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17 December 1998 A4-0508/98

REPORT

on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct

Committee on Development and Cooperation

Rapporteur: Richard Howitt

PE 228.198/fin.

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Following a request by the Conference of Committee Chairmen of 10 March 1998, the President of Parliament announced at the sitting of 3 April 1998 that the Committee on Development and Cooperation had been authorized to draw up a report on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct and that the Committee on External Economic Relations had been asked for its opinion.

At its meeting of 15 April 1998 the Committee on Development and Cooperation appointed Mr Howitt rapporteur.

The committee considered the draft report at its meetings of 28 October and 24 November 1998.

At its meeting of 25 November 1998 it adopted the motion for a resolution by 19 votes to 11, with 1 abstention.
The following took part in the vote : Rocard, Chairman; Fassa and Lehideux, Vice-Chairmen; Howitt, rapporteur; Aldo, Carlotti, Castagnède, Corrie, Cunningham, David, Delcroix (dep. Junker), Frutos Gama (dep. Sauquillo), Gillis (dep. Fernández Martín), Girão Perreira (dep. Andrews), Günther, Kinnock, Liese, Lööw, Maij-Weggen (dep. Baldini), Martens, Newens (dep. McGowan), Pettinari, Lord Plumb, van Putten (dep. Pons Grau), Robles Piquer, Sandbæk, Taubira Delannon (dep. Hory), Telkämper, Torres Couto, Vecchi and Verwaerde.

The opinion of the Committee on External Economic Relations is attached.

The report was tabled on 17 December 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
MOTION FOR A RESOLUTION

Resolution on EU standards for European Enterprises operating in developing countries towards a European Code of Conduct

The European Parliament;

- having regard to its resolution of 9 February 1994 on the introduction of a social clause in the trading system[1],

- having regard to its resolution of 12 December 1996 on the human rights situation in the world and the EU's human rights policy[2],

- having regard to its resolution of15 January 1998 on relocation and foreign direct investment in third countries,[3]

- having regard to its resolutions on Indigenous peoples[4],

- having regard to its resolution of 11 March 1998 on an OECD Multilateral Agreement on Investment[5],

- having regard to its resolution of 2 July 1998 on fair trade [6],

- having regard to the two most authoritative internationally agreed standards for corporate conduct adopted by the ILO: the 1977 “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy” and the 1976 OECD:
“Guidelines for Multinational Enterprises”, and to codes of conduct agreed under the aegis of international organisations such as the FAO, WHO and World Bank and efforts under the auspices of UNCTAD with regard to the activities of enterprises in developing countries,

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[1] OJ C061 of 28.2.1994, p. 59 and 89

[2] OJ C 020 of 20.1.1997, p. 94 and 161

[3] OJ C 34 of 2.2.1998, p. 156

[4] A3-059/94, OJ C 61 of 28.2.1994, p. 69; B4-0062 and 0103/95; B4-1415/95 as well as B4-0496, 0500, 0522 and 0551/96

[5] OJ C 104 of 6.4.1998, p. 103 and 143

[6] A4-0198/98, JO C 226 of 20.7.1998, p. 73

- having regard to the ILO Declaration on Fundamental Principles and Rights at Work, 18 June 1998, and its agreement of universal core labour standards: Abolition of forced labour (Conventions 29 and 105), Freedom of association and the right to collective bargaining (Conventions 87 and 98), Abolition of child labour (Convention 138), and Non-Discrimination in Employment (Conventions 100 and 111),

- having regard to the United Nations Universal Declaration of Human Rights and in particular its article where every individual and every organ of society is called upon to play its part in securing universal observance of human rights, the 1966 International Covenant on Civil and Political Rights, the 1966 Covenant on Economic, Social and Cultural Rights, the 1979 Convention of the Elimination of All Forms of Discrimination Against Women, the 1994 Draft United Nations Declaration on the Rights of Indigenous Peoples,

- having regard to the decision of the European social partners to contribute to the implementation of actions aimed at eradicating all forms of child labour exploitation and to promote the rights of these children throughout the world,

- having regard to Article 220 of the Treaty of Rome regarding reciprocal recognition of court judgments, to the 1968 EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters[1], usually known as the Brussels Convention, and to the Joint Action adopted by the Council on the basis of Article K3 of the Treaty concerning action to combat trafficking in human beings and sexual exploitation of children, of 24 February 1997[2],

- having regard to the 1997 OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,

- having regard to the European Council decisions to offer enhanced General System of Preferences (GSP) with respect to compliance with core labour standards[3], and to the EU Code of Conduct on Arms Exports[4],

- having regard to numerous initiatives on the part of individual enterprises, their associations, trade unions and non-governmental organisations, together with international voluntary standards such as Social Accountability 8000,

- having regard to the Hearing on "EU standards for European Enterprises operating in developing countries" of 2 September 1998 in the Committe on Development and Cooperation;

- having regard to Rule 148 of its Rules of Procedure,

- having regard to the report of the Committee on Development and Cooperation and the opinion of the Committee on External Economic Relations (A4-0508/98),

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[1] OJ 1978, L 304, p. 36

[2] OJ 1997, L 63, p. 2

[3] OJ 1998, L 160 of 4.6.1998

[4] OJ C 167 of 1.6.1998, p. 226

A. Whereas the EU as the largest development aid donor, and European enterprises, as the largest direct investors in developing countries, can play a decisive role in global

sustainable social and economic development;

B. Deeply concerned about numerous cases where intense competition for investment and markets and lack of application of international standards and national laws, have led to cases of corporate abuse, particularly in countries where human rights are not upheld;

C. Stressing that no company should profit from any competitive advantage resulting from disregarding basic labour laws and social and environmental standards; and recognising increasing evidence that corporate social responsibility is linked to good financial performance;

