



The European Commission's Green Paper:

**Promoting a European Framework for
Corporate Social Responsibility**

A Submission by

Oxfam International

January 2002

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Executive Summary

European Commission Green Paper: “Promoting a European Framework for Corporate Social Responsibility”.

Oxfam welcomes this European Commission initiative to raise awareness and stimulate debate on ways of promoting corporate social responsibility. As home to some of the biggest global companies, the European Union (EU) has an important role to play. As the Commission acknowledgesⁱ, not tackling the issue head-on would be renegeing on its own development policy goals “*to encourage sustainable development that helps to eradicate poverty in developing countries and integrate these countries into the global economy*” as well as “*to help reinforce democracy and the rule of law, whilst promoting respect for human rights and basic freedoms*”ⁱⁱ. These goals were recently articulated in November 2000 in a very welcome EU Development Policy Declaration.

This submission is divided into three main sections: The first highlights the reasons why the activities of companies, particularly multinational enterprises (MNEs), are of concern to a development organisation like Oxfam; the second considers the current responses to these concerns and suggests that they do not go far enough as an effective means of holding companies accountable for the social and environmental impacts; the final section provides Oxfam’s response as to how the EU can effectively promote the application of CSR principles.

Oxfam believes that in pursuing its trade and investment agenda, the EU should be guided by the development policy goals as outlined within the Development Policy Declaration of November 2000. This includes integrating CSR concerns into its positions on any agreements (regional, bilateral or global) it may negotiate. The Commission should also consider means by which transnational companies can be held to account within the EU for abusive behaviour outside the EU through the extension of extra-territorial jurisdiction. While it is useful for the Commission to build upon credible voluntary initiatives, it should recognise that regulatory measures play a role in setting a level playing field and ensuring that companies can be held to account. Finally, the Commission needs to be more rigorous itself in insisting that contractors undertaking activities on behalf of the Community in its development cooperation programmes respect fundamental human rights and conform to the EU’s social and environmental policies.

Oxfam's key recommendations to Parliament, Commission and member states

Parliament, Commission and EU member states should:

- **In defining corporate social responsibility and guidelines for companies, draw on existing initiatives such as the UN Draft fundamental human rights principles for business enterprises; the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and the revised OECD Guidelines for Multinational Enterprises.**
- **Consider a combination of EU public law and company law approaches towards CSR that would (a) set standards of behaviour; (b) provide procedures for monitoring implementation of standards; (c) provide for transparency through disclosure and reporting; and (d) meet the needs of providing redress for victims of corporate abuse.**
- **Harmonise the way in which the OECD Guidelines for Multinational Enterprises are applied and interpreted by member states. The Community needs to ensure that the National Contact Points (NCPs), which supervise implementation of the Guidelines, provide an effective mechanism for holding companies to account.**
- **Develop legislation that places an obligation upon investment fund managers to take into account social and environmental considerations in the selection, retention and realisation of investments and in the exercise of voting rights and establish an EU-wide social and ethical investment index.**

In addition the Commission and EU Institutions should take effective action to promote Corporate Social Responsibility by:

- **Establishing a Compliance Panel to ensure that companies awarded EU contracts or provided with financial guarantees such as export credit guarantees comply with EU human rights obligations and development policies and procedures in the execution of those contracts. When considering tenders, making the company's adherence to the OECD Guidelines a pre-condition of the award**
- **Setting up a contingency fund (with contributions from companies) to redress possible adverse impacts on impoverished communities in developing countries of activities undertaken under EU contracts or with EU financial guarantees.**
- **Ensuring that the European Investment Bank is more accountable and transparent in its provisions of support and that it establishes pre-conditions along social and environmental criteria for companies seeking its support.**
- **Maintaining a register of blacklisted companies – those found guilty in a court of law of corruption. Companies on the blacklist would be ineligible for EU contracts or awards for a period of three years.**

Introduction

1. Oxfam welcomes this European Commission initiative to raise awareness and stimulate debate on ways of promoting corporate social responsibility. As home to some of the biggest global companies, the European Union (EU) has an important role to play. As the Commission acknowledgesⁱⁱⁱ, not tackling the issue head-on would be reneging on its own development policy goals “*to encourage sustainable development that helps to eradicate poverty in developing countries and integrate these countries into the global economy*” as well as “*to help reinforce democracy and the rule of law, whilst promoting respect for human rights and basic freedoms*”^{iv}. These goals were recently articulated in November 2000 in a very welcome EU Development Policy Declaration.
2. This submission is divided into 3 main sections: The first highlights the reasons why the activities of companies, particularly multinational enterprises (MNEs), are of concern to a development organisation like Oxfam; the second considers the current responses to these concerns and suggests that they do not go far enough as an effective means of holding companies accountable for the social and environmental impacts; the final section provides Oxfam’s response as to how the EU can effectively promote the application of CSR principles.

