MINUTES

European Affairs Committee

Wednesday May 18 2016
9.30am

Minutes n^{o} 282

Inter-parliamentary meeting on corporate social responsibility

Chair :
Ms Danielle Auroi
Chair of Committee

European Affairs Committee

Wednesday May 18, 2016

Chaired by Ms Danielle Auroi, Chair of the Committee

The sitting was opened at 9.30am

Inter-parliamentary meeting on corporate social responsibility

Mr. Claude Bartolone, President of the French National Assembly. My fellow parliamentarians, ladies and gentlemen, I am delighted to welcome so many of you here today to the French National Assembly. The representatives of twenty-two chambers from eighteen states of the European Union as well as of the European Parliament have done us the honor of being present at this inter-parliamentary meeting. This is the fourth time since 2012 that the National Assembly has organized such a meeting and each time it has been upon the initiative of the European Affairs Committee. I would like to thank its Chair, Ms Danielle Auroi for this new demonstration of the concrete involvement of national parliaments in the European democratic debate. They are the relay of the sovereignty of our peoples.

As representatives of our sovereign peoples who, together, form the European people, it is indeed our duty, through our exchanges, our reports and our proposals, to participate actively in the European political space. This deepening of the notion of democracy is essential if we wish the Union to renew contact with its peoples. Faced with the European crises and at a moment when nationalism and extremism are increasing dangerously, it is more than ever necessary to rebuild the European political project in a way which is closer to the peoples' aspirations.

The two topics to be dealt with today are indeed those which worry European citizens whether they be workers or simple consumers. Both topics examine the question of corporate responsibility beyond national borders. In fact corporate social responsibility (CSR) is the great economic issue of our times. The time when liberalism was supposed to construct, at all costs, technical progress on the ruins of those whom it considered as archaic, old-fashioned and backward looking, has passed. Companies and the economy, we have too easily forgotten, are first of all made up of people, of human beings, of workers, of partners and of customers. We all belong to humanity.

Corporate social responsibility refers to the fact that with the globalization of supply chains, the activities of European companies must respect the principles upon which Europe was built; in the countries in which their subsidiaries, their sub-contractors or their suppliers operate, companies are ambassadors of the European dream. They must respect the human, social and environmental rights of the non-EU workers just as they do those of EU workers.

The member states of the Union were the first to attempt to encourage companies to act responsibly concerning their activities abroad. Among many national initiatives, allow me to cite the French Private Member's Bill concerning the "duty of vigilance" of parent

companies, which was passed on second reading March 23 last and is currently being considered by the Senate.

However national initiatives will not suffice alone – action on a European scale seems essential. Of course companies in certain sectors already follow European rules as regards CSR, but the question of a CSR which would be imposed on all companies must be asked so that the objective of competitiveness for European companies does not call into question the issue of sustainable development (social and environmental) which is also one of the aims of the Union. We shall not win if we go against our own principles.

The second topic on the agenda for today's meeting refers to exactly the same basic problem. The free movement of people, thus of workers, between the member states is, without doubt, one of the major steps forward due to European construction, but it is also an economic bonus for our companies! Everyone knows that the posting of workers can lead to abuses on the part of companies who take advantage of differences in social and tax laws between the member states in order to carry out "dumping" to the detriment of their competitors as well as to that of national workers.

We must therefore welcome the fact that the European Union has attempted, as of 1996, to provide a framework for the posting of workers by allowing them to take advantage of a basic number of the rights enforced in the host state, even if they remain the employees of the company which posts them and thus depend upon the legislation of their original member state. This framework is certainly not perfect, despite a first revision of the directive in 2014. The Commission itself agrees with this appraisal and proposed on March 8, 2016, a revision of the rules concerning the posting of workers within the European Union so as to adapt them to current needs. This initiative has just received, within the structure of the monitoring of subsidiarity, a "yellow card" from the parliaments of eleven member states of the Union, several of which are represented here today.

I personally hope that the legislative process does not become bogged down since, as far as we are concerned, we are very attached to the revision of this directive. It is clearly not a question of putting up barriers to the free circulation of workers, nor to free competition which are both pillars of European construction, but, on the contrary, of implementing the conditions so that these two freedoms may be carried out correctly which is not the case today. I wish that our meeting will allow each of us to express his/her positions and thus, to contribute to avoiding misgivings and misunderstandings.

You will have understood that these two topics refer to the necessity for a Europe which is not only economic but also social. Of course Europe must support the growth of companies but this must not be done to the detriment of social, human and environmental rights both inside and outside the European Union. It is the role of politics and politicians to recall this, to impose this and to rejoice in this. As we are in the "Salle Lamartine", I would like to quote this important Member of Parliament who was also a great poet: "He who can create despises destruction". How right he was! If politics can create rights then the reasonable man will no longer have to destroy his dreams.

This inter-parliamentary meeting is not only the concrete reflection of the involvement of national parliaments in European affairs but also a useful reminder of the positive aspects which we can all, citizens, member states and even other states, benefit from in a Europe which works well and which looks toward the future. Europe is neither a dream nor an institutional amalgam. It is a field for political action, a subject of power and a means

to improve people's lives. I shall never be satisfied if it cannot put into action such wonderful ideas.

I therefore wish that your debates on corporate social responsibility and on the posting of workers be fruitful and lead to the emergence of common positions which will, I am convinced of this, allow us to build a fairer world in the future as well as a world which is more egalitarian and which better respects the rights of peoples. (Applause).

First round table : Sharing views on the current situation in Europe regarding corporate social responsability

Chair Danielle Auroi. It is indeed for me both an honor and a true pleasure to welcome so many of you here in this symbolic room, named the "Salle Lamartine". Lamartine was, in fact, one of the precursors of the idea of Europe. Our first topic will deal with corporate responsibility and this responsibility is, at one and the same time, social and environmental. We shall discuss this subject in two phases – we shall first of all draw up an outline of what corporate responsibility means in Europe today and then we shall move onto the possible and desirable perspectives concerning the strengthening of CSR in European companies. Our second topic, this afternoon, will be focused on the posting of workers which also is closely linked to the responsibility of companies.

As regards the subject of CSR, our Committee would like to propose the notion of a "green card". This idea would allow parliamentarians to show their desire to be concretely involved in the drawing-up of European rules.

An effective and efficient social responsibility implies, in effect, the strengthening of the "duty of vigilance" for European companies throughout the entire value chain. The supply chains have now become globalized and European companies now have subsidiaries and use sub-contractors and suppliers throughout the world. The globalization of trade has an obvious economic interest, but multi-nationals can no longer just think about profit without taking into account the human, social and environmental consequences of their activities which can be tragic. The Rana Plaza collapse, which led to 1,127 deaths in 2013, reminds us of this every day and unfortunately is but one example among many others. Three years later, it is clear that good will is not enough. However, current European law considers that a CSR mainly based on the good will of companies and their professional federations is sufficient. Some parties have played the game by setting up their own structures to prevent the damage which could occur in developing countries but, unfortunately, they do not represent the majority. It must be stated that the general good implies the need to monitor the efficiency of measures which commit us and commit the European Union concerning its values and its reputation.

Thankfully, European law already makes provision for certain binding rules concerning the notion of "duty of vigilance" in several high-risk sectors , such as the diamond or timber industries and perhaps soon in the area of "conflict minerals". As regards the only rule which is applied to all companies, whatever their sector of activity, its scope does not go beyond the simple obligation for information which comes from Directive 2014/95 of October 22, 2014. Despite the progress which it represents concerning the field of transparency, this obligation only concerns a limited number of companies and imposes nothing more on them than an obligation to provide information and not any responsibility

whatsoever concerning their subsidiaries and in fact even less concerning their sub-contractors and their suppliers. Good practices are not enough in themselves to right or to prevent dramatic problems.

You will have understood, this "duty of vigilance" which has its origin in the general guidelines of the United Nations and of the OECD, needs, at a European level, to be more fully developed. Fortunately, it is more clearly set out in certain member states such as the United Kingdom and Denmark. France also is involved in this development since a Private Member's Bill concerning the "duty of vigilance" for parent firms and company HQs is in the process of being passed. We are delighted to wish that this procedure be adopted on a European level by the means of the drawing-up, as quickly as possible, of a directive.

These initiatives must be welcomed as they contribute to advancing the issue of a CSR at a European level: our national experiences should be a source of inspiration and represent a call to act together.

To begin our exchanges which I am sure will be very fruitful, I would like to give the floor to two speakers, Mr. Pedro Ortún Silván and then Mr. Pascal Durand.

Mr. Pedro Ortún Silván, special advisor to the European Commission's DG Enterprise on issues concerning corporate social responsibility.

