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CSR

CORPORATE SOCIAL RESPONSIBILITY AND THE ROLE OF THE LEGAL PROFESSION

A GUIDE FOR EUROPEAN LAWYERS ADVISING ON CORPORATE SOCIAL RESPONSIBILITY ISSUES

SEPTEMBER 2003

Conseil des Barreaux de l'Union européenne – Council of the Bars and Law Societies of the European Union

association internationale sans but lucratif

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PREFACE

The Council of Bars and Law Societies of the European Union (CCBE) has issued this guidance to European lawyers advising corporations on Corporate Social Responsibility (CSR).

CSR is an instrument of positive change inside businesses. It sets the framework and defines the manner in which a business must operate to be able to meet the ethical, legal, commercial and public expectations that a society has of any company.¹ These guidelines serve as a starting point for the corporate lawyer in creating new legal solutions for his client.

This guide explains:

- why companies should be interested in CSR; and
- why lawyers should advise on CSR.

The guide also provides information on how to pursue this topic further and explains the current CSR initiatives at a European and world-wide level.

The CCBE recently established a CSR discussion group for drafting this guide. The CCBE would like to thank Claes Cronstedt, Claes Lundblad, Yvon Martinet, Mauro Pizzigati, Birgit Spießhofer, Sune Skadegard Thorsen, Marco Vianello and Carita Wallgren for their participation in this discussion group.

The CCBE would appreciate any comments on the guide, and your feedback on this initiative.

For your comments or further information, please contact the CCBE at ccbe@ccbe.org

¹ MCE Management Centre Europe

I: UNDERSTANDING CORPORATE SOCIAL RESPONSIBILITY

*“Corporate social responsibility is now in every reasonable chief executives agenda, not always at the top, but it’s there”.*²

When Warren Buffett took over the chairmanship of Salomon Brothers after the bidding scandal on Wall Street in 1991, he told the assembled staff: *“Lose money for the firm, I will be very understanding; lose a shred of reputation for the firm, I will be ruthless”.*

Buffett and other successful representatives of the business world instinctively understand that values such as honesty, fairness and responsibility are necessary to be able to run a successful business. Many fortunes have been made, and are still being made, through unacceptable business methods. However, the development has been towards more transparency, more freedom, more democracy and more laws. This makes it less attractive to conduct business that is contrary to the values of society.

Courts in a number of countries are using the standards of international conventions on companies, although the vast majority of these standards are not directly binding on companies. This is a trend that is spreading to other jurisdictions. Many companies are being subject to legal proceedings at home and abroad – even though the alleged violations have been committed by its operations in other countries. Today, social responsibility is becoming a serious matter for our corporate clients.

The US judiciary especially apply their legal regime in an extraterritorial way, and they judge the companies’ conduct with regard to international law.

Shell, BP, Nike, GAP, Coca-Cola, JP Morgan Chase, Polo Ralph Lauren – the list could be made longer – have had their reputations severely damaged in recent times because they have acted contrary to current values.

In an opinion poll published in 2002, 25,000 individuals from 23 countries were asked about companies’ roles in society. Eight out of ten employees in larger companies said that the more social responsibility the employer takes, the more motivated and loyal the employees become.

A majority of the questioned shareholders stated that they would consider selling their shares in a company that fails in respect of social responsibility, even if the earnings are good.³

² Steve Hilton and Giles Gibbons, Good Business, p. 55.

³ See www.environicsinternational.com

II: CURRENT DEVELOPMENTS

*“Corporate Social Responsibility is something that companies operating internationally can’t ignore anymore”.*⁴

More and more companies adopt and implement rules for social responsibility because they know only too well how the market really works today. It is a matter of risk management, of creating an effective organisation and of creating a good market position.

A new legal landscape that extends liability for corporations concerned is emerging. Among other initiatives (see annex) we can see many obligations on companies, which have been imposed by national governments: -

1. Australia

In Australia the Corporate Code of Conduct Bill 2000 reflects the definite trend towards penalising unacceptable and harmful behaviour that occurs overseas.⁵ Australian companies with global operations and multinationals with Australian subsidiaries need to be aware that certain standards of conduct are increasingly expected of them in both the domestic and offshore operations. The Bill, although not yet enacted, sets codes of conduct that must be adhered to including environmental standards, health and safety standards, employment standards, human right standards, duty to observe tax laws, duty to observe consumer health and safety standards and consumer protection and trade practices standards. The Bill also provides for wide-ranging and onerous reporting obligations. This Bill is indicative of the trend and direction that CSR is taking.

Also in Australia, there are CSR reporting requirement currently in place for investments firms and listed companies.

2. Denmark and the Netherlands

Denmark and the Netherlands have encouraged 'triple bottom line' reporting, whereby social and environmental information is disclosed alongside financial reports.

3. France

In 2001, the French Parliament passed legislation requiring mandatory disclosure of social and environmental issues in companies' annual reports and accounts.⁶ It requires all companies listed on the “premier marché” (those with the largest capitalisations) to report against a template of social and environmental indicators, including those related to human resources, community issues and engagement, labour standards and key health, safety and environmental standards.⁷

4. Germany

In Germany, CSR reporting requirements have been introduced and apply to companies involved with pension funds.

5. United Kingdom

In 1999, the UK Parliament approved the Pensions Disclosure Regulation. The Regulation amended the 1995 Pensions Act, requiring all trustees of UK occupational pension funds to disclose “the extent (if any), to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments”.⁸

⁴ Doug Miller, CEO of Environment International, “CSR is here to stay”, *CSR Magazine*, October 2002.

⁵ See <http://www.aph.gov.au/Senate>

⁶ See www.occes.asso.fr/fr/comm/nre.html

⁷ Halina Ward, *Legal issues in Corporate Citizenship*, February 2003.