Globalisation and Corporate Social Responsibility

3. Like MNEs domiciled in other parts of the world, those based in the EU have taken advantage of the new opportunities offered to international business by globalisation. In 2000, Foreign Direct Investment (FDI) outflows from the EU amounted to US\$772.9 billion^v. Of the world’s twenty largest MNEs in terms of foreign assets, eight are based in the EU^{vi}. MNEs have benefited from multilateral and regional trade agreements as well as bilateral treaties, which have dramatically extended the scope and protection of their investment rights. Consequentially, regulatory requirements upon these companies have been much relaxed.
4. Investment in developing countries by MNEs has the potential to generate revenues, transfer skills and technology, create jobs and introduce new products to consumers. Yet this potential is often only partially realised or unrealised. There are many instances in which global companies seek out investment conditions in developing countries that maximise the company’s profit but hamper development efforts. For example, tax revenues are needed to fund public goods that contribute to the development of social and economic infrastructure. Yet in Zambia, foreign investors in the mining sector have exercised their negotiating power to increase tax concessions to the point where the government’s ability to finance basic health and education services has been severely undermined. In Bangladesh, tax concessions for companies operating in export processing zones cost the government around U\$130 million annually in lost revenue.
5. It is common for MNEs to outsource the production of retail goods to suppliers in developing countries. In many cases there is evidence that working conditions in those factories or plantations that supply MNEs are better than those that supplying the domestic market. However, there is as much evidence pointing to the fact that the workings of global supply chains in themselves result in the abuse of workers rights. The demands by MNES for downward pressures on price or very short turn-around production periods may be a prime reason that their suppliers adopt exploitative practices. Problems for workers include long working hours and forced overtime, restrictions on freedom of association and collective bargaining, low wages, lack of welfare provisions such as social insurance and maternity rights and poor health and safety practices. Responsibility for ensuring that workers rights are respected lies with factory owners, the governments where these factories are based and with MNEs themselves.

6. The presence of MNEs in emerging country markets has dramatically increased in recent years. Global companies can provide improved access to an array of goods and services but sometimes do so in ways that compound inequalities. Many global companies have gained monopolies over certain markets and abuse of this status can lead to prohibitive pricing or ‘cherry-picking’ of its consumers. Two stark examples of this are in the marketing of medicines and the delivery of water supply by private companies. Oxfam believes that the global pharmaceutical companies should play a more positive role in public health in the developing world. The price of key medicines in developing countries should be reduced within a framework of a standardized, transparent global system of equitable pricing that differentiates between industrialised and developing country markets. At the same time, global brand-name firms need to recognise the important role that generic medicines play in meeting public health needs in developing countries and towards this end, refrain from aggressively defending their patent rights to the detriment of generic production. The industries’ concern about the need to prevent leakage from poor to rich countries in ways that undermine incentives for future research and development should be met by clearly differentiating markets and customs controls.^{vii}
7. The international water supply market is dominated by a handful of global companies, with 70% of the market captured by just two European-based companies. Given the importance of water to human survival and the vast numbers of people currently without access to clean water, the dominance of this market-place by a few large multinationals gives rise to concern that equitable access will be subordinated to market imperatives. This could result in private companies taking advantage of their monopoly power and either pricing water tariffs beyond the reach of poor people or limiting the service to customers who can afford to pay.
8. Poor people have been harmed by companies seeking to increase market share through intensive marketing of products that are either harmful in themselves or which may be harmful if used unnecessarily. Tobacco is an example of one such product. The World Health Organisation predicts that by 2030, tobacco is likely to be the biggest cause of death and that the majority of these deaths will be in the developing world. Another example is the irresponsible marketing of infant formula in countries where there is no access to clean, potable water.
9. Many of the world’s poorest countries are integrated into the global economy through agreements with MNEs on the exploration and extraction of natural resources such as oil, gas, diamonds, gold, coltan and timber. Despite the potential for promoting long-term development offered by foreign exchange earnings generated by such investment, the negative impacts of this industry have been well-documented. At the local level, the industry has been associated with environmental and human rights abuses such as pollution of water supplies, displacement of local communities and abuses of indigenous peoples’ rights. At the national level, the substantial revenues generated by the extraction of valuable natural resources have been associated with corruption and economic mismanagement.
10. Responsibility for addressing the causes and consequences of human suffering in violent conflict has traditionally fallen to governments and to humanitarian agencies. Many businesses argue that they need to remain a neutral force but given the major impact that business can have where they operate in these situations, this position is untenable. Through their operations, an array of companies ranging from arms producers and traders, to extractive companies, to financial institutions can be involved in causing, exacerbating or profiting from violent conflict. Companies need to take account of the role of trade as a possible incentive for conflict, as a source of funding for continued combat and as a cause for resentment over the inequitable distribution of resources^{viii}.
11. Concern about the influence that large MNEs, in particular, have over public policy has grown in recent years. At the European level, the influence of biotechnology and pharmaceutical

