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***EU Domestic Advisory Group under the EU-Korea FTA***

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| **INFORMATION REPORT**   on  **Corporate Social Responsibility (CSR) in the European Union, implications for its policies in the area of trade and investment** |
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# **Introduction**

## **Corporate Social Responsibility (CSR) figures explicitly in the trade agreement between the European Union and the Republic of Korea** as a topic for discussion between the two trading partners[[1]](#footnote-2). At the monitoring committee for this agreement, European and Korean civil societies have produced reports on the topic[[2]](#footnote-3). Their conclusions call for the improvement of National Contact Points (NCPs) and an inventory of companies involved in sustainable development strategies. More recent agreements (Central America, Columbia, Peru, Moldova, Georgia, Ukraine, Canada, Singapore) provide similar opportunities for exchange between civil societies. Ongoing negotiations, particularly between Japan and the United States, should also make reference to it. In a recent opinion on investment[[3]](#footnote-4), the Committee advocates **including references to CSR and Socially Responsible Investment (SRI) in future investment agreements**.

## At global level, the International Labour Organisation (ILO) identifies 57 out of a total of 248 bilateral trade agreements that contain labour provisions. In its 2013 study *Social Dimensions of Free Trade Agreements*, the ILO aimed to assess their effectiveness[[4]](#footnote-5). Among the international standards recognised by the EU, the OECD Guidelines have the advantage of offering a dispute settlement mechanism. In order to promote and implement these guidelines, each OECD member state has set up an NCP, with the NCPs differing in terms of composition and mode of operating.

## NCPs serve as **mediators to resolve "specific circumstances"**, i.e. they respond to questions mainly from trade unions and NGOs regarding company actions which are considered to have breached the guidelines. An NCP's final decision is not legally binding but it has an impact on the company's reputation. Since 2000, more than 326 "specific circumstances" have been dealt with by the 45 NCPs active across the world. The 21 EU Member States which are members of the OECD[[5]](#footnote-6) have set up NCPs, along with three Members States that are not members of the OECD[[6]](#footnote-7).

# **Voluntary commitment by economic stakeholders in the European Union**

## **Voluntary initiatives taken by companies and sectors.** It is still difficult to assess the number and quality of responsible initiatives. However, more than 12 000 bodies in 145 countries are taking part in the Global Compact by signing up to its ten CSR principles[[7]](#footnote-8). A report on the Global Compact's local networks[[8]](#footnote-9) shows that two thirds of these are businesses, and there are just as many SMEs as large companies. Half of these large companies are European. Since 2008, the United Nations Conference on Trade and Development (UNCTAD)[[9]](#footnote-10) has provided companies wishing to compile an annual report with guidelines on CSR indicators.

## Over the last decade, **sector- or industry-specific collective initiatives** – such as tackling deforestation, improving working conditions in the toy industry or transparency in the extractive industries – have been developed and they support the individual efforts made by executives or management. They also contribute to competitiveness by managing risks, particularly when companies operate in countries that are structurally weak or corrupt.

## The **Millennium Development Goals (MDGs) results** have shown that private investment plays a key role, being much greater in volume than public development aid[[10]](#footnote-11). The May 2014 communication entitled **A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries** specifies adherence to social, environmental and fiscal standards as a precondition for any EU engagement with, or public support to, the private sector.

## In an effort to recognise the growing contribution made by the local private sector and direct foreign investment, alongside European public funding, the **ACP-EU Economic and Social Interest Groups' declaration** highlights the fact that innovative company activities contribute towards sustainable development and consumer protection. Fair trade and micro-financing are useful for achieving future sustainable development goals (SDGs).

## **According to UNCTAD**, the role of the private sector is set to increase. It estimates that a third of the funding necessary to finance the MDGs from now until 2030 will come from the private sector. This will increase investors' vigilance in the area of good governance.