⁸ See <http://www.legislation.hmso.gov.uk/si/si1999/19991849.htm>

Furthermore, in 2002 a CSR Bill was introduced in the House of Commons as a private members' Bill. Although the Bill was not enacted, it gives a good indication of movement in the direction of CSR, and the Bill was proposed again in an amended version in June 2003 backed by numerous NGO's.⁹

The original Bill proposed to:

- Make social, financial and environmental reporting (the so-called 'triple bottom line') mandatory;
- Require companies to consider CSR on big projects;
- Place specific duties and liabilities on directors and companies, with respect to social, financial and environmental issues;
- Provide remedies and rights of redress for people negatively impacted by business activities;
- Establish a new regulatory body to oversee environmental and social standards.

6. US Sarbanes-Oxley Act July 2002

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") was enacted.¹⁰ This imposed codes of conduct on companies in which they would be obliged to report on Corporate Social Responsibility requirements.

The final rules implementing Section 406 of the Sarbanes-Oxley Act require reporting issuers, including foreign private issuers, to disclose in their annual report whether they have adopted a written code of ethics that applies to the issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or people performing similar functions.

The above-mentioned governmental developments are merely reflections of broader international and regional movements and various court decisions (see annex).

⁹ See <http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmbills/145/2002145.pdf>

¹⁰ Pub. L. 107-204, 116 Stat. 745 (2002).

III: CORPORATE RISKS AND OPPORTUNITIES

“The 21st century company will be different. Many of the world’s best-known companies are already redefining traditional perception of the will of the corporation. They are recognising that every customer is part of the community, and that social responsibility is not an optional activity.”¹¹

Companies that choose to ignore CSR may encounter many consequences. The risks can be summarised as follows:

- Increased civil and criminal litigation against companies and management;¹²
- Loss of top talents;
- Loss of investors;
- Increased cost of capital;
- Decline in stock value;
- Loss of customers and business partners;
- Loss of public contracts and public procurement procedures e.g. World Bank, European Union, European Bank for Reconstruction and Development;
- Loss of business partners;
- Exposure to naming and shaming campaigns and blacklisting campaigns;
- Loss of brand value.

On the other hand, there are many opportunities available to companies who choose to implement CSR strategies and incorporate CSR into company policies:

- Enhanced corporate image and added brand value;
- Attract and retain top talents;
- Enhancing job satisfaction, loyalty and identification;
- Access to quality business partners;
- Obtaining the status of a “preferred partner”;
- Customer satisfaction and loyalty;
- Improving risk management;
- Lower insurance fees;
- Favourable access to capital markets;
- Attracting Socially Responsible Investment (SRI), which is mushrooming;¹³
- Establishing a good footing with public authorities and the general public;
- Creating a basic reference point and language for partnerships;
- Public relations opportunities;
- Contribution to the development of stable global markets.

¹¹ Tony Blair, UK Prime Minister.

¹² Business and Human Rights, A Progress Report, p.18, Office of the UN High Commissioner for Human Rights, January 2000

¹³ See for example survey by UK Social Investment Forum/Just Pensions that SRI investments in UK are up from £22.7bn in 1997 to £224.5BN in 2001

IV: WHY LAWYERS SHOULD ADVISE ON CORPORATE SOCIAL RESPONSIBILITY

"The main purpose of the board of directors is to seek to ensure the prosperity of the company by collectively directing the company's affairs, whilst meeting the appropriate expectations of its shareholders and relevant stakeholders".¹⁴

Responsibility for advising on CSR issues has not always been seen as falling to the legal profession. The CCBE believes that this should change. Law is the codification of basic human values. The goal of CSR is to implement these values in corporations, thus CSR develops and functions in a legal framework. There is no other professional who both has such ready access to EU boardrooms, and enjoys legal privilege. As a result, advising on CSR issues should become an everyday matter for corporate lawyers.

Even voluntary approaches to CSR have a legal context. Laws on misrepresentation or false advertising frame voluntary company reporting, for example. And voluntary approaches such as company codes of conduct can shape the standards of care that are legally expected of businesses. In the workplace, agreements reached through collective bargaining between employers and trade unions can become legally binding through incorporation in employment contracts.¹⁵

CSR should be part of company policies and integrated into strategies and decision-making. In this regard, the lawyer has a number of boardroom responsibilities:

- The lawyer should make the company management aware that CSR is an issue, which they will have to deal with.
- As lawyers are specialist advisers to corporations this will reflect on their responsibilities when acting as member of, or secretary to, the Board of Directors. CSR must be considered as an area where negligence may very well result in losses of a considerable size for the involved company. If the issues leading to the loss were treated during a board meeting, and the lawyer did not respond adequately, due to ignorance, this may very well lead to liability.

The lawyer also has a number of advising opportunities that might take place, as the case may be, together with other experts. These advising opportunities can be divided into long-term and short-term assignments.

For longer term assignments:¹⁶

- Analyse strengths, weaknesses, opportunities and threats (SWOT-analysis) of a given company in relation to CSR;
- Design CSR policies;
- Design a strategy for the company to address CSR adequately;
- Integrate CSR under existing risk management and compliance programmes;
- Design and implement concrete projects under CSR;
- Create CSR screening systems for investments;
- Develop a framework for supply chain management systems;
- Develop a framework for CSR as part of Quality Management;
- Implement in-house training on CSR;
- Integrate CSR into existing risks and quality management schemes and compliance programmes.

For short-term assignments:

- Consider the 'what, why and how' of a CSR approach - its challenges, dilemmas and opportunities;

¹⁴ Institute of Directors, *Standards for the Board*, 1999.

¹⁵ Halina Ward, *Legal issues in Corporate Citizenship*, February 2003.