companies, and their lobby organisations such as EuropaBio for example, over the controversial Directive on the Legal Protection of Biotechnological Inventions, or the Life Patents Directive, attracted much criticism. Recently, attention has focused upon the influence that the European service industry continues to have over the EU's approach to current negotiations on the General Agreement on Trade in Services (GATS). In Brussels alone, there are around 13,000 professional corporate lobbyists - about one for every European Commission Staff member. While business may have legitimate interest in influencing the development of public policy, it is important that firms do not exercise undue influence over governments that results in the public interest becoming subordinate to corporate interests. The lack of transparency surrounding such lobbying is a problem.

12. Commissioner for DG Trade, Pascal Lamy has said that there is a need to “*strike a balance between growth that open markets generate and societal values.*”^{xix} The responsibility of business to maintain this balance is imperative. Harnessing corporate assets to deliver pro-poor development should be further explored. To progress the CSR agenda, both companies and governments must realise that it is no longer viable to justify businesses' contributions to society by reference simply to the company's existence providing employment and capital. Nor is it enough to demonstrate responsibility simply through arms-length philanthropy or community development programmes which often do not reflect the real needs of people. Demonstrating corporate responsibility must extend beyond this model to reflect the net impact of a company's core business activities.
13. The EU not only has a responsibility to evaluate the performance of the many global companies domiciled within its jurisdiction. It also has a responsibility to demand responsible corporate behaviour of those companies that may provide services to its institutions or to which it extends benefits.

Responding to the CSR challenge

14. In Oxfam's opinion, Corporate Social Responsibility (CSR) is defined as a firm's commitment to conduct all aspects of its business in a manner that advances rather than hinders human development. Meeting this expectation involves the company accepting responsibility for the impact of its operations, assessing that impact and responding by mitigating negative effects and initiating positive ones.
15. The awakening of public consciousness about the power and impact of the core business operations of companies has led to damaging publicity and increased reputation risk. The response has been a proliferation of voluntary mechanisms designed to manage this risk. These range from statements of intent to guidelines for good practice and codes of conduct. Some of these have been developed by companies themselves; others by NGOs and trade unions and international organisations. At their weakest, adoption of such codes have been little more than an exercise in PR. At their strongest, they have brought some benefits by changing corporate attitudes towards companies' responsibilities beyond the financial bottom-line and through improved conditions in global supply-chains.
16. As a means of building a social consensus around corporate responsibility and catalysing the development of standards and implementation tools, voluntary initiatives are valuable. However, the voluntary nature of such activities has also meant that corporations cannot be held liable for non-adherence to standards. Where breaches occur, victims have no recourse to complaint mechanisms nor remedies. Further, standards themselves may better reflect the company's priorities than the needs or demands of those affected. Given the inevitable focus upon big-brand companies, smaller multinationals and those who are domiciled in localities where consumer pressure is weak or non-existent, have limited incentives to engage in the agenda. Finally, codes of conduct have been tailored to address three dominant issues - civil

and political rights, labour rights and the environment - yet, rarely address abuses of economic and social rights. Nor do they consider the role that MNEs play in markets, nor the impact of their activities upon the economic and social development in the host nation. As such, self-regulation as a sole mechanism for ensuring CSR is inadequate.

