



*Domestic Advisory Group under the EU-Korea FTA*

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Korea FTA**

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**OPINION**

on

**The European Union's vision and practice of Corporate Social Responsibility (CSR):  
contribution of the EU Domestic Advisory Group under the EU-Korea FTA**

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Rapporteur: **Ms Pichenot**

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EU Domestic Advisory Group  
under the EU-Korea FTA

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1. **The framework of international standards applicable to cooperation between the EU and the Republic of Korea in the field of Corporate Social Responsibility (CSR)**

1.1 The aim of this study is to launch a debate on CSR with the Korean partner in the framework of the Civil Society Forum of the EU-Republic of Korea Free Trade Agreement and, as an introduction to this debate, to provide a **review of the *acquis communautaire* and the CSR practices of the EU** and its Member States. As well as addressing the institutional aspects of CSR, this review covers various initiatives conducted by the economic and social stakeholders and national policies for ensuring effectiveness and transparency. The study also takes account of the ongoing discussions and work on corporate social responsibility in international fora, specifically the work carried out by the UN, the OECD and the ILO, which have established the normative framework that applies to cooperation between the EU and the Republic of Korea. In addition, the study also sets out examples of good practice in the area of CSR, which might suggest avenues for the future cooperation between the EU and the Republic of Korea.

1.2 The bilateral trade agreements concluded recently by the European Union with the Republic of Korea, Central America, Colombia, Peru, Canada and Singapore, and the parts of the association agreements with Ukraine, Moldova and Georgia that relate to trade, all contain provisions on trade and sustainable development. More specifically, these provisions provide for the ratification and effective implementation of standards and key international agreements on human rights, labour and the environment and support for practices conducive to **sustainable development**, such as CSR. Civil society wishes all the agreements currently being negotiated to be accompanied by an appropriate **impact assessment** and to contain similar provisions in the area of CSR covering, as a minimum, human rights, labour and employment practices, environmental issues and combating fraud and corruption.

1.3 CSR represents a lever for action, and the first new generation trade agreement, the FTA between the European Union and the Republic of Korea has pioneered its use as a regulatory tool for moving towards responsible trade and investment. Chapter 13 of the FTA is entitled "Trade and Sustainable Development" and refers to corporate social responsibility in Article 13(6) as an example of sustainable development at the micro-economic level: "The Parties shall strive to facilitate and promote trade in goods that contribute to sustainable development, including goods that are the subject of schemes such as fair and ethical trade and those involving corporate social responsibility and accountability". Annex 13 addresses the link between trade and sustainable development, providing for, "exchange of information and cooperation on corporate social responsibility and accountability, including on the effective implementation and follow-up of internationally agreed guidelines, fair and ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement"<sup>1</sup>.

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<sup>1</sup> Official Journal of the European Union, [L 127, 14.5.2011, pages 63 and 1335](#).

1.4 The European Union defines Corporate Social Responsibility as "**the responsibility of enterprises for their impacts on society**". In its most recent Communication from 2011<sup>2</sup>, which outlines the EU's CSR strategy<sup>3</sup>, the Commission draws attention to the **internationally recognised principles and guidelines in the field of Corporate Social Responsibility**, these being:

- **the OECD Guidelines for Multinational Enterprises**<sup>4</sup>,
- the ten principles set out in the **UN Global Compact**<sup>5</sup>,
- **the ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)**<sup>6</sup>,
- **ISO standard 26000 on corporate social responsibility**<sup>7</sup>,
- **and the UN Guiding Principles on Business and Human Rights**<sup>8</sup>.

These standards constitute the framework of reference for the EU's trade and investment activities and its agreements with partner countries.

1.5 Through their membership of the **OECD** and adherence to its Guidelines for Multinational Enterprises, the Republic of Korea and the EU Member States share the same code of conduct and **reference framework based on international standards. These states have also established National Contact Points (NCPs) for promoting and implementing the Guidelines**. The NCPs constitute a non-judicial mechanism for assessing specific instances and provide a mediation and conciliation platform for resolving any specific issues or disputes that may arise. The OECD Guidelines were updated in 2011 in order, in particular, to integrate the UN's "Protect, Respect and Remedy" Framework. These tools represent a common framework of reference for facilitating dialogue and convergence between the parties contracting the trade agreement with regard to the understanding and implementation of CSR.