## **However multilateral public support** – often in the form of public/private partnerships – **remains indispensable**, particularly in order to ensure long-term financing of key transport, energy and rural development infrastructure, which is necessary to attract direct foreign investors.

## **Socially responsible investment (SRI)** is the expression of sustainable development in the area of financial management. It involves taking account of non-financial criteria, i.e. environmental, social and governance criteria (known as ESG criteria) when making investment decisions. SRI contributes to an alternative approach to development by responding medium- and long-term investment needs and by facilitating the development of local SMEs and very small enterprises (VSEs). Europe is the world's most active and dynamic region in terms of innovation and creating socially responsible investment funds. Moreover, the various national European networks have since 2000 been united by the Eurosif federation.

## In the run up to the **2015 climate negotiations**, many investors have been engaged in tackling climate change. Some have declared themselves willing to gear investment towards the low-carbon economy, under the auspices of the United Nations Finance Initiative.

## These managers of assets, insurance companies, pension funds and sovereign wealth funds take as reference the **six UN principles for Responsible Investment (UNPRI)**, established by the United Nations Environment Programme Finance Initiative and the Global Compact. The International Finance Corporation (IFC) ) – a subsidiary of the World Bank responsible for transactions in the private sector – takes account of local development criteria by including issues relating to biodiversity, land acquisition, the plight of migrant workers and indigenous peoples, as well as resource efficiency and the prevention of pollution.

## The main national development agencies in the EU, along with the **European Investment Bank (EIB)** and the European Bank for Reconstruction and Development (EBRD), finance medium and long-term projects, particularly in neighbouring countries. They also ensure that beneficiaries comply with ESG criteria. These are subject to an impact report. The EIB has published an *Environmental and Social Handbook*[[11]](#footnote-12) to serve as a guide to application (revised version effective as of 2014).

## **Consumers**: the EESC highlights the importance of consumer awareness of sustainable development. The awareness heightened by industrial disasters, many consumers expect large retailers to adopt a responsible procurement policy and to ensure the traceability of their products throughout the supply chain. They appreciate innovative initiatives on fair trade, sectoral labels, eco-design and the circular economy. In order to help consumers to make informed choices, the EESC calls on the Commission to re-examine the issue of labels of origin, particularly within the textiles and clothing sector. The EESC notes with interest that the International Organisation for Standardisation is currently drawing up a standard on sustainable purchasing (ISO 20400)[[12]](#footnote-13).

## **The social partners:** CSR is a driver for cross-border and even global social dialogue through transnational company agreements (TCAs)[[13]](#footnote-14) – also known as International Framework Agreements (IFAs). In 2014 there were almost 250[[14]](#footnote-15) such agreements – 111 of which were global agreements – covering ten million workers. The majority of these agreements were negotiated in Europe between managers' and workers' representatives. The commitments made in some of these transnational company agreements (TCAs) also extend to the companies' subsidiaries, sub-contractors and suppliers. Some TCAs establish a joint management and trade-union structure for monitoring implementation of the agreement and provide, where appropriate, for informing or consulting the European Works Council.

## **The social economy** (also referred to as the "social and solidarity economy") has an increasingly important role to play in EU development policy, particularly in terms of promoting cooperatives in the agri-food sector. The European social economy sector, which adheres to ESG standards, works with its counterparts in other parts of the world to ensure that development of the sector is founded on factors other than financial criteria.

# **Transparency and governance in the external dimension of CSR**

## **General transparency and governance measures in the EU**

### **Non-financial reporting:** there is now an obligation for certain companies to include non-financial information in the management report, alongside accounting standards. In transposition and implementation of these new EU rules, it will be important to ensure that these actually do improve the transparency of company activity and good governance in global trade, and avoid a "tick-box" exercise.