. Please allow me, first of all, to give a brief overview of the CSR process as it takes place at the Commission and in all of the European Union and to recall the main stages before dealing with the perspectives envisaged by the Commission.

Everything really began in October 2011 with the adoption, at the outcome of a long consultation process with all the stakeholders (member states, companies, non-governmental organizations, trade unions), of the Commission's strategy on CSR. This sets down the basic principles and a new definition of CSR and includes an action plan for the period 2011-2015. Since then several positive political developments have taken place: the conclusions of last June's G7 and then the adoption in September of sustainable development objectives, as well as the agreement reached at the end of the COP21 in December. The Dutch presidency of the Union provided a new impetus to the process and this made progress in particular following on from the tragedies of Rana Plaza in Bangladesh or the scandals affecting large companies, including European firms.

We have just completed the assessment process of the implementation of the Commission's strategy on CSR. The definition, the approach and the principles adopted in 2011 still remain the same today i.e. the setting-down of values shared by companies but also for the companies in which they have been established, the implementation of internal processes which involve all their partners so as to include the social, environmental and ethical dimensions for the respect of human rights in their main strategies to arrive at an intelligent combination (a "smart mixture") of the measures which companies can take of their own accord and, if necessary, of legislative strategies. The idea is to encourage this process,s so as to reach, as soon as possible, a common objective which is shared by all the public and private actors and which the biggest possible number of European companies can embrace so as to fully implement the principles of CSR in their overall strategies and so that they can take the necessary measures for the prevention and mitigation of social, environmental and ethical risks.

The aforementioned assessment produced the following results which are shared by the majority of European stakeholders: significant progress has been made but the implementation of a strategy has been complex and often slow and the results remain insufficient. Only around twenty member states have adopted action plans as regards CSR and of them, only seven have also adopted action plans seeking to draw up a national strategy concerning the respect of human rights. Seven other states are currently working on such a strategy. In other words, more than half of the member states have not yet undertaken the adoption of such plans. In addition, although a growing number of European companies act in compliance with the Commission's strategy on CSR, they are still only a few hundred in number, perhaps a thousand at the most, even though there are currently in Europe, more than 10,000 companies employing more than 1,000 people and around 15,000 employing more than 500. In short, there is a long way to go still.

As for the Commission, it has taken most of the initiatives which it provided for in its 2011 strategy, including several legislative initiatives such as the revision of the "Public Procurement" directive which was designed so that member states could integrate environmental and social criteria in their public procurement procedures.

Other projects have been added to the directive on the reporting of non-financial subjects, such as a directive concerning shareholder rights and a regulation dealing with minerals originating in conflict zones. The latter have already reached the final stages of tri-partite discussion. Equally, last January, the Commission adopted a package regarding fiscal transparency and will soon propose a directive imposing, country by country, fiscal transparency rules for companies. In addition, such measures are also accompanied by a series of associated flanking measures.

With such a mixed record, we have drawn up a list of several measures for which it is necessary to go further or for which it is essential to accelerate the implementation process, as well as of new avenues for reflection which must be pursued. Once more, the objective is to involve as many companies as possible in the CSR process. Responsibility does not fall solely on the shoulders of public authorities but on those of all the actors concerned, including the companies which are leaders in their sector. The impetus must come from the highest level both for the public authorities and for the companies.

We are therefore preparing an updated action plan which will be ready before the end of the year as the Council has set down. Our action will be, in particular, in the following areas. We must, first of all, consolidate and accelerate the implementation of legislative measures which have already been passed. The directive on the reporting of non-financial subjects, for example, was adopted almost one and a half years ago with a two-year transposition time limit. However, very few member states have transposed it into their law although there remains only six months to do so. The Commission is currently drawing up a guide to help with this transposition. In addition, measures will be taken to strengthen the possibility for member states, companies, as well as national professional and sectoral organizations to do so, since out of 6,000 large companies concerned by the directive, around 4,000 have not yet begun the process.

After that, it is necessary to ensure the transposition of the revised "Public Procurement" Directive which has been carried by no more than seven member states whilst the deadline for transposition was set for last April. Thus, there is still much to be done in order to transpose and especially integrate these new provisions in the process concerning public procurement, service supplies and investment.

It will also be necessary to finalize, along with the member states, the adoption of the directive on shareholder rights and the regulation concerning minerals coming from conflict zones. The adoption of the package concerning fiscal transparency, even if it goes in the same direction, risks being more complicated. On top of this, we must encourage the member states which have not already done so, to adopt the action plans concerning CSR and to respect human rights, by fostering initiatives associating various stakeholders from the public and private sectors. This must be done at a sectoral level which is less difficult.

Beyond these different measures, we must kindle a greater request for such measures requiring responsibility, in particular, and first of all, with investors. Only 10-15% of all available capital in the world is invested in sustainable and responsible projects. This is far too little. All investors must include the criteria of social, environmental and ethical sustainability in their participation strategies concerning loans and guarantees. After that it will be necessary to make an effort with consumers: citizens must be better informed regarding the same criteria so that they can use them in their choices concerning purchases and investment.

Lastly, it is necessary to strengthen the framework for international coordination with the OECD, the International Labor Organization (ILO) and the UN, to make sure that such European initiatives have repercussions elsewhere, in particular in developing countries.

There is indeed a political momentum, however, substantial hurdles (the refugee issue, the question of terrorism and security, the economic crisis) could represent a barrier to the CSR process. If political and company leaders provide a real impetus, I nonetheless feel that we can continue along this road, as one thing is sure: a company cannot, in the medium and long term, be competitive unless it adopts ethical and sustainable practices both within its own structure and throughout its supply chain.

Chair Danielle Auroi. Should not the fact that the transposition of voluntary measures is subject to such delays not incite us to adopt binding measures?

Mr. Pascal Durand, member of the Committee on the Internal Market and Consumer Protection of the European Parliament. The main question deeply touches upon the human and societal model which we seek, based upon a balance between the requirements of the economy and of production, on the one hand, and on the other hand, upon the respect of the rights of citizens, wherever they were born, especially if they do not have the possibility of choosing their working conditions which is clearly the case in many countries where European companies do business.

You are right, Mme. Chair, to ask the question concerning binding rules, hard law, and non-binding rules, soft law. I have often heard the leitmotiv of the necessity to adopt good practices and to dialogue with the stakeholders being dragged up, but, strangely, “soft law” is no longer the issue when we have to regulate to defend investors or companies, such as in the case of protecting business confidentiality, for example. On the contrary, the rules adopted in this field are as binding as they can be and often follow an accelerated procedure, as we have just seen as regards the directive on business confidentiality. However, in the area of environmental and social responsibility, the rights of workers living in far-off countries, the confiscation of land or deforestation, it appears better to make do with good practices so as not to harm the correct functioning of the economy.

This is precisely where the problem lies. CSR is not a priority in current European law – not for the Council, nor for the Commission, nor for the Parliament. I have very deep-seated difficulties with the opposition which is created between the question of human rights and that of the competitiveness of European companies. Rules and regulations, we are told, will be harmful to the ability of European companies to function everywhere in the world. In fact, exactly the opposite is true! Europe cannot become grander unless it applies, to all of the elements in its value chain, the rules which it applies to itself: this is the definition of human rights. This is how Europe can play a major role in the world: by guaranteeing that all the rules which it applies in the European Union are also applied elsewhere. It is also in guaranteeing that the courts, since Europe is lucky enough to have an independent and competent justice system, recognize possible violations of human, social and environmental rights, so that European companies are answerable for the behavior of their subsidiaries. Everyone knows that the main contractor is the instructing party and as such it must be accountable, as is illustrated by the recent rules adopted in French law concerning the parent companies which go from the contractor through the various levels of sub-contractors.

In reality, in Europe, there is no overall rule in this field. Certain particular sectors are definitely regulated, like that of conflict minerals. Nonetheless, it is very difficult to construct a comprehensive vision, even if some areas are submitted without doubt to the principle of subsidiarity. At this stage, for example, the directive on shareholder rights, which is being drawn up by the Council, Commission and Parliament trio, includes nothing substantial on these questions and I regret this. Of course the Accounting Directive exists, as well as the United Nations principles. However, Europe does not exactly shine by the efficacy of its participation in such debates as it placed preliminary conditions, one of which was that the principles should apply to all companies and not only to the biggest ones which is tantamount to blocking the process as everyone knows that small companies do not have the necessary capacity to avail of information.