¹⁶ It is recommended that longer-term tasks be performed in co-operation with either in-house or external competencies in organisation, management – including crisis management, communication, human resources, training etc. depending on the objectives of the client.

- Undertake CSR assessments of affiliates, branches, investment opportunities, suppliers, licensees or other partners;
- Undertake CSR assessments as part of due diligence;
- Respond to media or NGO criticism;
- Provide assurance statements on CSR reporting in relation to scope, relevance and compliance with international standards;
- Undertake assessment of concrete CSR projects;
- Network with other companies and/or associations;
- Coordinate and supervise the CSR work of the company;
- Assess the legal implications of CSR reporting and advertising.

In *Kasky v. Nike*, Nike was sued under Californian State Law for false advertising. Kasky claimed that information on Nike's social performance was false and did not reflect the poor working conditions in its foreign factories. Nike defended itself based on the First amendment of the US Constitution on freedom of speech, but the Court ruled, in the first instance, against Nike to find that the company statements should be classified as "commercial speech" (and not political). Thus Nike's statements would be subject to the stricter standard of truth required by advertising law. In June 2003 the U.S. Supreme Court dismissed on technical grounds the action in which Nike was seeking to reaffirm the First Amendment right to free and open debate. Although the U.S. Supreme Court issued no formal decision, a majority of the Court expressly rejected the central holding of the California Supreme Court that Nike's speech could be restricted as purely "commercial." The case now returns to the California courts, which will have the views of the US Supreme Court in deciding whether the case may proceed to trial.

This case illustrates that companies' statements can be challenged for misrepresentation, and further illustrates the need for a corporate lawyer to be involved in CSR.

V: CSR STANDARDS

"A global human society based on poverty for many and prosperity for a few, characterised by islands of wealth, surrounded by a sea of poverty, is unsustainable".¹⁷

Many companies have established codes of conduct and policies integrating CSR principles into their business practices. According to the OECD, in 2000 there were 296 different codes of conduct.¹⁸ These codes reflect the growing pressure being placed on companies by NGOs, shareholders and socially responsible investment funds.

There are five basic types of codes:

- Company codes - e.g. Shell, Philips, Levi Strauss;
- Trade association codes - e.g. ICC, British Toy and Hobby Association, Bangladesh Garments Headquarters and Expatriates Association, Kenya Flower Council Code;
- Multi-stakeholder codes - e.g. AccountAbility 1000, good corporation.com, Project Sigma UK, Ethical Trading initiatives UK, Apparel Industry Partnership USA, Social Accountability 8000;
- Intergovernmental codes - e.g. the ILO Convention, OECD Guidelines on TNCs, EU Code of Conduct;
- World codes - e.g. ICFTU Code of Conduct Covering Labour Bodies, Principles in Global Corporate Responsibility, UN Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.¹⁹

In general, codes of conduct should:

- Be applied at every level of the organisation;
- Be based on the UN Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights;
- Be included in training for local management, workers and communities on implementation;
- Have emphasis on gradual improvements to standards, and to the code itself;
- Include ongoing verification, which should be developed and performed carefully following defined standards and rules;
- Enable benchmarking.

Based on these principles, each company should tailor its own code adapted to its specific environment and resources, to ensure acceptance and compliance with it. This code of conduct can take the form of a manual governing the day to day business of the company. It is the natural role of the lawyer to be involved in the drafting of such documents.

The first generation of codes were developed by individual companies. Starting with the 'credo' of Johnson & Johnson in the 1940's and Levi Strauss & Co., Starbucks Coffee Co., Shell and BP Amoco all following suit. The latter part of the 1990s displayed codes like SA8000 (the Council on Economic Priorities), the Fair Labour Association (US) and the Ethical Trading Initiative (UK), which were developed based on consensus from a range of stakeholders. Codes defined by single stakeholders including the Workers Rights Consortium and Clean Clothes Campaign also appeared, along with various trade or business associations like the Norwegian Confederation of Businesses' checklist for human rights practices, the Global Sullivan Principles and the Caux Principles for Business.

Finally, international organisations have begun to issue codes or standards to enhance corporate social responsibility. The OECD Guidelines for Multinational Enterprises (revised in 2000), the ILO 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (1977) and the United Nations Global Compact are very important initiatives. The Global Compact officially co-operates with the multi-stakeholder Global Reporting Initiative (GRI). Notably, the UN have adopted guidelines in the form of Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

¹⁷ President Thabo Mbeki of South Africa, *The New York Times*, 26 August 2002.

¹⁸ OECD Codes of Conduct. An expanded review of their contents, working party of the committee 2000.

¹⁹ Ralph Jenkins, *Corporate Codes of Conduct: Self regulation in a global economy, business and society programme*, 2001 UN Research Institute in Social Development.

VI: THE TRIPLE BOTTOM LINE

Sustainable development for business is operationalised by the triple bottom line, popularly described by the three Ps; *People, Planet, Profit*. In short companies seek to find sustainable solutions for their relationship with the *economy* (including the economy of the community), with the *external environment* (including biodiversity and animal welfare), and with *human beings* (hereunder in the relationship with employees, suppliers, customers, local communities and other stakeholders).

The following boxes present indicative lists of areas under the triple bottom line reflecting present developments. The areas mentioned are not intended to be exhaustive, but merely to give a brief overview of current developments.