D. Bearing in mind there is increasing consensus amongst business and industry, trade unions, NGOs and governments both from developing countries and from the industrialised world, to regulate business practices and establish codes of conduct;

E. Stressing that voluntary and binding approaches to corporate regulation are not mutually exclusive, and adopting an evolutionary approach to the question of standard-setting for European enterprises;

Voluntary codes of conduct

1. Welcomes and encourages voluntary initiatives by business and industry, trade unions and coalitions of NGOs to promote codes of conduct, with effective and independent monitoring and verification, and stakeholder participation in the development, implementation and monitoring of Codes of Conduct; emphasises, however, that codes of conduct cannot replace or set aside national or international rules or the jurisdiction of governments; considers that codes of conduct must not be used as instruments for putting multinational enterprises beyond the scope of governmental and judicial scrutiny;

2. Stresses that the content of a code, the process by which it is determined and implemented, must involve those in developing countries who are covered by it;

3. Believes that special attention must be paid to implementing codes in respect of workers in the informal sector, sub-contractors and in free trade zones, notably concerning recognition of the right to form independent trade unions; and against corporate collusion in violations of human rights;

4. Believes that a code should recognise the responsibilities of companies operating in conflict situations by ensuring that a Code covers the Amnesty International Human Rights Principles for Companies, Human Rights Watch recommendations to companies, and the UN Code of Conduct for Law Enforcement Officials;

5. Stresses that Indigenous peoples and their communities should benefit from such codes of conduct recognizing their important role for sustainable development;

6. Welcomes the fact that in the present context of globalisation of trade flows and communications as well as of increased vigilance of NGO's and consumer associations, it seems to be increasingly in the own interest of multinational undertakings to adopt and

implement voluntary codes of conduct, if they want to avoid negative publicity compaigns, sometimes leading to boycotts, public relation costs and consumer complaints;

7. Considers that enterprises should contribute economically to the development process in the affected areas, but they should not be allowed to implement social or economic projects, which should be the responsibility of the state;

8. Recommends that an 'evolutionary approach' be weighted towards a continuous and gradual improvement of standards; takes the view that this must reflect the enterprises' own obligations to make improvements;

European enforcement mechanism

9. Reiterates its request to the Commission and the Council to make proposals, as a matter of urgency, to develop the right legal basis for establishing a European multilateral framework governing companies operations worldwide and organize for this purpose consultations with those groups of society who would be covered by the code;

10. Recommends, that a model Code of Conduct for European Businesses should comprise existing Minimum Applicable international standards:
the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy and the OECD Guidelines for Multinational Enterprises;
in the field of labour rights: the I.L.O. core Conventions;
in the field of human rights: the UN Declaration and different Covenants on Human Rights ;
in the field of minority and indigenous peoples rights: I.L.O. Convention no. 169, Chapter 26 of Agenda 21, 1994 Draft United Nations Declaration on the Rights of Indigenous Peoples, U.N. Declaration on the Elimination of All Forms of Racial Discrimination;
in the field of environmental standards: U.N. Convention on Biological Diversity, the Rio Declaration and the European Commission proposal for the development of a code of conduct for European logging companies (COM(89) - 0410);
in the field of security services: Common Article 3 of the Geneva Conventions and Protocol II, and the U.N. Code of Conduct for Law Enforcement Officials; in the field of corruption: the O.E.C.D. anti-bribery convention and the European Commission communication on legislative measures against corruption (COM(97) 0192/fin.);
but should also include consideration of new international standards which are currently developed;

11. Calls on the Commission to study the possibility of setting up a European Monitoring Platform (EMP), (already proposed by some trade associations) in close collaboration with the social partners, NGO's from North and South and representatives of Indigenous and local communities; with the purpose of granting workers and the local population in host countries anywhere in the world some form of protection from oppression, abuse and exploitation and aim for socially and environmentally sustainable operations in countries where national laws are inadequate or not enforced and international laws and conventions not ratified;

12. Recommends that an EMP would consist of independent experts and a board of

representatives from European business, international trade unions, and international environmental and human rights organisations; believes that an independent monitoring and verification body could only prove useful if it is highly skilled, if it has appropriate procedures and, above all, if it is widely accepted as being objective and impartial;

13. Recommends that business and industry provide dissemination of information of their voluntary initiatives and conduct to the EMP so that their compliance with a European Code of conduct, international standards and private voluntary codes of practice (if adopted) could be properly assessed;

14. Recommends that the EMP promote dialogue on standards met by European enterprises, the identification of best practice, together with being open to receive complaints about corporate conduct from community and/or workers' representatives and the private sector in the host country, NGOs or consumer organisations, from individual victims or from any other source;

European Parliamentary action

15. Recommends, in view of the urgency for a more uniform approach to codes of conduct and monitoring, that a temporary European Monitoring Platform based on existing international conventions, declarations, standards and initiatives by industry, trade unions, intergovernmental organisations, consumer groups and NGOs, is established under the auspices of the European Parliament;

16. Proposes that during the new legislative period, special rapporteurs are appointed for a period of one year and annual hearings are held in the European Parliament, inviting the social partners and NGOs from the South and the North until the time a European Monitoring Platform is established;

17. Recommends that public hearings be organised regularly in the European Parliament in order to discuss specific cases, of both good and bad conduct, and that all persons concerned (including enterprises) be invited to attend them;

Role of European development cooperation

18. Recognizes that a responsibility for applying internationally agreed standards rests with the governments of the developing countries themselves; therefore welcomes recent EU initiatives to strenghten and extend the coverage of political dialogue with developing countries and to make "good governance" an essential element of EU cooperation policy;

