies have as little impact as possible. The UNICE letter calls the new approach by the Commission a true success for business. Furthermore, the letter says that 'a few passages must be interpreted as verbal concessions to other stakeholders, which will however have no real impact'.

The proposal of the Commission to re-convene meetings of the Multistakeholder Forum at regular intervals is one of those verbal concessions. If the starting point and ultimate aim of the business community at European level is to ensure CSR has no impact there is no reason for the NGO community to engage in such dialogues.

We fear that, on the current agenda of the Commission, the insistence on the promotion of CSR, with its voluntary dimension, might delay the adoption of urgently required measures of a regulatory nature, to clarify the scope of these obligations. We also believe, however, that in the promotion of CSR itself, there is a need for the definition of an adequate regulatory framework.

We ask the EU institutions, as well as the Member States to take a leadership role in Europe and the world, to ensure that European companies live up to the highest expectations, wherever they operate, and to stimulate the convergence of standards and practices of responsible behaviour around the world. In order to regain some credibility, the Commission should ensure that adopted policies are put into practice.

We propose the following recommendation to the European Commission for a way forward that contributes significantly to the enhancement of CSR and the respect for fundamental rights and principles and the environment.

1. ECCJ believes that regulatory measures are necessary to ensure all corporations abide by national and internationally agreed standards, whichever provides the highest standard. The European Commission should impose legal obligation on European companies to improve their accountability for social, environmental and human rights affected by their operations.

The European Commission should recognize that a definition of CSR as a voluntary concept is only credible if effective legal safeguards are put in place to ensure European companies respect minimum internationally agreed social, human and environmental rights within their spheres of influence, wherever they operate.¹

¹ See recommendation in EP Report on the exploitation of children in developing countries, with a special focus on child labour (2005/2004(INI)), Committee on Development Rapporteur: Manolis Mavrommatis, 15-06-2005, paragraph 46: "Recommends that the Commission investigate the creation of appropriate EU-level legal safeguards and mechanisms which identify and prosecute EU-based importers who import products which allow the violation of the core ILO conventions, including the use of child labour, in any part of the supply chain;

The European Commission has stated that it is not going to pursue a regulatory approach to the promotion of CSR. ECCJ on the contrary, believes that "Although voluntary initiatives can be successful in some cases, regulatory measures are necessary to ensure all corporations abide by national and internationally agreed standards, whichever provides the higher standard." (Mission Statement)

Many within the corporate sector argue that CSR on a voluntary basis is the best way for business to contribute to sustainable development. However, in 2003, the Organisation for Economic Cooperation and Development (OECD) reviewed the performance of a range of voluntary initiatives across a range of industry sectors. Given the NGO, governmental and commercial resources that have been put into such initiatives, the report's conclusions were damning "...there are only a few cases where [voluntary initiatives] have contributed to environmental improvements significantly different from what would have happened anyway. (OECD 2003: 14).

In the communication, the Commission states that CSR can contribute to a number of public policy objectives, such as "greater respect for human rights, environmental protection and core labour standards, especially in developing countries." Such human rights, environmental standards and core labour standards are outlined in internationally agreed standards and principles such as the ILO core conventions and environmental treaties, and often part of the national law in developing countries. The problem is often a lack of enforcement by the developing country governments. As a result, many CSR initiatives deal with compliance issues of existing legislation, often in supply chains of European companies. It is therefore unrealistic to continue to state that CSR deals only with issues above and beyond law, unless and until the social, environmental and human rights conditions in production countries are improved up to the legally required standards.

If the Commission wants to contribute to effective multi-stakeholder dialogue at the European level it should depolarize the debate on voluntary versus mandatory approaches to CSR, and explore voluntary as well as regulatory measures to enhance the contribution of CSR to the respect for human rights, environmental protection, labour standards and poverty reduction.

Such regulatory measures include:

§ duty of care for companies and their directors for social and environmental impacts; Directors should not only be accountable to their shareholders for their management policies and the decisions they take but should have a similar legal obligation to respect and promote the environment, human rights and social interests. This will mean that a director will have to consider the consequences to communities, the environment, health and safety of their employees, and shareholders before making a decision. This liability must survive corporate mergers.

§ Mechanisms of redress and access to justice for those affected by corporate activities throughout supply chains of European companies wherever they operate.

