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Paris, 2 May 2011

**The Secretary-General
to
The Ambassador and
Permanent Representative of France
to the European Union**

For the attention of Etienne Grass and
Morgane Lesage

Subject: Non-paper on France's proposals regarding a communication of the European Commission on Corporate Social Responsibility (CSR) to be issued in 2011

Please transmit the attached non-paper on France's proposals regarding corporate social responsibility (CSR) to Jean-Louis De Brouwer, Director of Europe 2020 at the Employment Policies Directorate and Jean-François Lebrun, Head of Unit at the Directorate-General for Employment, Social Affairs and Equal Opportunities, as well as Pedro Ortun, Director of Tourism, CSR, Consumer Goods and International Regulatory Agreements at the Directorate-General for Enterprise and Industry at the European Commission.

This contribution aims to see France's proposals regarding CSR given consideration in the communication on CSR that the European Commission is set to publish at some point between July and September 2011.

Deputy Secretary-General,

[signature]
Anne-Laure de Coincy

Non-paper of the French government proposing corporate social responsibility (CSR) guidelines for a new communication of the European Commission on CSR to be issued in 2011

The last communication issued by the Commission on CSR, in 2006, wished to see Europe **become a “pole of excellence”** in this area. France strongly supported this idea notably during its presidency of the European Union, in the second half of 2008, stating for example on 30 October 2008 that “corporate social responsibility is a key component of European development strategy, along with legislative and financial instruments that were established early on in European integration.”

France still has this conviction, along with that of **joint progress by private and public stakeholders**: “although social corporate responsibility is first and foremost voluntary action, taken by private stakeholders, public authorities have a role to play in coordinating corporate action and promoting it.”

Today European Union CSR policy should be determined with the idea of promoting European competitiveness in its Europe 2020 Strategy in mind.

Moreover, increasing national and international standards and initiatives, the most recent ones within the framework of the ISO and the United Nations Human Rights Council and others taken in the past (OECD, ILO, Global Compact, World Bank Group) – call on the European Union to think about its role and the methods it should use to encourage the development of CSR practices enabling European companies to achieve the “excellence” sought.

Economic globalization has reshuffled the deck in terms of power and has raised the question of Europe’s identity in doing so. International discussions on CSR now interest all the continents because they are questioning the sustainability of the planet in physical, social, societal and ethical terms. The European Union should seize this opportunity to highlight its legislation and case law, notably through studies that showcase its contributions to certain decisive issues such as identifying the scope of responsibilities of a transnational group.

Finally the countries that are emerging from the new international order are drafting national CSR rules with a varying range of requirements. And behind international CSR negotiations lie economic, social and environmental issues (particularly in terms of non-tariff barriers to investment and trade, green technology patent possibilities, etc.).

Such changes have therefore prompted the French government, which welcomes the European Commission project to propose a new CSR communication to Member States in 2011, to submit **four priority lines of action to the Commission**:

- 1) Promoting the emergence and consolidation of universal standards;**
- 2) Harmonizing national practices and initiatives;**
- 3) Using CSR to boost competitiveness;**
- 4) Using CSR to strengthen the European social model.**

1. Promoting the emergence and consolidation of universal standards

All countries aim to see their companies comply with the highest possible standards in the areas of the environment, social law, good corporate governance and human rights without that curbing their competitiveness. **Therefore, the European Union first and foremost needs to help successfully complete negotiations involving as many countries as possible that tend to universalize then recognize standards.**

The European Union should be able to better rally its Member States around a coordinated position in the international movement of drafting CSR standards.

It is important to remember that negotiations at the International Organisation for Standardisation, although they resulted in the adoption in 2010 of ISO 26000 by almost all the participating countries, also experienced split votes of certain Member States, which did not facilitate coherence efforts.

In the use of ISO 26000 guidelines, the Commission could **promote joint initiatives between different Member States ensuring that the number of national standards they are using as a model does not increase.**

Faced with a growing need to regulate globalization, and in the context of the upcoming G20, the Commission should be asked to refer to fundamental ILO conventions, to support the ILO Multinational Enterprises Declaration and to reiterate the importance of CSR reference frameworks and those concerning good corporate governance (OECD Guidelines, ISO 26000, Global Reporting Initiative, etc.) as certain member States do (for instance, in the case of France, recent commitments made by President Sarkozy and his speech at the ILO Conference).