19. Considers that resources must be set aside to support the governments of developing countries, so as to help ensure that international standards are incorporated in those countries' laws, and that technical and financial assistance must be granted to monitoring groups in the host countries;

20. Calls on the Commission to enforce the requirement that all private companies carrying out operations in third countries on behalf of the Union and financed out of the Commission's budget or European Development Fund, act in accordance with the Treaty of European Union, in particular Article F and Articles 172 and 215 in respect of fundamental rights, so that companies could be subject to annulment actions under Article 173 and compensation claims under Article 215; calls on the Commission to prepare a report on the extent to which private companies to which it awards contracts have been made aware of these obligations; further recognises that private companies acting as agents of the Commission in the field of development cooperation are already obliged to adhere to OECD standards concerning best aid practice and human rights and sustainable development principles enshrined in the Lomé Convention;

21. Calls on the Commission to ensure that the development strategy to strengthen the private sector environment in developing countries, should specifically integrate the role of European-based MNEs, and to progress an investment agreement with the ACP to promote economic growth and poverty reduction, and the potential for extra-territorial action covering human rights, workers' rights, environmental protection and corruption;

Other actions at the European level

22. Calls on the Commission to improve consultation and monitoring of European companies' operations in third countries through the mechanisms of the Social Dialogue within Europe, and the operation of democracy and human rights clauses in trade agreements with third countries outside Europe;

23. Recommends that at least the ILO Declaration of Fundamental Principles and Rights at Work, of 18 June 1998, be an explicit part of any future agreement the EU negotiates with third countries, as a matter of urgency;

24. Request the European Council confirm the interpretation in the 1968 Brussels Convention that, for cases of basic duty of care, legal action may be taken against a company in the E.U. country where its registered office is, in respect of any third country throughout the world, and calls on the Commission to study the possibility of enacting legislation, which open European courts to lawsuits involving damage done by MNEs, thus creating a precedence for developing customary international law in the field of corporate abuse;

25. Calls on the Commission to ensure that consideration is given, with an appropriate legal base, to incorporating core labour, environmental and human rights international standards when reviewing European company law including the new E.U. Directive on a European-incorporated company, together with reporting requirements on social and environmental performance; further calls for an appropriate consultation process with the social partners and NGOs on such a process;

26. Calls on the Commission to bring forward proposals for a system of incentives for companies complying with international standards developed in close consultation and cooperation with consumer groups and human rights and environmental NGOs - such as in procurement, fiscal incentives, access to E.U. financial assistance and publication in the Official Journal;

Actions within international institutions

27. Recommends that the European Union seeks to work en bloc to strengthen existing ILO and OECD instruments, in particular in the review now underway in the O.E.C.D., and within the United Nations, to ensure more powerful and effective monitoring and enforcement mechanisms, and strong penalties for non-compliance and that EU efforts notably go into reviving the UN Commission on TNCs for it to be entrusted with concrete tasks in the context of the monitoring and implementation of Codes, along with the ILO's Department for Multinational Enterprises;

28. Strongly recommends that in connection with negotiations on investment agreements which could be concluded in either the O.E.C.D. or the W.T.O. , the European Union not only contributes to establishing the legitimate rights of European enterprises, but also their duties in the field of environment, labour and human rights; strongly supports a mechanism for systematic monitoring of MNEs and for individual complaint against them to be incorporated in such an agreement;

29. Instructs its President to forward this resolution to the Commission, the Council, the ILO, the OECD and the governments and parliaments of the Member States.

B.
EXPLANATORY STATEMENT

INTRODUCTION

"Countries opening to (trade and investment) have been the first and main winners..with prosperity spread to an increasing number of people. (Between) 1993-6, 200-250 million people in the developing world reached incomes to establish themselves above the poverty line. The process of competitive opening is not leading to a downward spiral of social dumping."

European Round Table of Industrialists

"At Grasberg in Indonesia, the indigenous Amunyme tribe have seen their lands, livelihood and sacred sites destroyed by mining operations. When they have protested, they have been met with torture and murder by the Indonesian army. Mining began without their informed consent, and their key demand of rights to their land, enshrined in I.L.O. Convention 169, is being ignored. The company operates a code of conduct.

Women in a Manila factory receive just 3pence (UK) for stitching a shirt, for which their factory owner receives £2, and which goes on to be sold in Europe for £20. The working day is from 7a.m. up to 9 p.m. There are no medical facilities. Lighting and ventilation are poor. Trade unions are not allowed - as soon as a union is started, the factory is closed and opened up elsewhere with new workers. The company has operated its own code of conduct since 1991.

The pesticide endosulphan is being marketed for rice production in the Philippines. It has been found to be the country's number one source of poisoning, causing damage to the liver, spleen, kidney, cardiac muscle, and causing paralysis and genetic damage. It is withdrawn from sale as hazardous in three E.U. countries. When the government's attempt to get it banned failed, it was said that the company was "friendly" with the judge who handled the case.

World Development Movement, UK
Clean Clothes Campaign, Netherlands
Tebtebba Foundation, the Philippines

Each of these is a European company or controlled-subsidiary.

GLOBALISATION, FOREIGN INVESTMENT AND DEVELOPMENT

It is important to acknowledge that globalisation is having both positive and negative effects on the world´s communities. The progressive spread of a social awareness and international recognition of human rights, free movement of goods, people, capital and services could be seen as some of the positive effects but cultural levelling and homogenisation, abandonment of labour resources, at times undermining of labour rights, environmental damage and widening the gap between the global concentration of private wealth and extreme poverty, are negative impacts. There is a role for international regulations , multinational and trade institutions to mitigate the negative effects of globalisation through a new approach which places national development priorities, investor obligations and transparency at the centre, to ensure the benefits of international trade and investment are more equitably distyributed and reach the poorest people.