1.6 In relation to its policy on trade, the European Commission might also fill out the current framework by looking carefully at other more recently developed principles, such as the Principles for Responsible Investment (PRI), the Equator Principles for financial and banking institutions, the Performance Standards on Social and Environmental Sustainability of the International Finance Corporation (IFC), the private sector investment body of the **World**

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2 Communication from the Commission, "A renewed EU strategy 2011-14 for Corporate Social Responsibility", COM(2011)0681, 25.10.2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

3 The EU's CSR strategy is described in detail in Chapter 2 of this study (p. 6 and the following pages).

4 <http://www.oecd.org/corporate/mne/>

5 <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

6 [http://www.ilo.org/empent/Publications/WCMS\\_094386/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm).

7 <http://www.iso.org/iso/home/standards/iso26000.htm>

8 <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>.

**Bank**<sup>9</sup>, and the **FAO's** Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>10</sup>.

- 1.7 The task of measuring the effectiveness of CSR policies in the European Union is not an easy one. Nevertheless, over the past decade, significant progress has been made and the Commission quantified this in 2011 using a range of indicators:
- over 1 900 European companies have subscribed to the UN Global Compact,
  - over 4 600 companies have adopted the EMAS environmental management system,
  - over 700 companies are participating in the "Business Social Compliance Initiative" in order to improve working conditions in supply chains,
  - over 850 companies have published an extra-financial report using the Global Reporting Initiative (GRI) model.
- 1.8 An assessment of the European Union's CSR activity is currently underway through a **public consultation process**<sup>11</sup> opened to civil society in 2014. The Commission has also analysed the action that has been taken since 2011 (when the last CSR strategy was published) to reach the goals established in the strategy. This preliminary analysis demonstrates that 80% of the goals have already been reached, both with regard to legislation and with respect to the implementation of information, training and research projects. In addition, the Commission is also compiling an updated compendium<sup>12</sup> of legislation and practice in the 28 Member States.
- 1.9 The Rana Plaza tragedy in Bangladesh, in which over 1 100 people died in a factory that was sub-contracting for major global textile groups and retail chains, highlighted the need to improve work safety. Several of the major European companies, which are very aware of the risk to their reputations and were involved in the incident as principle producers, are now compensating victims. In the light of this tragic experience, it is important to initiate joint activities and cooperation in Asia in order to improve work inspections and social audit certification.
- 1.10 In 2010 the OECD published recommendations on "Supply chains and the OECD Guidelines for Multinational Enterprises"<sup>13</sup> for multinational companies and pursued its efforts to clarify the Guidelines through the launch of the **World Forum on Corporate Social Responsibility**. The issue of sub-contracting, specifically in the textiles/garment sector, was addressed at the

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<sup>9</sup> Site <http://documents.worldbank.org/curated/en/home>

<sup>10</sup> <http://www.fao.org/nr/tenure/voluntary-guidelines/en/>

<sup>11</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/public-consultation/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/public-consultation/index_en.htm)

<sup>12</sup> Corporate Social - Responsibility National Public Policies in the European Union - Compendium 2014 (31/10/2014)

<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7726&type=2&furtherPubs=yes>

<sup>13</sup> <http://www.oecd.org/investment/mne/10thoecdroundtableoncorporateresponsibility-updatingtheguidelinesformultinationalenterprises.htm>

second ministerial meeting of this Forum in June 2014<sup>14</sup>. On this extremely complex issue of **responsible management of supply and value chains**, the European Commission has funded a research project on, "Responsible supply chain management, potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU based companies". This study examines five key aspects of CSR: child labour, freedom of association and collective bargaining, adequate standards of living, unfair price levels and biodiversity.

The United Kingdom and Spain already have national legislation recognising a duty of care on the part of parent companies and companies that sub-contract work. A bill on this subject is currently under consideration in France<sup>15</sup>.

- 1.11 In a resolution<sup>16</sup> adopted in November 2013, the European Parliament calls on the Commission to "*investigate the possibility of establishing a harmonised definition of the relations between an undertaking designated the 'parent company' and all undertakings in a relationship of dependency with respect to that company, whether those undertakings are subsidiaries, suppliers or sub-contractors, in order to establish the legal liability of each of them*". In addition, the resolution stipulates that trade agreements should include provisions aimed at encouraging transnational judicial cooperation, to facilitate access to the courts for the victims of the actions of corporations within their sphere of influence.

## 2. A European CSR strategy that has evolved over the past decade (2001-2011)

- 2.1 Throughout the decade following the publication of the 2001 Green Paper<sup>17</sup>, which launched a public debate on CSR in Europe, successive European Commission communications<sup>18</sup>, European Parliament reports<sup>19</sup> and opinions from the European Economic and Social

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14 French NCP, Report on the implementation of the OECD Guidelines in the in the textiles/garment sector.

