



PROPOSALS FOR EUROPEAN REGULATION ON MULTINATIONAL CORPORATION ACTIVITIES

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Summary

Made up of several national entities brought together within a group on a global scale, multinational corporations (MNCs) have a predominant position in the international arena and have become unavoidable actors in the globalisation of the economy.

But their influence is not limited to the economic sphere, as illustrated by the increase in commitments to sustainable development and social responsibility (CSR). Questions of general interest, which are traditionally handed down to states, have been gradually transferred to these private actors.

Yet, these actors are not subject to any "ethical" rule, with States having satisfied themselves in the last 20 or so years with regulating trade and financial exchanges. Moreover, their transnational nature gives corporations freedom that neither individuals nor States can aspire to, since the rules to which they are subject remain at the national level.

The legal system is thus totally unsuitable today to their economic reality and no longer plays its role of guarantee of the fundamental values upon which our society is based.

The issue of regulating the activity of multinational corporations has thus become crucial.

In concrete terms, this situation is not irreparable, as this study and its proposals show. But to correct the situation, political authorities must take over....

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1. THE BASES OF ACTION BY NGOS IN FAVOUR OF REGULATING MNC ACTIVITIES

1.1 Setting up rules of the game - Globalisation of the economy has been characterised by the emergence of new rules for supervising commercial exchanges, with the aim of liberalising the markets—not of making the exchanges more ethical. Europe has played a key role in setting up these rules of the game, as it is aware that its companies depend on foreign markets. Furthermore, as the European Commission noted in one of its communications in 2007:

"In today's global economy European companies have never been more dependent on effective access to the markets of our trading partners. European companies are making capital-intensive investments in third countries and creating supply chains that are both complex and global. European exporters are increasingly looking to succeed not just in the large economies of the developed world, but in emerging economies such as China, India, Brazil and Russia.

The Global Europe framework of 2006[1] argued that trade policy can make a key contribution to growth and jobs in Europe by ensuring that European companies remain competitive and that they have genuine access to the export markets they need. Europe is right to open its own markets in a way that stimulates competitiveness and innovation, provides access to raw materials and attracts inward foreign investment: this is the right response to globalisation. In parallel, we can and should expect open markets and fair trading conditions abroad. In particular, the emerging economies that have benefited from the global trading system to achieve high growth rates should now bring down their own barriers and further open their markets. This is in their own interests, as well as those of the global trading system more widely. In a highly competitive global economy, market access will significantly influence our economic export strength."

This communication illustrates the main objective of many states that have been trying for the last 20 years to constantly increase their companies' access to new markets, to the detriment of all the fundamental rules of human rights. The rules that have stemmed from this trend have furthered the development of the capitalist model as we know it today. This model is based on extreme liberalism, and any attempt to oppose it or to bring ethics to it has been criticised, until recently.

States have thus given free reign to corporations to make their own "westward expansion". This has enabled them to develop on the scale of this "new playground" called the world.ⁱⁱ Corporate groups that are especially powerful economically have emerged and multiplied. They are no longer really connected to one country and thus escape all control. Whilst the new market rules have thereby enabled corporations to develop on a global scale, no legislation has monitored their evolution to make sure that all these new actors respect the rules of the game.

1.2 The legal void - These economic actors thus operate today within the framework of international trade rules but are not legally obliged to respect any international rule regarding the environment, labour conditions or human rights. This de facto state would have us believe that their activities can have no negative impact in these fields.

Multinational corporations thus benefit from nearly full impunity; there is currently no international rule that can put into question their responsibility as a corporate group. As there is no recognition of the international legal status of a corporate group, each entity making it up remains subject to the rights and obligations that exist in the countries where they operate. The group as a whole avoids any overall binding rule.

Faced with this legal void at the international level, only national recourse remains. But even at the national level, no legal system has succeeded in adapting to the global reality of these corporate groups. Only a certain boldness in the interpretation of existing rules makes it possible for victims today to hope to obtain remedying. But isn't the distinctive feature of rule of law to anticipate rules, so that they be the same for all?

In the event of damage caused by one of the entities of the group to individuals in a given country, the entities established in other countries therefore do not risk being troubled. **Such is the state of rule of law today**, in which total denial of justice to an entire category of individuals is allowed. Only national law can then assist these victims, provided that it has an effective legal system! This is moreover one of the reasons why some victims from countries where the legal system is lacking attempt to obtain damage reparations in a country other than that in which the damage occurred.ⁱⁱⁱ

1.3 CSR - This situation nonetheless does not lack positive prospects, as seen by the frenzy over the concept of Corporate Social Responsibility. Corporations have become aware of the role incumbent upon them within the societies in which they operate. Some have decided to invest in ethical behaviour. The concepts of sustainable development and societal responsibility thus appeared.

In more specific terms, the corporation manages its activity so as to produce positive impact on surrounding society. It is thus an undertaking by the corporation to act as a good citizen, i.e., to participate in economic development (all the while improving the quality of life of its employees and the surrounding communities) as well as to respect the environment. When the concept of CRS is applied in the corporation, it leads to a new vision of the corporation's role, which is no longer limited to its participation in economic growth, but asks it to become involved as a responsible citizen within the society in which it moves.

1.4 The limits of CSR - The main problem from this concept is that it puts forward a positive and determined vision of the role of the corporation, marginalising the very possibility that it could have a negative impact on society that would give legitimacy to binding measures.

It's precisely this involuntary nature of CSR that poses problems. It's in fact **a choice** proposed to the corporations to become involved beforehand and thus act in a responsible way. However, just as individuals or states, shouldn't these corporations also answer for their acts afterwards, as legally accountable when their activities cause damage?^{iv}

Conscious of the ineffectiveness of national regulation, States have thus brought the issue up to the international level. However, the attempts to regulate their activities have up to now led only to so-called *soft law*^v. Europe must play a driving role in this revolution of thought. It has the institutional, legal, political and economic means to do so. It has moreover undertaken to become a centre of excellence in the matter.

Today there are many European non-governmental organisations working on this issue, because an increasing number of their Southern partners inform them of the damage they have suffered from corporations of a European origin. It's within this background that the European Coalition for Corporate Justice (ECCJ) was created.

2. THE ECCJ PROPOSALS FOR MNC REGULATION

2.1 ECCJ presentation/approach – The European Coalition for Corporate Justice (ECCJ), represents 250 civil society organisations from 16 European countries. It was created in 2005 in order to inspire a framework of regulation for European corporations working inside as well as outside the borders of the European Union.

