



Ministère des Affaires Etrangères et Européennes

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RÉPUBLIQUE FRANÇAISE

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Official statement of the French government regarding the responsibility of companies in front on Human Rights

In June 2006, the French Minister for Foreign and European Affairs asked the President of the National Consultative Commission on Human Rights (Commission Nationale Consultative des Droits de l'Homme) to elaborate an advice regarding the responsibility of companies in front on Human Rights, in order to contribute to the mandate of the Special Representative of the UN Secretary General on Human Rights and Corporate Responsibility.

The President of the NCCHR convened a task force composed with representatives of business organizations, trade unions, human rights NGOs, academics and administrations in order to work on the subject. Emmanuel Decaux, a Professor at Paris II University, at that time, a member of the Sub-Commission of Human Rights by the UN was appointed as Chairman and Maurel, a Professor of Management in Paris XII University and a Member of Amnesty-International France, was elected as rapporteur.

The task force issued a study including 75 recommendations which was adopted by the NCCHR on the 24 of April 2008.

As Ambassador for Corporate Social Responsibility, I was asked to organize a common reflection between the concerned Ministries and Public Agencies on the basis of these recommendations: Ministries of Foreign and European Affairs, Ecology and Sustainable Development, Economy, Industry and Finance, Labour and Social Affairs, Agriculture and Fishery, National Defence, Agence Française de Développement, Insurance Export Credit agency (COFACE), i.a. A common draft-answer was presented to the Prime Minister's Office, finally signed by the Head of this office, the Government's General Secretary, on March, 3rd 2010.

This letter, which encompasses a broader scope than human rights and corporate responsibility, constitutes the first public statement of the French government as regards Corporate Social Responsibility.

Michel Doucin



**Services du Premier ministre
Secrétariat général du gouvernement**

3 mars 2010

NOTE

**in response to the opinion of CNCDH on corporate human rights responsibility
of 24 April 2008**

The Government has drawn up the following comments regarding the opinion on corporate human rights responsibility delivered on 24 April 2008 by the National Consultative Commission on Human Rights (CNCDH).

The 'New economic regulations act' (Law No 2001-420 of 15 May 2001), the 'Grenelle de l'environnement implementation planning Act' (Law No 2009-967 of 3 August 2009) and the 'National environmental commitment bill' currently being passed form the legislative basis upon which national policy regarding corporate social responsibility is shaped.

In addition to these, a new national sustainable development strategy for 2009-2013, which was developed after a wide-reaching consultation process, is now being implemented. The strategy is organised around the nine core themes of the EU sustainable development strategy, including themes such as responsible production and consumption, public health, risk prevention and management, world poverty, international sustainable development challenges and governance, which have a particular bearing on the corporate sector.

With regard to the first recommendation regarding the development of a French corporate social responsibility (CSR) strategy for human rights:

CNCDH suggests that a French strategy on corporate human rights responsibility be drawn up, which should take the protection and promotion of all internationally recognised human rights fully into consideration.

The Government shares the commission's wish to draw up such a strategy but considers it preferable to incorporate this strategy into the wider framework of the national sustainable development strategy.

National CSR policy is based on three fundamental principles:

- *The nature of CSR as complementary to legislative and treaty-based provisions, not as a substitute for these:* Before undertaking voluntary actions, businesses must fully satisfy their legal duties in all areas, including investment, social and environmental policy and governance and human rights compliance, regardless of which country they are operating in.

- *Observance of international instruments to which France is party.* Business practices must be conducted within the framework of observance and full implementation of the most universally ratified or traditionally recognised international treaties, which are also referred to by the writers of standard ISO 26000 as "international norms of behaviour". Within this framework, the International Bill of Human Rights has pride of place alongside the International Labour Organization (ILO) core treaties;
- *Combating distorted competition between businesses which act responsibly and those which do not,* in view of the costs which CSR undertakings entail, especially during an economic crisis. This principle implies that universally applicable standards should be pursued which will guarantee fairness in terms of international competition.

