



Doc. 12384

05 October 2010

Human rights and business

Committee Opinion¹

Committee on Economic Affairs and Development

Rapporteur: Mr Tuur ELZINGA, Netherlands, Group of the Unified European Left

A. Conclusions of the committee

The Committee on Economic Affairs and Development appreciates a substantial input by the Committee on Legal Affairs and Human Rights to the ongoing international debate on corporate ethics and the responsibilities of key players within a changing power structure across the globe. The rise of enterprises as influential actors on the national, European and world scene entails a number of open-ended questions about their rights and responsibilities towards the society. The Committee on Economic Affairs and Development therefore warmly welcomes the report by Mr Holger Haibach on human rights and business which seeks to clarify the Council of Europe's role in this domain.

The Committee on Economic Affairs and Development supports the proposals contained in the draft resolution and the draft recommendation presented by the Committee on Legal Affairs and Human Rights. Its proposed amendments aim to complete some provisions of the draft resolution and the draft recommendation from an economic point of view. They notably call for the strengthening of the existing Council of Europe treaties and their monitoring mechanisms. They also propose to examine the feasibility of elaborating a complementary hard law instrument, such as a convention or an additional protocol to the European Convention on Human Rights, in order to fill the existing gaps in human rights coverage described in Mr Haibach's report.

B. Proposed amendments

Amendment A (to the draft resolution)

At the end of paragraph 7.2, replace the words "transnational corporations" by "business entities registered within their jurisdiction".

Amendment B (to the draft resolution)

In paragraph 7.3, after the words "the European Convention on Human Rights" add the words "and in the revised European Social Charter".

1. Reference to committee: [Doc. 11673](#), Reference No. 3480 of 29 September 2009. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 12361](#). Opinion approved by the committee on 5 October 2010.



Amendment C (to the draft resolution)

After paragraph 2.1, insert a new sub-paragraph as follows:

“examining the feasibility of elaborating a complementary legal instrument, such as a convention or an additional protocol to the European Convention on Human Rights;”.

Amendment D (to the draft recommendation)

After paragraph 2.2, insert a new sub-paragraph as follows:

“strengthening the supervisory mechanism of the revised European Social Charter;”.

Amendment E (to the draft recommendation)

After paragraph 2.2, insert a new sub-paragraph as follows:

“accelerating the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);”.

C. Explanatory memorandum by Mr Elzinga, rapporteur for opinion

1. Human rights – a core business of the Council of Europe

1. The Council of Europe and its Parliamentary Assembly can take pride in the vast work accomplished over the last sixty years in upholding human rights in Europe. In parallel, significant progress has been made beyond Europe as an array of international treaties, frameworks and mechanisms in this field were put in place. However, the evolving international context reveals the need to review both our understanding of human rights and the effectiveness of human rights protection.

2. Mr Haibach’s report rightly points out the growing importance and influence of business entities in that respect. It describes the concept of corporate social responsibility and presents a comprehensive inventory of existing international legal instruments addressing the issue of businesses’ responsibilities towards society, in particular on human rights. The fact that most of those instruments are not legally binding for enterprises – big or small, national or multinational – reflects the absence of a global consensus for stronger regulatory frameworks.

3. Mr Haibach’s analysis concludes that although “there is a growing awareness of the impact that businesses can have on human rights”, “existing frameworks do not provide adequate guidance to businesses ...”, “nor do they provide adequate remedies to victims where abuses occur”. He also notes that there is an imbalance in the scope of human rights protection for individuals and businesses vis-à-vis the European Convention on Human Rights, that the case law runs ahead of current regulatory frameworks and that human rights violations by European companies in third countries, in particular outside Europe, cannot be properly investigated by either national courts or the European Court of Human Rights. This speaks of loopholes in the existing legal set-up across Europe that need to be remedied if Europe wants to lead by example. What other body should take action if not the Council of Europe for which human rights are its *core* business?

2. The need for stronger European legal frameworks for business and human rights

4. It has been argued that ethically sound corporate behaviour is good for enterprises’ image/reputation and profitability, hence making it unnecessary to resort to mandatory norms. This assumption takes inspiration from the traditional free market theory where self-regulation of the market is favoured over state interventionism and is deemed sufficient to ensure fair competition between optimally informed market players. The recent outbreak of the financial-economic crisis has shown that both the market’s “invisible hand” and regulatory oversight by states can fail dramatically, thus inflicting serious damage to society. We have learned that we need better regulation and better oversight of corporate behaviour at national and supranational levels. Now is a good time to rethink our systems of checks-and-balances with regard to the corporate sector in terms of ethics, including on human rights.

5. Already in 2004, the Assembly, alarmed by a series of corporate scandals and eroding public confidence in the economic system, warned that “these scandals reflect a broader breakdown in the corporate culture” which “... will require not only legislative change but also a broader cultural response”.² Among the

cultural changes thus called for were proposals concerning the development of a culture of integrity and good corporate governance towards the harmonisation of corresponding legislation and practice. From a Council of Europe point of view that necessarily implies measures for fostering transparency, accountability and ethical behaviour, also as regards human rights. Even though some measures were taken, those steps proved to be “too little and too late” to rectify the eroding balance of the economic system.