17. Self-regulation in this area may also detract from governments' duty to protect and promote human rights and human development. This duty includes ensuring that citizens are protected against abuse generated by company operations and providing access to justice and redress where abuse has taken place.
18. Companies are expected to accept responsibility, assess its impact and respond to it by mitigating negative effects and initiating activities that generate positive ones. These obligations cannot be considered as something undertaken as an optional extra since failure to meet them will breach certainly the company's moral and increasingly legal obligations, thus challenging its license to operate. The Green Paper's proposal therefore that corporate social responsibility is demonstrated by companies integrating social and environmental concerns into their business operations on a voluntary basis^x makes a critical omission.
19. A holistic and sustainable approach towards CSR demands a strategy that brings together regulatory measures initiated and overseen by government with voluntary initiatives by companies which assist them in identifying good practice.
20. The idea of regulating company activity with regards to its social and environmental impact is not new^{xi}. At the national level, regulations that control corporate behaviour ranging from anti-trust legislation to anti-corruption laws to environmental and labour standards exist. Under EU law, companies are subject to considerable legislation which prohibits for example, anti-competitive activities within the Common Market, on environmental protection and other areas. The challenge thrown up is how to regulate transnational corporations. Their transnational nature poses a host of obstacles in terms of national regulation. For example, although the parent company may be responsible for defining the policies and instructing particular operations that have negative impacts, the corporate veil may place liability artificially upon the subsidiary. Where developing countries do wish to regulate such companies, they are hampered by a range of factors including a lack of institutional capacity, excessive deregulation or corruption. It is therefore necessary to consider complementary mechanisms that engage home governments (i.e. the government of the country where the company is domiciled) in monitoring and regulating the behaviour of companies. Such efforts have been made in a few jurisdictions to date. The EU has not ventured into extending extra-territorial jurisdiction within the areas of human rights or environmental protection. A more robust response by the EU and EU governments to abusive behaviour by European companies is needed.

Promoting a European CSR Framework: Oxfam's recommendations

21. The Green Paper asks: *"How can the EU promote greater application of CSR principles through its policies both within Europe and internationally, including its political dialogue and partnership agreements, as well as its programmes, and its presence in international fora?"*^{xiii} Oxfam believes the European Commission can play a critical role in identifying and implementing steps to increase corporate accountability for its social and environmental impact. These steps can be divided into four areas:

Promoting a trade and investment regime which integrates CSR concerns

22. Investment is at the heart of the EU's new Free Trade and Partnership Agreements. At Doha, the EU lobbied strongly for the WTO to begin negotiations on a framework for multilateral rules on Foreign Direct Investment. In an attempt to allay developing country concerns that previous, similar efforts disproportionately favoured corporate interests over development

considerations, the EU has committed itself to developing voluntary principles and standards of behaviour that would require companies to behave responsibly in fields as diverse as environmental protection, labour relations, development, transparency and corruption.^{xiii} The EU should actively meet this commitment so to ensure that any rules-based system that is established provides for the protection of poor people's human rights and promotion of their social and economic development. Part of the EU's responsibilities in this regard is to take a balanced approach towards corporate lobbying. In setting its trade and investment agenda, the Commission should ensure that the interests of companies do not outweigh its commitments towards promoting development as outlined in the Development Policy Declaration of 2000.

Promoting a better understanding of the scope of CSR

23. The Green Paper does not fully outline the scope of CSR. As regards human rights, the Commission should take into account situations where:
 - goods and services provided by the company effect or aid in the abuse of human rights;
 - human rights are abused in the production or processing of the goods or the carrying out of the service for the company;
 - the company is complicit in the violation of human rights by the State; and
 - the company through its investment demands or operations undermines the government's ability to meet its human rights obligations.
24. In order to develop a more comprehensive view of what amounts to human rights abuse by companies, including a sharper understanding of where boundaries of responsibility lie and how redress to victims can be provided, the Commission should consider the fundamental human rights principles for business enterprises^{xiv} which endeavours to draw together all existing standards in international law and articulate how they apply to business^{xv} drafted by the UN Sub-Commission on the Promotion and Protection of Human Rights. It is particularly important that abuse of economic, social and cultural rights are factored into the CSR debate since, in many ways, company activity has a significant impact upon them and their denial compounds poverty. The Commission should also refer to a recent paper for the Office of the High Commissioner for Human Rights on corporate complicity with human rights violations^{xvi}.
25. Further, the Commission should refer to the ILO Tripartite Declaration of Principles concerning MNEs and the revised OECD Guidelines for MNEs.