15 "Proposition de loi relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre" [Bill on the duty of care on the part of parent companies and companies that sub-contract work]: <http://www.assemblee-nationale.fr/14/propositions/pion1519.asp> (FR only).

16 Harlem Désir, European Parliament Resolution on corporate social responsibility in international trade agreements, 11 November 2010: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0317&language=EN> and <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2010-0317+0+DOC+XML+V0//FR>

17 Green paper: Promoting a European Framework for Corporate Social Responsibility, COM(2001) 366 final, 18.7.2001, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0366&from=EN>.

18 Communication from the Commission concerning Corporate Social Responsibility: *A business contribution to Sustainable Development* COM(2002) 347 final; Communication from the Commission, *Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility* COM(2006) 136 final; Communication from the Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, COM (2011) 681 final.

19 Richard Howitt, Report on Corporate Social Responsibility: Promoting society's interests and a route to sustainable and inclusive recovery, January 2013; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0023+0+DOC+XML+V0//EN>; Raffaele Baldassarre, Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth, January 2013, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0017+0+DOC+XML+V0//EN>; European Parliament resolution of 25 November 2010 on corporate social responsibility in international trade agreements, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0446+0+DOC+XML+V0//EN>.

Committee (EESC)<sup>20</sup> have fed into the ongoing discussion and analysis, which has also been enriched by a regular multilateral forum on CSR that has included civil society<sup>21</sup>. In the 2001 Green Paper, CSR was defined as, "*a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*".

2.2 However, far from being fixed<sup>22</sup>, the concept of CSR has continued to evolve in Europe, thanks to a **structured civil dialogue between the stakeholders** (social partners, businesses, consumer and development associations, environmental and human rights NGOs and academia) and the national and European public authorities. This is one of the factors that has enabled a new definition and the current **European strategy to be developed in liaison with initiatives from Member States and businesses that practise corporate social responsibility**.

2.3 So, on the one hand, we are looking at an evolving Community-level strategy. However, the strategy also has a national dimension, since each of the 28 EU Member States is invited to draw up a **country-specific CSR plan**<sup>23</sup> in order to implement it. Here, attention should be drawn to the fact that across Europe a wide range of different approaches have been adopted and progress on developing the strategy varies from country to country. To date, 25 of the 28 countries already have an action plan. At EU level, a **Corporate Social Responsibility (CSR) High-Level Group of Member States' Representatives** exists to support exchanges between the Member States. The **review of the national action plans**, based on the peer-review mechanism used by the European Commission, indicates that every Member State now either has an existing national plan, is currently developing one or bases its policy on a national list of priority actions to promote CSR.

2.4 In sectors wishing to draw on it, Europe's CSR policy provides help and support to **businesses and sector-specific platforms** to enable them to derive benefit from CSR in terms of wealth and job creation, and helps to disseminate innovative solutions and good practices that can also benefit society as a whole. CSR Europe<sup>24</sup> is a business network responsible for promoting good practice in Europe through approximately 30 organisations from the corporate world connected with CSR. With the recognition that the private sector has a key

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20 EESC opinion: Corporate social responsibility, 24.5.2012, <http://www.eesc.europa.eu/?i=portal.en.soc-opinions&itemCode=21054>; EESC opinion on disclosure of non-financial information, 11.07.2013; <http://www.eesc.europa.eu/?i=portal.en.int-opinions&itemCode=28186>; EESC opinion on Corporate social responsibility, 14.12.2006; <http://www.eesc.europa.eu/?i=portal.en.soc-opinions&itemCode=81>.

21 The next multi-stakeholder CSR civil society forum is to be held in February 2015.

22 Avis du CESE, *La RSE: une voie pour la transition économique, sociale et environnementale* [Opinion of the French Economic, Social and Environmental Council, *CSR: A path to economic, social and environmental transition*], Alain Delmas, Paris 2013, [http://www.lecese.fr/sites/default/files/pdf/Avis/2013/2013\\_14\\_rse.pdf](http://www.lecese.fr/sites/default/files/pdf/Avis/2013/2013_14_rse.pdf) (FR only).

23 <http://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=CSRprreport&mode=advancedSubmit&langId=en.&policyArea=&type=0&country=0&year=0>.

24 The European Business Network for Corporate Social Responsibility website: <http://www.csreurope.org/>.

role to play in development and cooperation, a new area is opening up for CSR<sup>25</sup>. Other private-sector initiatives, which have been set up in Europe include the "Business Social Compliance Initiative" and the "Global Social Compliance Programme"<sup>26</sup>, which aim to coordinate social audits and involve around one hundred of Europe's leading retail firms.