For this purpose, work was carried out in 2007 by journalists, academics as well as defenders of human rights and the environment to study the changes it would be possible to make in European legislation in order to prevent and remedy human rights or environmental violations committed by European corporations.

There is currently a **legal void**: the victims of their activities—be they in a member state or not—have trouble having the problem remedied.

In order to fill this legal void, the ECCJ proposes 3 reforms^{vi}:

1- Strengthen the responsibility of parent companies

Parent companies must be held responsible for the human and ecological impacts of their subsidiaries and of the companies over which they have "power of control".

2- Require companies to exercise their duty of care

Companies must see to it that they take reasonable measures to identify and prevent any human rights or environmental violations in their sphere of responsibility.

3- Oblige big corporations to give accounts of the social and environmental impacts of their activities and on the entailing risks

Corporations must be able to refer to precise standards in order to give accounts on the impacts and risks involved from their activities in their sphere of responsibility.

2.2 Two political options - The ECCJ remains convinced that greater justice can be provided only with the setting up of true reform concerning the obligations of MNCs and an accountability regime adapted to the reality of a corporate group. The current financial crisis has shown the limits of the self-regulation that today governs corporate behaviour, civic or otherwise.

Until such a reform—and perhaps political position by the Commission and Council—are established, other less fundamental solutions are possible: this would in particular involve modifying existing laws by sector and of adapting them to the reality of the group as well as to European values. Such an approach would not resolve all the problems but would at least have the advantage of showing a political desire to react and not subject the corporate groups to the vagueness of the law in which they find themselves today and which generates legal insecurity both for the corporations and the victims of their actions.

3- THE BASES OF EUROPEAN INSTITUTION COMPETENCE

3.1 The following recall the objectives sought after in creating the European Community, according to the terms of the treaty that established it.^{vii}

Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Article 3

1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

(b) a common commercial policy;

(g) a system ensuring that competition in the internal market is not distorted;

(h) the approximation of the laws of Member States to the extent required for the functioning of the common market;

(m) the strengthening of the competitiveness of Community industry;

(r) a policy in the sphere of development cooperation;

(t) a contribution to the strengthening of consumer protection (...)

Beyond the values commonly associated with the EU, respect of human rights by the economic actors must be grasped as a "tool" at the service of the major objectives of the EU Treaty.

Indeed, it seems legitimate and conceivable to us to work out an argumentation based on the major objectives defined by the Treaty and to establish a connection with any relevant measure that comes under the area of CSR promoted by ECCJ.

We can for example consider that the establishment of a system making it possible to **ensure that competition in the internal market is not distorted** (Paragraph g, Article 3 of the EC treaty) can find its expression in the three measures advocated by ECCJ. They seek to prevent corporations operating within EU borders from suffering from unfair competition from operators that supply the common market with products or services whose production has led to human rights or environmental violations. Making corporations effectively take into account their negative externalities all along their supply chain would avoid the development of offers of products and services at unfair prices that put to disadvantage the corporations doing everything possible to avoid the occurring of damage in their supply chain. The ECCJ measures would thereby help to guarantee corporations their return on ethical investment, but without acting as illegitimate barriers to the liberalisation of exchanges.

3.2 The European institutions not only have the legitimacy to act, but the treaty establishing the European Community above all gives them the competence to do so.^{viii}

Article 5

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.^{ix}

Article 6

Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,*
- the smooth and gradual integration of the developing countries into the world economy,*
- the campaign against poverty in the developing countries.*

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

Article 179

1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.

Article 181

Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 181 A

1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.

Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.

2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.

3. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 308

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

3.3 Above and beyond the treaty, it's European Parliament itself that, for several years now, has been calling on the Commission and Council to intervene.^x

"(...)Suggests, in this connection, that the assessment and monitoring of European companies acknowledged as being responsible be extended to cover their activities and those of their subcontractors outside the European Union in order to ensure that CSR also benefits third countries and in particular developing countries, in accordance with the ILO conventions concerning, in particular, the freedom to form trade unions, the ban on child labour and that on forced labour, and more specifically those relating to women, migrants, indigenous peoples and minority groups;(...)

Calls on the Commission to implement a mechanism by which victims, including third-country nationals, can seek redress against European companies in the national courts of the Member States;(...)

Believes that CSR policies can be enhanced by better awareness and implementation of existing legal instruments; calls on the Commission to organise and promote awareness campaigns and monitor the implementation of the application of foreign direct liability according to the Brussels Convention, and on the application of Directives 84/450/EEC^{xi} on misleading advertising and 2005/29/EC on unfair commercial practices to adherence by companies to their voluntary CSR codes of conduct;(...)

Welcomes the commitments of the Commission, repeated in its communication on CSR to support and promote CSR across all of its fields of activity and calls for a major effort to translate these commitments into concrete actions across the board;

Believes that the CSR debate must not be separated from questions of corporate accountability, and that issues of the social and environmental impact of business, relations with stakeholders, the protection of minority shareholders' rights and the duties of company directors in this regard should be fully integrated into the Commission's Corporate Governance Action Plan; points out that these issues should form part of the debate on CSR; asks the Commission to take these particular points into consideration and to advance firm proposals to address them;(...)"

3.4 The Commission has moreover made provisions for one of its actions to integrate CSR into other Community policies.^{xii} Yet, this integration should not make us forget that access to justice remains a fundamental principle which these policies cannot make up for.

Here is one of the actions provided for in this communication:

Integrating CSR into other Community policies

As outlined in the strategy for sustainable development adopted by the European Union at the Gothenburg Summit in June 2001, and in the Charter of Fundamental Rights of the European Union proclaimed in Nice in 2000, the EU has undertaken to integrate economic, social and environmental considerations into its policies and actions, as envisaged by the CSR concept. The Commission will undertake to further the integration of CSR principles into EU policies, to publish a report in 2004 on the results of the European multi-stakeholder forum and to set up an inter-services group on CSR within the Commission to ensure consistency in Commission activities. CSR principles are particularly relevant in the following EU policies:

- ***employment and social affairs policy*** (education/lifelong learning/information/consultation/ equal opportunities/integration of people with disabilities/anticipation of industrial change and restructuring);
- ***enterprise policy*** (balanced approach which maximises synergies between economic, social and environmental dimensions);
- ***environmental policy*** (ongoing evaluation of environmental results/the concept of environmental effectiveness which compares the quantity of goods produced with the impact of the production on the environment/consideration of environmental aspects in company annual reports/contribution to developing the environmental technology which is more environment-friendly and provides long-term benefits for enterprises);
- ***consumer policy*** (consideration of the interests of consumers who are increasingly aware of environmental and social needs);
- ***public procurement policy - public purchasers*** (taking advantage of the fact that public purchasers are often in a better position to take account of social and environmental considerations/facilitate the exchange of best practice in the field);
- ***external relations policy, development policy, trade policy*** (taking advantage of the various links which exist with states around the world through political and trade agreements in order to ensure compliance with international rules governing social, environmental and human rights issues/get the EU to address multinationals directly to promote these views);
- ***public administrations*** (integrate CSR principles into their own management, including that of the European Commission/specific projects within the European Commission to promote the CSR concept within its services).