Social Responsibility (People)

- Labour rights: Slave, forced or compulsory labour; child labour; freedom of association/collective bargaining; non-discrimination/equal opportunities; rest, leisure and holidays; minimum wages; health and safety;
- Right to work: Protection against unjustified dismissals and technical/vocational guidance and training
- Right to life
- Development rights: Right to education; to health; to adequate food and fair distribution of food; to clothing; to housing; to social security; to enjoy technological development;
- Right to hold opinions & freedom of expression, thought, conscience and religion
- Right to a family life
- Right to privacy, e.g. surveillance, personal information, drug testing
- Minority rights to culture, religious practise & language and cultural rights (indigenous peoples)
- Right to peaceful assembly
- Right to take part in political life
- Informed consent to medical / biological trials
- Moral & material interests form inventions.

Environmental Responsibility (Planet)

- UN Convention on Bio-Diversity: in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer;
- The Precautionary Principle (In doubt about negative environmental impact of a given action – abstain);
- Use and handling of GMOs (Genetically Modified Organisms);
- Air emissions and impact on global warming (greenhouse gases);
- Impact on the ozone layer (Montreal Protocol Annexes);
- Prohibition of use of certain materials and substances, hereunder safe handling/transport of dangerous substances;
- Distance to residential neighbourhoods for production sites;
- Soil, ground water and surface water contamination;
- Treatment and reduction of waste water;
- Water consumption and leakage;
- 'Eco-efficiency', consumption of raw materials, and consumption of energy;
- Export of waste and re-use of material;
- Subsidising of environmental projects (e. g. protection of the rainforest etc.).
- Animal welfare

Economic Responsibility (Profit):

- Financial profit, economic growth and asset creation;
- Business ethics, corruption and bribery;
- Direct and indirect economic impact on communities through spending power (suppliers, consumers, investors, tax payments and investments), and geographic economic impact;
- Economic impact through business process: outsourcing, knowledge, innovation, social investments in employees and consumers;
- Monetary support for political parties, lobbying, and other 'political' activities;
- External economic impact from pollution, internalisation of externalities, value of consuming products;
- Stock exchange behaviour, including insider trading;
- Economic regulation, tax incentives, redistribution;
- State contracts and state subsidies;
- Intellectual property rights, hereunder patents, pricing and the impact on economic and societal development potential;
- Anti-trust & competition, including market impact and 'alliances';
- Board and executive remuneration and role of accountants;
- Donations;
- Taxes, including 'transfer pricing'.

In practice it is not possible to describe each bottom line quite as simple as illustrated. Grey zones exist between the lines. For example, corruption and bribery will belong to the 'economic'-bottom line as having an immediate impact on the economy of the community, notwithstanding that the practice has human rights implications as well in the form of discrimination and non-equal access to law.²⁰ The 'environmental'-bottom line describes the impact on the external environment, notwithstanding that the environment has great impact on the right to health of people. Consequently, most reporting strives towards a holistic approach embracing all three bottom lines in one report.

The figure below mentions some of the existing management tools in relation to the three bottom lines.

Economic responsibility	Environmental responsibility	Social responsibility
IAS (International Accounting Standards)	ISO 14000 series	ISO 18000
ISO 9000 series	E-MAS	SA 8000
	Life Cycle Assessments	AA 1000s
	Business in the Environment's Index	ETI Base Code
		ILO standards
		Caux Principles
		Sigma
		Amnesty International Human Rights guidelines for Business
Global Reporting Initiative (for reporting)		
Balanced Business Scorecard		
Compliance Programmes		
Dow Jones Sustainability Index		
FTSE4good Index		
EFQM Business Excellence model		
PricewaterhouseCoopers Reputation Assurance framework		
London Benchmarking Group		
OECD Governance Principles		

Finally, as a prerequisite, any company is expected to comply with international, regional, national and local laws and regulations *directly applicable* to the corporation.

Compliance to such regulation will in most societies fulfil several of the areas mentioned in the boxes above, but in many cases a company may not be able to prove CSR only by demonstrating legal compliance. Beyond this compliance, there is another area that we might describe as Corporate Social Opportunity, which is motivated by competitive advantages i.e. economic incentives.

²⁰ A few human rights are not of immediate concern for business and should remain the overriding obligation of the state structure. These rights are found in the International Covenant on Civil and Political Rights (ICCPR): Art 9 – 10: the rights to freedom and personal safety (arrest and detention), Art 11: prohibition against imprisonment for non-fulfilment of a contractual obligation, Art 12: the right to liberty of movement and freedom to choose residence, Art 13: the right to seek asylum, Art 14 – 15: the right to a fair trial and prohibition against retroactive punishment, Art 16: the right to recognition as a person before the law, Art 20: prohibition against inciting war and against hate speech, and Art 26: equality before the law. However, business should be conversant in relation to the rights as the State's performance in these areas may have an impact on business opportunities and certainly has an impact on the public's perception of the legitimacy of the company to conduct business in a certain territory. In a few incidences the company may even be directly involved when selling goods and providing services to the violating government or, with the pace of privatisation, taking over the government function as such.

VII: CONCLUSION

*“CSR may have entered our national vocabulary but it has not taken root in our consciousness”.*²¹

CSR has increased in recent years as a result of the recognition of the essential contribution of business to social, environmental and Human Rights progress, and because of pressure from consumers, investors, employers, governments, NGOs and public opinion.

A growing number of businesses already have CSR as a priority in their agendas. It is the lawyers' role to assist their clients in positioning their business successfully in this new legal landscape.

²¹ Ella Joseph, centre-left think-tank IPPR, [The Observer](#), 2 February 2003.

ANNEX I: CSR AND THE EUROPEAN EXPERIENCE

*“CSR can play an important role in advancing sustainable development. Many businesses have already recognized that CSR can be profitable and CSR schemes have mushroomed. (...) CSR is no longer just a job for marketing departments”.*²²

European initiatives (non-exhaustive) -

1. Manifesto of Enterprises against social exclusion

At the EU level, the debate on CSR dates back to 1995 when a group of EU companies and Jacques Delors, then President of the European Commission, launched this Manifesto.