EECJ wants affected communities outside EU boundaries to be protected under European law and able to seek compensation, for any human rights or environmental abuses committed by European companies or their overseas subsidiaries or associates. If affected communities are

therefore requests the Commission to explore the possibility of creating incentives for EU importers who carry out regular and independent monitoring of the manufacture of their products in all third countries forming part of the production chain"

unable to claim compensation from European companies in their own country, they should have access to justice to home country courts in EU member States.

§ Extra-territorial application of core labour standards and fundamental human and environmental rights

European companies should be legally bound to respect and comply with basic internationally agreed standards and principles as laid down in the ILO core convention, the European Declaration on Human Rights and other European law. These rules should apply to the worldwide operations of European companies including in third countries.

2. ECCJ considers high and consistent levels of transparency of European business activities and products a prerequisite for effective and credible CSR. Mandatory social and environmental reporting is needed to ensure such transparency by all European companies.

Achim Steiner, executive director of the UN Environment Programme (UNEP), recently stated that it is the "right time" for governments to introduce mandatory corporate social responsibility (CSR) reporting:²

"We need to liberate business by providing it with the regulation that it needs to do something differently," he said at a press conference in Amsterdam. "To set regulatory frameworks is exactly what is needed right now."

By law, companies will have to submit an annual societal report on the social and environmental impact of their past activities. In concrete terms, companies will report their impacts on Human Rights, Society and the Environment inform stakeholders.

The report should as a minimum contain:

- o Reporting on social and environmental impacts
- o Reporting on the status of industrial relations and on the implementation of collective agreements
- o Disclosure of subsidies received from the European Union and the Member States
- o Disclosure of lobbying activities, in particular the amount of money spent on lobbying purposes as well as the names and functions of the people who were targets of lobbying.
- o Comprehensive points of sale information about products and services
- o Reporting of consultation with (local) stakeholders
- o Disclosure of payments, subsidies and lobbying vis-à-vis public authorities
- o Supply chain data, including the number of suppliers, CSR policies, supply chain management and monitoring systems, non-compliances found and corrective actions taken

Apart from a reporting requirement for companies, consumers' and other stakeholders should have a 'right to know' about the production process, products and services and the social and environmental conditions under which these are produced and marketed.

3. The European Commission should recognize and encourage credible and effective multi-stakeholder initiatives at sectoral and European wide level, based on internationally agreed CSR standards and guidelines and operational CSR principles.

² Speech at GRI conference, Amsterdam 5-7th October 2006

The European Commission should create a regulatory environment in order to ensure that CSR practices effectively pay, that the 'best in the class' are rewarded. At the same time the Commission needs to legislate the laggards... and not only support the leaders. Corporate Accountability initiatives can only be effective and credible if they include mechanisms for independent monitoring and verification of their claims. The measures proposed by the Commission to promote CSR on a voluntary basis are highly inadequate to promote effective CSR initiatives. While the Commission recognizes that "involving stakeholders enhances the effectiveness of CSR initiatives", organizing regular review meetings of the Multistakeholder Forum and supporting CSR initiatives by stakeholders is not enough. The Multistakeholder Forum has shown that there are a number of fundamental differences of opinion between business and non-business actors that need to be overcome. The Commission should take leadership in this debate, and recognize and encourage credible and effective multi-stakeholder initiatives at the European level, so that a common understanding is developed of what constitutes effective and credible CSR initiatives. Also more leadership should be developed in the harmonization of standards, to make sure market access is not hindered unnecessarily and to create clarity for consumers.

The Commission should therefore, together with stakeholders, identify key criteria for effective and credible multi-stakeholder initiatives, such as:

- They should be based on instruments adopted at international level, such as the ILO Conventions and OECD Guidelines.³
- NGOs, trade unions, including from developing countries should be represented in the governance structure of the initiatives
- They should have clear procedures concerning implementation, encourage continuous improvement and recognize responsibility throughout the supply chain.
- They should be transparent, accessible and independent verification should be part of the initiatives implementation procedures.
- They should include mechanisms that ensure small farmers and producers are not excluded from supply chain due to burdensome administrative requirements which they cannot meet
- They should strive towards harmonization with related existing codes and certification methods
- They should take into account the costs of compliance (certification/audit costs as well as costs for improvements) and include mechanisms to ensure that these costs are equally shared throughout the supply chain
- They should include mechanisms to ensure pricing and purchasing practices allow the necessary social and environmental costs to be paid throughout the supply chain.