### The 2014 Directive[[15]](#footnote-16), which is currently being transposed, applies to businesses which have more than 500 employees, listed companies and public interest entities (as defined at national level, including for example financial institutions) whether they are listed or not. In 2018 (2017 tax year), around 6 000 companies operating in the EU will have to publish a non-financial report for their stakeholders, which includes their subsidiaries and discloses their policies, risks and results on "environmental issues, social and employee related factors, respect for human rights and tackling corruption." In addition to transposition, the Commission is also obliged to develop guidelines to assist in the compliance of companies with their transparency obligations included in the new rules. The Commission could eventually create a database to collate at EU level all information published in this respect.

### **Conditionalities attached to public procurement:** the European Union has revised its directives on public procurement. These new rules include a horizontal clause which permits including environmental or social inclusion criteria when awarding public contracts, the use of eco-labelling and the possibility of factoring in environmental aspects during the production process, and an approach based on life-cycle costing calculations[[16]](#footnote-17).

### A proposal for a regulation on the responsible sourcing of **minerals from conflict-stricken or high-risk areas**[[17]](#footnote-18)was adopted on 20 May 2015.This aims to obligeEuropean importers of tin, tantalum, tungsten and gold to be certified by independent third parties, while VSEs and SMEs are eligible for financial aid for certification through the COSME programme.However agreement has yet to be reached between the Council and the European Parliament.

### The majority of EU Member States are committed to implementing **the *Global* *Standard for Automatic Exchange of Financial Account Information***[[18]](#footnote-19), published in 2014 by the OECD, within a short timescale. This agreement would require multinational companies to publish their accounts on a country-by-country basis, which will make it easier to tax profits in the country where they are earned.

## **Sector-specific measures for transparency and governance in the EU**

### Since 2013, **the banking sector directive**[[19]](#footnote-20)has contributed towards creating transparency with regard to tax obligations, making it compulsory for banks to publish certain tax data on a country-by-country basis.

### A 2013 directive[[20]](#footnote-21) requires companies operating in the **extractive or primary forests industries** to compile a specific annual report from 2016 onwards. These companies must be transparent with regard to the payments that they make to local governments (country by country reporting), so that these governments can explain how they have used the revenue to civil society, local authorities and investors. The EU also calls on other countries to adopt the initiative on transparency in the extractive industries (EITI), along with initiatives on the primary forests industry (FLEGT[[21]](#footnote-22)) and the diamond industry (the Kimberley certification process), which help improve governance and tackle corruption and tax evasion.

### **European activity in the textiles and clothing industry.** This highly-sensitive sector accounts for a significant share of some countries' external trade and provides many jobs, which are not always of high quality, in terms of either wages or working conditions. Having been made aware of the situation for some time by international trade unions and NGOs, some major western buyers – brands and retailers – establish codes of conduct and carry out social audits. Faced with strong competition, some buyer-companies ask their subcontractors to respect human rights at work, while at the same time imposing low prices and very tight deadlines. They thus subject companies in developing countries which are part of their supply chain to contradictory orders. As the situation currently stands, it is not easy to guarantee traceability, particularly when the local state is weak.

### The European textile and clothing sector is concerned with competitiveness and is developing initiatives (particularly environmental initiatives) to drive forward sustainable growth. The European Apparel and Textile Confederation (Euratex) intends to make efficient use of resources (labour, primary materials, energy, water) in order to optimise costs, promote transparency in the supply chain and conduct dialogue with internal and external stakeholders. It runs a pilot project for sustainable growth, with the support of DG Employment.

### The 2013 **Rana Plaza tragedy in Bangladesh** highlighted the need to improve safety at work. Many Member States' NCPs[[22]](#footnote-23) have produced reports on the textiles and clothing sector in Bangladesh, including specific recommendations. In partnership with the ILO and Bangladesh, the EU is part of a major compact that aims to improve workers' rights, working conditions and safety in the country's ready-made garment industry factories[[23]](#footnote-24). It helps provide financing for a worldwide agreement between trade unions and companies on the safety of buildings and fire protection. This approach adopted by economic stakeholders, states and international institutions is both innovative and promising[[24]](#footnote-25).