From the viewpoint of these policies, it would be completely incomprehensible for the European institutions not to take action to promote and guarantee the respect of its fundamental values, especially when those who do not respect them are European nationals or controlled by them.

In this perspective, this report thereby proposes to act initially by sector, according to the work method explained below.

4- WORK METHOD

To achieve the three objectives proposed by ECCJ, we must distinguish two phases:

- **Beforehand:** imposing obligations in the fields of human rights and the environment on corporations. These obligations should make it possible to limit the unexpected occurrence of damage from the activities and to place corporations on an equal footing faced with the law.
- **Afterwards:** setting up a true accountability regime accessible to the victims of activities by European corporations, regardless of whether these victims are located in European Union territorial not, when these obligations are not respected by European corporations.

It's up to Europe to guarantee other countries that corporations from Europe do not go to establish themselves in third countries to take advantage of less advanced levels of legislation, especially when it comes to the protection of fundamental or environmental rights that are universally recognized and for which Europe has undertaken to be one of the guarantors.

STEP 1 Tables A to C

In this perspective, in the following tables A to C, we have identified the current legal voids that prevent reaching the objectives announced in the ECCJ proposals. Solutions to fill in these voids have been proposed at the same time.

STEP 2 Tables 1 to 12

In tables 4 to 12, by sector, we have identified the relevant European texts in which amendments could be proposed to fill in some of these voids. Whilst there are very many sector-based laws that could be amended to achieve the objectives pursued by ECCJ, we have adopted only those that will be up for revision soon here.^{xiii}

TABLE A

Proposal 1 – Parent companies must be held responsible for the human and ecological impacts of their subsidiaries and the companies over which they have "power of control".

The legal voids	Solutions proposed
Damage prevention	
<ul style="list-style-type: none"> - The corporate group has no legal status and thus no obligations that can be imposed on the group as such. - No harmonisation at the European level on the definition of the group 	<ul style="list-style-type: none"> - Harmonise European legislation on the definition of the group. - Recognize the legal personality of the group (for example, German law).
Principle of separate legal liability: each entity of a group is responsible for its own acts and cannot be responsible for the acts of the other entities of the group.	<ul style="list-style-type: none"> - Impose an obligation of control by the parent company over subsidiaries regarding the impact of their activities on human rights and the environment. - Subject the group to a control authority regarding the group's impact on human rights and the environment. (e.g. insurance). - Harmonise European legislation on the definition of control within a corporate group.
Parent company has no obligation to control its subsidiaries regarding human rights or environmental protection	
No obligation for the companies to respect human rights included in the various international laws on the protection of human rights, as this obligation is the responsibility of states. Corporations are simply subject to the national legislations in the countries where they operate or are incorporated.	The obligation States have to make international agreements they have ratified be respected could be transferred to corporations. This obligation would fall on the company located on European territory, which would have to make sure that the companies it controls would have to respect them, even outside its territory. It could take the form of a due diligence obligation. ^{xv}
Remedying the damage	
The common law liability regimes (civil or criminal) put the burden of proof on the victim/plaintiff/complainant. However, the proof needed for such complaints are often companies' internal documents to which the victim has no access.	Impose a due vigilance/diligence obligation on the parent company with regards to the entities it controls, due to its ability to influence their behaviour, policy and strategy, and for the burden of proof that this obligation is respected be the responsibility of the company
Legal liability: In a transnational dispute ^{xvi} , the question of court with jurisdiction over the dispute should be asked. For European countries, the principle to determine this jurisdiction is where the defendant is domiciled. ^{xvii} Yet, some judges decline jurisdiction if they consider that the dispute is connected more to the place where the damage occurred, which in this type of dispute will be in a country other than that of the parent company.	Modify the rule of conflict of jurisdiction so that, in human rights matters, the European national courts can protect the victims of human rights or environmental violations by European corporations, even if these violations occur outside of European territory.
In a transnational dispute, after having determined court jurisdiction, it's important to determine the law that applies to the dispute. For European countries, the rule of principal is the law of the place where the damage occurred ^{xviii} , which is often in a foreign country. An exception is in environmental matters, for which the defendant will have a choice, along with the law of place of generation of harm.	The rule of conflict of laws provided for in the environmental area should become the rule of principle.
Criminal liability: No uniform rule at the European level on the responsibility of legal persons	

TABLE B

Proposal 2 - Companies must see to it that they take reasonable measures to identify and prevent any human rights or environmental violations in their sphere of responsibility.