More than 40,000 multi-national enterprises (MNEs), with approximately 250,000 foreign

affiliates, dominate this globalised economy, accounting for two-thirds of global trade in goods and services. In fact, the turnover of four of the biggest MNEs exceeds the gross domestic product of the whole of Africa.

In 1994 foreign direct investment (FDI) into less-industrialised nations was US$80 billion, accounting for between one-third and two-fifths of global FDI inflows. Yet benefits are not evenly distributed with just ten host recipients, the majority in Asia, accounting for nearly 80 percent of all FDI to the developing world.

Burdened by debt, low commodity prices, structural adjustment, and unemployment, governments throughout the developing world queue up to attract multinationals, liberalise investment restrictions as well as privatising public sector industries. For industry and business, developing countries offer not just the potential for market expansion but also lower wages and fewer health, tax and environmental regulations than in the North. Yet in a country like Mongolia, which has fulfilled liberalisation requirements, poverty and unemployment have increased, nutritional standards remain critical and small businesses are failing.

INTER-GOVERNMENTAL INITIATIVES ON CODES OF CONDUCT

United Nations

In 1974, *the Centre for Transnational Corporations (CTC)* was established with the purpose of drawing up a set of guidelines which defines the rights and responsibilities of transnational corporations (TNCs) in their international operations. It covered all aspects of transnational business activities, including political, economic, financial and social affairs. However, the code was never adopted. And by March 1993, the CTC had been converted in to a smaller agency within the weakened UN Conference on Trade and Development.

The International Labour Organisation (ILO) and the Organisation for Economic Cooperation and Development (OECD)

International standards have been drawn up by the *ILO: the 1977 "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy"* and the *OECD: "Guidelines for Multinational Enterprise"*. These international principles and declarations including. environmental protection, core labour standards, human and children´s rights are internationally recognised but voluntary, not binding. Both international instruments are comprehensive, and have been endorsed by governments as well as by social partners. They are the most authoritative internationally agreed definitions of responsible behaviour for multinational companies.

THE EUROPEAN UNION, CODES OF CONDUCT AND MONITORING

The European Parliament, over the years, has consistently supported the need to develop and monitor codes of conduct for the corporate sector. In December 1996, the annual report on human rights called for a Code of Conduct for European Companies, operating in third countries, which obliges them to respect human rights in all their forms (civil, social, economic, environmental) including mechanisms of control and sanction. In December 1997, the Parliament adopted its report on relocation and foreign direct investment in third countries in which it again called for a code of conduct for European Multinationals. Companies which undertake to respect its provisions are recommended to be published in the Official Journal of the EC. In July 1998, Parliament adopted its report on Fair Trade with developing countries, once more calling for the

development of codes of conduct for European MNEs operating in developing countries.

The European Commission welcomed the Code of Conduct signed by the social partners in the European textile and clothing sector[1]. It encourages European firms or sectors to adopt codes of conduct on a voluntary basis but considers that a monitoring system be an integral part of the package. The Commission has further said that Codes of Conduct should be based on ILO standards, involving the social partners. It supports the establishment of an independent monitoring and verification body to contribute to promoting the implementation of fundamental standards. It has started an explanatory study into the ways and means available for promoting a code of conduct of European businesses which invest in developing countries. In so doing, it is reviewing the terms of the existing codes and the results of their application. At the moment, however, the Commission says there is no legal basis from which to impose binding conditions.

VOLUNTARY CODES OF PRACTICE ADOPTED BY COMPANIES AND INDUSTRY

Companies have increasingly adopted voluntary codes. They have done so for different reasons: as a recognition of the importance they attribute to their social responsibility, to improve their corporate image and at the same time minimise their vulnerability to negative consumer reaction thus avoiding damaging boycotts and bad publicity.

There is also a growing awareness that good employer practice is a profitable means of conducting business. The long term viability of a company, particularly when operating in countries troubled by social and political unrest, depends on their social and environmental performance.

The Confederation of Danish Industries, for example, has launched a set of guidelines for industry on human rights, requiring companies to pursue the same level of social responsibility in their new host country as in their home country. An increasing number of multinationals have explicitly committed themselves to human rights in their codes of conduct including Shell and Rio Tinto.

A growing number of retailers in Europe apply ethical standards of production to the goods they import (fair trade). Eurocommerce, for example, agreed that they would have the right to cancel orders from companies which supply goods produced by children or prisoners. The European Apparel and Textile Organisation (EURATEX) and the European Trade Union Federation of Textiles, Clothing and Leather (ETUF:TCL) signed an agreement for the development of a code of conduct.

NGOs, grass root organisations and trade unions have placed increasing pressure on companies to improve working conditions and better respect environmental standards in the developing world, and many have developed their own codes.

CODES OF CONDUCT AND DEVELOPING COUNTRIES

[1] Oral Question H-0804/98 from Richard Howitt MEP, September 1998

Southern governments are sometimes the most vehemently opposed to social protection measures in international agreements, seeing them as either imperialistic or protectionist.

However, codes of conduct give responsibility to companies, not countries. Good codes are based on agreed international standards, signed up to by Southern governments already, and a key element should be respect for the right for a country to pursue its own development strategy. One main aim is for southern producers to get a fairer deal from global trade.

Your rapporteur consulted southern NGOs from Ecuador, Nigeria and the Philippines, and attended the UN Working Session on Indigenous Peoples, each of whom supported the concept of a European code, and in particular somewhere where complaints can be brought. These findings are backed up by new research in the Philippines, Pakistan, India, Bangladesh and Sri Lanka, co-funded by the European Commission[1]. Model codes were said to reflect the workers' own priorities and were supported, as long as there was freedom to organise. The findings also showed that informal sector workers, despite difficulties in inspection, could particularly benefit, whilst fears about small contractors going out of business were dismissed as "smaller units are constantly closing down anyway." Export Processing Zones set up in many countries precisely to evade any costs of regulation, could be seriously addressed.