### Nevertheless, it is important to bear the **example of Cambodia** in mind. The country and its "Better Factories Cambodia" project, which, under the auspices of the ILO, combined access to the US market with the decent treatment of workers, have long been cited as an example of good practice. A minimum wage had been introduced for the whole sector and a monitoring mechanism was set up. However, the end of the multifibre agreement changed the deal and the project became less effective at improving working conditions[[25]](#footnote-26).

### **Responsible land tenure.** As part of its efforts to guarantee food security and tackle land grabbing, The United Nations Food and Agriculture Organization (FAO) has drawn up *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*[[26]](#footnote-27)*.* The ACP-EU Economic and Social Interest Groups' declaration calls on governments to implement the FAO principles on responsible land tenure in order to ensure a transparent land use policy, and to implement agricultural reforms that make it possible to guarantee access to landed property.

# **Traceability and due diligence in the sphere of influence**

### **Traceability in global value and supply chains.** As value and supply chains have become more complex due to globalisation, the application of due diligence has raised questions. These questions relate, firstly, to the balance of responsibility between parent companies/subsidiaries and buyers/contractors, and, secondly, to resources for evaluating and supervising the value chain within the sphere of influence. In 2010, the OECD published **guidelines for multinational enterprises**[[27]](#footnote-28)on this subject and launched a global forum on responsible business conduct, which in 2014 addressed the question of sub-contracting. Since 2014, the UN Global Compact has provided companies with value chain **traceability methodology**[[28]](#footnote-29), which makes it possible to define the sphere of influence.

### In 2011 the International Trade Centre (ITC) set up a database, the **Standards Map**, which provides information on more than 170 (mostly private) standards, codes of conduct and audit procedures, particularly on agri-food products from developing countries. The Standards Map shows the obligations that operators within supply chains in 180 countries must meet[[29]](#footnote-30). Producers and traders are able to anticipate the needs of future buyers and integrate more fully into the world trading system.

### Since 2010, the Observatory for Corporate Social Responsibility (ORSE)[[30]](#footnote-31) has run a bilingual (English, French) website, which lists CSR initiatives and regulations on each continent (Africa, Americas, Asia, Europe) on a country-by-country basis[[31]](#footnote-32).

## **Implementing the duty of due diligence**

### **The UN Guiding Principles on Business and Human Rights**[[32]](#footnote-33), adopted in June 2011 unanimously by the Human Rights Council of the United Nations, are organised into three pillars, namely: protect, respect and remedy. The adoption of these principles is a key step in the field of corporate responsibility as the text supplements the conventional notion of CSR (economic, environmental, social-societal, governance) by laying emphasis on human rights under the societal pillar. Countries must protect human rights by implementing universally-applicable international treaties, and companies must respect them by applying international and national law, including by monitoring their supply chains.

### The duty of due diligence, which was outlined in the 2008 Ruggie Report[[33]](#footnote-34) and expanded on in the aforementioned Guiding Principles, was clarified and enhanced in the 2011 **revised version of the OECD Guidelines** for Multinational Enterprises[[34]](#footnote-35).According to these guidelines, companies must use their influence to prevent and mitigate any adverse effects directly linked to their activities or commercial relations, with regard to which they are subject to a best efforts obligation. Some believe that due diligence should eventually be extended to the whole supply chain, which is a major challenge. A number of companies and investors already take human rights into account, despite the difficulties that this entails.

### **Due diligence** must be included in the non-financial reports of large companies[[35]](#footnote-36). Several Member States have taken initiatives, some of which were outlined or announced at the recent CSR Compendium[[36]](#footnote-37). This includes, for example, the United Kingdom (2015 law on tackling forced labour), the Netherlands (preventative analysis of sectoral risks), Finland (mechanism for complaints against public companies), France (proposal for a bill on the responsibility of parent companies) and Denmark (working group on extra-territoriality). The countries which form the Group of Friends of Paragraph 47[[37]](#footnote-38) advocate that companies should disclose information which will enable an assessment to be made of their contribution to sustainable development.