Improving Accountability Mechanisms

26. Oxfam believes that voluntary self-regulatory initiatives have played a part in developing the CSR agenda in Europe and elsewhere. The opportunity now exists to analyse how far these initiatives have gone in adequately meeting CSR expectations. Consideration should be given as to how government can play a role in setting a level playing field, ensuring that all European firms are cognizant of their duty to behave in a socially and environmentally responsible manner and to demonstrate accountability according to uniform standards and mechanisms.
27. The Commission should explore options including a legislative approach that could combine the application of public law and company law. Public law would provide the means by which citizens can gain redress where governments have failed to protect them against corporate abuse. Within company law, CSR could be integrated into governance provisions like director's duties and annual reporting requirements. Key elements to be included are a comprehensive set of standards; an obligation upon companies to consider social and environmental impact when defining policies and operational strategies; an obligation upon companies to conduct social and environmental impact assessments and to ensure effective and legitimate stakeholder

consultation in making such assessments; an obligation upon companies to monitor compliance with standards; disclosure and reporting requirements, coupled with the right to information; and a complaints and redress mechanism.

28. The Commission should be able to draw upon various existing initiatives. With regards to standards, particular reference should be made to existing international human rights law and humanitarian law, the relevant conventions of which have been highlighted both within the European Parliament's Code of Conduct for European Businesses^{xvii} as well as within the UN Draft Fundamental Human Rights Principles for Business Enterprises, the ILO Tripartite Declaration of Principles concerning MNEs, and the revised OECD Guidelines for MNEs.
29. The Commission should also continue its efforts to promote the full implementation of the OECD Convention on Combating Bribery by monitoring its application by member states. Updates on progress and effectiveness should be included in the EU's annual Human Rights Report.
30. The Commission could consider making it mandatory for EU companies to report periodically on their social and environmental performance against these established benchmarks. This enables transparency with regards to corporate activity and a means by which impact can be assessed. The Sustainability Reporting Guidelines of the Global Reporting Initiative which identify and consolidate uniform global standards on disclosure of environmental, social and economic performance information provide a good mechanism.
31. Disclosure requirements upon companies should include an obligation to be transparent about corporate lobbying activities. The Commission should also meet this obligation by ensuring that all minutes of meetings and correspondence is placed on public record. Legislation comparable to the US Lobby Disclosure Act of 1995 could be considered.
32. The Commission should push forward with the establishment of the European Monitoring Platform as suggested in the European Parliament Resolution, as a means of providing a complaints and redress mechanism. It should also consider developing an EU-wide policy on the application of the OECD Guidelines which would standardise the establishment and functioning of the National Contact Points (NCPs). This includes setting standards on (a) the establishment and functions of National Contact Points; and (b) on accountability within the investigatory, monitoring and reporting process. Further, there should be parliamentary scrutiny of NCP investigations and reports. These may be through annual hearings both at the national level and by the European Parliament. Further efforts should also be made to explore the possibilities of making the OECD Guidelines legally binding upon European companies.
33. In designing compliance mechanisms, the Commission could build upon its experiences with the Eco-management and Audit Scheme (EMAS) as defined in EU Regulation 1836/93. While not mandatory, the European Union's Environmental Management and Audit Scheme (EMAS) might provide a possible model, insofar as it sets out criteria against which company behaviour can be assessed, and deters unfounded claims of environmentally good behaviour. It also envisages independent auditing of environmental performance and requires improvements in performance. It is possible to envisage an EMAS model for Corporate Social Responsibility. The Commission should also consider how this voluntary scheme may in the future, be translated into a mandatory one.
34. Socially responsible investment (SRI) should be promoted within Europe as a means of driving companies towards responsible social and environmental behaviour. There have been favourable developments in this area with key players extending the reach of SRI activities from negative screening to active engagement with firms on management of reputation risk. As in the case of voluntary codes of conduct, there is a need to develop uniform standards to ensure a fair assessment of corporate activity as well as to ensure that investors are capable of

evaluating the real impact of company operations on the lives of the poor, rather than relying too heavily upon statements of intent. The Commission should consider legislation that places an obligation upon fund managers to take into account the social and environmental considerations in the selection, retention and realisation of investments and in the exercise of voting rights. An amendment to the UK Pensions Act which came into force in 2000 and requires pension fund trustees to disclose their policies on socially responsible investment and on the exercise of shareholder rights, including voting rights provides a good indicator of how such a mechanism could work effectively.^{xviii} The adoption of an EU-wide Social and Ethical Investment index would guide this process.