The legal voids	Objective to reach
Damage prevention	
<ul style="list-style-type: none"> - No overall obligation for the contracting company to control its subcontracting chain or what happens at its partner. (except food directives) - No specific obligation for the contracting company to control its subcontracting chain or what happens at its partner with regards to human and environmental rights. 	<p>Impose a due diligence obligation on the contracting company with regards to its partners and subcontractors. This obligation would involve:</p> <ul style="list-style-type: none"> - the right for the contractor to be able to make sure the environment and human rights are respected by its partners; - an obligation to be able to take any useful measure to be able to prevent harmful effects, such as in food matters.^{xi} <p>Such an obligation would act as the basis for volunteer commitments by companies that could then truly go beyond laws in CSR matters.</p>
<p>Problem of the limits of the sphere of responsibility: up to what point must the contracting company be responsible for respect of human rights and the environment?</p> <p>Difficulty coming from the absence of definition of control by a contracting company over its commercial partners or subcontractors</p>	<p>Need to define the control peculiar to relations with the actors of the supply chain</p> <p>The limits of responsibility should thus be defined: a range of indices could be proposed to make it possible to determine the existence of control: (economic dependency, making staff available, etc) many are already used in existing laws.^{xx}</p>
Remedying the damage	
<ul style="list-style-type: none"> - No overall system of tort liability whose responsibility would fall upon the contractor. - No specific system of tort liability whose responsibility would fall upon the contractor in the event of damage caused in violation of human rights, nor Community provisions applicable to environmental law. 	<ul style="list-style-type: none"> - Harmonise the legal liability system based on violation of duty of care. This could be expressed by joint responsibility and solidarity by the contracting company and its partner, as in the system put forward by the proposed directive providing for sanctions against employers of illegally staying third-country nationals. - A system based a corporation's non-respect of its CRS commitments should also make it possible for deceived victims to obtain a remedying of damage.^{xx1}
Necessary harmonisation with regards to recognising interest to enact legal proceedings by organisations that defend human rights and the environment.	Recognise the interest to enact legal proceedings by organisations whose objective is to bring up cases of responsibility.
The common law liability regimes (civil or criminal) put the burden of proof on the victim/plaintiff/complainant. However, the proof needed for such complaints are often companies' internal documents to which the victim has no access.	Imposing an obligation of vigilance/due diligence on the parent company with regards to the entities it controls (especially due to its ability to influence their behaviour, policies and strategies) should lead to a reversal of the burden of proof on the debtor company of this obligation.
Legal liability: In a transnational dispute ^{xxiii} the question of court with jurisdiction over the dispute should be asked. For European countries, the rule of principle to determine this jurisdiction is where the defendant is domiciled. ^{xxiv} Yet, some judges decline jurisdiction if they consider that the dispute is connected more to the place where the damage occurred, which in this type of dispute will be in a country other than that of the parent company.	Modify the rule of conflict of jurisdiction so that, in human rights matters, the European national courts can protect the victims of human rights or environmental violations by European companies, even if these violations occurred outside of European territory. (see Table A, same proposal)
In a transnational dispute, after having determined court jurisdiction, it's important to determine the law that applies to the dispute. For European countries, the rule of principal is the law of the place where the harmful event occurred ^{xxv} , which is often in a foreign country. An exception is in environmental matters, for which the defendant will have a choice, along with the law of place of generation of harm.	The rule of conflict of laws provided for in the environmental area should become the rule of principle.
Criminal liability: No uniform rule at the European level on the responsibility of legal persons	

TABLE C

Proposal 3 - Oblige big corporations to give accounts of the social and environmental impacts of their activities and on the entailing risks

Legal voids	Solutions proposed
Existing obligation: Directive 2003/51 EC of 18 June 2003, but no clear indicators regarding the information that the companies should report Implementation in some Member States, but scope of application and details too variable	Harmonise the indicators to which the companies should refer, in order to allow comparison of corporate reports and to ensure fairer competition, and also so that the companies know of the information that must be provided and that interests ALL the stakeholders.
No harmonised mechanism of sanctions in the event of false or incomplete information that could deceive the consumer or any other party interested by this information ^{xxvi}	The common law sanctions applicable to financial information are not adapted to <u>non</u> -financial information, as the interested parties are not the same, the consequences in the event of false or incomplete information are different and controls cannot be based on the same tools. Specific sanctions in the event of false or incomplete non-financial information should thus be provided for by the laws.
CSR and the information requested concern a broader range of stakeholders than in the case of financial information. However, as there is no definition of these new interested parties , the importance for these latter to act is not known, even though their interest could be harmed by force or incomplete information.	Take into account the "new" stakeholders interested in this information, via a definition of the stakeholders that includes the interested stakeholders + the parties not necessarily having a legal relationship with the company.
The existing rule merely asks: <i>"To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters."</i> ^{xxvii} The obligation therefore does not deal with the risks of the company's activities in these areas, even though they would be the most appropriate information to report. (Same problem for Directive 2006/46/EC of 14 June 2006 ^{xxviii})	Specify the information that the companies must report: the risks and resources implemented in human rights and environmental matters, in addition to their performances in these areas, which are two different things.
For this information, there is no control mechanism suitable for non-financial information; auditors and accountants currently have no available tool or competency for controlling non-financial information, which moreover requires scientific expertise and on-site investigations.	Setting up of an internal management mechanism for the group. Setting up of an external control mechanism that is <u>independent</u> and <u>adapted</u> to non-financial information; specify who would be responsible for this duty besides the auditors. Evolution of accounting practices for gradual integration of a reliable level of insurance regarding non-financial data.

TIMETABLE

TEXT TARGETED	TIMETABLE	ECCJ PROPOSALS TARGETED
Directive 2004/35/EC of European Parliament and Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage	<ul style="list-style-type: none"> - Commission must make a report before 30 April 2010 on the effectiveness of the remedying of damages according to the directive and the insurance conditions and, if necessary, propose a harmonised and mandatory financial guarantee system - Report by Member States to the Commission on experience gained from its implementation before 30 April 2013 	1 and 2
Proposed directive of European Parliament and Council on an improved policy on industrial emissions (integrated pollution prevention and control) (Recast) [COM(2007) 843 final]	?	1 and 2
DIRECTIVE 2008/99/EC of European Parliament and Council of 19 November 2008 on the protection of the environment through criminal law	<p>National timing: time limit for transposition = 26 December 2010</p> <p>Report every 3 years (starting from its transposition) on its implementation, by the Member States to the Commission, then report from the Commission to the Council.</p>	1 and 2
Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies	<p>Public Consultation until 30 April 2009</p> <p>Legislative proposal by the Commission for late 2009</p>	3
Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts	<p>Public Consultation until 30 April 2009</p> <p>Legislative proposal by the Commission for late 2009</p>	3
Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance – "Solvency II" (recast).	2009, adoption of the directive by EP and Council	1 and 2
<p>Proposal for Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions; and of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (so-called CRD Directive)</p> <p>Directive 2006/48/EC of Parliament and Council relating to the taking up and pursuit of the business of credit institutions (recast)</p> <p>Directive 2006/49/EC of Parliament and Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)</p>	Commission proposal should be approved by Parliament in April 2009	1 and 3
Proposal for a European Parliament and Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and	A general recasting project is underway (COM(2008)0419 –C6-0258/2008 – 2008/0141(COD);	1