### In order to implement the Guiding Principles on Business and Human Rights, the European Commission has published specific guidelines for businesses operating in three sectors: **information and communication technologies, oil and gas, and recruitment agencies**[[38]](#footnote-39). A specifically-tailored document on the guidelines is also available for European small and medium sized enterprises (SMEs)[[39]](#footnote-40).

### The European Union asks each Member State to gradually establish an **action plan on business and human rights**, as has been done for example in Denmark, Finland, Italy, the Netherlands and the United Kingdom[[40]](#footnote-41).

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1. Free trade agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22011A0514%2801%29&rid=5>). [↑](#footnote-ref-2)
2. <http://www.eesc.europa.eu/?i=portal.en.external-relations-international-trade-monitoring-korea>. [↑](#footnote-ref-3)
3. <http://www.eesc.europa.eu/?i=portal.en.rex-opinions.33193>. [↑](#footnote-ref-4)
4. <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_228965.pdf>. [↑](#footnote-ref-5)
5. Germany, Austria, Belgium, Denmark, Spain, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, the Slovak Republic, the Czech Republic, the United Kingdom, Slovenia and Sweden. [↑](#footnote-ref-6)
6. Latvia, Lithuania, Romania. [↑](#footnote-ref-7)
7. [www.unglobalcompact.org.ParticipantsAndStakeholders/index.html](http://www.unglobalcompact.org.participantsandstakeholders/index.html), June 2014. [↑](#footnote-ref-8)
8. [https://www.unglobalcompact.org/docs/publications/LN\_Report\_2012.pdf.](https://www.unglobalcompact.org/docs/publications/LN_Report_2012.pdf) [↑](#footnote-ref-9)
9. See Guidance on corporate responsibility indicators in annual reports, UNCTAD: [http://unctad.org/en/docs/iteteb20076\_en.pdf](file:///C:\Users\jtho\AppData\Local\Temp\unctad.org\fr\docs\iteteb20076_fr.pdf). [↑](#footnote-ref-10)
10. See REX/441 opinion - *Financing for development – the position of civil society* (Rapporteur: Ivan Voleš). [↑](#footnote-ref-11)
11. <http://www.eib.org/infocentre/publications/all/environmental-and-social-practices-handbook.htm?lang=en>. [↑](#footnote-ref-12)
12. [http://www.iso.org/iso/home/store/catalogue\_tc/catalogue\_detail.htm?csnumber=63026](http://www.iso.org/iso/fr/home/store/catalogue_tc/catalogue_detail.htm?csnumber=63026). [↑](#footnote-ref-13)
13. See Commission staff working document – The role of transnational company agreements in the context of increasing international integration SEC(2008) 2155 of 2 July 2008. [↑](#footnote-ref-14)
14. Business Accountability FOR Development: <http://www.ituc-csi.org/business-accountability-for-development?lang=en>. [↑](#footnote-ref-15)
15. <http://ec.europa.eu/finance/accounting/non-financial_reporting/index_en.htm> [↑](#footnote-ref-16)
16. <http://ec.europa.eu/growth/single-market/public-procurement/modernising-rules/reform-proposals/index_en.htm>. [↑](#footnote-ref-17)
17. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2014:0111:FIN:en:PDF>. [↑](#footnote-ref-18)
18. "This document was approved and declassified on 17 January by the Committee on Fiscal Affairs ("CFA"). It contains the standard on the automatic exchange of financial account information. It was drawn up by the OECD and the G20 countries, in close collaboration with the European Union." [↑](#footnote-ref-19)
19. Directive 2013/36/EU of 26 June 2013. [↑](#footnote-ref-20)
20. Directive 2013/50/EU of 22 October 2013, point 7. [↑](#footnote-ref-21)