With regard to the second recommendation calling on the government to engage in active diplomacy in the area of CSR:

With a view to effectively implementing policy in this area, the Government created a post of Ambassador for Bioethics and Corporate Social Responsibility within the Ministry of Foreign and European Affairs in September 2008, followed by the creation of a General Directorate for Globalisation, Development and Partnerships within the ministry in March 2009. One of this department's main tasks is to implement France's action on economic and societal issues vis-à-vis global organisations.

The government also wishes to emphasise the fact that French diplomacy has already achieved appreciable results in promoting an understanding of CSR based on the following three principles:

- The Organisation for Economic Cooperation and Development (OECD) Principles for Private Sector Participation in Infrastructures, adopted on 20 March 2007, which at France's proposal, include principles which state that, "*a process of prior consultations with the potentially affected communities is called for in order to ensure that the interest of communities concerned, including respect of human rights, will be taken into account and duly protected*" and that, "*Enterprises should respect the human rights of individuals affected by their activities, in a manner that is consistent with host governments' international obligations and commitments. (...) withdrawal of vital infrastructure services (...) could be perceived as impairing the human rights of affected individuals*";
- The current version of draft Standard ISO 26000, which calls for observance of the International Bill of Human Rights and the core human rights instruments by non-state players. This version is a result of work done by the French delegation made up of representatives of employers' organisations, trade unions, consumer associations, NGOs, experts and government departments;

- The final declaration of the State and Government Leaders' summit of the Organisation Internationale de la Francophonie in Quebec on 17-19 October 2008, which followed on from the Bamako Declaration of 3 November 2000, in which "*the undertaking of French-speaking states and governments to promote an internalised culture of democracy and total respect for human rights*" was emphasised. The Quebec declaration affirmed that corporate social responsibility brings "*added value to peace, the rule of law, cooperation and sustainable development*", which will help cope with the current economic challenges which the more vulnerable member countries are facing in their quest for sustainable, harmonious development. The declaration proclaims the commitment of member states to invest in these areas.

Furthermore, over the last few months the Government has been calling for a reform of global governance to give greater priority to respect of fundamental rights. At the International Labour Conference organised by ILO on 15 June 2009, the French President expressed his wish to build "*a new global governance model which will ensure that ILO principles are represented at the WTO, IMF and the World Bank, whenever the fundamental principles which ILO is responsible for upholding are at issue*". At the closing session of the Paris 'New World, New Capitalism' conference in January 2009, the French Prime Minister also called for "*the adoption of an international standard for corporate social responsibility, similar to the existing standards regarding product safety or process quality assurance*" and this is a standpoint which French diplomacy has consistently taken for several years now.

These calls for concrete reforms, which are backed by a very strong commitment by France through the G20, the Security Council and the Council of the European Union, are arousing growing interest, especially in this period of international crisis, in which the failures of global governance have become all too apparent.

With regard to the third and fourth recommendations calling for clarification of the respective responsibilities and duties and states and businesses with respect to human rights:

French diplomacy is playing a full role in international work to clarify the respective roles of states and international judicial and quasi-judicial bodies.

In particular, France is supporting the work of the UN Special Representative on Business and Human Rights. France has been active in calling for the adoption of the third report presented to the Human Rights Council on 2 June 2009, which singles out three fundamental principles:

- the duty of states to protect their citizens against human rights violations by third parties, including those in the private sector;
- the obligations of businesses with respect to human rights;
- the need for better access to remedy for victims of violations.

The Ambassador for Corporate Social Responsibility ensures that active communication is maintained between the Special Representative, who has already been invited to France on several

occasions, CNCDH and the government bodies involved in preparing for the various consultations which the special representative organises throughout his term of office.