The green card to which you alluded, Mme. Chair, is an excellent initiative. Beyond that, Europe is expecting France to develop its legislation in the field of CSR towards which all actors have now turned their gaze. Alas, this bill is not under discussion at the Senate, as President Bartolone told us, for it is not yet on the agenda. European parliamentarians and the other stakeholders would like the Senate to include it on its order paper very quickly, as it is now essential for certain countries to take initiatives in this area and for Europe to follow the example provided. We must, in this room, la Salle Lamartine, dare to call for a “beacon of thought”. Let us remind Europe that for certain questions, binding law, which is, in fact, simply the law, can have an effectiveness which non-binding rules do not have since their implementation depends on the good will of companies which are more virtuous than others. We cannot go on like this. In the field of CSR, Europe is very late. That is why we expect much from the French legislation which is both intelligent and balanced.

Chair Danielle Auroi. Thank you very much for this insightful speech. The debate is now open.

Mr. Lucio Romano, member of the European Policies Committee of the Italian Senate (*interpretation from Italian*). Corporate social responsibility and the respect of human rights are fundamental questions : the subject is about respecting rights which have been neglected for a long time on account of the budget crisis and of fiscal consolidation policies. Let us remind ourselves of article 3 of the Treaty on the European Union which states that the development of Europe is based on a social market economy aiming at social

progress. Similarly, article 41 of the Italian Constitution stipulates that private, economic initiative is open but that it may not operate in opposition to social benefit nor may it infringe human dignity.

The European social model is thus based on two pillars: the freedom of enterprise but also the respect for and the protection of the weakest. It is in order to defend these values that the Committee for European Affairs of the Italian Senate supports the proposal of Ms Auroi to put forward a "green card" concerning corporate social responsibility. We have always approved of measures aimed at encouraging responsibility in companies in the social field. In December 2014, the Italian Senate already declared itself favorable to a regulation bill seeking to authorize self-certification for socially responsible companies. Our intention was to gradually transform a voluntary system into a binding system. The European Parliament agrees that obligatory certification is necessary and it is by widening its field of application that such a proposal could be founded on a more solid base.

There is another important question: the application of the directive on the reporting of non-financial information which obliges companies to draw up an account, in their annual reports, on their action in the social and environmental field and in the area of human rights as well as on the measures taken to fight against both active and passive corruption. The deadline for the transposition of this directive shall be reached next December. It will provide an opportunity to assess the implementation in companies of questions of social responsibility and also to look at the concrete realization of our commitment to improving the regulations in order to give substance to the objectives laid down in article 3 of the European Treaty. We must, of course, strengthen the competitiveness of the European Union on the world stage but, at the same time, we must not turn our backs on our social and environmental laws. From this point of view, the Italian Senate and its President pledge all their support for the process concerning social and environmental responsibility.

Mr. Antonio Costa Silva, member of the Committee for the Economy, Innovation and Public Works at the Assembly of the Republic of Portugal (*interpretation from English*). The importance of the question of CSR deserves an intense debate. The proposal of a "green card" which Mme. Chair formulated at the informal meeting of the working group of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) is relevant. In order to develop the European model, we must draw up a European norm for sustainable development which is based on the essential principles of the Charter of Fundamental Rights of the European Union. The development of Europe both in terms of economy, competitiveness and productivity but also of social and environmental policies, is an objective which unites us all beyond economic and social interests. CSR can contribute to promoting the European social model which offers all its member states, and in particular Portugal, the possibility of participating in the European integration process. As this is a worldwide issue, it is necessary to include all of the European stakeholders – entrepreneurs, shareholders, company heads, employees, local associations, public authorities, trade unions, professional bodies, non-governmental organizations, consumers and all citizens – in the debate and in the process of recognition of CSR as well as in the drawing-up of strategies aimed at providing it with substance. Such a debate must reach a conclusion with the adoption of legislation whose objective is to guarantee CSR in Europe and even above and beyond companies, as well as throughout the whole production chain.

Mr. Fred Teeven, member of the Economic Affairs Committee of the Second Chamber of the States General of the Netherlands (*interpretation from English*). The

Committee for External Trade, Cooperation and Development of the Lower Chamber of the Parliament of the Netherlands has decided to support the proposal for a green card put forward by the French National Assembly, which I thank for having organized this meeting, given how important it is that we adopt new practices, so as to learn from each other.

I would like, nonetheless, to react in a very clear fashion to Mr. Durand's speech. We often hear about the idea of adopting rules concerning the "duty of vigilance" for example. Regulation can be useful and governments should not fear using it. However, we believe that it should be an option only when necessary. So that practices may permeate all stages of the value chain, let us avoid passing laws too quickly. The Netherlands, just like Germany, provides numerous examples of the fact that social dialogue, when it is non-binding can open up a promising path. I believe in the potential of voluntary cooperation between stakeholders. This is why we prefer voluntary agreements which are the result of a debate between the parties which together commit themselves to progress. If such agreements work, it is because all the stakeholders involved take on, of their own free will, the responsibility for their implementation. They also share the risks and are accountable to each other for their actions. Put simply, non-binding measures appear to me to be more efficient than adopting premature laws.

Mr. Richard Howitt, member of the Committee on Employment and Social Affairs of the European Parliament (*interpretation from English*). First of all, I would like to thank our French colleagues, not only for having organized this meeting, but also for the impetus which they provide in the field of CSR. The debate on the opposition between binding law and non-binding rules is primordial. I was *rapporteur* at the European Parliament on corporate social responsibility. We convinced the Commission to change the definition in order to reach an intelligent combination of binding measures and of voluntary measures rather than to solely advantage one or the other, which would lead us to failure.

It is true that the current Commission has not made CSR one of its priorities but Mr. Ortún Silván and his colleagues possess vast expertise on these questions and Commissioner Elżbieta Bieńkowska has committed herself to a new plan of action which must be materialized. Whilst we wait for that, let us agree that the movement has begun.

The directive on the reporting of non-financial information is a major initiative which has arrived at a crucial moment. It is not only a question of transposing simple technical measures. Companies must embrace this measure to encourage sustainable development and the respect of human rights.

As regards minerals coming from conflict zones, for example, Europe has only followed in the footsteps of the United States and the Commission has only just adopted a flagship initiative (but is it really?) in the textile sector. When we take measures on a European scale, they must be at the forefront of the practices carried out in the rest of the world and not simply exist to show that we are acting.

Parliaments are involved in the implementation of the United Nations guidelines on companies and on human rights but it must be said that half of the EU states do not yet possess action plans – a mechanism which, nonetheless, Europe was the first to invent. Our Dutch colleagues last week carried out a huge peer examination exercise, but we must put more pressure on member states so that they honor their commitments. In the same vein, I totally support the French initiative concerning the "duty of vigilance" but it must be implemented along with the European action plans.

The development of mechanisms to allow victims to have access to legal action has been a complete failure. The proposal for a revision to the "Brussels I" agreement which was suggested by the Commission, allowing victims to obtain damages, was rejected. In addition, the European Union adopted an empty chair policy during the meeting of the inter-governmental working group of the Council for Human Rights of the UN which dealt with a binding treaty concerning companies and human rights – what a shame. We may not approve of everything that is said but we can, at least, attend the meetings.

We feel we must support the conclusions of our Dutch colleagues concerning world supply chains but we must, at the same time, be vigilant that they imply real progress with being limited to repeating what we know already.

On a European scale, we can do a lot more by using external mechanisms such as the OECD guidelines. Let us not be content with mentioning CSR and human rights in the trade agreements which we sign with other countries – let us add real monitoring mechanisms.

Finally, we must continue to seek the involvement of the trade unions in the drawing-up of laws and agreements in the field of labor law and Europe must give its support to the agenda of the ILO for the notion of decent work. We must also be involved in world mechanisms in the field of CSR, whether it be the Companies and Human Rights Committee of the World Economic Forum or the Sustainable Development Goal 12.2. Let us contribute to such processes rather than operating in a vacuum.

Ms Marina Berlinghieri, member of the European Union Policy Committee of the Italian Chamber of Deputies (*interpretation from Italian*). Meetings such as today's are essential for the correct functioning of Europe. CSR is a key element in the lasting reestablishment of the confidence of European citizens and consumers. We must, indeed, contribute to a strategy which aims at the development of CSR so as to better respect human rights, social and environmental norms and labor law.

These norms should be included in the European treaties and in international conventions so as to assist the development of a competitive market which is not based on social dumping practices but on the economic actors who respect the values of the European Union, i.e. human rights, social legislation and the protection of the environment.

To reach this solution, we must strengthen the monitoring mechanisms. It is only by operating together that we can exercise the "duty of vigilance" and the respect of common norms, so as to continue the process of European integration which, let us remember, was born from the desire to create a common European social framework. The construction of a social Europe can only be achieved at a supranational level and not by each state acting in isolation. The more such a process is shared by the member states, the stronger Europe will be on the international stage. We must meet the great challenges of globalization which are: the movement of human beings, of capital and of work. From this point of view, Europe must encourage international reflection, especially during the World Summit which will take place next June. The Italian Parliament and Government, in their capacity, have spared no effort in quickly transposing the directive on CSR with the active involvement of companies.