When CSR initiatives are benchmarked on the basis of such basic principles, the Commission should then recognize such initiatives thereby providing greater legitimacy to those initiatives that genuinely work towards the improvement of social, environmental and human rights conditions. Official recognition of effective and credible multi-stakeholder initiatives can be used for guiding public procurement decisions, market access preferences and other incentives (f.i financial or tax measures) to mainstream and upscale their scope and thereby their impact.

Examples of effective and credible multi-stakeholder initiatives can be identified within Europe and elsewhere, such as the UK based Ethical Trading Initiative and the Dutch Fair Wear Foundation, but a European wide approach on sectoral level is often lacking. The Commission should therefore play a role in up scaling such initiatives. Also, the Commission should analyse in which sectors multi-

³ As stated in the European Commission communication on Promotion of decent work for all, "The EU contribution to the implementation of decent work agenda in the world", Brussels 24 May 2006 COM (2006)249, page 9 section Corporate Social Responsibility

stakeholder initiatives have not been developed fully yet, and support and facilitate the development of initiatives in these sectors, like for example the electronics sector.

4. The European Commission should advance global action on responsible business practice and better implement international approaches with respect to EU-based enterprises.

If the Commission really wants to make Europe a 'pole of excellence on CSR' they should at least be on top of the debate. The assumptions underlying the communication are outdated, and not carried by the leading companies or other stakeholders: In a 2006 briefing paper put out by the special rapporteur to the UN John Ruggie on CSR in supply chains confirms "there is considerable agreement about barriers to compliance and communalities of non-compliance, but no agreement on solutions except for a "unanimous call for more responsible local government action" (Harvard University/FES 2006: 16). Ruggie's briefing paper also concludes, "the end game will be harmonization of codes concurrent with stronger national and international law" (Harvard/FES 2006: 40).

The European Commission should support the development of international labour, human and environmental norms and principles. The existing guidelines and instruments, such as the OECD Guidelines and the ILO core conventions have proven to be insufficient to curb corporate malpractices on a large scale, and the European Commission should therefore support the development of additional regulatory instruments at the international level, notably at the UN level. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights form a good basis for the development of an internationally accountability instrument at UN level.

At the same time, the European Commission should strengthen the implementation of EU and Member States' allegedly preferred CSR instrument - the OECD Guidelines.⁴ Up to date, there is no evidence to suggest that the OECD Guidelines have helped to reduce the number of conflicts between local communities, civil society groups and multinational companies on a large scale. The lack of sanctions has prevented the instrument from being a deterrent for companies to change their behaviour. Therefore, the OECD Guidelines should be made more binding on European companies by linking the Guidelines to government support and subsidies, by strengthening mandate of the National Contact Points (NCPs) for the OECD Guidelines to research and investigate complaints and make authoritative statements including sanction mechanisms. As a minimum, compliance to the OECD Guidelines should be a prerequisite for European companies seeking export credit guarantees and EU and Member State subsidies and seeking public procurement contracts.

While most EU member states have set up an NCP, there is still a large divergence in implementation of the OECD Guidelines, both in terms of institutional set up, procedures and the manner in which recurring issues in specific instances are handled. This was the conclusion of the UN Secretary-General's Special Representative on human rights and transnational corporations in his February 2006 Interim Report, which stated that the "performance of NCPs is very uneven, especially when it comes to human rights. More uniform practices and greater public accountability would enhance the NCPs' currently modest contribution".

⁴ "...the OECD Guidelines for Multinational Enterprises are the most comprehensive, internationally endorsed set of rules governing the activities of multinationals. In promoting CSR in developing countries, EU businesses should demonstrate and publicise their world wide adherence to them." From: The European Commission's Communication concerning Corporate Social Responsibility: A business contribution to Sustainable Development (COM(2002) 347 final)

The European Commission should play a much more vigorous role in ensuring harmonisation of the implementation of the OECD Guidelines by European NCPs. The Commission should therefore analyse and compare the functioning of European NCPs and their effectiveness, and on the basis of that develop a model for European NCPs to ensure a level playing field for European businesses as well as other stakeholders in the implementation of the OECD Guidelines. In the UK and the Netherlands, recent evaluations and consultations have led to proposals to improve the effectiveness of the instrument and the NCPs, and a more independent positioning of the NCP to ensure an independent assessment of alleged breaches. These examples should form the basis of a European wide effort to improve the implementation of the OECD Guidelines at Member State level.