Community-scale groups of undertakings for the purposes of informing and consulting employees	first reading in European Parliament on 16 December 2008	
Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (COM(2007)0249)	Waiting for 1st reading by the Council	2
DRAFT REPORT on the social responsibility of subcontracting undertakings in production chains (2008/2249(INI))	Committee on Employment and Social Affairs Rapporteur: Lasse Lehtinen , 12/11/08(draft report) Resolution adopted on 26 March 2009	2
Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime COM/2005/0006 final - CNS 2005/0003 */	The States must take the required enforcement actions before 11 May 2010. The Commission will have to establish a report on enforcement by the Member States. The Council will check implementation on this basis, before 11 November 2012.	1 and 2
Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	Revision planned before end of 2009	1 and 2
Directive 2005/29/EC of European Parliament and Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')	Parliament has asked the Commission to submit a report on their implementation before 12 June 2011.	1, 2 and 3
DIRECTIVE 2006/114/EC of European Parliament and Council of 12 December 2006 concerning misleading and comparative advertising		1, 2 and 3
Proposed DIRECTIVE 2008/0153 (COD) OF EUROPEAN PARLIAMENT AND COUNCIL dealing with undertakings for collective investment in transferable securities UCITS: coordination of laws, regulations and administrative provisions, of 16 July 2008	The European Securities Committee should submit its report in late October 2009 to the Commission, regarding the implementing measures of the new securities directive, with a view towards formal adoption of the directive.	3
Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council	A follow-up report by the Commission is expected for 2009. ^{xxix} And amendments could be made after revision of the CRD directives and Solvency II	1

Key for the following tables

Italics: summary of text

Normal: proposed objectives to achieve

**TABLE 1
ENVIRONMENT**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Directive 2004/35/EC of European Parliament and Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage</p> <p>http://europa.eu/scadplus/leg/en/lvb/l28120.htm</p>	<p>- Commission must make a report before 30 April 2010 on the effectiveness of the remedying of damages according to the directive and the insurance conditions and, if necessary, propose a harmonised and mandatory financial guarantee system</p> <p>- Report by Member States to the Commission on experience acquired in its implementation before 30 April 2013</p>	<p>Proposal n° 1 and 2</p>	<p><i>-The first liability scheme applies to the dangerous or potentially dangerous occupational activities listed in Annex III to the Directive.</i></p> <p>The operators subject to the obligations aimed at in these directives should also respect these obligations when they develop their activity outside the EU, in order to avoid transfer of polluting activities.</p> <p><i>- The second liability scheme applies to all occupational activities other than those listed in Annex III to the Directive, but only where there is damage, or imminent threat of damage, to species or natural habitats protected by Community legislation. In this case, the operator will be held liable only if he is at fault or negligent.</i></p> <p>To avoid the transfer of polluting activities, this directive should expressly provide for the case in which an operator controlling a legal entity, even outside the EU, could find its responsibility incurred based on this directive, unless it shows its absence of fault or negligence.</p> <p><i>- Each Member State designates a competent authority in charge of making the operator take a preventive measure or remedy the damage. Some individuals can call on this authority with a request along these lines.</i></p> <p>The directive should provide for receiving requests from people affected by the activities covered by the directive, even outside European territory. (Para.25)</p> <p>Agreements with third-party States could be proposed so that these latter designate similar competent authorities to which people from these third countries who are affected by the activities of companies controlled by a company located within European territory can also submit requests of action for prevention or remedying.</p>	<p>6 174-1 174- 4 175-1 177 178 179 181 181 A 300 of the EC Treaty</p>	<p>Environment DG</p>

**TABLE 2
ENVIRONMENT**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) [COM(2007) 843 final] of 21 December 2007</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0844:EN:HTML</p>	?	Proposal n° 1 and 2	<p>Some obligations borne by the operator and contained in these proposals should extend to operators located on European territory but that control companies located in foreign countries: Example: Article 11 "general principles of certain basic obligations" on the operator</p> <p>Such an extension would moreover correspond to the expectations expressed in Regulation (EC) No 1013/2006 of European Parliament and Council of 14 June 2006 concerning shipments of waste, and especially its preamble that expressly mentions the need to take into account minimum European standards <u>in the event of exportation of waste to third countries</u>.</p>	174 175-1 EC Treaty	Environment DG
<p>DIRECTIVE 2008/99/EC of European Parliament and Council of 19 November 2008 on the protection of the environment through criminal law</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0028:0037:EN:PDF</p>	<p>National timing: time limit for transposition = 26 December 2010</p> <p>Report every 3 years (starting from its transposition) on its implementation, by the Member States to the Commission, then report from the Commission to the Council.</p>	Proposal n° 1 and 2	<p>The national legislations:</p> <ul style="list-style-type: none"> - a definition of control or duty for monitoring that provides for this duty to be the responsibility of the parent company located on the territory of a Member State over all the companies it controls, even outside European territory - a definition of control that must provide for the specific case of control of subcontractors and/or commercial partners. In some cases, the contracting company should acknowledge that it has a duty for monitoring, according to the control it exercises. - specific measures regarding burden of proof and the importance of taking action will have to be taken for the measure to be fully effective 	175-1 EC Treaty	Environment DG

**TABLE 3
CORPORATE LAW**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction (Treaty Art.)	Competent Institution
<p>Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies</p> <p>http://europa.eu/scadplus/leg/en/lvb/l26009.htm</p> <p>Modified in particular by: Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings</p> <p>Directive 2003/51/EC of the European Parliament and of the Council of 18.6.2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (Text with EEA relevance)</p>	<p>Public Consultation until 30 April 2009</p> <p>Legislative proposal by the Commission for late 2009</p>	<p>Proposal n° 3</p>	<p>Current text:</p> <p>- as modified by 2006/46: Preamble Para.10 : <i>"Furthermore, where relevant, companies may also provide an analysis of environmental and social aspects necessary for an understanding of the company's development, performance and position. There is no need to impose the requirement of a separate corporate governance statement on undertakings drawing up a consolidated annual report. However, the information concerning the group's risk management system and internal control system should be presented."</i></p> <p>- Art.46 bis: a code of corporate governance should be included in the management report.</p> <p>As modified by 2003/51: Art.46: the management report <i>"To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters;"</i></p> <p>Proposal:</p> <p>- Clear indicators should be proposed to the companies with regards to non-financial matters.</p> <p>- This information should also deal with the environmental and social risks of the activity, as well as with risks of violations of human rights (cf. Para.14 Directive 2006/46).</p> <p>- A control authority competent to verify this non-financial information should be set up by the Member States.</p> <p>- Sanctions in the event of false or incomplete information should be provided for by the Member States.</p> <p>- If the company has a CSR policy, the creation of a CSR position in the accounts should be considered.</p>	<p>54 -3 g) 44-1 251 of the EC Treaty</p> <p>Section 1, Art.2-6 of the Directive (for States)</p>	<p>Art.52: a contact committee</p>