The Rabat Seminar on corporate human rights responsibility in the context of the French-speaking community, organised at France's initiative in collaboration with OIF in March 2008, brought CNCDH together with its counterparts from other French-speaking nations. The High Commissioner for Human Rights and the Deputy Special Representative of the Secretary General also took part in the seminar. The conclusions reached by consensus among the thirty countries through their various representatives underlined the complementary nature of the roles of governments and economic players, as well as a fundamental principle according to which, "*there can be no lasting economic activity which does not take account of human rights, the person at work and the environment*". The state's role as regulator and the importance of the social contract whereby the various economic and social stakeholders put their commitments into practice were also affirmed.

The above-mentioned Declaration of Quebec formally enshrined these principles. Enterprises of the OIF member states are encouraged to "*adhere to the relevant instruments and international standards and principles, and promote their harmonization*", whilst its Member States must undertake to "*ratify the principal international and regional human rights instruments and ensure they are fully implemented*" and "*promote transparency, accountability and good governance*" in the extractive industries and "*encourage broader support for the Extractive Industries Transparency Initiative (EITI), to which 14 Francophonie member countries are party*".

A four-year CSR action plan is currently being drawn up for 2010-2013 within OIF, under the aegis of the Peace, Human Rights and Democracy Delegation.

With regard to the sixth and seventh recommendations encouraging the French government to play an active role in state regulation of the human rights implications of corporate activities and in bringing perpetrators of violations to justice:

Since 2001, France has shown her concern to ensure that French businesses provide more information for their shareholders, employees, consumers, suppliers and all other interested parties, about their social and environmental performance by adhering to a simple, motivating framework. The requirement imposed by the 'New Economic Regulations' (NRE) Act of 15 May 2001 to include information on non-financial practices in the annual management reports of listed companies is an international benchmark and the G8 summit of June 2007 called for this type of initiative to be more widely adopted.

The government continued with this commitment, through the consultation organised in 2007 in the lead-up to the *Grenelle de l'Environnement* talks, which brought together the government, local politicians, employers' organisations, trade unions and NGOs, followed by a debate in Parliament of two bills, one of which was passed on 3 August 2009, the other of which is currently being passed. This was followed by the creation of a national sustainable development strategy.

Article 53 of the so-called *Grenelle I* Act of 3 August 2009 sets a target of extending the NRE Act to large enterprises, which are listed according to a number of different criteria (number of employees, annual turnover, existence of subsidiaries, tied in with a presentation of their

contribution to sustainable development). The same article extends the reporting duty to majority-owned public companies. It also requires diplomatic authorities to support harmonisation of industry-based indicators within the EU and to propose the introduction within the EU of the principle of recognition of the accountability of parent companies for serious harm to the environment caused by their subsidiaries and to support this goal at international level also. The article also announces that France will propose a working framework within the EU for establishing social and environmental indicators which will allow comparisons to be made between different companies.

The current version of the *Grenelle II* bill, which was passed at its first reading in the Senate and was presented to the National Assembly on 9 October 2009, calls for a re-examination of the decree implementing the NRE Act, in the light of changes which have taken place within Europe and internationally. At Parliament's request, in September 2009 the Government put before Parliament a public assessment of the NRE initiative, which highlights the fact that the initiative has helped motivate listed companies to take sustainable development on board. One illustration of this is the fact that many companies have created a dedicated sustainable development department. Nevertheless, the assessment showed that too few companies are complying with the law and the quality of the information they are providing is too variable to allow for comparisons.

The Government also believes that in order to improve regulation, there needs to be greater oversight of financial activities. As a result, in addition to her work on pushing for binding international standards, France has also made innovative steps in the area of socially responsible investment.

This policy began with the 'Salary-based savings schemes Act' of 19 February 2001 (Law No 2001-152) and the 2001 Act 'introducing various social, educational and cultural provisions' (Law No 2001-624 of 17 July 2001), which introduced the pension fund. This fund provides a means of implementing an investment policy geared towards social, environmental and ethical considerations. More recently, the 'Modernisation of the economy' Act (Law No 2008-776 of 4 August 2008), introduced the "enterprises in solidarity" mutual fund, to which employees who have signed up to a company savings plan can allocate some of their assets.