Mr. Joël Labbé, member of the Economic Affairs Committee of the French Senate. Confronted with the antagonism between business on the one hand and the defense of fundamental rights on the other, what role should the political leaders that we are, play? Mr.

Durand was in favor of the adoption of binding rules and I believe that we have, indeed, the responsibility to follow this path. Of course, voluntary dialogue with all the stakeholders is essential but there comes a time when binding measures are necessary.

In France, the ball is in the court of the Senate, which must include in its agenda the bill on CSR and must rework it in political terms. During the first reading, I was a witness to the role played by the French Association for Private Companies (AFEP) whose equivalent exists in all European countries. Even though it is necessary to hear such actors, let us remember that it is not up to them to take political decisions – that is our job.

As regards the issue of the confiscation of land brought up by Pascal Durand, the situation, up to now, was already scandalous in Africa and in Asia. Today, Europe itself and in particular, France, is affected by a movement which will continue to grow as we do not have the necessary legal instruments to deal with it and as European legislation stops us from obtaining them. This is a question of the food sovereignty of France and of Europe but also of the defense of the public good which is represented by the agricultural land of Mother Earth.

Finally, what exactly do you mean, Mr. Ortún Silván, when you talk about the complexity of the implementation of measures concerning fiscal transparency? Of course, the task is difficult, but this goal must be reached without fail!

Ms Ulrike Hiller, Deputy Chair of the Committee on European Union Questions at the Bundesrat (*interpretation from German*). In Germany, we also envisage all the voluntary measures taken to respect human rights, to encourage decent work and to improve the respect of environmental rights especially considering the issue of refugees. This is why the debate on the responsibility of large multi-national firms is absolutely essential.

Of course, the old question on whether we should content ourselves with non-binding measures or whether it is necessary to adopt binding rules is still relevant today. According to our Dutch colleague, it is still not easy to adopt binding rules which have the support of companies. Indeed, how can we guarantee the support of the largest possible number of firms whilst making provision for efficient monitoring mechanisms?

From this point of view, the European Commission, upon the initiative of Ms Malmström has provided an in-depth study on the functioning of public procurement and also on the trade strategies used. In Germany, in Bremen in particular, we strive to make public procurement respect the social and environmental norms of the ILO which are indeed integrated into our legislation.

So that the initiatives taken in the field of CSR may have the widest possible impact, they must involve as many citizens, non-governmental organizations and faith groups as possible. It is for this reason that we are working with the Commission to draw up a reward and recognition mechanism for local authorities which specifically commit to fair trade, human rights and the protection of the environment.

Finally, France's proposal concerning the green card is very positive, even if we have not yet discussed it in Germany.

Mr. Finn Sørensen, member of the European Affairs Committee of the Danish Parliament (*interpretation from English*). The Danish Parliament has not yet had the

opportunity to discuss in detail the issue of CSR, so I shall present to you the point of view of my own party, the Red-Green Alliance. The bill currently before the French Parliament seems particularly interesting to us and we would certainly like to know more about it.

Similarly; the proposal for a "green card" seems very relevant to me. European law authorizes us to impose strict obligations on the big multi-national companies in the field of CSR concerning the "duty of vigilance" and responsibility. Alas, many countries (including my own) are late. From this point of view, we are in favor of the modification of European law so as to impose CSR rules on big companies.

As for the possibility that this conference leads to a statement, we would propose that such a statement make explicit reference to the rights of workers as is laid down in the core conventions of the ILO.

Mr. Gilles Savary, member of the Committee for Sustainable and Territorial Development of the French National Assembly. The debate on the respective merits of voluntary merits and binding laws is an old one within the European Parliament where I sat for around ten years. Competition is healthy when it is accompanied by an improvement in the quality of services and products and when it stimulates innovation. It becomes extremely unhealthy when it is based only on the exploitation of workers and on the emergence of a low-cost labor market from which one cannot envisage taking advantage without giving anything back. In addition, tragedies such as that at Rana Plaza give rise to negative images of the economic positions of western countries. It is for this reason that, even if we adopt better ethical resolutions, no one will be able to resist price competition and this will lead to the exploitation of workers in other ways which Europe has attempted to extinguish but which thrive, elsewhere, upon poverty, upon gaps in the standard of living and of salaries and upon the absence of labor law. In such cases, we are far from the virtues of competition and the foundations of the European project – a humanist project since Europe assumes its responsibilities in this field – but also from the rules of fair competition on which our internal market is based.

In such conditions, I would doubt that voluntary agreements produce results and lead to a framework which would allow us to impose our values. On the issue of diesel, for example, I heard, for a long time, at the European Parliament that voluntary agreements would suffice. In reality, they sufficed to produce a generalized lie from all the companies, linked in a cartel, by comparison with the objectives of the Union.

Far from being an ardent advocate of the class struggle, I have often been accused of "social-liberalism", but I believe that we must remain realistic and not lie to ourselves: Europe would do well to take a legislative initiative.

Lord Cromwell, member of the Sub-commission on European Justice of the House of Lords of the United Kingdom (*interpretation from English*). Could Mr. Ortún Silván clarify for us what are the new elements in the updated action plan which the Commission will publish before the end of the year ? In addition, what reply can we expect from the Commission, following the proposal of a "green card" which we officially support?

Chair Danielle Auroi. We are all in agreement on principles and on the necessary respect for social and environmental rights both within the European Union and beyond. However, the method to be used, voluntary agreements or binding law, is genuinely debatable.

Let's take for example the Michelin Company whose headquarters is in my town and which is one of the firms which asked the European Commission to draw up the directive on business confidentiality, which the Commission did very quickly. This very same company has a factory in Tamil Nadu, in the south of India, where the authorities have destroyed a primary forest and drained three lakes leading to a major environmental catastrophe. The Michelin Company, naturally, claims to have no responsibility over the local public authorities, even if it was perfectly aware of these measures and of the expropriations which resulted from them. Certainly, it has changed the tenure of its discourse since, but it continues to claim it has no responsibility.

Mr. Ortún Silván explained the progress which we still have to make within the European Union. Can the Commission launch work on a new directive which the European Parliament and the national parliaments can defend by means of this "green card"?

Mr. Pedro Ortún Silván. We are fully involved Mr. Romano, in favour of the speedy implementation of the directive on the reporting of financial information, but understand that the ball is now in the court of the member states, which must transpose it within the time limits. Following on from a public consultation which finished a month ago, the Commission is preparing a guide for implementation but it is also up to member states to make companies which have not yet modified their internal processes, aware of this. If it is correctly applied in the six thousand target companies, this directive will provide a new impetus to the CSR process, since it not only provides that these companies produce a report but also, and especially, that in doing so, they will adopt an internal process in the field of vigilance and the identification of risks, as well as measures aimed at reducing them and will do this with the help of shareholders, trade unions and the populations effected by their activities. This would be a great step forward towards the adoption of other measures concerning the "duty of vigilance", such as those mentioned in the law recently passed in France, which deal with very large companies. The priority for all public and private actors is thus to apply this directive as quickly as possible and to do so efficiently, as it will have an impact on the processes in force, not only in the companies concerned, but also in all the firms involved in their supply chains, including SMEs.

Mr. Labbé, European fiscal policy has always been very complex. It is, to a certain extent, submitted to the unanimous agreement of the Council. We can hope that the adoption of the latest directive concerning the reporting of information, country by country, will be less difficult, but there must, nonetheless, be a sufficient number of member states willing to implement it as soon as possible – from this point of view Commissioners Moscovici and Hill have already obtained several commitments.

Lord Cromwell, as regards the updated action plan, there is still a long way to go. We shall begin by facilitating the implementation of the whole legislative package which has been provided for. Either it will have been adopted by the Commission, the Council and the Parliament or it will still be in the process of being discussed by the three or at the beginning of its examination by the Parliament and this concerns the fiscal package in particular. After that, we could envisage other voluntary measures and if necessary, Mr. Teeven, measures of a regulatory nature. The debate concerning the impact of measures to be taken to allow victims whose rights have been infringed, to obtain compensation is very much open within the Commission and the member states whose positions are still quite divergent. Several existing instruments, such as the national contact points for the guidelines of the OECD for multi-national companies, should, if their means and powers are strengthened, play an increasing role and be open to claimants. However, their functioning, which is still very uneven, greatly

depends upon the resources allocated to them, without speaking of the member states which do not yet possess this instrument.