2.5 The recent **definition of corporate social responsibility** in the 2011 Commission Communication provides a broader vision in terms of the expectations placed on businesses, wherever they perform their activities. The European Union has subsequently **updated the definition** of the concept as, "*the responsibility of enterprises for their impacts on society*". This definition, which extends and broadens CSR, encompasses **all types of undertaking**, from SMEs, the social economy and non-profit enterprises right up to the largest multinationals - even though the obligations on very active SMEs may often seem less formal. Specific tools for particular sectors of activity - **and for SMES in particular** - allow the strategy to be adapted to different situations. There is currently a shift towards including public administrations and services of general interest in the CSR strategy, particularly in relation to procurement policy.

2.6 The first rule for companies operating within the European Union that are embarking on a corporate social responsibility approach is to ensure that they adhere both to the spirit and practice of the **existing national legislation**. In addition, **in dialogue with stakeholders**, companies may set CSR targets that go beyond these legal obligations, with a view to moving towards integrating social, environmental, human rights, good governance and consumer protection concerns into their investment, production, marketing and service provision activities, according to their specific characteristics. This puts CSR **at the core of the company's strategy** and means that management must be involved in all of its various aspects. To avoid CSR being reduced to a mere communication exercise, financial and non-financial activities must be reported on in a transparent way.

### 3. **A broad spectrum of public policies and initiatives in the European Union**

3.1 Through its choices, the **European Investment Bank (EIB)** has been contributing to the EU's efforts to strengthen CSR since 2005. Stressing good governance, including a high level of transparency and accountability for itself and its counterparts, the bank has made a commitment to promote more ethical and sustainable forms of investment, in particular in the activities it conducts in support of micro-finance and SMEs.

3.2 The **European Social Fund** provides financial support to SMEs for developing CSR. For example, in Germany<sup>27</sup>, the "sustainable business angels" initiative offers start-ups a year's

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<sup>25</sup> Communication from the Commission: *A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries*, COM(2014) 263 final.

<sup>26</sup> Site [www.gscpn.com](http://www.gscpn.com).

<sup>27</sup> Comparative analysis of the national CSR plans adopted in Europe, CSR Platform, France.

support and guidance on integrating a CSR approach. The SMEs which accept this support are eligible for bank loans at preferential rates.

- 3.3 Legislative measures on **mandatory reporting, public procurement and investment** were adopted in the European Union in 2014.

The European Union has revised its directives on **public procurement**<sup>28</sup> in order to take better account of social and environmental concerns. Companies now run the risk of being excluded from public calls for tender for non-compliance with the environmental and social requirements. These new rules include a horizontal clause which, as well as covering the possibility of including environmental and social integration criteria in public procurement, also include the use of eco-labelling, the possibility of taking account of environmental aspects throughout the production process and an approach based on calculating product life cycle costs.

- 3.4 In April 2014, on a proposal from the Commission, the European Parliament adopted a revision of the accounting directives, making it mandatory to **disclose non-financial information** and information relating to diversity. Some companies will have to disclose information on their policies, risks and results as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, as well as diversity on their boards of directors. The new rules apply to publicly listed companies and non-listed companies such as banks and insurance companies. The 6 000 or so companies concerned may use the guidelines they deem appropriate to draw up an **information report that they may choose to integrate into their financial report**. The new rules on reporting will come into force in mid-2016.

- 3.5 When it comes to non-financial reporting, businesses often refer to international principles/guidelines, such as the ILO's tripartite declaration, the UN's Global Compact, the OECD's Guidelines for Multinational Enterprises and the ISO 26000 guidelines. Companies are free to choose one of these benchmarks for their annual contribution on the basis of its impact on their business model. One global private-sector framework often used for the reporting of non-financial information in Europe is the Global Reporting Initiative (GRI). In relation to reporting, the crucial issue remains that of the relevance and reliability of the information reported. The "comply or explain" arrangements (the principle being that businesses must either comply with the rule or explain why they are unable to supply the information) rely on relevant assessments of the social and environmental issues likely to avoid risks to the company's future or competitiveness.

For example, in Denmark, where reporting on the basis of the "comply or explain" method is already a legal requirement, there is a 97% compliance rate with this provision amongst 1 100

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[http://ec.europa.eu/internal\\_market/publicprocurement/modernising\\_rules/reform\\_proposals/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals/index_en.htm).

of the largest companies which publish reports on their impact on the environment and human rights. Since 2001, France has put in place a system of obligatory annual reports for large companies, which in 2011 was extended to non-quoted companies with more than 5 600 employees. The introduction of auditing of the annual report by an independent third party is the final advance in terms of reporting. According to the KPMG study, the compliance rate amongst major companies in Korea in 2013 was 49%<sup>29</sup>.