Integrating CSR into existing European Commission Mechanisms

35. The EU Commission itself needs to be more rigorous in expecting companies who are awarded contracts to implement Commission funded projects and programmes to meet their social and environmental responsibilities. This obligation basically derives from Article F of the Treaty on European Union requires Community institutions to respect fundamental human rights. Further all EU programmes set out a range of human rights priorities and initiatives to support the process of democratisation. Oxfam's experience has shown that the Commission and EC delegation have not always fulfilled their obligations to inform contractors about their obligations to uphold EU human rights and development policies nor adequately supervise overseas contracts. Public adherence to the OECD Guidelines and its enforcement mechanism should be an eligibility requirement on all companies seeking to be awarded contracts or other types of guarantee, including export credits.
36. The Commission should promote adherence to standards on social and environmental practice as a pre-condition for the provision of other financial guarantees such as export credit guarantees by all member states. It should consider the establishment of a Compliance Panel modelled upon the International Finance Corporation's Compliance Adviser / Ombudsman to ensure that companies awarded EU contracts comply with EU human rights obligations as well as relevant development policies and procedures. Companies awarded contracts should be required to deposit a contingency fund (to the value of 1% of the total value of the contract), which could be drawn upon to mitigate any adverse impacts on communities affected by a project without their having to resort to litigation.
37. In its development cooperation, the Commission has many duties that if undertaken with due diligence would do much to enhance corporate social responsibility. In the past, under the Lomé Convention, Commission officials often failed to grasp the concept of 'joint responsibility' and to understand that partnership agreements, of necessity, imply some diminution of the concept of the principle of ACP sovereignty. There is a complex interplay between the different standards and shared responsibilities articulated in the Lomé and Cotonou Conventions and the more narrowly defined contractual obligations between the ACP state and the contractor. Joint responsibility clearly does not mean that Commission officials are relieved of all responsibility for ensuring that the tendering documents and the choice of the contractor reflect the EU's human rights goals and development standards. Implementation and Management Procedures are covered in Annex IV of the Cotonou Agreement. It makes clear that the Community has joint responsibility with the ACP State for drawing up general guidelines and criteria for appraising projects and programmes. The Community also draws up – 'in close collaboration with the ACP State concerned' – the financing proposal. The National Authorising Officer (NAO) appointed by each ACP State 'in close cooperation with the EC Head of Delegation' shall be responsible for the preparation, submission and appraisal of projects and programmes. The same cooperation extends to the issuing of invitations to tender, the examination of tenders and contracts. The Head of Delegation also has to give his approval before an invitation to tender dossier. All too often, the Commission and Delegates have failed to ensure that the tenderer is informed about the common standards of the EU and relevant international human rights norms.^{xix} Failure to observe such basic safeguards has often resulted

in serious harm befalling impoverished communities: for example, forced evictions loss of livelihood, or other serious reductions in their quality of life. All of this reinforces the critical role that the Commission and Delegations have to ensure that companies operate to the highest standards.