Overall, the updated action plan will consist in strengthening the implementation of the current mechanisms whilst working on avenues for reflection concerning possible non-binding measures – we shall support, for example, the signing of public-private partnerships in the area of the responsible management of supply chains in developing countries. In addition, several sectoral measures have already been taken in the pharmaceutical, textile, palm oil and mineral sectors.

I would like to conclude by mentioning the measures aimed at promoting the request for responsible practices. Investors, from this point of view, must play their role better. Public authorities must include, as quickly as possible, environmental and social clauses in their procedures for public procurement. Let us remember that the directive concerning public procurement has not yet been transposed in more than twenty member states! Let us thus begin by implementing the provisions which have already been adopted, before thinking about adopting supplementary measures such as the one I have just mentioned, even if the issue of extra-territoriality and the revision of the "Brussels I" and the "Rome II" rules, is hugely complicated from a legal point of view, and even if consensus does not yet exist between member states, despite the pressure applied by the Parliament.

Mr. Heinz-Joachim Barchmann, Deputy Chair of the European Affairs Committee at the Bundestag (*interpretation from German*). It goes without saying Mr. Teeven, that it is essential to take voluntary measures based on free will. Nonetheless, the current debate demonstrates that that is not enough and that, at the same time, we must promote a legal initiative. It is true that in the Bundestag, for example, where we worked in-depth on the issue of conflict minerals, the committee which I represent, has a position which is quite different from that of the Economic Affairs Committee. This is the proof that it is very difficult to obtain consensus on these subjects. We must, nevertheless advance despite the obstacles. Another major problem is the monitoring of the implementation of these rules for which we must foresee the necessary means.

After the Rana Plaza catastrophe, Germany proposed to Europe to take a worldwide (and not only European) initiative in the field of decent work so that the issues of social dumping, in particular, have no greater importance than they have now and that working conditions improve throughout the supply chain.

Mr. Pascal Durand. It goes without saying that we shall not resolve the debate between binding law and voluntary agreements with a simple binary formula: the stakeholders must, naturally, dialogue, whilst taking into account the circumstances. I would, nonetheless, wish that we consider that the respect of human rights and of the environment is just as important as business confidentiality, for example. We must, in fact, find the right balance which allows us to preserve our social and environmental model and to extend it to the rest of the world, as human rights are universal. One can criticize this model but, in accepting it, we must not accept to differentiate between the human beings to whom it applies. Since we make laws in certain areas, it seems to me essential that we make laws also in others which are even more important.

Mr. Ortún Silván, you correctly mention the progress made concerning the reporting of information country by country. Having said that, the Parliament adopted a position in July on the directive concerning shareholder rights in which it included the obligation of reporting. This was met by general indifference. Upon hearing of my astonishment, Mr. Sapin, the French Minster of Finances, explained to me that the competitiveness of European companies precluded going beyond such an obligation of reporting. Then the scandals of Luxleaks and of the Panama Papers occurred and, as if by magic, the Commission examined this question and now defends a proposal, to its honour, even it only repeats the provisions already adopted by the Parliament. All this, I repeat, being met by general indifference. Why is it possible to modify norms following a scandal when it was not before, in the name of the respect of competition seen as healthy when yet in any case it is possible? I am surprised that, under pressure, it is sometimes considered necessary to pass laws but that, without pressure, such laws are considered superfluous!

Chair Danielle Auroi. To sum up this first round table, I would like to begin by thanking Mr. Ortún Silván for showing us that we would progress better if the states implemented the measures which have already been passed and for inviting us, in order to do so, to alert our respective executives.

In addition, he emphasized what can be done for the compensation of victims. Indeed, the victims of the collapse of Rana Plaza and their families have not yet been recognized! In France, certain associations, such as Sherpa, have brought cases to defend these victims, but these have been disallowed on account of the lack of legal rules. Clearly, as our colleague Barchmann stated, there is no recognition of victims without a binding law which is the only way, in certain countries, to put an end to the condition (shocking as it may be for our environmental and social principles) of those who are the real “damned of the earth”.

The instrument of the National Contact Point (NCP), when it exists, is useful but insufficient: in the case of Rana Plaza, once more, the network of NCPs did its job but did not manage to gain the recognition of the victims.

Since we agree on the same principles and since we also are in agreement to continue our reflection, even if it goes faster in certain areas such as business confidentiality, we may, by proposing this green card, incite the Commission to draw up a project which would be a first step to fully including CSR in the arsenal of legal tools with which Europe needs to arm itself. Other countries, e.g. the United States or Canada, have an ethical behaviour which is much more rigorous in the field of CSR. Let us be coherent and let us act together because it is together that we can be effective. Europe could thus show its forward-looking mentality in the area of social and environmental rights.

The sitting is adjourned from 11.05am to 11.30am.

Second round table: What perspectives? The necessary strengthening of corporate social responsibility including the duty of vigilance for multi-nationals

Chair Danielle Auroi. This second round table will be introduced by Mr. Cees Van Dam, Professor at King's College, London, at the School of Management of Rotterdam and at the Erasmus University who will give us a legal perspective and by Mr. Dominique Potier, French MP, *rapporteur* of the French bill concerning the duty of vigilance of parent and contracting companies.

Mr. Cees Van Dam, Professor at King's College, London (*interpretation from English*). I would like to set out the legal options open to those who wish to regulate corporate social responsibility. There are three instruments: the main guidelines of the United Nations concerning companies and human rights; administrative law and in particular competition law and the law concerning civil responsibility. The main guidelines of the United Nations may be applied on a voluntary basis but are not legally binding; administrative law is implemented by a public regulatory body; the law concerning civil responsibility is triggered by victims, either individually or else through a group action, in an attempt to obtain compensation.

Neither the main guidelines of the United Nations nor administrative law include a right to remedy and reparation for the victims, as they may only be compensated within the framework of civil responsibility. The main guidelines of the United Nations do not include criminal sanctions for the companies accused of being negligent. In the framework of administrative law, a fine may be imposed upon the company which is judged to be in the wrong as regards competition law. Finally, compensation is due to the victims within the framework of civil responsibility but, in practice, it is very complicated for them to obtain it – the situation is completely unsatisfactory.

What then is the solution to be found in order to make the duty of vigilance obligatory, and as easy as possible, so as to force companies to take human rights into account? I eliminate criminal law, for although such law exists on a national scale, as we have seen in the United Kingdom with the adoption of a law concerning modern slavery, it does not exist on a European level. Obligation may be imposed by national public authorities, and we shall listen, with interest, to the presentation which will be given to us on the French bill. In this case, when negligence has been proven, the penalty imposed on the particular company is generally a fine which can be of several million Euros for infringement of the regulation of the market. For example, a company which employs children, is considered guilty of distortion of competition as the other companies in the sector do not act in a similar fashion.

It is possible to attempt to explain to companies that if they respect the main guidelines of the United Nations, then they will benefit from this behaviour. Many studies have proved this. However, it would also be necessary, of course, to have a body in charge of the application of the regulations. This could, but not necessarily must, be the European Commission.

The perspective is not the same if one looks at negligence from the point of view of administrative law, which obliges the company not to distort competition, or of civil responsibility which obliges the compensation of the victims. This possibility is open to aggrieved persons in many countries but it does not necessarily have any value in countries where common law is applied; the provision is therefore not necessarily applicable in all places within the European Union.

Suffice it to say, that if we wish to make the duty of vigilance for companies binding, it would be better, in my opinion, to privilege administrative law considering that it is a question linked to the operation of the market, rather than applying civil responsibility.

Indeed in the law pertaining to civil responsibility we come up against several obstacles. The first is linked to extra-territoriality. Can one regulate outside one's borders? The question has for a long time fired up debates between lawyers, but this is no longer the case. One may regulate the market as long as one is interested in the activities of European parent companies or of contracting companies which buy goods by means of a supply chain. For the rest, the European Union can, clearly, not impose its legislation beyond its borders.

The second obstacle is the application of the law. In conformity with "Rome II", this should be carried out by the home country of the victim, i.e. if a Nigerian victim brings an action against a parent company whose headquarters is in the Netherlands, then Nigerian law will be applied. That is to say that even if the European legislator imposes obligations within the framework of civil responsibility on companies whose headquarters are situated in the European Union, they will not systematically be applied in the case where the aggrieved persons are not citizens of the Union. Exceptions to this principle have been foreseen but differences in interpretation do not allow us to know precisely if they have value in such cases. So, if the European legislator wishes to follow the path of binding regulation through civil responsibility law, he/she would have to modify or amend the regulation "Rome II" to strengthen the rights of victims concerning compensation.