TABLE 4
CORPORATE LAW

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts</p> <p>http://europa.eu/scadplus/leg/en/lvb/l26010.htm</p> <p><u>Modified in particular by:</u></p> <p>Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings</p> <p>Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Council Directives 78/660/EEC , 83/349/EEC , 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings (Text with EEA relevance)</p>	<p>Public Consultation until 30 April 2009</p> <p>Legislative proposal by the Commission for late 2009</p>	<p>Proposal n° 3</p>	<p>Current text: as modified by 2003/51: Art. 36, the consolidated management report contains: <i>"To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters."</i></p> <p>As modified by 2006/ 46: Preamble Para 14 : <i>"This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union."</i></p> <p>Proposal: Clear indicators should be proposed to the companies with regards to non-financial matters.</p> <ul style="list-style-type: none"> - This information should also deal with the environmental and social risks of the activity, as well as with risks of violations of human rights (and especially the fundamental rights and principles recognized by the Charter of the Fundamental Rights of the European Union). - A control authority competent to verify this non-financial information should be set up by the Member States. - Sanctions in the event of false or incomplete information should be provided for by the Member States. 		<p>DG Internal Market</p>

TABLE 5
CORPORATE LAW

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Proposal for a Directive of the European Parliament and of the Council of 26 February 2008 on the taking-up and pursuit of the business of Insurance and Reinsurance – "Solvency II"</p> <p>http://www.europarl.europa.eu/oeil/file.jsp?id=5512082&noticeType=null&language=en</p>	2009, adoption of the directive by EP and Council	Proposals n° 1 and 2	<p>Articles 29 to 36: <i>on the principles and methods of financial monitoring (conditions and modalities of control exercised by the control authorities).</i> Social and environmental information could be required and made subject to the control procedures provided for by the directive, as insurance in this area can also represent a special risk.</p> <p>Art.41: <i>obligation to have an internal good-governance policy that extends to their subcontracting:</i> obligation that should extend to CSR policies and not be limited to good governance</p> <p>Art.219 to 277: <i>a group and partnership control policy with third countries when some of the group is established in third countries.</i> Process solely applicable to insurance companies but that should be extended to all corporate groups from other sectors.</p> <p>Art.239-240 and s. : <i>The parent company or group is asked to cover its subsidiaries in the event of liquidation, for example.</i> Should be extended to all types of sectors and not be limited to the insurance sector.</p> <p><i>The rules of governance must exist at the group level, with the group's auditor being able to verify that the group's management authority has respected its obligations, by evaluating the governance of the group that was set up:</i> should be transposed to all the corporate groups, without being limited to the insurance sector.</p> <p>Art. 263 : <i>Situation in which the parent company is located in a third country: and with a view towards cooperation with the control authorities of third countries, the commission will propose the council to negotiate agreements in view of the control modalities.</i> Should be extended to corporate groups and not be limited to the insurance sector.</p>		<p>- DG Internal Market</p> <p>- Art. 313 : European Insurance and Occupational Pensions Committee</p>

TABLE 6
CORPORATE LAW

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Proposed DIRECTIVE 2008/0153 (COD) OF EUROPEAN PARLIAMENT AND COUNCIL dealing with undertakings for collective investment in transferable securities UCITS: coordination of laws, regulations and administrative provisions, of 16 July 2008</p> <p>http://www.europarl.europa.eu/oeil/file.jsp?id=5668452&noticeType=null&language=en</p>	<p>The European Securities Committee should submit its report in late October 2009 to the Commission, regarding the implementing measures of the new securities directive, with a view towards formal adoption of the directive.</p>	<p>Proposal n° 3</p>	<p>Obligation to publish "human rights" and "environment" ratings attributed to financial investments, and the degree of exhaustiveness and reliability given by the rating agency to this information should be added. This measure could be subject to an addition to Article 28 of Directive 85/611/EEC, Point 1 or to Chapter IX of the proposal:</p> <p><i>"The managers shall, if need be, indicate in the leaflet and the rules the way in which they will have decided to take into account social, environmental and governance criteria in their investment policy, as well as the exercise of rights associated with them."</i></p> <p>This obligation would aim at indicating the aforementioned information in at least one of the documents sent annually to shareholders, as well as in all the commercial or promotional documents of the securities, in whatever form they are.</p>	<p>47-2 EC Treaty</p>	<p>Commission and European Securities Committee</p>
<p>Proposal for Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions; and of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit (so-called CRD Directive)</p> <p>Directive 2006/48/EC of Parliament and Council relating to the taking up and pursuit of the business of credit institutions (recast)</p> <p>Directive 2006/49/EC of Parliament and Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)</p> <p>http://ec.europa.eu/internal_market/bank/docs/regcapital/com-2004-486/volume1_en.pdf</p>	<p>Commission proposal should be approved by Parliament in April 2009</p>	<p>Proposals n° 1 and 3</p>	<p><i>Chapter 5 on the information to be published by credit institutions:</i> should include non-financial information concerning the impact of their activities on the environment, human rights and the respect of fundamental social rights.</p> <p><i>Several clauses provide for the setting up of control of the group by the authority on the territory where the parent company's headquarters is located.</i> Such a measure should be extended to all types of companies structured into group form and not be limited to credit institutions.</p>	<p>47 EC Treaty</p>	<p>Commission and European Banking Committee (Art. 151)</p>

TABLE 7
CORPORATE LAW

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>European Parliament and Council Directive 2002/87/EC of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, 98/78/EC and 2000/12/EC</p> <p>http://europa.eu/scadplus/leg/en/lvb/l24038c.htm</p>	<p>A follow-up report by the Commission is expected for 2009</p> <p>And amendments could be made after revision of the CRD directives and Solvency II</p>	Proposal n°1	<p>- Monitoring of groups is provided for by directive, in these particular sectors. The preamble states that the directive shall respect the Charter of fundamental rights. The definition of subsidiaries chosen is very broad here and corresponds to the expectations of ECCJ.</p> <p>- <i>The monitoring aimed at by this directive is also directed towards the conglomerates whose headquarters is outside the EU. In this case, cooperation agreements with third states must be signed that set, among other things, the objectives and the resources for this monitoring.</i></p> <p>Among these objectives, the monitoring of social and environmental impacts of their activities should be provided for.</p> <p>Generally speaking, the controls should deal with the social and environmental impacts of these groups, and the required prudential behaviour should be defined more broadly.</p>	47 EC Treaty	European Financial Conglomerates Committee (Art. 21)