38. There are also various mechanisms which have been established to monitor the Commission and its staff which can be used to demand greater accountability from those companies that have been awarded contracts or who are recipients of Community funds and are acting as 'agents of the Commission'.
39. Responsible for the control of the Communities' finances, the Court of Auditors reviews all EU expenditure, including the cost effectiveness of the Commission's development and humanitarian work. The Court of Auditors reports have been influential in changing spending priorities and improving accounting procedures. It uses its audit work as the basis for proposals to encourage the institution responsible for management (the Commission), and, to a similar extent, the legislative authority (the Council of the European Union and the European Parliament) to make the necessary improvements. As an institution, the Court of Auditors has been less well adapted to ensuring that its recommendations arising in specific projects are properly enforced.
40. The Commission should encourage Member States to integrate social and environmental considerations into public procurement. In interpretative communications issued in 2001^{xx}, the Commission highlighted the fact that the public procurement directives currently in force do not contain provisions that meet these goals and, that to ensure that they do would meet the priorities laid out in the Treaty of Amsterdam and the Charter of Fundamental Rights of the EU. In its communications, the Commission suggests that Member States could, by Directive, be obligated to consider the company's ability to meet social and environmental standards at the tendering stage. Further, obligations to meet these standards should be included in the terms and conditions for execution of the contract. Although the Communications refer to the Internal Market policy and circumscribes social considerations to that of labour, it should be possible to extend the remit to procurement from outside the EU and to broaden the scope of social and environmental considerations.
41. One other potential avenue for people affected by the operations of companies to seek redress. Article 177 (ex Article 130u) including the provision on human rights in Article 130u (2) are subject to the jurisdiction of the European Court of Justice (which oversees the proper application and interpretation of Community law). Individuals may bring non-contractual liability claims before the Court under Articles 275 and 288 (2) (ex Articles 178 and 215 (2)) to recover damages caused by Community institutions or "by its servants in the performance of their duties" Such action is not restricted to EU nationals. The Commission should consider how this avenue could be made available by removing certain obstacles which have so far prevented any cases being taken. At present, the standard of proof is very high, claims are only accepted from individuals who suffered injury, and the cost of litigation is prohibitive. Representation by interested NGOs is not permitted.
42. With the EU's emphasis on investment, and the increase in the level of funds to be managed by the European Investment Bank (EIB) outside of the 15 member states, reforms are urgently needed. In the past the EIB had not paid sufficient attention to credit risk analysis and to mitigating and monitoring risk. The EIB's information disclosure policy is also deficient in that it fails to provide public access to relevant social and environmental information.^{xxi} The biggest problem remains the commercial confidentiality that the EIB invokes when borrowers stipulate that documentation should not be disclosed. Participatory consultation with all stakeholders, prior to the Bank's decision, is not regarded an essential element of project assessment. The EIB has failed to develop specific social and development policies and safeguard procedures, comparable to those of the World Bank. The EIB's performance also

suffers from inadequate oversight mechanisms.^{xxiii} As a result, the operations of the EIB have been subjected to little outside scrutiny. The EIB must be made more accountable and transparent. A pre-condition for any company seeking EIB's support should be acceptance of the EU's CSR policy and compliance mechanism.

Summary of recommendations

42. In summary, Oxfam recommends the following:

- In pursuing its trade and investment agenda, the EU should be guided by the development policy goals as outlined within the Development Policy Declaration of November 2000. This includes integrating CSR concerns into its positions on any trade and investment agreements (regional or global) it may negotiate.
- The Commission should consider means by which transnational companies can be held to account within the EU for abusive behaviour outside the EU through the extension of extra-territorial jurisdiction.
- The Commission could consider making it mandatory for EU companies to report periodically on their social and environmental performance against these established benchmarks. This enables transparency with regards to corporate activity and a means by which impact can be assessed. The Sustainability Reporting Guidelines of the Global Reporting Initiative which identify and consolidate uniform global standards on disclosure of environmental, social and economic performance information provide a good mechanism, which could be incorporated in EU law.
- The Commission should promote an approach towards CSR which obliges companies to conduct all aspects of their business in a manner that advances rather than hinders human development. This involves the company accepting responsibility for the impact of its operations, assessing that impact and responding by mitigating negative effects and initiating positive ones. The Commission should build upon credible voluntary initiatives but should recognise that regulatory measures play a role in setting a level playing field and ensuring that companies can be held to account.
- In developing appropriate regulatory measures, the Commission should consider legislative options which (a) set standards of behaviour; ; (b) provide procedures for monitoring implementation of standards; (c) provide for transparency through disclosure and reporting; and (d) meet the needs of providing redress for victims of corporate abuse.

In particular, the Commission should:

- *refer to the UN Draft fundamental human rights principles for business enterprises; the ILO Tripartite Declaration of Principles concerning MNEs and the revised OECD Guidelines for MNEs;*
- *consider a combination of EU public law and company law approaches towards CSR, possibly along the lines of the EMAS model as defined in EU Regulation 1836/93 insofar as it sets out criteria against which company behaviour can be assessed, and deters unfounded claims of good behaviour. It also envisages independent auditing of environmental performance and requires improvements in performance;*

- *establish reporting guidelines with reference to the Sustainability Reporting Guidelines of the Global Reporting Initiative;*
- *establish the European Monitoring Platform as outlined in the European Parliament Resolution;*
- *standardise the application of the OECD Guidelines amongst member states to provide for a more effective investigatory, monitoring and reporting mechanism through the National Contact Points (NCPs) by which companies can be held accountable;*
- *enable parliamentary (both national and European) scrutiny of NCP activities;*
- *develop legislation that places an obligation upon investment fund managers to take into account social and environmental considerations in the selection, retention and realisation of investments and in the exercise of voting rights;*
- *establish an EU-wide Social and ethical investment index.*