2. EU Lisbon Summit, March 2000

The Manifesto led to the creation of a European Business Network promoting business-to-business dialogue and exchange of best practices on CSR-related issues. However, it was with the European Summit in Lisbon in March 2000 that CSR was put at the top of the EU political agenda. For the first time, EU heads of state made a special appeal to companies' sense of responsibility to help in achieving the new EU strategic goal of becoming the most competitive and inclusive economy in the world by 2010.

3. European Commission

The EU published a Green Paper in July 2001.²³ It covers a wide range of topics, including responsible actions during corporate restructuring, promoting of “work/life balance” and corporate codes of conduct and social rights. It is intended to function as a “launch-pad for debate”; encouraging companies to take the “triple-bottom-line” approach. The Green Paper consists of 2 sections. The internal section focuses on CSR practice involving employees and relates to issues such as, investing in human capital, health and safety, and managing change. The external section focuses on CSR on a more wide range of stakeholders, including local communities and international communities, business partners and Human Rights. The consultation process aimed to develop a new framework for the promotion of CSR based on European values.

In July 2002, the European Commission published a new strategy to promote business contribution to sustainable development.²⁴ The policy paper calls for a new social and environmental role for business and sets up a ‘European Multi-Stakeholder Forum’ to exchange best practices, establish principles for codes of conduct, and seek consensus on objective evaluation methods and validation tools, such as ‘social labels’. The Commission’s strategy is designed to:

- Promote the business case for CSR in order to make it attractive to more companies, in particular Small and Medium Enterprises;
- Promote external evaluation and benchmarking of companies’ social and environmental performance in order to make CSR credible;
- Manage a European Multi-Stakeholder Forum in order to focus discussion on CSR;
- Ensure that EU policies are CSR-friendly.

²² European Commission: Corporate Social Responsibility: new Commission strategy to promote business contribution to sustainable development, IP/02/985, 2 July 2002.

²³ Brussels COM (2001) 416 Final. Commission of the European Community-
http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf

²⁴ See http://europa.eu.int/comm/employment_social/soc-dial/csr/csr2002_en.pdf

4. Council Resolution, December 2001

The Council Resolution on follow-up of the Commission Green Paper recognised that CSR can contribute to reaching the objectives laid down by the European Council in Lisbon, Nice and Göteborg for the EU to become the most competitive and dynamic knowledge-based economy in the world, fostering social integration and sustainable development.

5. European Parliament's Code of Conduct, December 1998 and 2002

In 1998, the European Parliament published a European Code of Conduct regarding the activities of Trans-National Corporations (TNCs) operating in developing countries.²⁵ The European Parliament passed a first resolution to promote the accountability of European-based TNCs by supporting initiatives in the field of codes of conduct. In the resolution, the European Parliament states its support for voluntary codes of conduct as a substitute for international regulation. Furthermore, the European Parliament calls upon the European Commission and Council to come to terms with the subject of a "European Monitoring Platform" and proposes to organise hearings on the subject.

In May 2002, the European Parliament voted for new legislation to require companies to publicly report annually on their social and environmental performance, to make board members personally responsible for these practices, and to establish legal jurisdiction against European companies' abuses in developing countries.²⁶ The package is part of a new EU Framework for CSR and represents a major step towards establishing international regulation for TNCs. The Parliament also voted to:

- Set up a European CSR Forum to give rights to stakeholders, such as consumer and activist groups, to oversee policies alongside business and trade unions;
- Set up a European Social Label to endorse products where there is respect for human and trade union rights;
- Introduce the wider social and environmental impact of companies' performance in European negotiations between employers and trade unions;
- Make all EU financial assistance to business subject to compliance with basic standards, including setting up a blacklist against companies guilty of corruption;
- Mobilise the European Unions trade and development programmes to tackle abuses by companies in developing countries.

6. Council Resolution, February 2003²⁷

This Resolution calls upon Member States to promote CSR at a national level; to continue to promote the dialogue with social partners and civil society; to promote transparency of CSR practices; to exchange information and experiences and to integrate CSR into national policies and into their own management.

7. Other initiatives to promote CSR in Europe

- SustainAbility UK²⁸ - an independent management consultancy to promote the business case for sustainable development with the mission to help create a more sustainable world by encouraging the adoption of practices, which are socially responsible, environmentally sound and economically viable all of which satisfy the triple-bottom line of sustainable development.

²⁵European Parliament: European criteria for companies operating in developing countries LDCs: towards a European code of conduct, INI/1998/2075.

²⁶ From 2003, French corporations will have to demonstrate their commitment to CSR by giving detailed accounts of their social and environmental reporting. The Guardian, 26 September 2002.

²⁷ OJ. 2003/C 39/2.

²⁸ See <http://www.sustainability.com>

- UK Ethical Trading Initiative (ETI) 1998²⁹ - focuses on managing an organisation's supply chain in a socially responsible manner. ETI seeks to encourage a shared approach to the sourcing of goods and services that leads to a raised standard of living for workers around the world.
- CSR Europe³⁰ - helps companies to share their knowledge and experience on CSR. It is a business-driven membership network whose mission is to encourage companies to advance in ways that stimulate job growth, increase employability and prevent social exclusion thereby contributing to a sustainable economy and a more just society. CSR Europe's Resource Centre includes a 'best practice' database, a publications list, links to related organisations and details of CSR Europe's programs.
- Copenhagen Centre (TCC)³¹ - promotes voluntary partnerships between business, government and civil society in order to provide opportunities for the less privileged to be self-supporting, active and productive citizens. TCC aims to become a 'European house for CSR', providing forums to facilitate the continuing debate.
- European Academy of Business in Society³² - in July 2002, leading European business schools and more than 60 major multinational companies teamed up to launch a large research and teaching project on the business case of CSR
- National Grid Transco UK³³ - leads the group's community investment and coordinates the Transco Affordable Warmth Programme (to relieve fuel poverty for homes outside the gas supply areas), the National Grid (practical tree and wood-related projects) and Creative Education for teenagers failing in conventional schools.
- Small and medium sized enterprises (SMEs) and CSR - CSR is not just the business of TNCs. According to a recent survey 50% of Europe's SMEs are already involved in CSR ranging from 32% in France to 83% in Finland.³⁴ According to another survey 41% have an environmental policy, 28% make charitable donations, 15% consider ethical issues when outsourcing and 13% have a diversity policy.³⁵