French government bodies are heavily involved in spreading the principal voluntary corporate social responsibility standards, through: the Global Compact, to which 500 French companies have signed up (two of the ten Global Compact criteria relate specifically to human rights); the OECD Guidelines for Multinational Enterprises (the brochure is published and the seminar is organised in conjunction with Mouvement des Entreprises de France (MEDEF), COFACE is involved in providing information to applicants for export credit insurance, etc.) and the Principles of Responsible Investment (PRI) which are aimed at incorporating environmental, social and governance issues into investment portfolio management. In a report of May 2008, Paris-Europalace recommended that institutional investors which have not yet signed up to and adopted these principles should do so.

The French public limited company Caisse des Dépôts et Consignations (CDC) is one of the financial institutions which founded the Principles of Responsible Investment (PRI). As part of its

'action doctrine' adopted in December 2008, which provides a framework for conducting a policy of ethical investment committed to sustainable development, it decided to implement PRI principles to the full, according to which organisations in which it invests must publish appropriate information on environmental, social and corporate governance matters.

In March 2007, the French government also adopted a national sustainable public procurement plan (PNAAPD), which encourages public purchasers (government departments, local authorities, hospitals and public establishments) to commit to sustainable, and hence socially responsible, public procurement policies. One of the plan's main aims is to encourage organisations to practice recruitment and career development which combats discrimination against vulnerable individuals, in keeping with the 'Active Inclusion Strategy' adopted on 16 December 2008 under the French EU presidency, following the publication by the European Commission on 3 October 2008 of a Recommendation to work towards a 'strategy of active inclusion of people excluded from the labour market'.

By 2012, 10% of all France's public calls to tender aimed at industries in which the workforce comprises at least 50% manual labour must include 'social clauses'. This target was made official in a paper sent out to cabinet ministers on 9 April 2008 on the development of a socially responsible public procurement policy and in a Prime Ministerial circular of 3 December 2008 on the example which the state should set with regard to sustainable development in the operations of its departments and public establishments.

Another of the Government's priorities is to establish recourse mechanisms for victims.

The reform of French criminal law brought in by the 'Perben II' Act 'adapting the justice system to changes in criminality' (Law No 2004-204 of 9 March 2004) had already extended all offences to include artificial persons, whereas until then they had been restricted to natural persons. Crimes committed outside French territory are also liable to criminal prosecution. Complicity is recognised under French law and in view of the complexities involved in enforcing this liability in a transnational setting, the justice ministry, in its capacity as representative of the public interest, has a key role to play in the procedures. This reform considerably extended the scope of corporate criminal responsibility and in so doing went far beyond the practices of most of France's neighbouring countries.

The Government also encourages use of amicable routes of dispute settlement between businesses and the parties concerned.

With this in mind, the National Contact Point (NCP) created in implementation of the OECD Guidelines for Multinational Enterprises operates on a tripartite basis (comprising representatives of trade unions, businesses and government departments) and can also receive applications from a variety of different parties involved in individual situations of alleged breaches of the guidelines. In a few instances, a disagreement has resulted in notices of a company having breached its fundamental corporate responsibilities being published on an official French website. A debate is currently underway as to how to improve this procedure.

Furthermore, the High Authority for the Fight against Discrimination and Promotion of Equality (HALDE), set up in 2004, carries out important activities in the corporate sector. Among its powers are the authority to receive complaints, which it investigates and on the basis of which it carries out enquiries which may then lead to a referral of the complaint to the courts. However, the Authority is engaged first and foremost in working to encourage socially responsible behaviour through dialogue and by devising reporting procedures. The government also feels that the Authority could be promoted as an example to other countries and adapted to suit their situations.

With regard to the fifth and eighth recommendations which stress the need to promote the implementation and development of standards governing economic players, with respect in particular to the United Nations, ILO, European Union and OECD instruments:

As illustrated by her participation in the ILO Summit on the Global Jobs Crisis on 15 June 2009, France plays a very active role within the International Labour Organization, especially with regard to promoting the fundamental treaties on employment law, such as treaties banning child labour or those promoting management-union dialogue and decent work.