6. Furthermore, on the occasion of the Assembly’s first debate on the state of human rights and democracy in Europe, in 2007, the Economic Affairs Committee³ stressed the manifold nature of human rights – covering also economic and social rights – that all together enable people to lead meaningful lives with dignity. It therefore pleaded for the strengthening of the (revised) European Social Charter – the counterpart of the European Convention on Human Rights (ECHR) in the field of economic and social rights – by considering the possibility to open its complaints procedure to individuals as is the case with the ECHR. This call remains valid and pertinent. It should be reconsidered as the Council of Europe is undergoing a major structural reform which could pave the way to a more ambitious approach to the implementation of treaties in general and the Social Charter in particular. Your rapporteur would like to call to mind a recent meeting of the Secretary General of the Council of Europe with the European Committee of Social Rights where Mr Jagland highlighted the indivisibility of human rights, the complementarity of the Charter and the ECHR, and the insights that can be drawn from the (revised) European Social Charter framework.

7. In this context, your rapporteur wishes to recall the ILO’s Decent Work Agenda⁴ which promotes a balanced and integrated approach towards the pursuit of productive employment and decent living for all through means that may differ from country to country, reflecting national priorities and capacities. Through their powers to create or destroy jobs, multinational enterprises exert a strong influence over employment, wages and working conditions. They should do their utmost to implement core labour standards wherever they operate and to resist the temptation of depressing wages or working conditions (“social dumping”) in third countries. Council of Europe member states should take a clear position on this issue, in particular in their dealings with non-European countries at state-to-state level (e.g. development assistance programmes and export promotion schemes) and through regulations applicable to multinational enterprises registered in these states but operating abroad.

8. Moreover, we should recall this Assembly’s invitation to the governments of the Council of Europe member states to consider drawing up an additional protocol to the ECHR recognising the right to a healthy and viable environment.⁵ If implemented, such a protocol could clarify the liabilities of businesses towards society in terms of environment and human rights.

9. Your rapporteur is convinced that, if the Council of Europe’s action is to have an added value in the process of strengthening human rights frameworks in Europe, it should be ambitious. The Parliamentary Assembly, acting as the Organisation’s generator of ideas and proposals, should put forward a full range of legislative measures that the Council of Europe and its member states could take. This applies also to the feasibility of preparing a binding legal instrument such as a convention or an additional protocol to an existing convention/treaty.

10. To those hesitating about the ways to compel businesses to take serious account of human rights fundamentals, we could suggest to look into the mechanism put in place by the OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“Anti-Bribery Convention”). This convention, together with two related OECD recommendations and rigorous peer review process, requires all OECD countries to implement a comprehensive set of measures to prevent, detect, investigate, prosecute and sanction bribery of foreign public officials by individuals and companies.

11. The Council of Europe could either work together with the OECD on a new legal instrument relating to business and human rights, or use the relevant OECD’s know-how and experience to prepare its own legal instrument. That the two organisations can successfully work together is proven by the fact that they negotiated and concluded a joint Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 127) and a subsequent additional Protocol (CETS No. 208) which, by the way, opens the convention for accession to non-member states of these organisations.⁶

2. . See the report on “Corporate ethics in Europe” (Doc. 10103) by Mr Christian Brunhart (Liechtenstein, EPP/CD) on behalf of the Committee on Economic Affairs and Development and Resolution 1392 (2004).

3. . Opinion presented by Ms Liudmila Pirozhnikova (Russian Federation, EDG) – Doc. 11215.

4. . This strategy has four pillars: the creation of productive employment, the strengthening of social protection systems, the promotion of core labour standards and the fostering of social dialogue.

5. . Report by Mr José Mendes Bota (Portugal, EPP/CD) – Doc. 12003 – presented on behalf of the Committee on the Environment, Agriculture and Local and Regional Affairs and Recommendation 1885 (2009).

12. Moreover, as the process for updating this joint convention and the SWIFT scandal⁷ have shown, there is also a need to modernise another Council of Europe instrument – the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Indeed, it is necessary to ensure better protection of the right to privacy against the background of swelling cross-border data flows over the Internet, increasing involvement of enterprises in the handling of personal data, growing use of surveillance technologies and a push for greater transparency in order to combat tax evasion, copyright violations and other crime.

3. Conclusion: the Council of Europe must lead by example

13. In conclusion, new economic realities and legislative challenges arising from globalisation compel European decision makers to re-examine the design of human rights protection in Europe and beyond as far as the activities of the corporate sector are concerned. There is a widening understanding of what constitutes human rights and the growing awareness of the interaction between human rights and the business activities, trade and investment flows of transnational enterprises. The Council of Europe should cover the existing gaps in human rights coverage by acting swiftly and ambitiously, notably in considering the elaboration of a mix of hard and soft law instruments. In a world in which business activities are increasingly transnationally organised, the Council of Europe must lead by example and play its part fully in proposing strong fixes to current judicial frameworks where they lack effectiveness to protect human rights and to guide businesses effectively on human rights.

6. See [Doc. 12161](#) – report by Mr Peter Omtzigt (Netherlands, EPP/CD) – on behalf of the Committee on Economic Affairs and Development.

7. The SWIFT issue arose in 2006 when the media revealed that the US authorities were accessing data on European bank transfers via a Belgium-based financial network without any authorisation of European authorities. Although the data thus siphoned was to be used for anti-terrorist purposes, European states feared the misuse of such data and saw a breach in privacy. The dispute was finally settled through an EU-US agreement on the processing and transfer of financial messaging data for purposes of the US Terrorist Finance Tracking Programme (TFTP) signed on 28 June 2010.