To address the need for international regulation, the Commission should encourage voluntary action to introduce **social dialogue internationally** in very large companies, the best example being **International Framework Agreements**. There are currently 86 contractual forms to implement CSR commitments in partnerships between global groups and international federations of trade unions. Most of them were concluded by European groups. Within the framework of International Framework Agreements, European groups adopted this form of regulation worked out in European social dialogue in all their subsidiaries, including in countries where compliance with ILO and UN conventions can be difficult, thereby leveraging managerial practices in these countries. Reflection with groups and trade unions that have negotiated International Framework Agreements should help determine how the European Union could attain recognition for this form of regulation as a model in the development of CSR practices involving stakeholders.

Countries implementing **official development assistance policies** should work with the DG RELEX, DG DEV CO and European Investment Bank in the last stage of talks in the revision of the Performance Standards of the International Finance Corporation, since they are seeking to build their reference position for loans from all aid agencies.

The European Investment Bank should involve national development assistance agencies, along with the Commission, governments and other European aid players (including CONCORD) in the current revision of sustainability criteria for its loans in developing countries.

Moreover, by supporting the implementation of standards drafted in other bodies, the European Union can play a decisive role if it acts collectively.

With regard to **human rights and companies**, at its June 2011 session, the Human Rights Council will examine the work of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, tasked with drawing up Guiding Principles on Business and Human Rights. It then needs to be determined how the European Union could assist in the international promotion of such Guiding Principles, adapt them to the European context and ensure their coherence with European Union internal and external human rights policy. The European Union could likewise rely on a group of experts from the European institutions concerned and work in partnership with the Council of Europe.

The Commission could also review existing mechanisms in this area (Guidelines on Human Rights Defenders adopted by the European Council in 2003, European Instrument for Democracy and Human Rights, European Commissioner for Human Rights, European Court of Human Rights, European Committee of Social Rights, European Union Ombudsman, etc.) so that it can identify the most significant upcoming projects.

Finally, consistent with the Extractive Industry Transparency Initiative and as part of anti-corruption efforts, the European Union could engage in dialogue seeking to establish legislation that requires companies in the extractive industry to disclose payments to governments of the countries where they do business, as President Sarkozy on behalf of France has already suggested.

2. Harmonizing national practices and initiatives

Since the 2001 Green Paper was published, many Member States have taken incentives regarding CSR practices and ten or so have come up with national CSR strategies and plans. Since the development of national CSR rules can negatively affect the Single Market, the basis of the Union, the following efforts should be made to harmonize them:

- Reporting

A growing number of European countries have made efforts to request, even require, large companies to be more transparent about risks they take in the areas of the environment, society and governance (ESG) directly or indirectly (via stock exchanges), with the subprime crisis and BP disaster in the Gulf of Mexico furthering this trend.

The French government reiterates its support to:

- “Building for the European Union a shared framework for CSR reporting, with a limited number of indicators that are adapted to each business sector and take account of the international standards that are considered to be fundamental” (French Labour Minister, 30 October 2008);
- “Implementing a legislative initiative, a recommendation or a minimum number of common principles, to align the initiatives launched by a number of countries” (France’s response to a recent questionnaire of the Commission on the Single Market).

The principles should determine the important items and how they should be presented. Such a framework will help develop best practice references with regard to indicators to be used, especially by business sectors and with the participation of stakeholders.

A limited set of general indicators based on consensus and taking account of the main international agreed references (OECD, ISO 26000) should make the CSR European rules clearer and more understandable for European companies doing business in the Union and around the world.

It would be a good idea to accompany this action with:

- An assessment of Directive 2004/109/EC on the harmonisation of transparency requirements (providing for the disclosure of extra-financial information that could have an impact on corporate financial results),
- A review of the fourth Directive 2003/51/EC on the application of international accounting standards of 18 June 2003.

- Criteria integrating sustainable development in public procurement

These criteria are still piecemeal and varied, resulting at times – especially with regard to social criteria – in judicial recourse with dissuasive effects.

First steps have been taken including the GPP toolkit on the common environmental criteria and the recent guide on social criteria in public procurement. The Commission could facilitate **the integration of sustainable development in public procurement, notably as part of measures to revive the internal market and to review public procurement directives planned for 2012.**

In its response to the Single Market questionnaire, France underlined its wish to “implement a culture of innovative, socially and environmentally responsible procurement” and “to uphold offers promoting social, environmental and regional quality (even though) current practices of public authorities, in the social sectors in particular, are not easily compatible with the strict application of procurement rules”.