In the context of the International Standards Organization, France is keen to use ISO Standard 26000 as a robust, effective tool which is in keeping with her own values.

During the second half of 2008, the French presidency of the European Union organised twenty different conferences dealing with the various aspects of corporate social responsibility. Two of these were devoted to the need to respect human rights: the first held at the beginning of July as part of the World Forum on Human Rights in Nantes and the second at the beginning of December in partnership with the group of businesses under the umbrella "Enterprises and Human Rights" [*Entreprises et droits de l'Homme*].

Among other things, these events sought to emphasise the oversight and incentivising role which states should play in promoting corporate social responsibility. The conferences were accompanied by messages addressed to the European Commission calling for the Commission to implement the objectives it has set itself. During one of these conferences, organised in partnership with the European Economic and Social Council, the government highlighted the need to include corporate social responsibility as "a full, separate element of the European social model" and called for the establishment of a European standard on non-financial reporting based on sector-wide indicators. Article 53 of the *Grenelle I* act further reinforced this recommendation by calling on France to take initiatives within the EU to establish unified indicators.

In February 2009, the European Commission reconvened the Multi-stakeholder Forum on Corporate Social Responsibility, where the above aim also received strong backing and on 18 September, the Commission organised a series of five seminars which provided a forum for the different groups of economic players to express their views on the subject. France supports the EU High Level Group on Corporate Social Responsibility, made up of the EU Member States and the Commission and is keen for it to become a driving force for strong EU policy in this field.

At the Heiligendamm G8 summit held on 6-8 June 2007, state and government leaders adopted the declaration "Growth and responsibility in the world economy", which contains a section proclaiming the need for convergence and universal application of standards, calling for companies listed on stock exchanges to provide an evaluation in their annual reports of the ways in which they are fulfilling CSR standards and guidelines and also calling on OECD, in collaboration with the Global Compact and ILO, to draw together the most useful of the existing CSR standards in order to heighten the visibility and clarity of the various guidelines and standards. The declaration also calls upon the emerging economies to adopt the OECD Declaration on International Investment and Multinational Enterprises.

France was also instrumental in including in the same declaration a call for members of the World Trade Organization (WTO) and international organisations to promote internationally recognised fundamental labour standards and calling on members of the G8 to commit to promoting decent work and observance of the fundamental principles of the ILO declaration in their bilateral trade agreements and within multilateral bodies.

The leaders' final statement from the Pittsburgh G20 summit, to which the ILO Secretary General was invited at France's proposal, calls on all its members, whether or not they have ratified the ILO's core treaties, to implement policies which are in line with the ILO's Fundamental Principles and Rights at Work. The annex to the Pittsburgh Declaration also recognises as a fundamental principle the responsibility of states to implement decent working conditions and to combat all forms of social exclusion.

Within OECD, France intends to take an active role in the revision of the Guidelines for Multinational Enterprises launched by the ministerial conference of June 2009 and scheduled to take place in 2010. Relevant NGOs, under the umbrella organisation OECD Watch, will be taking part in the exercise. France has decided to take part in the peer review initiated by the Dutch National Contact Point and believes that the exercise will be a concrete opportunity to evaluate the effectiveness of this type of mechanism, from the point of view of revising the guidelines and preparing for a reform of the French National Contact Point.

Finally, the Government is following with great interest the exercise undertaken by the European Investment Bank (EIB) with a view to verifying whether the practices of the companies to which it lends are in compliance with the declaration of environmental and social principles and standards it adopted in 2008 and revised in 2009. The declaration includes undertakings which refer to the European Union Charter of Fundamental Rights, following the audit mission which its board of directors commissioned from a 'committee of nine wise men' chaired by Michel Camdessus.

The government shares the concerns of CNCDH and intends to pursue its commitment at national and international levels to promoting greater corporate social, environmental and human rights responsibilities.

These are the observations which the Government wishes to present in response to the principal recommendations by CNCDH.