The main conclusion from the consultation is that the content of a code, the process by which it is determined and implemented, must involve and empower those in developing countries who are covered by it. Full disclosure of information by companies is needed, as well as training for local management, workers and communities on implementation. Furthermore, the emphasis must be on a "developmental approach" - one which stresses continuing gradual improvements to standards, and to the code itself, mirroring companies' own commitment to "continuous improvement" of the quality of the product. The example of assisting child labour in to education, rather than dismissing contractors who use child labour, demonstrates the positive and constructive approach.

WHY SHOULD EUROPE ACT ?

There is a powerful case to answer that the European Union should take a more active role in standard-setting for the conduct of its enterprises in developing countries. Forty-two of the top 100 MNEs are based in Europe, only 35 in North America. Yet in the United States, 85 per cent of large companies have codes, and NAFTA provides a first mechanism where trade unions and civil society can bring complaints against companies. The world's first voluntary standard for the social impact of business, Social Accountability 8000, was first developed in America.

This counters the fear sometimes expressed that European action could undermine the competitiveness of our companies in world markets, as do the agreements already made to offer enhanced General System of Preferences (GSP) to countries respecting core labour standards, and for a Code of Conduct on Arms Sales.

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[1] Women Working Worldwide - "Women workers and Codes of Conduct" Feb. 1998

The European Union is the biggest aid donor in the world, yet at present there is no coordinated support to help governments in developing countries to enshrine internationally agreed standards in national law, to assist in implementation of these standards, (including training of labour, environmental and human rights inspectors), or to provide technical and financial assistance to watchdog groups in host countries. Moreover, the Social Dialogue within Europe, and the operation for democracy and human rights clauses in trade agreements with third countries

outside Europe, provide ready-made mechanisms for improving consultation and monitoring of our companies in the developing world.Meanwhile, private companies, who are carrying out operations in third countries on behalf of the Union, are already obliged to act in accordance with Treaty obligations for fundamental rights, and could be subject to annulment actions and compensation claims.

Indeed the development strategy currently being prepared by the Commission to strengthen the private sector environment in developing countries, should specifically address the role of European-based MNEs, whilst the EU should negotiate an investment agreement with the ACP to ensure that developing countries have the right to regulate inward investment to support domestic capacity through profit reinvestment, technology transfer, local content requirements, skills training and balance of payments requirements.

Perhaps most of all, there is a groundswell of activity within member states, from the Ethical Trading Initiative in the United Kingdom, to a statutory code of conduct proposed for German companies operating in China to a Belgian proposal to make companies prosecutable for breaches of core labour standards in third countries. European companies, particularly small business, cannot respond to the proliferation of often inconsistent initiatives.

An E.U. Code could create a level playing field, reward best practice and drive up standards in underperforming companies.

ALTERNATIVE WAYS FORWARD

(I) Self-regulation

Despite the adoption of hundreds of voluntary codes of conduct and business practices. Some companies who have not yet engaged in dialogue with their staff, suppliers and shareholders in this way, should be encouraged to do so However, companies should note the need to extend their provision to all parts of the production chain, and to ensure externally verified enforcement mechanisms.

(ii) Action within international institutions

After over 20 years of existence, the ILO Tripartite Declaration failed to progress into a systematised dialogue and has treated a total of only seven cases. This is not an argument for ignoring existing standard-setting in global institutions, but for working en bloc within the institutions to strengthen existing ILO and OECD instruments, to ensure more powerful and effective monitoring and enforcement mechanisms, and strong penalties for non-compliance. The current review of the OECD guidelines provides an opportunity to do this, whilst the U.N. Centre for Transnational Corporations could be revived.

Some argue for a binding regulatory system in which countries would commit themselves to withold or withdraw registration in their country, and refuse to allow access to their markets, for any enterprise which breached certain social and environmental standards. This would require an effective monitoring system, perhaps an international enforcement body with the right to monitor the activities of MNEs. As with all aspects of this report, a multilateral approach is required in order to avoid charges of imperialism and to ensure full consultation with developing countries.

There are also wider arguments, outside the scope of this report, for a social clause in trade and investment agreements. Despite the European Parliament's reservations about the Multilateral Agreement on Investment (MAI), as previously negotiated in the OECD, in any future investment agreement there is a strong case to put respect for labour, environmental and human rights standards on the same footing as international financial regulation. The legitimate rights of corporations (for example to reasonable compensation for expropriation) must be matched with the right of governments to pursue their own development strategies and the protection of basic human rights. Any such agreement should incorporate mechanisms for systematic monitoring of MNEs and for individual complaints against them.

(iii) Legal jurisdiction by European Courts

It can be argued that, rather than setting up special mechanisms for highlighting abuse of internationally agreed standards, such abuses should be able to be dealt with through the normal jurisdiction of the courts. Indeed the 1968 Brussels Convention (Article Two) states that a company can be sued in a country where its registered office is, and most Member States currently interpret this as meaning cases from any country throughout the world. This interpretation could usefully be endorsed by the Council. A study could also be undertaken on drawing up a European version of the American Tort Claims Act, a 200-year-old statute which allows foreign citizens to take civil cases in violation of international law, and which has been used to apply international human rights standards directly to corporations.

South African mineworkers suffering from asbestosis, factory workers in Natal with mercury poisoning, and a foreman who had cancer after working in a uranium mine in Namibia, have all been successful in having cases against British-based MNEs heard in the British courts. Recourse to such legal action is an important safeguard, but one which is restricted to breaches of absolute “duty of care” by companies.