From a general point of view, the reversal of the burden of truth would mean starting from the principle that a company has caused harm to victims unless it could prove the opposite and show that it has respected its duty of vigilance and taken the necessary precautions. The Swiss proposal contains such a suggestion but it quite seriously bends civil responsibility law which means that it doesn't look very realistic.

I would suggest beginning to act through administrative law and then, after that, moving onto what could be done through civil responsibility law in the majority of jurisdictions.

I would add that requests for reparation on the basis of civil responsibility law can be counter-productive in cases calling the supply line into question. If one attempts, using this road, to get a conviction against a company because certain of its suppliers, in a given country, employ children, this could mean that the company withdraws from the country and this would not at all help the families and the children who are forced to work.

In other words, civil responsibility law is, in this case, an instrument with a limited impact which does not always guarantee the victims the right to be compensated. Using the road of administrative law could help incite companies to clean up their supply chains in a more flexible way.

Chair Danielle Auroi. Thank you very much. This illuminating analysis should incite us to use the road of administrative law but as such law varies according to the member countries of the Union, it will be the source of debate for quite some time yet. How can we take a first step to move towards a European law? This is what our colleague Dominique Potier MP will tell us. The principles which underpin the French bill, which several of us here have supported, are taken up in the proposal for a green card which you have heard about this morning.

.

Mr. Dominique Potier, member of the Economic Affairs Committee of the French National Assembly. The idea of the green card is a great democratic innovation and I welcome the organization of this inter-parliamentary meeting which brings us together for the right reason, which is the inclusion in law of the duty of vigilance for parent companies and contracting companies concerning their subsidiaries, their sub-contractors and their suppliers. That is the aim of the French Private Member's Bill which you have supported from the beginning, Mme. Chair along with my colleague Philippe Noguès. Hundreds of MPs are involved in this fight and we have been called to give evidence in several European countries: I myself did so in Amsterdam during the Dutch presidency of the Council of Ministers and I have also done so in Austria.

I am sure that our mobilization today will provide a certain publicity for this legislative fight in favour of the implementation of the principles set down by John Ruggie, against a low-cost competitiveness and for the respect of human dignity, but also for the political and economic security of international relations. It seems to us essential to enforce a law which will add to the raising of European standards in the trade area and which, one day perhaps, will no longer permit the importing into Europe of products soiled by an unreasonable environmental footprint or made in harmful conditions by the workers concerned. In such a scenario, vigilance must be adopted at every level and in particular in the framework of the project for the transatlantic partnership. The bill is a supplement to the good-will of the companies themselves but also to the fact that citizens, who as consumers, make ethical choices which are in line with their political choices.

In addition to the regulation of trade exchanges and to citizen good-will, which can be shared by employers (and this is a very powerful ethical driving force), must be added the legislative limitation, without which we would remain in a poetic dimension, certain of not reaching our announced objective. It is for this reason that we wish our initiative to set up a precedent within the Union. It is a question of obliging, through law, the large contracting companies to carry out, themselves, the duty of vigilance concerning their subsidiaries and sub-contractors, by making them draw up a plan to this effect. The judge, in the end, will decide if such a plan is efficient and has been properly implemented. The plan should include measures to prevent certain crimes which are already outlawed by British law such as modern slavery and child labour, as well as serious environmental damage and corruption – all this in line with the wishes of the French Minister for the Economy.

Every person who can justify his/her interest in intervening (local authorities, trade unions, other countries) may challenge the vigilance plan before a judge who will assess if, in fact, it is conceived to reach internationally shared objectives. This is an obligation which is imposed upon the economic powers, as all power must also mean responsibility. That is the basis of this bill, which frees itself of extra-territorial questions and gives to the parent companies a specific responsibility in the effective implementation of Ruggie's principles, both through their subsidiaries and through their sub-contractors, with whom they have established trade relations. This regulates the question of multi-layered sub-contracting. A large company which does not possess an efficient vigilance plan could be subject to an administrative penalty (with a maximum of ten million Euros) and the jurisdiction in question could order the implementation of its decision with a fine which would have no maximum amount. The judge could also order the publication of the conviction. This legally dissuasive arsenal would appear sufficiently broad to be efficient.

Which are the companies targeted by these measures? In an attempt to transmit a message and with the desire to reach a compromise with the Executive which accepted to have this bill included on the parliamentary agenda, we listed the most important companies present in France, i.e. those which have more than 5,000 employees in our country or more than 10,000 employees, if one counts their European subsidiaries. These number between 150 and 200. This covers the most powerful multi-nationals which represent almost two-thirds of our international trade exchanges. The economic well-being of such large groups allows them easily to conform to this duty of vigilance. In addition, since they have an image and an international reputation to keep up, they have, in most cases, already implemented, on a voluntary basis, the principles of corporate social responsibility. For most of them, it is merely a question of the transcription into law of the practices which they have already largely adopted.

We, therefore, are not targeting all companies. With this pioneering law, we wish to set a precedent beginning with the big groups which are already quite virtuous, according to what the rating agencies say. It is, to some extent, a question of getting one's foot in the door in order to later make progress. As has been shown by the many recent scandals (Panama Papers and others) the abuses of international liberalism are often rooted in the fragmentation of the law and of taxation. It is therefore a question of lifting the legal veil which artificially separates those who give the orders and those who carry them out on the other side of the planet.

This ground-breaking text was not born by chance. It is the fruit of intense cooperation with non-governmental organizations such as the Catholic Committee Against Hunger and for Development, Sherpa, the Friends of the Earth and many others. A collective group was formed which contacted MPs of all political parties. In addition to members from the governing majority, many MPs were receptive to this fight; there was hesitation on the right wing which helped us to advance our ideas. The coalition between parliamentarians and civil society, which soon broadened to the main French trade unions, benefitted from the creative ferment of academic circles. It is now a question of defining the aims, the responsibilities and the missions of companies in the 21st century, as the world progresses.

More pragmatic steps have been taken by certain member states of the European Union. History must provide us with lessons. The end of the slave trade was not due to the actions of a continent acting as a single entity: pioneer states gradually led others. The outcome which we seek implies singular initiatives but also requires the political courage which certain states will demonstrate. Let us remember: a century ago, the accounting reform of companies was vigorously opposed on the pretext that it undermined the freedom of enterprise and of competition. At that time it was a question of making it obligatory to have an independent view, that of the auditor, who would be in charge of certifying the veracity of the accounts of the company In the same way, the main contractors must today, take into account the common good and be accountable for their extra-financial management.

Chair Danielle Auroi. Thank you very much. To reply to Mr. Sørensen, who has made the request, I wish to state that an English version of the bill will be transmitted to you later when the actual text has been translated. However, the proposal for a "green card", which is based on the principles underpinning the bill, can be found in both French and English in the file which you were given to cover this sitting.

Ms Ana Birchall, Chair of the European Affairs Committee of the Chamber of Deputies of the Rumanian Parliament (*interpretation from English*). Thank you very

much Mme. Chair, for having organized this debate which deals with a subject of the utmost importance. The Rumanian Parliament has passed a law which transposes the directive concerning public procurement and the supply chain. In this way,, we hope to contribute to overall progress within the European Union. We shall support the proposal for a green card and I shall sign the draft declaration which you have prepared. However, I would be grateful if you could pass around our proposals for amendments to this text.

Mr. Carlo Sommaruga, member of the Foreign Affairs Committee of the National Council of the Swiss Confederation. Thank you very much Mme. Chair for having invited me to speak on behalf of Switzerland, a non-member state of the European Union. Since 2011 and the adoption of the principles put forward by John Ruggie, an informal working group comprising of parliamentarians and representatives of civil society has been set up in Switzerland to follow the political reflection on the measures concerning the social and environmental responsibility of companies. As a result of this, in 2012, a motion requesting the Federal Council to present a report to the Federal Assembly, aiming at the establishment of a "Ruggie strategy" for Switzerland, was put forward. Unfortunately, despite a majority vote in the Parliament, we are still awaiting the decision of the Federal Council to present a document in this direction. This can be explained by the inter-ministerial battle which opposes the Department of Foreign Affairs and the Federal Department for the Economy. The latter is dragging its feet. The Foreign Affairs Committee, of which I was Chair, put forward certain other requests which led to a certain amount of progress, but the debate in Parliament was held up in 2015, after a direct intervention, concerning certain MPs, of the umbrella body representing the biggest Swiss corporations led to the reversal of a vote.