- 3.6 It has been acknowledged that CSR can contribute to the development of **social dialogue in companies**, particular through the negotiation of **international framework agreements (IFAs)** concluded between representatives of management and employees (e.g. the management of a major multinational corporation and a European or global trade union federation), which may contain monitoring provisions. European Works Councils may contribute to the company's CSR strategy as information and consultation bodies for employees. However, in the automotive industry, the obligation to set up works councils is not being respected by South-Korean enterprises established in Europe.
- 3.7 From an embryonic stage at the beginning of the millennium, by 2012 these negotiated agreements had been concluded in 224 major multinationals, covering over ten million employees across the world. Of these, 143 are European framework agreements, whilst 81 have global coverage. In some cases, the commitments made in these IFAs also extend to the companies' subsidiaries, sub-contractors and suppliers. Some IFAs which establish a structure where the company's board/management and trade union/staff representatives are equally represented, in order to monitor the application of the agreement, publish regular reports which can also be used for reviewing the agreement.
- 3.8 In 2012, there were 28 **non-financial rating** agencies worldwide. As well as providing their clients - investors, fund managers and companies - with information on companies, these bodies also offer third party rating ("declaratory" rating) and audits and consulting advice for companies ("solicited" rating). Accordingly, a number of sustainable development stock market indices are available. One example is the "Euronext Vigeo Europe 120" index from the VIGEO European ratings agency, which shortlists the European companies that obtain the top 120 aggregate scores, reflecting performance with regard to the set of risks the agency defines and evaluates to assess and measure corporate responsibility<sup>30</sup>.
- 3.9 In global terms, Europe is the **most active and dynamic region** when it comes to innovating and creating **socially responsible investment (SRI) funds**. Socially responsible investment is expanding beyond employee savings plans and pension funds, particularly in France, the United Kingdom and the Netherlands. By responding to the challenges of long-term investment, support for innovation and the development of local SMEs and VSEs, it is

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<sup>29</sup> KPMG study on the state of corporate responsibility reporting across the world covering 4100 companies in 41 countries.

<sup>30</sup> See the agency's website <http://www.vigeo.com/csr-rating-agency/>.

helping to encourage an alternative approach to development. Investors are beginning to attach increasing importance to social and environmental issues.

- 3.10 As noted in the EUROSIF study<sup>31</sup> published in 2014, there has been an upsurge in "impact investing" strategies that aim to maximise environmental, social and governance (ESG) benefits alongside the concern to maintain profitability. A study conducted by KPMG<sup>32</sup> found that South Korean conglomerates were strongly represented in socially responsible investment indices. Conversely, it also found that in 2013, barely one in two of the 100 largest companies in the Republic of Korea had published a non-financial report.
- 3.11 The practice of "norm-based exclusion", which consists in excluding from investment portfolios companies guilty of serious and repeated breaches of major international agreements, is rapidly gaining ground in Northern Europe. To give one example, a Norwegian fund and the Dutch fund APG are currently entangled in a complaints procedure, lodged by a South Korean NGO with several OECD national contact points. The complaint has been brought against them in their capacity as a minority shareholder in a POSCO mining operation, which is accused of serious human rights violations in India<sup>33</sup>.

The exclusive survey that Novethic conducted in Europe in 2013, which questioned 165 long-term institutional investors (retirement and pension funds, insurers etc.) in 12 countries, representing more than EUR 5 trillion in assets, demonstrates that although awareness of the concept of responsible investment is rising, there is a long way to go in terms of actual practice. With no consensus on reasons, only 10% of the panel had taken steps to define the minimum standards below which they would not invest in sensitive sectors.