²⁹ See <http://www.somo.nl/monitoring/project/fo-3-1.htm>

³⁰ See <http://www.csreurope.org>

³¹ See <http://www.copenhagencentre.org/main>

³² See <http://www.csreurope.org/whatwedo/default.asp?pageid=306>

³³ <http://www.nationalgrid.com>

³⁴ Observatory of the European SMEs, "European SMEs and Social environmental responsibility".

³⁵ Grant Thornton, "European Business Survey 2002".

ANNEX II: WORLD-WIDE INITIATIVES ON CSR AND HUMAN RIGHTS (NON-EXHAUSTIVE)

"We are not asking corporations to do something different from their normal business; we are asking them to do this normal business differently".³⁶

The global eight

"It is our goal to be better contributors to the betterment of society through our products and services and through the manner in which we provide them to the markets. Balancing the expectations of corporate responsibility is a challenge, but through this balancing process we hope and expect that we will enhance the public respect for our company".³⁷

Among CSR initiatives, eight of them are the most prominent:

1. The ILO's Tripartite Declaration of Principles 1977³⁸

The ILO adopted a Tripartite Declaration of Principles concerning TNCs and Social Policy in 1977. The Declaration was updated in 2000 in the light of the 1998 ILO Declaration of Fundamental Principles and Rights at Work. The Declaration's value lies both in its comprehensive content, which covers all aspects of social policy from industrial relations to training and employment, and in the fact that it is addressed to a wide range of key economic actors and workers' organisations.

2. The Global Reporting Principles (GRI), 2000³⁹

The Global Reporting Initiative (GRI) was established in late 1997 with the mission of developing globally applicable guidelines for reporting on the economic, environmental, and social performance, initially for corporations and eventually for any business, governmental, or non-governmental organisation. The GRI's goals are to:

- Elevate sustainability reporting practises world-wide to a level equivalent to financial reporting;
- Design, disseminate, and promote standardised reporting practises, core measurements, and customised sector-specific measurements;
- Ensure a permanent and effective institutional host to support such reporting practises world-wide.

3. The Global Compact 2000 ("GC")⁴⁰

"Let us choose to unite the power of markets with the authority of universal ideals. Let us choose to reconcile the creative forces of private entrepreneurship with the needs of the disadvantaged and the requirements of future generations".⁴¹

- A. The GC, an initiative to promote CSR - the GC was announced by the UN Secretary-General at the World Economic Forum in Davos in 1999 and formally launched in 2000 as one measure to respond to the challenges of globalisation. The GC is an initiative intended to promote CSR and citizenship in the new global marketplace. It brings companies together with UN organisations, international labour organisations, NGOs and other parties to foster partnerships and to build a more inclusive and equitable global marketplace. It aims, in the words of Kofi Annan, to contribute to the emergence of "shared values and principles, which give a human face to the global market".
- B. The GC, a voluntary initiative - The 400 companies engaged in the GC are diverse and represent different industries and geographic regions. However, they all have two features in common: they are all leaders and they all aspire to manage global growth in a responsible

³⁶ Kofi Annan, UN Secretary-General, on the role of corporations in environment.

³⁷ Tom Gottschalk, Executive Vice-President, Law & Public Policy and General Counsel, General Motors.

³⁸ See <http://www.ilo.org>

³⁹ See <http://www.globalreporting.org>

⁴⁰ See <http://www.unglobalcompact.org>

⁴¹ Kofi Annan, UN Secretary-General.

manner that takes into consideration the interests and concerns of a broad spectrum of stakeholders (employees, investors, customers, advocacy groups, business partners and communities). Corporate leaders participating in the GC agree that globalisation, which only a few years ago was seen by many as an inevitable and unstoppable economic trend, is in fact highly fragile and may have an uncertain future. Indeed, rising concerns about the effects of globalisation on the developing world – be they related to the concentration of economic power, income inequalities or societal disruption – suggest that, in its present form, globalisation is not sustainable. The GC was created to help organisations to redefine their strategies and courses of action so that all people can share the benefits of globalisation, not just a fortunate few.

The GC is not a regulatory instrument, a legally binding code of conduct or a forum for policing management policies and practices. Neither is it a “safe-harbour” allowing companies to sign-on without demonstrating real involvement and results. The GC is a voluntary initiative that seeks to provide a global framework to promote sustainable growth and good citizenship through committed and creative corporate leadership.

- C. The GC's 9 Principles. Companies are asked to undertake 3 commitments: to advocate the GC and its 9 Principles in mission statements and annual reports, to post on the GC website all the steps they have taken to act on the 9 Principles and to join with the UN partnership purpose of benefit to developing countries. The 9 Principles are:

Human rights

- Business should support and respect the protection of internationally proclaimed Human Rights;
- Make sure they are not complicit in Human Rights abuses.

Labour Standards

- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced and compulsory labour;
- The effective abolition of child labour.