(iv) New European Legislation

It is further suggested that European legislation for competition and state aids, (based on Articles 85, 86, 90 and 91 of the Treaty) be revised to ensure European-based companies be made accountable for complying with core standards in their operations overseas.

However, under the existing Treaty, the competence of these Articles appears to be strictly within the Member States, unless States themselves were willing to consider extended regulation of companies in third countries, under Joint Action. Given the very strong European reaction when the United States attempted to impose trade sanctions against companies operating in Cuba under the Helms-Burton Act, this seems unlikely.

Nevertheless, the 1997 European Commission communication on legislative measures against corruption, and German, Belgian and U.K. legislation against citizens guilty of sexual abuse of minors in third countries, both show an ability to promote international standards through domestic law, where the political will exists. The new E.U. Directive on a European-Incorporated company, together with discussion of stricter reporting requirements for companies on social and environmental performance, could provide an opportunity for further consideration of these arguments.

However, a more productive way forward may be to look at a system of incentives to reward companies for positive efforts to comply with international standards - "carrots rather than

sticks". Already in Australia, "social companies" are accorded preferential tax status, whilst in Sweden additional export credits are accorded to companies meeting the Environment Ministry's standards.

TOWARDS A EUROPEAN CODE OF CONDUCT AND MONITORING PLATFORM

However, this report suggests that the above approaches are not alternatives, but part of a complementary set of actions which can contribute to an evolutionary approach to the whole subject of standard-setting for MNEs. Voluntary regulation can do a great deal to promote better practice, but the worst offences will only ever be prevented through national and international laws and binding rules. Such systems can operate in parallel: binding rules to ensure minimum standards and voluntary initiatives to promote higher standards.

In this context, this report recommends the following initiative at the European level, which will start as a voluntary initiative, but which does not preclude moving towards mandatory regulation:

1. The creation of a Model European Code of Conduct which should contribute to greater standardisation of voluntary codes of conduct, based on international standards;

A European Code of Conduct would allow the impact of codes of conduct to spread beyond a limited number of companies with the necessary motivation and capacity to develop their own systems. However, it should be explicitly stated rather than draft a new Code including new laws and regulations (for which a legal basis in the Treaty does not exist) it is recommended that a basic model framework code is set up which comprises already internationally agreed Minimum Applicable standards. Such a code would aim to guarantee minimum standards regarding the environment, health and safety conditions in the workplace, no use of forced, bonded or child labour, respect for women´s and indigenous peoples rights, and respect for basic human rights. It should aim to increase corporate accountability and apply to any company whose headquarters are registered in the European Union, their contractors, subcontractors, suppliers and licensees world-wide (meaning any legal or natural person who contracts with the company and is engaged in a manufacturing process) in different sectors. Individual codes and agreements may be required for different sectors, but it is suggested that this proposal provides a feasible starting point covering all sectors. The Code would provide the framework of reference for external monitoring and verification and could be based upon already existing international instruments outlined in the Resolution.

2. The establishment of a European Monitoring Platform, including provisions on complaint procedures and remedial action

The general objective of a European Monitoring System would be to contribute to granting workers anywhere in the world protection from oppression, abuse and exploitation and work towards socially and environmentally sustainable operations where national laws are inadequate or not enforced and international conventions are not ratified. A special case concerns conflict situations, where very careful behaviour is required to avoid collusion in the violation of human rights. The Monitoring Platform could develop the following characteristics and activities:

The Platform would consist of independent experts in addition to a board of representatives from the European business and industry sector and international trade unions, environmental and human rights NGOs, including representatives from the South;

It would receive reports from business and industry about their compliance with

international standards and codes of conduct submitted to the Monitoring Platform voluntarily or after request;
It would receive complaints from local groups, trade unions, community representatives about corporate conduct voluntarily of after request;
It would select case studies on the basis of the information submitted;
It would evaluate the validity of the complaints and the reports submitted on the basis of agreed upon auditing procedures for verification;
Auditing mechanisms would provide important factual and experiential background for developing international law in relation to corporate conduct,
It would publicise the results of the inquiries on an annual basis.

A European Monitoring Platform should not go as far as determining working conditions and wages in developing countries. This should be negotiated by the workers, trade unions and employers where possible in the country of investment as local negotiation presents a better guarantee for implementation of standards. A European System should aim at improving labour conditions not simply cut child labour, or exclude vulnerable workers, including women and children, casual workers and migrants, pieceworkers and home workers.

Comprehensive consultation needs to take place around the setting up of the EMP, in order to guarantee its objectivity, and to deal with difficult questions around representativeness, protection for complainants, as well as ensuring that the whole mechanism does not become over-politicised or legalistic, rendering it ineffective, or reproducing the problems seen with other international mechanisms.

Nevertheless this report concludes that as the legal basis for a binding European Code and Monitoring system does yet not exist and needs developing, the European Parliament should restate its demand to the Commission to bring this forward. In addition, in view of the need and urgency to further a more uniform approach to codes of conduct, this report proposes the creation of a *temporary European Monitoring Platform* with a complaint procedure, also based on existing international conventions, declarations, standards and initiatives by industry, trade unions, intergovernmental organisations, consumer groups and NGOs under the auspices of the European Parliament. Companies could use the European Parliament´s publicity to highlight their positive contributions and voluntarily become subject to its standards and external monitoring procedures and also show their stakeholders that they are conforming with best practice. This system would have several important advantages:
It does not require the creation of a whole new infrastructure in the immediate future, but would rely on the Parliament´s existing resources and a simplified procedure outside the judicial format but with all necessary publicity,
The European Parliament would provide a platform to all interested parties and the system would avoid the necessity to create a Model European Code relying on existing international law and public hearings,
Through the affiliates of the international trade union organisations, local industry and NGOs, developing countries could be involved in the consultation process and invited to give testimonies on their experiences.
Corporations, by voluntarily complying with Parliament´s auditing mechanisms, would satisfy consumers and gain positive publicity.
It would set a necessary precedent for the establishment of an independent European Code of Conduct and European Monitoring Platform.
Publicity remains the key tool on this issue, given the importance of reputation to companies, and the growing importance of consumer power.