43. The Commission, Parliament and Council should consider means by which it can promote CSR through the policies and practices of EU institutions

In particular, the Commission should:

- *establish a Compliance Panel to ensure that companies awarded EU contracts or provided with financial guarantees such as export credit guarantees comply with EU human rights obligations and development policies and procedures in the execution of those contracts;*
- *ensure that where tenders are considered, a company's public acceptance of the OECD Guidelines and its implementation procedures should be a pre-requisite for qualification;*
- *establish a contingency fund - to which companies contribute - to redress the adverse impacts of company activities undertaken under EU contracts or with EU financial guarantees;*
- *provide that the Court of Auditors (a) ensures that recommendations made on specific projects and programmes and in relation to particular contractors are promptly acted upon by the Commission or its agents; & (b) maintain a register of 'blacklisted' companies (where there has been a conviction on charges of corruption) and ensure those that are blacklisted are not eligible for EU contracts or awards for a period of 3 years;*
- *establish a public procurement directives which oblige member states to take into account the company's ability to meet social and environmental standards before the award of tender and in the execution of the contract;*
- *ensure victims' (or public interest groups on their behalf) ability to bring non-contractual liability claims under Articles 275 and 288(2) to*

recover damages caused by companies that act as “servants” of Community institutions in the performance of the duties;

- *ensure that the European Investment Bank is more accountable and transparent in its provisions of support and that it establishes pre-conditions along social and environmental criteria for companies seeking its support, including public adherence to the OECD Guidelines and its implementation procedures.*

END NOTES

ⁱ Green Paper, para 52

ⁱⁱ << <http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm>>>

ⁱⁱⁱ Green Paper, para 52

^{iv} << <http://europa.eu.int/scadplus/leg/en/lvb/r12000.htm>>>

^v World Investment Report 2001

^{vi} Royal Dutch Shell, Volkswagen, Bayer, Elf Aquitaine, Daimler Benz, Unilever, Philips and Fiat.

^{vii} For further analysis, see Oxfam briefing paper, Fatal Side Effects: Medicine Patents Under the Microscope, 2001 accessible at <<http://www.oxfam.org.uk/cutthecos>>.

^{viii} For a detailed analysis, see Keen D., and Tickell S., Business and the Humanitarian Imperative: The Humanitarian Responsibilities of Non-State Actors Operating in Conflict, Paper prepared for the Centre Henri Dunant (June 2000)

^{ix} Lamy, P., Europe: A home market in the global market, 16th Annual Conference of Kangaroo Group, European Parliament, Brussels, 17 September 2001

^x Green Paper para 8 and para 20

^{xi} See Richter, J. Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action, Zed Books, 2001

^{xii} paragraph 92

^{xiii} DG Trade, Looking Ahead at Trade and Investment: towards a basic framework for foreign direct investment, October 2001

^{xiv} This initiative has been delegated within the Sub-Commission to the Working Group on the Working Methods and Activities of Transnational Corporations. The most recent draft can be accessed at <<http://www1.umn.edu/humanrts/links/principles11-18-2001.htm>>

^{xv} A useful reference is Beyond Voluntarism: Human rights and the developing international legal obligations of companies, International Council for Human Rights Policy (current draft, November 2001). An earlier draft can be accessed at <<http://www.ichrp.org/excerpts/30.pdf>>

^{xvi} Clapham A. and Jerbi S., Categories of Corporate Complicity in Human Rights Abuses (March 2001) at <<http://www.business-humanrights.org/Clapham-Jerbi-paper.htm>>

^{xvii} Resolution on EU standards for European Enterprises operating in developing countries towards a European Code of Conduct, 15 January 1999

^{xviii} The Occupational Pension Schemes (Investment, and Assignment, Forfeiture, Bankruptcy etc.) Amendment Regulation 1999, Regulation 2(4).

^{xix} See Ombudsman Complaint No 530/98/JMA –ET 7017

^{xx} Commission of the European Communities, Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement, Brussels, 15 October 2001 COM (2001) 566 final.

^{xxi} The EIB policy on access to information and transparent decision-making does not yet conform to the EU Directive on EIAs. Nor does it conform to the Regulation EC N. 1049/2001 of the European Parliament and the Council of 30 May 2001 on access to the European Parliament, Council and Commission documents.

^{xxii} CEE Bankwatch Network et al ‘NGO Statement European Investment Bank: Necessary Areas of Reform’, London 23 November 2001

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