Environment

- Eliminate discrimination in respect of employment and occupation;
- Business should support a precautionary approach to environmental challenges;
- Undertake initiatives to promote greater environmental responsibility;
- Encourage the development and diffusion of environmentally friendly technologies.

4. The OECD Guidelines for TNCs, 2000⁴²

The OECD Guidelines are a set of recommendations addressed by governments to TNCs operating in or from adhering countries. Although non-binding, they are supported by OECD countries from which most TNCs originate. Their aim is to help TNCs operate in harmony with government policies and societal expectations. In keeping with the notion of CSR and to promote the contribution of business to social development and the promotion of basic workers' rights, the Guidelines provide voluntary principles for responsible business conduct in fields such as employment, industrial relations, Human Rights, environment, competition, information disclosure and taxation, combating bribery, and consumer protection.

⁴² See <http://www.oecd.org>

5. The ICC Guidebook on Responsible Business Conduct, February 2002⁴³

The Group on Business in Society has developed the ICC Guidebook on Responsible Business Conduct. Its main purpose is to make practical suggestions to companies on how to approach CSR issues in order to help position individual company principles within the existing framework of generic business principles, government codes of conduct and new initiatives, as well as broader social values. The Guidebook's secondary purpose is to explain to those outside business how companies are addressing CSR issues. Reinforcing the positive role of business society through the encouragement of CSR and good corporate citizenship constitutes one of the ICC's strategic priorities.

6. UN Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights⁴⁴

Following more than three years work the U.N. Sub-committee on the Promotion and Protection of Human Rights unanimously adopted the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' (the Norms) on August 13, 2003. The Norms, and the accompanying interpretative Commentary, constitute an authoritative interpretation of international human rights for business.

The Norms primarily serve companies by bringing together a range of obligations for companies drawn from existing international human rights, labour and environmental standards. The Norms are of utmost importance to all actors in business and contribute considerably to the convergence of content for CSR. Though the Norms are an authoritative interpretation of the responsibilities of corporations under international human rights laws they are not binding in themselves. Companies or governments can adopt the Norms and they are expected to form the basis for a binding document in the near future.

The Sub-committee not only adopted the Norms themselves but also the accompanying commentary. The commentary adds substantial value to the Norms, bringing the relative abstract norms closer to realisation by companies and offering valuable clarification and references. The Norms emphasize that states have the primary obligation to respect, protect, fulfil and promote human rights, but underlines that businesses shall ensure that their impact does not constitute violations or work against the realization of human rights. Such responsibility relates to the full range of human rights, i.e. civil, political, economic, social and cultural rights. As part of the human rights obligations, the Norms highlight obligations in relation to security of persons, core labour rights, legal compliance, curbing corruption, consumer protection, environmental protection and operations in conflict zones. As the first authoritative UN document in relation to CSR the Norms are expected to have significant impact. The direction outlined by the Norms offers the convergence needed in a field congested with a plethora of divergent initiatives and codes of conduct.

7. Social Accountability (SA) 8000⁴⁵

The Council on Economic Priorities Accreditation Agency has established SA 8000, a standard for assessing labour conditions in global manufacturing operations. SA 8000 addresses issues including prison labour, wages, child labour, and health and safety and relies on certified monitors to verify factory compliance with the standard.

8. Global Sullivan Principles⁴⁶

Aimed at promoting equal opportunity in South Africa and developed a set of Principles in 1999 to guide the global behaviour of TNCs on labour, ethics, and environmental practices.

⁴³ See <http://www.oecd.org>

⁴⁴ See <http://www.un.org>

⁴⁵ See <http://www.sa-intl.org>

⁴⁶ See <http://globalsullivanprinciples.org>

ANNEX III: OTHER INITIATIVES WHICH PROMOTE CSR AND HUMAN RIGHTS (NON-EXHAUSTIVE)

There are a number of other initiatives which promote CSR and Human Rights:

1. Principles for Global CSR

The Principles for Global CSR were developed by the US-based Interfaith Centre on CSR, the Canadian-based Ecumenical Council for CSR and the UK-based Taskforce on the Churches and CSR. These principles are based on international covenants regarding the rights of indigenous persons, employees and women.

2. Declaration of Principles on Human Rights and the Environment 1994

The Declaration was prepared by a group of experts on Human Rights and environmental protection convened by the UN. It was the first international instrument that addressed the linkage between Human Rights and the environment and demonstrates that accepted environmental and Human Rights principles embody the right of everyone to a secure, healthy and ecologically sound environment.

3. World Business Council for Sustainable Development⁴⁷

The World Business Council for Sustainable Development is a coalition of 125 TNCs committed to the environment and to the principles of economic growth and sustainable development. It develops co-operation between business, government and other organisations concerned with the environment and sustainable development, encourages high standards of environmental management in business, and business leadership, undertakes policy development to create a framework for business, shares best practice and has developed a global network.

4. International Business Leaders Forum (IBLF)⁴⁸

The International Business Leaders Forum (IBLF) is an organisation that promotes international leadership in responsible business practices, to benefit business and society. It operates in over 60 countries and works with leaders in business, civil society and the public sector in transition economies in order to achieve social, economic and environmentally sustained development. The IBLF encourages continuous improvement in responsible business practices, develops geographic or issue-based partnerships, contributes to an enabling environment and provides the conditions for these partnerships to flourish.

5. Aarhus Convention - UN ECE⁴⁹

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and Human Rights, and establishes that sustainable development can be achieved only through the involvement of all stakeholders. It focuses on interactions between the public and governmental authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

6. Apparel Industry Partnership (AIP) 1996⁵⁰

The Apparel Industry Partnership (AIP) was initiated in 1996 to take steps to protect workers worldwide and to give the public the information it needs to make informed purchasing decisions. AIP is comprised of apparel and footwear companies, a university, Human Rights groups, labour-religious

⁴⁷ See <http://www.wbcsd.ch>

⁴⁸ See <http://www.iblf.org>

⁴⁹ See <http://europa.eu.int/comm/environment/aarhus/>

⁵⁰ See <http://ur.rutgers.edu/news/ACLA/flap9.html>

organisations and consumer advocates. AIP released a historic agreement establishing a workplace Code of Conduct and Principles of Monitoring.