#### 4. **Implementing the UN Guiding Principles on Business and Human Rights**

- 4.1 Another very significant recent step in CSR was the unanimous adoption by the UN Human Rights Council in June 2011 of the **Guiding Principles on Business and Human Rights**<sup>34</sup>, based on a three-pillar "**Protect, Respect, Remedy**" framework. The Republic of Korea and several European states, which are currently members of the UN Human Rights Council should participate in implementation and monitoring.
- 4.2 These guiding principles reaffirm the central role of the State in the protection and promotion of human rights, and prioritise the prevention and mitigation of negative impacts on human rights. With respect to the application of the principles, the cornerstone is the concept of

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31 Eurosif.org website

32 KPMG study on the state of corporate responsibility reporting across the world covering 4100 companies in 41 countries

33 Study on *Norm-based exclusions, how responsible investors handle controversial companies*, published by the French responsible investment research centre, Novethic in 2012  
([http://www.novethic.com/fileadmin/user\\_upload/tx\\_ausynovethicetudes/pdf\\_complets/2013\\_controversial\\_companies\\_study.pdf](http://www.novethic.com/fileadmin/user_upload/tx_ausynovethicetudes/pdf_complets/2013_controversial_companies_study.pdf))

34 Developed by John Ruggie's working group.

"human rights due diligence", with its corollary that negative impacts on human rights must be identified and remedied. Companies must use their influence to prevent and mitigate negative effects directly linked to its activities or business relationships. The impact must be clearly imputable to these business operations, goods or services. For certain stakeholders this due diligence requirement should eventually be extended the whole supply or subcontracting chain, which poses a major challenge. The third pillar of the guiding principles, access to legal redress, is considered to be the weakest. Generally speaking, access to justice for victims of human rights abuses is often insufficient.

- 4.3 To facilitate the implementation of this new framework of guiding principles, the European Commission has published specific guideline policies for businesses operating in three kinds of sector: IT and communication technologies, oil and gas and recruitment agencies. A specifically tailored document on the Guidelines is also available to European SMEs.
- 4.4 A mechanism for promoting monitoring of the application of the Guidelines has been established via a working group of experts representing all five continents. The European Union is asking every Member State to take steps to introduce a **national action plan for human rights**, modelled on those that already exist in the Netherlands, Denmark, Italy and the United Kingdom<sup>35</sup>. In the context of this initiative, the participation of civil society is a major advantage. The EU is working with the key human rights NGOs, including Amnesty International, FIDH (International Federation for Human Rights), Friends of the Earth, the ECCJ and CIDSE.

At the European level, what is now needed is a legal analysis of the strengths and weaknesses of our legislation and institutions, with a view to ensuring that these principles are put into practice.

## 5. **The external dimension of CSR in the EU's relations with third countries**

- 5.1 CSR is now frequently being put on the agenda for policy dialogues and trade negotiations with third countries. **In the context of EU external policy, partnership-based relations and agreements with other countries and regions across the world also aim to reinforce compliance with fundamental international principles.** Indeed, this is a key element in the EU's strategy for promoting democracy and human rights, including the ILO conventions and decent work agenda. These fundamental texts which are recognised throughout the world must guide all businesses in their CSR practices and initiatives. To avoid a limited approach based on charity, philanthropy, or image promotion, or a misleading reduction of CSR to a support for advertising, marketing or green-washing, businesses are undertaking to integrate their CSR practices into their strategies or economic models. In 2014, the EU published an

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These national plans have been published on the European Commission's website:  
[http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm) .

initial monitoring report<sup>36</sup> covering the commitments made by major European companies with respect to compliance with internationally recognised principles and guidelines. This report demonstrates the variety of standards used by businesses, depending on their size and sector of activity and the national legal systems they operate in.

To improve understanding and implementation of CSR and encourage the dissemination of good practice on a global scale, it is important to work on developing the toolbox given in the UN Guiding Principles on Business and Human Rights<sup>37</sup>, which sets out a useful six-stage approach for tackling sub-contracting problems in the supply chain.

## 5.2 Integrating CSR into the EU's trade and investment policy towards third countries

In connection with European external policy, CSR will have to be integrated into the revision of trade agreements (Chile, Mexico), trade negotiations (Canada, Japan, Mercosur, the United States, China and other countries in Asia etc.) and the implementation of agreements (Colombia/ Peru, Central America), as a tool for aligning standards and restraining unfair competition. CSR is based on a constructive dialogue and a progressive approach that make a concrete contribution to better regulation of globalisation.

In the trade agreement with the Republic of Korea, the Domestic Advisory Group's proposal to the agreement's Trade and Sustainable Development Committee is that there should be a baseline assessment of the existing frameworks and practices, focusing in particular on the OECD framework. The Republic of Korea being strongly linked to an active green growth strategy, CSR should be an appropriate instrument for advancing a sustainable development approach. In its 2013 study focusing on trade and green growth<sup>38</sup> (discussed at the meeting of the EU-Korea Civil Society Forum in September 2013), the EU Domestic Advisory Group addressed this link with corporate social responsibility initiatives.