**TABLE 8
CONSUMER LAW**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0029:EN:HTML</p>	<p>European Parliament resolution of 13 January 2009 on the transposition, implementation and enforcement of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and Directive 2006/114/EC concerning misleading and comparative advertising (2008/2114(INI))</p> <p>Point 24 of this resolution:</p> <p>"Insists that the Commission submit on schedule, by 12 June 2011, a comprehensive implementation report pursuant to Article 18 of the UCP Directive which incorporates experience gained from the MCA Directive;"</p>	<p>Proposals n° 1, 2 and 3</p>	<p>- <i>according to this directive, those responsible for conduct codes can be encouraged by the member states to control for unfair commercial practices..</i> This control should be mandatory and should not replace access to justice for the consumer, who should thus be informed in this particular case.</p> <p>- the directive should provide for a liability regime for the person in charge of the code</p> <p>- For improved consumer protection, the directive should provide for an accountability regime for the "person in charge of the code" in the implementation of the code by professionals subject to it. This is because currently no one is really responsible for this implementation.</p> <p>- should include a definition of the code of conduct (ethical trader, ethical code, etc., what is found in it, etc.), which does not currently exist.</p> <p>- <i>regarding unfair information in the codes:</i> should take into account false, inaccurate or incomplete information.</p> <p>- should take into account the social and environmental conditions in which the products or services were developed, especially if this is provided for in the code of conduct.</p> <p>⇒ Generally speaking, current legislation is not adapted to the voluntary codes of conduct of companies, as consumers do not have the adequate means to assert their rights when these codes have deceived. No effective prior control concerning respect of the commitments by the companies is provided for.</p>	<p>Art.95, procedure:251 EC Treaty</p>	<p>Initiative: Commission</p> <p>Health and Consumers DG</p>
<p>DIRECTIVE 2006/114/EC of European Parliament and Council of 12 December 2006 concerning misleading and comparative advertising</p> <p>http://europa.eu/scadplus/leg/en/lvb/l32010.htm</p>					

TABLE 9
LABOUR LAW

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Proposal for a European Parliament and Council Directive on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0419:EN:HTML</p>	<p>A general recasting project is underway (COM(2008)0419 –C6-0258/2008 – 2008/0141(COD));</p> <p>first reading in European Parliament on 16 December 2008</p>	<p>Proposal n°1</p>	<p>- Specific dispositions concerning the corporate groups with activities outside the EU should be provided for, especially when control of the group is carried out from a Member State. A specific committee at the global group scale should then be provided for.</p> <p>- The department to which this global works council belongs would have duty of care to make sure that the principles of the directive are enforced as much as possible outside of EU territory when it controls this company.</p>	<p>137 of the EC Treaty</p>	<p>Employment DG</p>
<p>Proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (COM(2007)0249)</p> <p>http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0069+0+DOC+XML+V0//EN</p>	<p>Waiting for 1st reading by the Council</p>	<p>Proposal n°2</p>	<p>Article 4 : <i>"Employers [who are professionals as much as individuals here] would, before recruitment of third-country nationals, be required to check that they have a residence permit or another authorisation for stay."</i></p> <p>Article 8.2 : "Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third-country nationals, may next to or in place of the employer be held liable to make the payments identified in paragraph 1 in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor."</p> <p>Article 12 : Provides for the case of responsibility of legal persons having power of control</p> <p>Should not be limited to the jurisdiction of the Justice, Freedom and Security DG, but extended to the Employment DG and concern social and human rights questions within subcontracting chains generally. This principle of responsibility of the main contractor having power of control should not be limited to the case of immigrant workers.</p>	<p>Art.63-3 EC Treaty</p>	<p>Justice, Freedom and Security DG</p>

**TABLE 10
LABOUR LAW**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>DRAFT REPORT on the social responsibility of subcontracting undertakings in production chains (2008/2249(INI)) Committee on Employment and Social Affairs Rapporteur: Lasse Lehtinen , 12/11/08 (draft report)</p> <p>http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+COMPARL+PE-415.234+01+NOT+XML+V0//EN</p>	Resolution of 26 March 2009	Proposals n°2	<p><i>The commission is asked to intervene in several areas, especially in the setting up of a clearer legal instrument that introduces joint responsibility and solidarity at the Community level, all the while respecting the various legal systems existing in the Member States as well as the principles of subsidiarity and proportionality; as well as launching an assessment of the impact on the added value and feasibility of a Community instrument regarding responsibility of the chain, in order to increase transparency in the subcontracting process and to guarantee better enforcement of Community and national legislation. Parliament emphasises that this study should be cross-sectional.</i></p> <p>It will then be important to urge the Commission to at least follow these recommendations.</p>	39 49 50 137 of the EC Treaty 31 Para.1 of the Charter of Fundamental Rights	Ask the Commission to Intervene

**TABLE 11
GENERAL PART OF CRIMINAL LAW**

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime COM/2005/0006 final - CNS 2005/0003 */ http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:300:0042:01:EN:HTML</p>	<p>The States must take the required enforcement actions before 11 May 2010 The Commission will have to establish a report on enforcement by the Member States. The Council will check implementation on this basis, before 11 November 2012.</p>	Proposals n°1 and 2	<p>Article 5 : Liability of legal persons is provided for in the case of organised crime Article 6 : Penalties for legal persons Article 7 :Jurisdiction and coordination of prosecution</p> <p>A new case of jurisdiction by national authorities should be provided for: and especially the case in which the corporation that <u>controls</u> the company that participated in organised crime is located on European territory.</p>	29, 31, Para .1 e) 34 Para. 2, b) of the EC Treaty	Member States, Commission, Council

TABLE 12
COMMON PROCEDURAL RULES

Text targeted	Political timing	ECCJ proposal targeted	Objectives to achieve	Basis of jurisdiction	Competent Institution
<p>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0044:EN:HTML</p>	Revision planned before end of 2009	Proposals n° 1 and 2	<p>Article 2 : competence of courts of the Member State in which the defendant is domiciled (principle of jurisdiction).</p> <p>A special case of jurisdiction should be provided for in the case of human rights violations, no matter where the damage occurred. The regulation should anticipate cases in which European national courts decline jurisdiction in matters of human rights violations committed outside European territory, when the victims are foreigners.</p> <p>One of the objectives is to give protection as effective as that proposed by the United States under the Alien Tort Claim Act, in the event of human rights violations by perpetrators located in Europe or controlled by entities located on European territory.</p>	61-c 67-1 of the EC Treaty	Commission, aided by a committee

CONCLUSION

One of the foremost difficulties related to the question of responsibility of multinational corporations in human rights and respect of the environment matters resides in the crosscutting nature of the subject.

The sector-based work method chosen here makes it possible to highlight the inconsistencies of European legislation regarding corporate groups, in order to propose revising the most relevant documents. Whilst we have dealt only with the texts that will be examined soon by the European bodies, many of them impose obligations on corporations and would be worth having their geographical scope enlarged, in the name of the various principles upon which Europe is founded (see II above). Whilst reform by sector, as proposed in this study, can be considered in the short term, it should nevertheless be replaced, in the long-term, by legislation especially on corporate groups.