Two parallel steps were then taken. On the one hand, a petition made the population and the political community aware of corporate social responsibility. On the other hand a popular initiative was launched. This instrument, which is very specific to Switzerland, leads, as long as 100,000 signatures are obtained in the space of eighteen months, to a request of a revision of the Constitution. This brings about a debate within the Federal Council, first of all and then in Parliament. If such discussions do not lead to a bill going in the direction of the initiative then a popular debate is held, followed by a referendum. Given the political climate, the chances of this initiative succeeding are slim but it could lead to a parliamentary counter proposal. It has received the support of 77 organizations, of former ministers, of the former President of the International Committee of the Red Cross (ICRC), of academics and of many other personalities.

In this popular initiative, we can see the basic elements which are included in the French bill aiming at imposing the respect of the duty of diligence, i.e. the identification of risks, the measures to be taken, the need for a report. All of this excludes a criminal dimension. The text, which aims mainly at strengthening the civil responsibility of companies, has, for the moment, gathered 140,000 signatures. It shall be presented very soon and we hope that the debate which will be opened will allow us to make progress. However, we count enormously on the work of the European Parliament in this field because, as you know, Switzerland is afflicted by a serious problem, referred to by the term, "banking secrecy". This means that certain subjects cannot progress unless they are supported, to some extent, by foreign countries.

Chair Danielle Auroi. There is no direct criminal penalty in the French bill either.

Mr. Fred Teeven, member of the Economic Affairs Committee of the Second Chamber of the States General of the Netherlands. (*interpretation from English*). After having listened to Mr. Van Dam, our delegation is even more convinced than it was, of the problems which would be posed if we sought to resolve this question by passing legislation. I shall say it again, we must begin with voluntary initiatives taken at a national level. These will form the basis for a European approach. This is exactly what happens in Switzerland with the popular initiative which goes from bottom to top and not the contrary. As the law in European states differs, could Mr. Van Dam tell us more about the problems linked to extra-territoriality ? When one thinks about regulating, it is essential to target the questions with which one intends to deal. With all due respect to the French approach, we believe that it is necessary to begin with voluntary initiatives to reach a common regulation, and not the opposite. In addition, is it not true that applying the law only to the biggest companies is distorting competition? Surely the risk of small and medium-sized companies turning their backs on their responsibilities is greater than for the big multi-nationals, who already have to follow the rules in this field? You will have understood, I am not certain that passing legislation is the way to solve everything.

Mr. Richard Howitt, member of the Committee on Employment and Social Affairs of the European Parliament (*interpretation from English*). My congratulations go to Mr. Potier for his initiative which we vigorously support. We shall be behind him and will give him whatever help he needs at a European level, if he requires it. We cannot for much longer allow companies to hide behind their sub-contractors to escape their responsibilities. New types of trade partnerships must be drawn up. We also observe that the term “value chain” more and more replaces the term, “supply chain” at every level. The Swiss initiative is also extremely interesting and although I am opposed to certain aspects of the policy followed by the Government of the United Kingdom, I recognize that British law concerning modern slavery also has important provisions.

It is our duty to deal with the question of corporate social responsibility even if the problem of extra-territoriality remains in the balance. We know that some European companies are contractors in certain fragile states where there is no real justice. We must end the most scandalous cases of labor rights which take place in subsidiaries and sub-contracting firms. If we do not propose an efficient solution, we shall no longer be credible. John Ruggie, who was tasked by the Secretary General of the United Nations with explaining how to solve this problem, asked us to do so and the European Council indicated that it would implement his recommendations. However, eight years have passed since John Ruggie produced his conclusions and this has not been done. Work is in progress on this subject at the Council for Human Rights of the United Nations. I have no doubt that if we do nothing to signal the most shameful of cases concerning the violation of human rights, the end result will lead to binding treaties, which many companies seek to avoid.

A lot is said about the problems linked to extra-territoriality, but the provisions which have already been adopted to fight against sexual tourism and corruption show that it is perfectly possible to act, if the will exists. The NGO Sherpa has demonstrated that one can deal with these problems by bringing the claim of negligence before European courts. The duty of diligence is not a principle with no basis: it is one of the main guidelines of the United Nations and it has substantial international support, including within employer bodies and international chambers of commerce. I remind you, in addition, that corporate social responsibility was the subject of a European directive concerning the reporting of non-financial information. In short, what the French text and the idea of a green card propose is to

apply measures which are generally accepted on an international level. I will sign the draft declaration and I hope to continue working with you for more progress in this field.

Chair Danielle Auroi. Thank you for your words of encouragement .

Lord Cromwell, member of the Sub-committee on European Justice of the House of Lords of the United (*interpretation from English*). I have already said that the relevant committee of the House of Lords has already formally given its approval to the proposal for a green card. We believe that at the present moment, voluntary initiatives are insufficient and that more must be done at a European level. The question is how to achieve this goal and we would like more clarification. Practically speaking, what methods can be used to detect negligence and what penalties can be applied? How can we make sure that companies are accountable? How, concretely, can we ensure that victims be compensated?

The publication of a report on the way a company implements its social responsibility, even if it is imposed, can become an exercise in self-promotion instead of attaining the goal for which it was conceived, i.e. an audit or an admission. In addition, rather than favoring regulation, we would tend towards transparency, or more precisely, naming and shaming, i.e. the public denunciation of the guilty companies accompanied by a penalty in the most serious of cases. I shall clarify my statement as follows: many people know that a terrible event took place in Bangladesh, but many fewer know that it happened in Rana Plaza and even fewer know the names of the European companies for whom the Bangladeshi firms, set up in these buildings, worked. If governments were to explicitly name the contracting companies, this could have, through social media and the network of NGOs, an impact on an economic level. This represents a means of pressure on companies.

In addition, if a directive were to set down the approach to be taken on a European scale, each state would decide for itself upon the penalties to be applied and the way to apply them. Thus, implementing a directive could appear to be a clear method to more easily reach an agreement, but this could also, if we are not careful, seem to lead to a step forward for, at the least, a half-step backward.

To sum up then, we support the “green card”, we congratulate our French colleagues for having taken this initiative and we shall look closely to see if this laudable intention leads to any real change.

Ms Charoula Kafantari, Chair of the Production and Trade Committee of the Greek Parliament (*interpretation from English*). Since we consider that the European Union should be a leader in the field of corporate social responsibility, we support the initiative of the French Parliament and we have signed the draft declaration.

Greece has, itself, its own action plan for the 2014-2020 period which aims at implementing the notion of corporate social responsibility for the biggest companies. More broadly speaking, we are attempting to modify our development model and we shall include in the bill, which will be considered by Parliament, the principles of corporate social responsibility, i.e. the respect of human rights, social rights, labor law, environmental law and consumer rights This will take into account the notions of strategy, trade relations and activities for such companies.

You, Mme. Chair, have made reference several times to the respect of the environment. Indeed, the environmental dimension of corporate social responsibility must not

be overlooked. Companies have a major role to play in the recycling of paper, in the sustainable use of resources, in the decrease in the consumption of water and in the reduction of their carbon footprint. Companies and consumers must cooperate in order to find the ways to contain climate change. To do so, companies must embrace transparency concerning the efforts they make for the protection of the environment. We know the harmful effects they can have; accidents, pollution of the soil and the water table, high consumption of natural resources, emission of toxic gases into the atmosphere, creation of waste etc. The heads of big companies are under growing pressure which makes them more aware of the energy consumption of the companies they lead as well as the environmental impact of such firms.

So that companies take their responsibility seriously in this field, their behavior should be taken into account in the assessment of their profits. They may certainly wish to be profitable, but they must also demonstrate that they are concerned about individuals and the environment, and this should be reflected in the jobs that they offer, the quality of the products they make and the way in which they use natural resources.

Ms Heidi Hautala, member of the Development Committee of the European Parliament (*interpretation from English*). Voluntary initiatives and the exposure to the general public of harmful practices by companies are laudable ideas, but, to ensure that all firms are treated in an equitable fashion, it is time to reach an agreement on binding legislation. In addition, the European Commission should seriously study the French bill and the green card proposal when it comes, to draw up an action plan concerning the strengthening of corporate social responsibility. To hear that we have to wait until the end of the year for the Commission to publish its action plan, is disappointing. The Dutch presidency of the European Council has been very active on this point, and it might seem a missed opportunity for the Commission not to publish any conclusions before the end of the aforementioned presidency.

Could Mr. Van Dam clarify how, at a European level, we can implement the right to compensation which is mentioned in the report of the Office of the High Commissioner for Human Rights of the United Nations concerning the right to compensation of the victims of violations of human rights involving companies? As my colleague, Richard Howitt, underlined if we do not manage to solve this question, we will tend towards binding regulation, which would not be my first choice.

Chair Danielle Auroi. For the moment, seven national parliaments have supported our proposal for a green card. I would ask those have not yet done so and who are favorable to this proposal, to join us so that we may push this project forward at the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC). I remind you that a draft resolution, with a welcome amendment from Mr. Sørensen, is also available for signature.