## 5.3 CSR in raw materials supply chains

The European Union considers mining and forestry to be sectors where the risk of corruption and tax fraud is high. On the basis of the **transparency objectives for the extractive industries** (Extractive Industries Transparency Initiative - ITIE) and **primary forests** (Action Plan on Forest Law Enforcement, Governance and Trade - FLEGT), which require account to be taken both of wildlife preservation and the Kimberley Process Certification Scheme, the EU will step up its efforts to make the extractive industries (oil, gas and minerals) and the forestry industry more transparent. It will enable effective use to be made of the information from the transparency initiative by divulging the sums companies pay to governments in the

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36 To be completed.

37 [Site sa-intl.org/index.cfm?fuseaction=ViewPage&pageId=1315](http://Site%20sa-intl.org/index.cfm?fuseaction=ViewPage&pageId=1315)

38 The green economy and trade in the context of sustainable development: contribution of the Domestic Advisory Group under the EU-Korea FTA, Evelyne Pichenot 2013.

framework of the new legislation on country specific declarations. A recent Communication<sup>39</sup> sets out an integrated approach with regard to responsible sourcing of ores from conflict or high-risk zones, together with a proposal for a regulation, which establishes a European self-certification mechanism in the framework of the obligation of due diligence with regard to supply chains for importers of tin, tungsten, tantalum and their ores and supply chains for gold. With regard to implementation, companies will be able to draw on the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas"<sup>40</sup>.

#### 5.4 **The role of the private sector in development: CSR as a lever for action**

In May 2014, the Commission issued a Communication entitled "A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries"<sup>41</sup>, which contains a long paragraph detailing the place given in the strategy to promoting responsible trade practices through development policy. Adherence to social, environmental and fiscal standards is considered a precondition for any EU engagement with, or public support to, the private sector<sup>42</sup>. In its work plan, the EU will seek to promote CSR guidelines and principles through policy dialogue and development cooperation with partner countries, and to enhance market reward for CSR in public procurement and also through promotion of sustainable consumption and production.

In 2012 the International Finance Corporation (IFC), a World Bank institution responsible for private sector operations, revised its eight Performance Standards on Environmental and Social Sustainability for private sector access to lending. These cover issues related to biodiversity, land acquisition, the situation of migrant workers and indigenous peoples, resource efficiency and pollution prevention.

#### 5.5 **The European Union, a player in the Bangladesh Sustainability Compact for the textiles sector**

In partnership with the ILO<sup>43</sup>, the USA and Bangladesh, the EU is a party to the Bangladesh Sustainability Compact aimed at improving labour rights, health and safety at work and safety

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39 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1032&title=EU-proposes-responsible-trading-strategy-for-minerals-from-conflict-zones>

40 <http://www.oecd.org/daf/inv/mne/mining.htm>.

41 [http://ec.europa.eu/europeaid/what/economic-support/private-sector/documents/psd-communication-2014\\_en.pdf](http://ec.europa.eu/europeaid/what/economic-support/private-sector/documents/psd-communication-2014_en.pdf)  
EESC opinion, Volès

42 Aprovev, response to the European Commission's public consultation on the question of the private sector and development.

43 A sui generis tripartite agreement on factory safety in Bangladesh has been concluded under the aegis of the ILO between the global trade union confederations and the multinationals. It contains a legal obligation on the signatory companies to honour their commitments.

conditions in textile factories in Bangladesh<sup>44</sup>. More than 150 major European and American companies have signed the May 2013 Accord on Fire and Building Safety in Bangladesh, which promotes safety in textiles factories, laying down a plan for improving safety conditions and a legal dispute settlement mechanism. By virtue of the New York Arbitration Convention, international trade disputes are settled by the courts of the company's country of origin.

There is still a great deal of uncertainty about compensation for the victims of the Rana Plaza, and a number of companies subcontracting work are refusing to take part in the settlement. However, the multipartite initiatives involving companies and supermarket chains following this tragedy show that it is possible to organise operations bringing together States, the private sector and social partners to address workplace health and safety conditions in sub-contracting chains and improve the certification of social audits.

#### 5.6 **The EU and the Republic of Korea at the G20 in the fight against tax evasion and corruption**

The Republic of Korea and most of the EU Member States have committed to the rapid implementation of the Standard for Automatic Exchange of Financial Account Information<sup>45</sup>, a new standard published in 2014 by the OECD. Under this agreement, multinationals will be obliged to **publish their accounts on a country by country basis**, which will make it easier to tax profits in the country where they arise.