7. Voluntary principles on security and Human Rights 2000⁵¹

Some governments, companies in the extractive and energy sectors (BP, Shell, Chevron, Texaco, Conoco, Freeport, McMoran, Rio Tinto), and NGOs (Human Rights Watch, Amnesty International, International Alert, Lawyers Committee for Human Rights) have developed a set of Voluntary Principles to guide companies in maintaining the safety and security of their operations within an operation framework that ensures respect for Human Rights and fundamental freedoms. These Principles are designed to provide practical guidance that will strengthen Human Rights safeguards in company security arrangements in the extractive sector. They address three areas: engagement with private security, engagement with public security, risk assessment supporting security arrangements consistent with Human Rights.

8. Institute of Social and Ethical Accountability (ISEA)⁵²

The Institute of Social and Ethical Accountability (ISEA) combines the terms “social” and “ethical” to refer to “the systems and individual behaviour with an organisation and to the impact of an organisation’s activity on stakeholders”. Its new international standard, AccountAbility 1000, has at its core the importance of stakeholder engagement in the social and ethical accounting process.

9. New Partnership for Africa’s Development (NEPAD)⁵³

The New Partnership for Africa’s Development (NEPAD) was established in 2001 in Nigeria and is comprised of 15 African countries. The organisation is modelled after the Marshall Plan, a programme of development that successfully re-built Europe after World War II. NEPAD hopes to ensure political and economic stability in return for increased foreign investment, as well as better access to trade and debt relief.

10. International Alert⁵⁴

International Alert is an NGO committed to the peaceful transformation of violent conflict. Its Business and Conflict programme is designed to address the twin problems of the corporate sectors potential for negative impact on conflict and the insufficient understanding amongst governments, multi-lateral institutions, NGOs and the corporations themselves of the role business can play in addressing the structural causes of conflict.

11. Other organisations

In the last years, Human Rights organisations (Amnesty International, Human Rights Watch, Lawyers’ Committee on Human Rights), labour organisations (International Confederation of Free Trade Unions), corporate accountability organisations (Global Exchange, Clean Clothes Campaign, Global Witness), anticorruption organisations (Transparency International), religious, shareholder, student and environmental organisations have committed greater resources and attention to corporate action on Human Rights.

⁵¹ See <http://www.state.gov/g/drl/rls/2931.htm>

⁵² See <http://www.accountability.org.uk/>

⁵³ See <http://www.nepad.org/>

⁵⁴ See <http://www.international-alert.org/>

ANNEXE IV: WHERE CAN I FIND MORE INFORMATION - WEBSITES OF INTEREST

There is an abundance of information available on CSR. The CCBE would suggest that as a starting point lawyers could consult the following documents and websites:

<http://www.csreurope.org> – CSR Europe is a business-driven membership network. Its mission is to help companies achieve profitability sustainable growth and human progress by placing corporate social responsibility in the mainstream of business practice.

<http://www.csrwire.com> - CSRwire seeks to promote the growth of corporate responsibility and sustainability through solutions-based information and positive examples of corporate practices.

<http://www.bsr.org> - Business for Social Responsibility (BSR) is a global organisation that helps member companies achieve success in ways that respect ethical values, people, communities and the environment.

<http://www.business-humanrights.org> - Business & Human Rights Resource Centre is a charity promoting greater awareness and informed discussion of important policy issues.

<http://www.unglobalcompact.org> - the Global Compact seeks to advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation.

<http://www.ilo.org> – This is the website of the International Labour Organisation.

<http://www.hrw.org> - Human Rights Watch is dedicated to protecting the human rights of people around the world.

<http://www.goodmoney.com> – This website provides information on Social, Ethical and Environmental Investing and Consuming & Corporate Accountability.

<http://www.inform.umd.edu/crge/resources/interest.htm> – This is an association of academic units and individual faculty on the University of Maryland Campus whose mission is to promote, advance, and conduct, research, scholarship, and faculty development that examines the intersections of race, gender, and ethnicity with other dimensions of difference.

<http://eumc.eu.int> - The primary task of the European Monitoring Centre on Racism and Xenophobia (EUMC) is to provide the Community and its Member States with objective, reliable and comparable information and data on racism, xenophobia, islamophobia and anti-Semitism at the European level in order to help the EU and its Member States to establish measures or formulate courses actions against racism and xenophobia.

<http://www.socialinvest.org> - The Social Investment Forum site offers information, contacts and resources on socially responsible investing.

<http://www.idealswork.com> - This website is committed to make socially and environmentally responsible behaviour essential to the success of any business.

<http://www.ethicalcorp.com> - Ethical Corporation's mission is to provide balanced, informed, unbiased, useful original content on the issues in and around corporate social, environmental and financial responsibility through publishing and learning events.

<http://www.bitc.org.uk> - Business in the Community is a unique movement of 700 member companies committed to continually improving their positive impact on society.

<http://www.csrcampaign.org> - The European Business Campaign on Corporate Social Responsibility has set itself the goal of mobilising 500,000 business people and partners to integrate CSR into their core business by 2005.

<http://www.international-alert.org> - International Alert is an NGO committed to the peaceful transformation of violent conflict.

Conseil des Barreaux de l'Union européenne – Council of the Bars and Law Societies of the European Union

association internationale sans but lucratif

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SEPTEMBER 2003