Finally, broad consultations should be launched with a view to drawing up specific rules to further access of small and medium-sized enterprises and social economy

undertakings to these calls for tender with specific stipulations, consistent with the Europe 2020 Strategy.

- Labels and certifications

Many initiatives, whether they are private or public, national or international, aim to create labels and certifications regarding CSR measures.

With regard to France, Article 53 of Act 2009-967 called the Grenelle Environment Act 1 indicated that “the State will support the creation, for enterprises of all sizes, of labels attesting to the quality of their management in the social and environmental areas (...), and the implementation of an accreditation mechanism by independent certification bodies responsible for attributing them”.

To avoid any fragmentation of the European market, the Commission – which itself has already developed or supported European labels, such as the Discerno CEEP-CSR Label initiated by the European Centre of Public Employers providing Public Services (CEEP) could **encourage harmonisation action involving stakeholders**, either item by item, or in a global CSR approach including assessment and approval methods of the labels.

- Incentives to engage small and medium-sized enterprises in CSR

SMEs that are ready to get involved in CSR do not always know how to proceed. The Commission could **launch European momentum to mobilize VSEs and SMEs** (very small enterprises and small and medium-sized enterprises) by offering them lower-priced tools and best practices and by supporting them in the sharing of their experiences or collective action and assessment instruments that are suitable for their size from either governments or corporate groups.

It could likewise encourage **voluntary employer initiatives** (like the Young Leaders Centre in France, active for the past ten years, and making free tools available to enterprises), while avoiding any binding measures that could make SMEs more fragile.

- Incentives to reinforce responsible consumption

Several Member States have already taken national initiatives that call for the collective assessment and if possible harmonization concerning:

- Establishing the abovementioned labels;
- Developing the idea of posting social and environmental characteristics;
- Making it easier to incriminate irresponsible communication practices in court.

The implementation of the 2006 directive on misleading advertising should be assessed to help avoid any “self-reporting” by companies concerning allegations about their advertising methods.

A consultation should be launched on responsible consumption and the links between CSR policy, integrated product policy and the sustainable consumption and production plan should be bolstered.

- Socially Responsible Investment (SRI)

France would like to see **more transparency when it comes to the integration of SRI practices by fund managers** to convince investors to move towards investments that factor in financial performance, environmental, social and governance (ESG) risks and sustainable development opportunities.

It would like **the Commission to help showcase best practices of Member States**, including the French initiative on pension funds and employee saving plans seeking to invest in socially responsible companies.

A European CSR Week could be launched modelled after national weeks that already exist in the United Kingdom, Belgium and France to promote SRI.

3. Using CSR to boost competitiveness

For many, the international competitiveness war is being played out in the areas of technological innovation and productivity. Yet studies show that CSR can play a decisive role developing green technology and participative governance methods in companies generating creativity. The European Union should not curb this competitiveness with costly regulations, but rather encourage it with a strategic vision, the use of different approaches based on the sector and company size and cost/benefit analyses.

- Strategic vision

Initial reflection should focus on the driving force of its internal market and its external trade, ranked among the first in the world. Several recent reports of the European Parliament have made us think about the way European Union **trade agreements can be used to drive partner countries to define social and environmental requirements** for their export companies, and common control mechanisms.

A first step could be an international conference to review the effects of efforts that have already been made and standards that have been adopted by certain emerging countries (such as the guidelines for enterprises doing business on external markets that were recently adopted by China), and to come up with methods.

- Selectivity

Certain import sectors of the economy in a position to exert significant influence on international markets have potential leverage. The Global Social Compliance Programme (GSCP) launched by the leading European large-scale distributors, a trade union and an NGO to improve the quality of their social audits, illustrates this potential for drawing up global standards in certain manufacturing sectors. The

GSCP, which now covers environmental audits, also seeks to be a tool for dialogue between buyers and suppliers. Dialogue should be engaged with emerging countries to explore the possibility of such initiatives becoming universal.

- Cost/benefit analysis

The sustainability of the CSR business model has generated scepticism to date. However we know that anticipating regulatory or market constraints benefits companies. As a result, adaptation costs are lower and can be spread over time and financed in better conditions. In addition, consumers and public authorities have a positive image of such companies. As EU Commissioner Tajani suggested on 30 November 2010, research programmes should focus on economic models that make CSR investment sustainable for companies in the different sectors (see the IMPACT Study).