Beyond the ethical justifications that underlie the approach of the ECCJ members, such reform is necessary today given the inconsistency we can see governing European legislation on corporate groups. As we have seen, States have not hesitated in giving a sense of responsibility to these groups or in setting up responsibility regimes regarding subcontracting chains in meticulously defined areas or regarding strong economic impacts (this is especially the case regarding insurance, solvency, tax systems, in legal work, food health, etc.).

Conversely, the setting up of obligations concerning respect for human rights or the environment remains on the whole within the sphere of self-regulation. One of the justifications given to this inconsistency is the transnational nature of these actors, which makes it difficult to set up regulation at the group level. Here we have tried to show the contrary. The sole limit today is that of political will.

The work by the European Commission and Parliament regarding social responsibility gives us hope that situations will evolve. However, the European institutions have still not clearly determined what their expectations are regarding their corporations when they operate in a third country. Such an objective would nevertheless give legitimacy to the establishment of real reform that would force corporations based in the European Union to respect the fundamental rules they are subject to on EU territory (in particular in terms of security related to work, employment, the environment, waste, rules regarding access to justice, etc.) When they operate, directly or not, in third countries.

Let us not forget that these issues of good internal governance are crucial. Those related to the impact of activities by corporations outside of their own physical location are even more so yet remain disregarded.

- i. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Global Europe: a stronger partnership to deliver market access for European exporters {SEC(2007) 452} {SEC(2007) 453}/* COM/2007/0183 final */
- ii. Brussels 7 December 2007, Conference on corporate social responsibility: CSR at the Global Level: what role for the EU? Speech by Isabelle Daugareilh, researcher at the CNRS (French national centre for scientific research), Centre of comparative labour law and social security-Comptrasec-UMR CNRS 5114 Université Montesquieu Bordeaux IV
- iii. Examples to illustrate this can be found in the CCFD report "Des sociétés à irresponsabilité illimitée !", March 2009, www.ccfid.asso.fr/hold-up/rap.html; see as well the European Coalition for Corporate Justice (ECCJ) report "With power comes responsibility", May 2008, www.corporatejustice.org
- iv. Two separate terms exist: *corporate responsibility* and *corporate accountability*. The first refers to moral responsibility, whereas the second covers the notion of legal responsibility.
- v. "Soft law" indicates texts that have no legal constraint, compared to hard law, which imposes legal obligations subject to penalties. OECD guidelines for multinational corporations or the ILO declaration to MNCs, for example, are two texts that provide corporations with lines of conduct but whose non-respect does not lead to any penalty.
- vi. "With power comes responsibility: Legislative opportunities to improve corporate accountability at EU level", May 2008, European Coalition for Corporate Justice. The proposals are elaborated in the "Fair Law Report: Legal Proposals to Improve Corporate Accountability for Environmental and Human Rights Abuses", Filip Gregor, GARDE programme of the Environmental Law Service, Hannah Ellis, The Corporate Responsibility (CORE) Coalition
- vii. http://europa.eu/eur-lex/en/treaties/dat/C_2002325EN.003301.html
- viii. http://europa.eu/eur-lex/en/treaties/dat/C_2002325EN.003301.html
- ix. The Maastricht Treaty introduced two new principles into the Community's institutional system, defined by Article 5 of the EC Treaty: the principle of subsidiarity and the principle of proportionality. "The first makes it possible to determine if Community competence must be exercised, and the second concerns the scale of Community intervention. (...) The principle of subsidiarity therefore makes it possible to determine if shared competence must be exercised by the Community or by the States". This principle thus makes it possible to determine case-by-case whether the States or the Community must intervene. "From that time on, the exercise of each shared competence is likely to evolve over time according to the requirements and circumstances peculiar to the objectives aimed for". Stéphane LECLERC, *Droit institutionnel de l'Union et des communautés européennes*, summary, Paris, LDGJ, 2003.
- x. European Parliament resolution of 13 March 2007 on corporate social responsibility: a new partnership (2006/2133(INI))
- xi. OJ L 250, 19.9.1984, p.17.
- xii. European Commission communication of 2 July 2002 concerning Corporate social responsibility: A business contribution to sustainable development [COM (2002) 347 final - not published in the Official Journal].
- xiii. i.e., from April 2009 to the end of 2013.
- xv. Speech by Olivier De Schutter, European Multi-stakeholder Forum on CSR, 10 February 2009, Brussels, proceedings available at: http://ec.europa.eu/enterprise/csr/forum_2009_index.htm
- xvi. A transnational dispute would, for example, involve a victim of a subsidiary located in a country different from that of the parent company. If the victim sues the parent company in a country different from where the damage occurred, the dispute would be of an international nature.

xvii. Regulation (EC) No 44/2001 of 22 December 2000 concerning jurisdiction, recognition and enforcement of judgments in civil and **commercial** matters ("Brussels 1"), Art. 2

xviii. Regulation (EC) No 864/2007 of European Parliament and Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II")

xix. See Regulation (EC) No 178/2002 of European Parliament and Council of 28 January 2002, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

xx. See, for example: the so-called "transparency" Directive 2004/109/EC, Article 2-1 f); the so-called "Conglomerates" Directive 2002/87/EC on the definition of a parent company and a subsidiary; the so-called "Solvability II" Directive, Article 13-1-i-15; 7th Directive 83/349/EEC etc.

xxii. In consumer matters, such a system already exists, but it remains unsuitable to the problems posed by corporate commitments included in their codes of conduct.

xxiii. A transnational dispute would, for example, involve a victim of a subsidiary located in a country different from that of the parent company. If the victim sues the parent company in a country different from that where the damage occurred, the dispute would be of an international nature.

xxiv. Regulation (EC) No 44/2001 of 22 December 2000 concerning jurisdiction, recognition and enforcement of judgments in civil and commercial matters ("Brussels 1"), Art. 2

xxv. Regulation (EC) No 864/2007 of European Parliament and Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), Article 7

xxvi. "Le non respect de l'obligation posée par l'article 116 de la loi NRE est clairement devenu sanctionnable : un autre point de vu", Association Sherpa, January 2008, www.asso-sherpa.org

xxvii. Directive 2003/51/EC of European Parliament and Council for the modernisation of accounting standards, dated 18 June 2003, article 1-14

xxviii. Directive 2006/46/EC of European Parliament and Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings

xxix. http://ec.europa.eu/internal_market/financial-conglomerates/docs/efcc_newsletter_sep2008.pdf