During the new legislative period, a rapporteur could be appointed for the period of one year and receive cases submitted by different actors on corporate conduct in different sectors. Once a year, or more often, these cases would be brought out into the open by organising a joint parliamentary hearing to which all interested parties are invited; victims, companies, trade unions and NGOs from the South and the North. Corporations would be requested to submit reports regarding their compliance with a set of basic standards. Victims of abuse, trade unions, local business and industry or consumer groups and NGOs could submit complaints to the parliamentary rapporteur and an annual report on the outcome of the hearing would be submitted to plenary. In order for companies to be engaged, emphasis must be on dialogue and best practice, not simply on complaints.

Bibliography:

CAFOD Policy Briefing "Codes of Conduct and the Ethical Trading Initiative", April 1998

CEPAL, Comision economica para america latina y el caribe, Foreign investment and TNCs in Latin America, 1995

The Challenge for Shell - Multinational Entreprises can make an important contribution to the enjoyment of fundamental human rights, Amnesty International and Pax Christy Memorandum to Shell

Clean Clothes Campaign: "Of Rags and Riches", Amsterdam, January 1997

European Round Table of Industrialists: "European Industry and the Developing world, for a global framework of mutual interest and trust", Brussels, May 1997

DFID - The development implications of the MAI, a report by EVK Fitzgerald, University of Oxford - 21 March 1998

"ILO warns of global rise in child labour" article in FT by Michael Peel

"Industry and Human Rights, a Guide", Jens Schierbeck, Confedeation of Danish Industries, april 1998

Europe, inc., dangerous liaisons between eu institutions and industy - Corporate Europe Observatory, CEO - 1997

Fair Trade Yearbook, towards 2000 - EFTA, january 1998

Monitoring corporate codes of conduct, discussion paper prepared by the CIIR and the New Economics Foundation, on behalf of the independent

Monitoring Working Group which includes CAFOD, Christian Aid, Consumers International, Fairtrade Foundation, Oxfam, WDM.

Multinational Enterprises and the Third World - V.N. Balasubramanyan, Trade Policy Research Centre, 1980

Multinationals making explicit commitment" by David Buchan, article in FT

Our global business, ONE WORLD ACTION, no 3

Open Trading, Options for effective monitoring of corporate codes of conduct, executive summary, New Economics Foundation

Pax Christi and Amnesty International memorandum to Shell, April 1996

Testimony for the RIIA and the CEPMLP, University of Dundee, Richard Dicker, Associate Counsel and Director, Corporations and Human Rigths Program, Human Rights Watch - 20 April 1998

Workers rights are human rights, the case for linking trade and core labour standards, produced and published by Solidar, 1998

Tebtebbe Foundation (Indigenous Peop^les´INternational Centre for Policy , Research and Education): "The urgent need for Corporate Accountability and a Mandatory Code for European Enterprises", evidence from Victoria Tauli-Corpuz to the Development Committee, European Parliament, 2 September 1998.

Discrimination against indigenous peoples, transnational investments and operations on the lands of indigenous peoples, report of the Centre on Transnational Corporations submitted pursuant to Sub-Commission resolution 1990/26, Commission on Human Rights, Sub Commission on Prevention of Discrimination and Protection of Minorities, 15 June 1994

UNCTAD World Investment Report, 1995

World Development Movement "A law unto themselves - Holding Multinationals to account, London, September 1998
World Development Movement, Corporate Giants, their grip on the world´s economy
World Development Movement: "People before Profits", London, Mayu 1998

From the Internet:
The Multinational Resource Center, Washington DC 20036 and the Multinational Monitor

Interhemispheric Resource Center
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Corporate Watch and Sweatshop Watch.

Codes of conduct think tank (www.oneworld.org/ttank/codes/front.html)

In addition, this report is the outcome of a series of consultations with different sectors of society, e.g. business and industry, trade unions, NGOs from the South and the North, indigenous representatives, international organisations, independent experts from the academic world and European Commission officials. In June 1998 the consultation process was launched with round tables organised in the European Parliament, Brussels and in the European Parliament office in the UK and extensive exchange of information with experts. Some contributed orally, at the meetings, others submitted their views in writing or commented on drafts by telephone, fax or e-mail. I am extremely grateful for the contribution of the following people, organisations, businesses and industries:

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Commented [COMMENT2]: Amendment ##

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18 November 1998

OPINION
(Rule 147)

for the Committee on Development and Cooperation

on EU standards for European enterprises operating in developing countries: towards a European Code of Conduct and Monitoring Platform (report by Mr Howitt)

Committee on External Economic Relations

Draftsman: Mr Peter Kittelmann

PROCEDURE

At its meeting of 4 June 1998 the Committee on External Economic Relations appointed Mr Kittelmann draftsman.

It considered the draft opinion at its meeting of 10 November 1998.

At that meeting it adopted the following conclusions by 12 votes to 10.