4. Using CSR to strengthen the European social model

It is probably because CSR concepts originated in the United States that we have not yet seen genuine interaction of the European social model with CSR. Yet European identity is taking shape in the area, and it should be strengthened. It is first and foremost in the priority given to dialogue with employees as stakeholders that this identity is established.

CSR should include a participative governance model urging business leaders to establish long-term dialogue with stakeholders.

- Dialogue with stakeholders/employee shareholding

The European Union could engage in legal reflection and encourage the exchange of best practices regarding governance and the participation of employees in companies (see stakeholder management) drawing on existing models of employee shareholding where possible.

Employee shareholding is another form of integrating social dialogue in participative governance of European companies. It is especially European companies that have engaged in such practices, in some cases since the 19th century, that have completely changed corporate social relations.

Today the models vary greatly in European countries, and **they should be harmonized**, as the European Economic and Social Committee recommended in its own-initiative opinion in October 2010. The European Union should first seek a simple formulation that is suitable for small enterprises and that facilitates in particular the transfer of companies when the owner/operator does not have a descendent to take over, situations that are increasing due to changing European populations; and second a formulation aimed at furthering access in large companies to shareholding – minority but heard – for employees.

- Social economy undertakings and social entrepreneurship

These enterprises – mutual corporations, cooperatives, foundations and associations – account for 10% of European economies and are often at the forefront in the development of new services generated by the changes in our societies. A significant number of European countries, models for governance, involving stakeholders, employees and clients, have achieved international recognition engaging in “bottom-of-the pyramid” experiences or social entrepreneurship. The European international cooperation system should allocate more funds to developing this type of initiative with a high political impact, but whose economic balance is rarely achieved rapidly – initiatives that help fulfil the social purpose of Europe.

The European Union should **get social economy undertakings more involved in building its CSR policy**. (France particularly supports Proposal 35 of the Consultation of the Commission on the Single Market that provides for a “Social Entrepreneurship Initiative” including “a new investment fund scheme”.)

- Responsible operation of public services

Public services are part of the European social identity and several Member States have required their state-controlled companies to lead by example in the area of CSR. However the role of CSR in their management has not yet been the subject of large-scale reflection.

Responsible social and environmental management, particularly through governance that is more open to stakeholders, **can play a key role in the improvement of public services**.

This should be one of the development goals in the European CSR vision.

ISO 26000 recommends in this regard among other things, that “an organization that supplies essential services should”:

(...) in setting prices and charges, offer, wherever permitted, a tariff that will provide a subsidy to those who are in need; operate in a transparent manner, providing information related to the setting of prices and charges; expand their coverage and provide the same quality and level of service without discrimination to all groups of consumers; manage any curtailment or interruption of supply in an equitable manner, avoiding discrimination against any group of consumers; and continuously maintain and upgrade its systems to help prevent disruption of service.”

European reflection on the integration of CSR in the management of public services including an international component should be launched. If the Millennium Development Goals are to be achieved, public services in areas such as health and education need to be further developed.

- Socially responsible restructuring

With regard to cases of industrial restructuring, and to anticipate them as well as offset their social cost:

- Member States should first encourage socially responsible restructuring (in its response to the questionnaire on the Single Market, France underlined the interest of “identifying European best practices in the area of preventing and supporting restructuring”),
- The Commission could effectively commit to establishing a framework and further developing appropriate tools (this means going beyond the recommendations made by the ILO with the EU).

- Affirmative approaches in efforts to curb discrimination

There are a number of collective programmes in Europe that have been launched by companies with trade union partners, NGOs and local governments, which aim to go beyond international and national non-discrimination requirements. European companies have often understood that it is through **voluntary inclusion programmes** for disabled people and minorities and breaking down barriers to women’s career advancement that significant progress can be made. **Theme-based meetings** on different affirmative initiatives should highlight this other aspect of the European social identity.

The communication to be issued by the European Commission in 2011 on CSR would advantageously

- **Result in a recommendation for countries and other CSR stakeholders;**
- **Be accompanied by a multi-year action plan;**
- **Showcase the federating role of the Commission, which is crucial to continually providing Member States with information.**