21. Since 2003, the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) has aimed to reduce the entry of illegal wood into the EU through measures addressing both supply (support to producer countries to improve their legal framework and its implementation) and demand (EU regulation on verifying the legality of timber shipments imported). [↑](#footnote-ref-22)
22. Belgium (<http://economie.fgov.be/fr/binaries/CP_Bangladesh_20140207_FR_tcm326-242681.pdf>),  
    France (<http://www.tresor.economie.gouv.fr/8507_rapport-du-pcn-sur-la-mise-en-oeuvre-des-principes-directeurs-de-l-ocde-dans-la-filiere-textile-habillement>), Italy (<http://pcnitalia.sviluppoeconomico.gov.it/en/news/item/301-report-on-responsible-business-conduct-in-the-textile-and-garment-supply-chain>). [↑](#footnote-ref-23)
23. <http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf>.  
    See also <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1296>. [↑](#footnote-ref-24)
24. Human Rights Watch - Report April 2015 "Whoever raises their head suffers the most – Workers' rights in Bangladesh's garment factories" ([www.hrw.org/](http://www.hrw.org/)). See also [RanaPlaza-arrangement.org](http://www.ranaplaza-arrangement.org/). [↑](#footnote-ref-25)
25. See: "Missive" No 56 by *Gestion Attentive* consultancy, *Les "bonnes pratiques" de la confection cambodgienne* ("Good practices" in the Cambodian clothing manufacturing sector), February-March 2014, and "Missive" No 58 *Chaîne de valeur dans l'habillement* (The clothing value chain), July 2014: [www.gestion-attentive.com](http://www.gestion-attentive.com/). [↑](#footnote-ref-26)
26. Responsible governance of tenure (<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>). [↑](#footnote-ref-27)
27. *Supply Chains and the OECD Guidelines for Multinational Enterprises.* [↑](#footnote-ref-28)
28. *A Guide to Traceability: A Practical Approach to Advance Sustainability in Global Supply Chains* (download at <http://www.unglobalcompact.org/Issues/supply_chain/index.html>). [↑](#footnote-ref-29)
29. <http://www.intracen.org/default.aspx>, <http://www.intracen.org/itc/a-propos-de-l-itc/Standards-Map/#sthash.2iPVKvKl.dpuf>, <http://www.intracen.org/itc/a-propos-de-l-itc/Standards-Map>. [↑](#footnote-ref-30)
30. Observatory on Corporate Social Responsibility: [orse.org](http://orse.org/). [↑](#footnote-ref-31)
31. <http://www.reportingcsr.org/home-p-1.html>. [↑](#footnote-ref-32)
32. [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\_En.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). [↑](#footnote-ref-33)
33. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development - Protect, Respect and Remedy: a Framework for Business and Human Rights - Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. [↑](#footnote-ref-34)
34. <http://mneguidelines.oecd.org/text/>. [↑](#footnote-ref-35)
35. Directive 2014/95/EU concerning the disclosure of non-financial and diversity information by certain large undertakings and groups, amending Directive 2013/34/EU on accounting. [↑](#footnote-ref-36)
36. Corporate social responsibility national public policies in the European Union, 2014 Compendium (31 October 2014). [↑](#footnote-ref-37)
37. The Group of Friends of Paragraph 47 is composed of government representatives from different regions of the world that are committed to contributing to the implementation of paragraph 47 of the Outcome Document of the 2012 United Nations Conference on Sustainable Development (Rio+20), *The Future We Want.* See the *Charter of the Group of Friends of Paragraph 47 on Corporate Sustainability Reporting:* [www.unep.org/](file:///C:\Users\jtho\AppData\Local\Temp\www.unep.org\). [↑](#footnote-ref-38)
38. <http://ec.europa.eu/growth/industry/corporate-social-responsibility/in-practice/index_en.htm>. [↑](#footnote-ref-39)
39. Id. 35. [↑](#footnote-ref-40)
40. Id. 36. [↑](#footnote-ref-41)