With respect to the OECD Guidelines, the Commission should furthermore propose to extend the scope of the OECD Guidelines for Multinational Enterprises from investment to trade.⁵

5. The European Commission should collate, support and undertake research into both the sectoral, geographical and company-wise forms and scope of violations of CSR principles as well the effectiveness of CSR initiatives and their actual impact in terms of outcomes and results.

A positive point in the communication is the mentioning of the need for research into the effectiveness of CSR in reaching social and environmental objectives, amongst others. However, the communication lacks concrete research areas that need to be covered in order to gather such information.

Research into the impact of current CSR initiatives is essential. Such research should include both the quality as well as the quantity of the CSR initiatives. The quality of CSR initiatives include the level of the standards and principles that the initiative aims to comply with or strives to comply with, as well as the inclusiveness and acceptance by stakeholders, and whether the initiatives brings meaningful and structural improvements on the ground. Research into the quantity should include research into the scope and market coverage of CSR initiatives, and lead to recommendations for to upscaling and mainstreaming CSR initiatives. Also research into harmonisation of standards is desirable.

There is a large amount of information on sectoral, geographical violations of CSR principles like the OECD Guidelines and the ILO labour rights. It would however be very useful if the EU would publish every year an authoritative 'Annual State of CSR' combining existing information and newly to be commissioned research brought together in one comprehensive document. The EU should commission such a document to a well-respected independent group of experts and researchers which should both collate existing information, describe new trends, set an agenda for research into new areas and topics and come with recommendations.

The Commission should also investigate and identify sectors and companies which on a large scale and/or continuously and persistently violate internationally accepted standards and principles (OECD Guidelines, ILO Conventions, Rio Principles) in any part of the production and supply chain and publish such a list;⁶

⁵ As also proposed in the EP Report on the exploitation of children in developing countries, with a special focus on child labour (2005/2004(INI)), Committee on Development Rapporteur: Manolis Mavrommatis, 15-06-2005,

⁶ See also recommendation 48 of the EP Report on the exploitation of children in developing countries, with a special focus on child labour (2005/2004(INI)), Committee on Development Rapporteur: Manolis Mavrommatis, 15-06-2005,

Another important area of research was identified in the 2004 report of the EU Multistakeholder Forum, on “improved understanding of global supply chain issues and responsibilities, including how purchasing practices impact suppliers and their communities. There should be particular attention to the involvement and contribution of SMEs, and notably those in the South”⁷

6. The European Commission should reach co-operation agreements with developing countries to research, monitor and help to remediate social, human and environmental problems in operations and supply chain of EU-based companies in third countries, starting with countries where EU-based companies are most economically active.

Companies that are based in the European Union and are operating in third countries are expected to abide by the OECD Guidelines for Multinational Enterprises, including in their supply chain wherever they operate. However, there is ample evidence that European companies that are involved in human, labour and environmental rights violations, especially in sectors that shown endemic problems like oil and mining, the production of consumer products and export oriented agricultural production.

We urge the European Union to come to an agreement with developing countries on research, monitoring, corrective action programmes in the operations and supply chain of EU-based companies in developing countries.

We particularly refer to the report adopted by the Employment and Social Affairs Committee on the application of Directive 96/7/EC on the posting of workers (2006/2038(INI)). Paragraph 28 calls on the Commission to regulate joint and several liability for general or principal undertakings, in order to deal with abuses in the subcontracting and outsourcing of cross-border workers.

7. The European Commission should include human rights, social and environmental provisions in investment agreements in order to ensure that developing country Governments retain a right to regulate and control investments that do not contribute to the wider goal of sustainable development do not respect fundamental rights.

The European Commission and its Member States should commit themselves in Economic Partnership Agreements (EPAs) and Bilateral Investment Treaties (BITs) to make their corporations respect international labour, human rights and environmental standards. Provisions in bilateral, regional or multilateral agreements include:

- Reservation of regulatory powers on issues of social and environmental responsibility
- Inclusion of an article that allows countries to adopt laws and measures that protect human rights and the environment (see WTO Article XX of GATT 1994)
- Inclusion of a binding articles on compliance to internationally agreed CSR standards and principles, such as the OECD Guidelines, ILO Tripartite Declaration and Rio Principle

Drafted by Joris Oldenzien (SOMO) for the European Coalition for Corporate Justice

⁷ EUROPEAN MULTISTAKEHOLDER FORUM ON CSR Final results & recommendations (2004), recommendation 4.