The following took part in the vote: Herzog, chairman; Sainjon, vice-chairman; Kittelmann, vice-chairman and draftsman; Correia (for Moniz pursuant to Rule 138(2)), van Dam (for Souchet), Ferrer, Hindley, Howitt (for Elchlepp pursuant to Rule 138(2)), Ilaskivi (for Casini), Karamanou (for Nencini), Kjer Hansen (for Plooij-van Gorsel pursuant to Rule 138(2)), Lannoye (for Kreissl-Dörfler), E. Mann, Moorhouse, Papakyriazis, Porto, Posselt (for Habsburg-Lothringen), Schwaiger, Smith, Sturdy (for Tajani), Valdivielso de Cué and Wilson (for Falconer pursuant to Rule 138(2)).

I. INTRODUCTION

1. The Committee on External Economic Relations has repeatedly tackled issues relating to social conditions in the workplace in third countries with which the European Union has economic and trade relations. The emphasis has been on workers' conditions in developing countries. The committee's call for certain key aspects of worker protection - known as 'social clauses', and concerning the possibility for free trade unions to operate and the prohibition of forced and child labour - to be enshrined in the world trade system has secured wide support. These demands, which are based on key International Labour Organization (ILO) conventions, are uncontentious among the industrialised countries, and were once again confirmed at the ILO's most recent International Conference in June 1998, in the Declaration on Fundamental Principles and Rights at Work. The developing countries, however, still have reservations about such social standards being introduced into the world trade system, and suspect that they are intended merely to serve the industrialised states as a pretext for protectionist measures against competitive imports

from the Third World.

2. Parallel to these discussions, efforts have been going on for several decades within the UN and the OECD to produce a code of conduct for multinational enterprises with regard to their operations in developing countries. Unlike the social standards referred to above, these codes of conduct go into far more detail about how firms should behave. In principle they seek to hold multinationals to giving their employees in developing countries the same rights in the workplace as those enjoyed by employees in the industrialised countries. In terms of setting out desirable aims this approach is understandable, but it overlooks the fact that, in reality, working and social conditions cannot be looked at separately from economic development. Consequently, it is not surprising that no binding agreements on the behaviour of multinationals in developing countries have been arrived at to date.

3. Against this backdrop, the rapporteur of the committee responsible is concerned to take an initiative concerning multinationals whose headquarters are located in one of the EU Member States. With this restriction, which in view of the global activities of multinationals appears to be of only limited operational use, the aim is to arrive at legally binding rules of conduct. The first step towards this is to be improved monitoring of the economic practices of European firms operating in developing countries. In this area, he allocates such an important role to non-governmental organisations (NGOs) that he advocates support for such organisations out of the European Parliament's budget (paragraph 8 of the draft report). Budgetary reservations argue against this at present, in view of the most recent judgment by the European Court of Justice on the requisite legal basis for the use of resources from the EU budget. Furthermore, it is not the European Parliament's role to monitor industry, but that of the executive, i.e. the Commission.

4. Calls to create and promote the potential for extraterritorial action covering human rights, worker and environmental protection and corruption, so as to arrive at implementing mechanisms and punitive measures against European firms on the basis of individual complaints by their employees in developing countries, also appear to be legally doubtful. This would be tantamount to a kind of 'EU Helms-Burton Act'. We cannot ourselves copy what we reproach the United States for doing. Your draftsman considers that the call to make it possible to bring cases relating to the behaviour of multinationals abroad before European courts is similarly incompatible with the present international legal system.

5. Your draftsman therefore considers that the following conclusions flow from the above:

- any code of conduct, whether for all multinationals or only for European multinationals, must be based on the voluntary principle;

- the extraterritorial application of EU rules cannot form the basis of EU policy vis-à-vis multinationals, since this conflicts with the international legal system;

- measures to make the activities of European multinationals in developing countries more transparent, by establishing an international monitoring mechanism, are to be welcomed.

In tabling the following amendments the Committee on External Economic Relations has only partly endorsed the views of the draftsman of the opinion.

II. CONCLUSIONS

The Committee on External Economic Relations calls on the Committee on Development and Cooperation, as the committee responsible, to incorporate the following amendments in its report:

AMENDMENT 1

Paragraph 4

4. Reiterates its request to the Commission and the Council to make proposals for a code of conduct applicable on a voluntary basis to European enterprises operating abroad;

AMENDMENT 2

Paragraph 5

5. Recommends that a model Code of Conduct for European Businesses should be based on existing international standards and in particular agreements under the ILO Declaration of Fundamental Principles and Rights at Work;

AMENDMENT 3

Paragraph 6

6. Concludes that a European Code of Conduct similar to the one introduced by the US Administration could only be functional if it was monitored by the Commission to ensure compliance by European multinational enterprises which have agreed to be bound by it;

AMENDMENT 4

Paragraph 10a (new)

10a. Recommends that at least the ILO Declaration of Fundamental Principles and Rights at Work, from 18 June 1998, be an explicit part of any future agreement the EU negotiates with third countries, as a matter of urgency;

AMENDMENT 5

Paragraph 14

14. Strongly recommends that in connection with negotiations on investment agreements which could be concluded in either the OECD or the WTO, the EU not only contributes to establishing the rights of European enterprises, but also their duties in the field of

environment, labour and human rights; strongly supports the suggestion of several European governments to append the OECD guidelines for MNEs to the MAI; and for systematic monitoring of MNEs and for individual complaints against them to be dealt with in the new international tribunal proposed;

AMENDMENT 6

Paragraph 16

16. Calls on the Commission to ensure that consideration is given to an appropriate legal base (2 words deleted) taking into account core labour, environmental and human rights international standards when reviewing European company law including the new EU directive on a European incorporated company;

AMENDMENT 7

Paragraph 17

17. Calls on the Commission to bring forward proposals for a system of incentives for companies complying with international standards; (17 words deleted)

AMENDMENT 8

Paragraph 18

18. Instructs its President to forward this resolution to the Commission, the Council, the ILO, the OECD and the governments and parliaments of the Member States.