With respect to corruption, the "Bribery Act" adopted in the United Kingdom in 2010 is an interesting model to follow, since this legislation established a new requirement with associated penalties: failure to prevent bribery. Businesses must put in place the best possible procedures, complying with the following six principles. The procedures must be proportionate to the risks, there must be a top-level commitment within the company, the business must assess the bribery risks it faces, it must show due diligence in relation to the individuals most exposed to risk, introduce training programmes to prevent corruption and ensure that the measures are monitored and reviewed.

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<sup>44</sup> Missive de gestion attentive n°58, Chaîne de valeur dans l'habillement, (Careful management letter, No. 58, Value chain in the textiles sector), July 2014, site [www.gestion-attentive.com](http://www.gestion-attentive.com).

<sup>45</sup> <http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-financial-account-information-common-reporting-standard.pdf>

## 6. **Introducing interactive discussion on CSR between the Republic of Korea and the European Union with a view to improving the links between CSR, trade and investment**

### 6.1 **Promoting cooperation between the OECD's National Contact Points**

Analysis of the NCPs in Europe shows that there is a degree of heterogeneity in their composition and functioning. Whilst some are under government control, others are based on a tripartite model, as in France or, as in the Netherlands and Norway, enjoy considerable autonomy. The social partners, and particularly the trade unions, need to have representation independent of the public authorities. There is also a need to assess the application of equal treatment of the parties and the principle of the right of all parties to express their views during the appraisal process. It would also be useful to conduct a comparative analysis of how the NCP operates in the Republic of Korea, with the help of the experts from the OECD. The DAG proposes a joint study visit on the accessibility, transparency, visibility and effectiveness of the various NCPs.

### 6.2 **Exchanges of good practice between multinationals**

Leading Korean multinationals in Europe (Samsung Hyundai, Kia) and many European multinationals in the Republic of Korea operate using CSR practices. With the financial support of the Committee on Trade and Sustainable Development, the DAG recommends **mapping the various practices** regarding social, environmental and societal commitments, adoption of transnational codes of conduct, involvement in negotiated sectoral agreements and publication of non-financial reports.

### 6.3 **Cooperating on the promotion of CSR in developing countries**

With a view to fostering CSR and decent work as a framework for a basic social protection floor in countries targeted for development aid<sup>46</sup>, the DAG recommends encouraging partner countries' accession to the OECD guidelines. It also recommends supporting ILO initiatives by means of aid from European countries and Korea aimed at improving working conditions, e.g. in the textile and garment sector in Asia.

### 6.4 **Encouraging the drawing-up of national CSR action plans in the EU and the Republic of Korea**

The DAG recommends exchanges of experience, methods and content between the national plans already existing in Europe and coordination arrangements in the Republic of Korea. It also recommends that the representatives of employees and trade unions be more involved in drawing these up and monitoring them, and that stakeholders' right to information be improved, particularly with regard to environmental matters. It also recommends that the

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<sup>46</sup>

Site [rse-et-ped.org](http://rse-et-ped.org).

debate be enlarged to include public purchasing and publicly-owned and social economy enterprises, and that account be taken of CSR in the conditions for companies' access to public trade-promotion bodies, such as trade credit, insurance or aid agencies.

#### 6.5 **Ensuring convergence of CSR initiatives in international organisations**

Paragraph 47 adopted in Rio in June 2012 focuses on reporting on the environmental impact of businesses' activities, with a specific emphasis on publicly listed companies and large companies, including their impact in developing countries. The possibility of supporting the Group of Friends of Paragraph 47 and including non-financial information in the periodic reports should be discussed with the Republic of Korea.

6.6 **In the framework of the United Nations' post-2015 Sustainable Development Goals, CSR should be a lever for achieving future sustainable development goals that are inclusive and universal. A cross-cutting sustainability objective could be incorporated into the financial reports of all the world's major companies, to help ensure that businesses implement the future sustainable development goals set out in the UN's post-2015 framework<sup>47</sup>. This would be a welcome development for the Global Compact, and one which the EU countries and the Republic of Korea could both support.**

6.7 **Mobilising the Republic of Korea and the European States to accelerate the implementation of the United Nations Guiding Principles on Business and Human Rights.**

With a view to the effective implementation of these international commitments, the DAG proposes:

- an exchange of experience with a number of European countries which have already drawn up their first national human rights plan,
- an inventory of companies which include respect for human rights in their strategy or encourage the taking of responsibility by the parent company or company subcontracting work,
- an inventory of national laws and mechanisms facilitating victims' right to effective legal remedies.

The DAG recommends that the European Union carry out an impact assessment on this human rights agreement.

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<sup>47</sup> Business Alliance for post 2015.