Ms Ulrike Hiller, Deputy Chair of the Committee for Questions on the European Union in the Bundesrat (*interpretation from German*). I share the opinion of Ms Hautala that we must precisely clarify the level at which progress is possible and how we can cooperate in the best possible way. It is for this reason that exchanges such as today's are so important. The subjects we deal with are complex and we must decide which instruments can regulate them in the most efficient fashion. Should this be by means of the law? In Bangladesh, it is not necessarily respected. Monitoring and transparency are of essential importance – how can we guarantee them? In order that all the supply chains be monitored, in

every sector, we cannot rely on random checks. There is a major role to be played by works councils and trade unions which know very well what happens on the ground.

The implementation of the "green card" procedure is an excellent initiative which should be closely examined in Germany. I will sign the draft declaration but I feel that it is important that the European Parliament plays an active part in this legislative procedure. It is necessary that European MPs have the real right to put forward bills and that they take, just like national parliamentarians, their own initiatives. The national parliaments, the European Parliament and the Committee of the Regions must not play one against the other – it is necessary for them to cooperate at every level of decision-making.

Chair Ms Danielle Auroi. In France, all the trade unions, including that of the Executives and Managers, support the bill put forward by Dominique Potier.

Mr. Kalle Palling MP, Chair of the European Affairs Committee of the Estonian Parliament. (*interpretation from English*). Our Parliament is one of those which supported the "green card" initiative. We are completely behind the principle of the strengthening of corporate social responsibility but we feel that it must be introduced into European legislation in a proportionate way. Specific attention must be paid to the capacities of SMEs, i.e. the administrative complexity which they face must not be increased. We must emphasize the role to be played by consumers through their choices. Estonia, which is a Nordic country, sees corporate social responsibility as a mark of quality – it should be in the interest of companies to sell their products whilst taking this into account. Having said that, we consider that the initiative is important, not only for subsidiaries and sub-contractors in other countries, but also for companies from European countries, since all do not necessarily respect their social responsibilities.

Mr. Carlo Sommaruga. It seems to me essential to clarify the amendment put forward by Mr. Sørensen to show more clearly to which conventions concerning the rights of workers, it refers.

Mr. Potier said it, certain multi-nationals have taken voluntary initiatives concerning social responsibility. In Switzerland, this is the case for Nestlé and certain banks, but, in all, they only represent 10% of all the big Swiss multi-nationals. That is to say, for those colleagues who had any doubts, that we must go beyond the idea of a voluntary approach. The popular initiative supported by progressive groups and civil society in Switzerland aims at encouraging the notion of making the whole value and economic command chain more responsible. This can be applied to SMEs also, according to the role that they play – we must be aware, of course, of their situation, but, we must not imagine that they be automatically exempt from future rules.

Mr. Finn Sørensen, member of the European Affairs Committee of the Danish Parliament *(interpretation from English*). I agree to clarify my amendment, by mentioning the notion of the "core conventions" of the International Labor Organization (ILO). Everyone will thus better understand what we are talking about.

Mr. Dominique Potier. I understand that for SMEs, the expectations are contradictory: certain speakers wish them to be subject to the reporting of non-financial information, whilst others prefer them to be exempted from this. In my opinion, non-financial reporting opens up a door, on a European level. We must, first of all, begin by applying this obligation to large companies and then, gradually, move down, in a reasonable and adapted

way, to firms of a smaller scale. The argument concerning administrative complexity is not viable, as the French bill provides companies with a broad freedom of initiative to decide upon the most important risk factors. It is this map of risks and the means decided upon to deal with them which must be assessed by the judge. We do not request the drawing-up of inventories, but a form of vigilance which is adapted to the variety of situations. It is, therefore, not a question of over-administrating but of having each company face its responsibilities.

In addition, regulation and voluntary action are not mutually exclusive. When you go on the road, it is good to have a driving license. We ask all those who drive on the highway of globalization to have a driving license and a vehicle in good condition but this does not exclude, into the bargain, being a courteous driver. There is no reason to oppose good will and regulation which is the guarantee of safety – the two must always be associated.

In the same way, we must not oppose national regulation and European regulation. History shows us that the European Union makes progress when the member states make progress together – a virtuous circle is created. Perhaps, at an intermediary stage, the more pro-active countries, supported by international NGOs, could form a kind of *avant-garde* to show that their companies make the respect of human and environmental rights a basic element of their competitiveness and thus provide them with a trademark. A group of like-minded countries could bring the others with them.

Your speeches, dear colleagues, have shown great encouragement for the French initiative. The end of this term of Parliament is approaching and the decision has not been taken, at the highest level of the State, to speed up the process. The most conservative of the multi-nationals or the most liberal, are exerting enormous pressure to stop the legislative process from reaching its goal. In such a context, your support and that of NGOs could modify the balance of power and make the decision tend towards justice and the law. I thank you for your support in this shared fight for fairness, which seeks to place limits in the name of life. Globalization cannot happen without scruples or morals – it must be controlled and must bear the marks of a civilization whose values include placing boundaries on the economic sphere.

Mr. Cees Van Dam (*interpretation from English*). To reply to Ms Hautala, the report of the High Commission for Human Rights of the United Nations, which promotes an initiative at an international level, cannot, of course, be ignored, but the United Nations does not have the power to impose binding rules upon states. Therefore, we must always seek to have their main guidelines applied but this will not be carried out automatically purely by the actions of the UN. In the same way, the treaties on which the agreement is based, within the framework of the United Nations, are only binding for the countries which have ratified them. This means that if developing countries ratify a text seeking to strengthen corporate social responsibility, this could have a considerable impact upon western companies which work with suppliers based in the countries of the southern hemisphere or which have subsidiaries in these countries.

To make things clearer, we could refer not only to the “core conventions” but also to the document drawn up by John Ruggie, which quotes the treaties signed at the United Nations and the conventions of the ILO.

My presentation, Mr. Teeven, did not attempt to explain that regulation would complicate things, but that it is complicated to regulate, especially by means of civil

responsibility law and that to facilitate that which could be complicated, it would be a good thing to favor the road of administrative law. As things stand, administrative law makes no provision for the right to compensation for victims; this is indeed the problem. In most cases, voluntary measures do not lead to the right for compensation. Voluntary measures are a very interesting option, but their impact differs according to the country. The Netherlands, where consultations between companies, NGOs and public authorities are a tradition, is at the forefront in this area, but this is not the case in all the countries of the Union. Having said that, it is interesting to analyze how the Netherlands operates in order to change things.

To finish, there is the question of the problems concerning the implementation of rules on an extra-territorial scale. The British laws concerning corruption and modern slavery show that extra-territorial legislation already exists. In essence, these laws concern activities which take place outside of the borders of the United Kingdom or of the European Union, but they are not centered on those who carry out such illegal activities outside the borders of the Union. In fact criminal responsibility lies with the companies which are based in the United Kingdom and which are obliged to implement prevention strategies. I would like to provide a concluding example which is very striking. It concerns a parent company from a European country which was legally obliged to pay damages inflicted by one of its subsidiaries in another country. In this case, it was the Anglo-Dutch company Shell: the plaintiffs, Nigerian farmers, sued the parent company, with its HQ in the Netherlands, and also its subsidiary, Shell Nigeria. The Dutch court did not uphold the action against the parent company, but it sustained that against the subsidiary, thus making a decision on the behavior of a company whose seat and activities are in Nigeria. The situation is thus not quite as clear-cut as one might imagine: the notion of extra-territoriality already exists and one cannot argue that it will completely stop the progress of the issue with which we are dealing today.

Chair Danielle Auroi. I would like to thank all of today's speakers whose speeches have magnificently added to our discussions.

The sitting is closed at 12.45pm

Members presents or excused

European Affairs Committee

Meeting of Wednesday, May 18, 2016 à 9 h 30
Presents. - Ms Danielle Auroi, Mr. Jean-Luc Bleunven, Mr. Christophe Caresche, Mr. Yves Daniel, Mr. William Dumas, Mr. Jérôme Lambert, Ms Audrey Linkenheld, Mr. Michel Piron, Mr. Arnaud Richard, Mr. Gilles Savary
Excused. - Mr. Kader Arif, Mr. Philip Cordery, Ms Seybah Dagoma, Mr. Yves Fromion, Ms Marietta Karamanli, Mr. Jean-Claude Mignon
Also present at the meeting. - Ms Michèle Bonneton, Mr. Joël Labbé, Mr. Jean-Luc Laurent, Mr. Dominique Potier, Mr. Christophe Premat