



# Foreign Investment: Legal Incentives for Socially Responsible Corporate Behavior Abroad

Austria • Belgium • Czech Republic  
European Union • Finland • France • Germany  
Republic of Ireland • Poland • Russian Federation  
Sweden • Switzerland • United Kingdom

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**FOREIGN INVESTMENT: LEGAL INCENTIVES FOR SOCIALLY RESPONSIBLE  
CORPORATE BEHAVIOR ABROAD**

As trade and business becomes more and more international, the number of multinational companies grows steadily. This growth has given rise to increased concerns about the activities and behavior of national companies abroad. In response to this concern, various international organizations and corporations have adopted guidelines for the activities of multinational companies in foreign countries.<sup>1</sup>

The present report, prepared by the Law Library of Congress, contains a survey of seventeen countries and the European Union. The following countries were included: Austria, Belgium, the Czech Republic, Finland, France, Germany, Greece, the Republic of Ireland, Italy, the Netherlands, the Republic of Poland, Portugal, the Russian Federation, Spain, Sweden, Switzerland, and the United Kingdom.

None of the surveyed countries had any specific legal provisions--such as tax or any other benefits--requiring their domestic companies to act socially responsibly abroad. For countries like Poland, the Czech Republic or Russia, this situation may be due to the fact that, until recently, these countries would not permit any foreign investment or other activities by their domestic private companies. Therefore, one speculative theory why the law of these countries has not reached the appropriate level of development to deal with such problems.

The lack of special regulations for the other countries may possibly be due in part to the fact that their investments have not reached the level of the U.S. investment abroad. Other possible theories, as indicated in the report on Germany, is that there may be a reluctance to further complicate tax laws, a hesitancy to enact extraterritorial legislation, or an unwillingness to adversely impact business.

Even though there are no special regulations, one may note that there were some initiatives aimed at recommending codes of conduct regulating activities of domestic companies abroad. One of them took place in the United Kingdom where an official committee is expected to recommend a code of conduct which may affect multinational companies.<sup>2</sup>

Despite a recent awareness among the institutions of the European Union that an eventual regulation of conduct of multinational enterprises conducting business outside of the Union may be needed, so far the Union has not adopted any legislative measures to deal with general standards of conduct for Member enterprises or to provide incentives for European Union companies to act socially responsibly abroad.<sup>3</sup>

Apartheid in South Africa has resulted in the creation of some major laws in the past. In 1977, for example, nine members of the then European Community voluntarily and acting within the sphere of political cooperation, adopted a code of conduct for companies with subsidiaries, branches, or representative offices in South Africa.<sup>4</sup> In connection with the South African apartheid, a similar law was passed in the United States--section 207 of the Comprehensive Anti-Apartheid Act of 1986.<sup>5</sup> The Act required U.S. nationals that employed more

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<sup>1</sup> Zachary, *Multinationals Can Aid Some Foreign Workers*, WALL STREET JOURNAL (Apr. 24, 1995), at 1 (Append. I).

<sup>2</sup> See the enclosed United Kingdom report.

<sup>3</sup> See the enclosed European Union report.

<sup>4</sup> Id.

<sup>5</sup> Hereinafter the 1986 Act. See appended excerpt of the Act.

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than 25 persons in South Africa to take steps to comply with the code of conduct.<sup>6</sup> When the political situation in South Africa changed drastically and apartheid stopped being the official doctrine of the state, the code of conduct was repealed by South African Democratic Transition Support Act of 1993.<sup>7</sup> Similarly, the Member States of the European Union changed its reporting requirements connected with 1977 code of conduct.

From the above analysis, it seems that the pioneers in the field of codes of conduct for multinational companies are international organizations and some major multinational companies themselves.<sup>8</sup> Individual governments do not seem to be particularly preoccupied with regulating the activities of their companies abroad.

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<sup>6</sup> The code of conduct was codified at 22 U.S.C. s. 5035.

<sup>7</sup> Pub. L. 103-149, s. 4 (a) (2), 107 Stat. 1504.

<sup>8</sup> *Id.* at 1.

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**AUSTRIA**

Austria does not have tax legislation that would grant advantages or incentives to Austria companies for behaving socially responsible abroad.

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**BELGIUM**

No Belgian law could be found which would provide for legal incentives, such as tax benefits, etc., to induce domestic corporations to act socially responsible in their operations abroad as exposed in H.R. 910.

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**CZECH REPUBLIC**

There are no legal incentives in the Czech law, such as tax benefits, etc., to induce domestic corporations to act socially responsible in their operations abroad as exposed in H.R. 910.

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## EUROPEAN UNION

It appears that the European Union has not adopted so far any legislative measures which either provide incentives to European enterprises or deal with general standards of conduct when such enterprises conduct business outside of the territories of the Member States of the European Union with the view to promote socially responsible business practices.

It is noteworthy however, that within the institutions of the European Union, notably within the European Parliament and the Council of Ministers, there has been recently an awareness of the need towards an eventual adoption of codes of conduct for enterprises when conducting business abroad. For instance, a resolution, adopted in 1993 by the Council of Ministers and the representatives of the member states on a Community program for policy and action in relation to the environment and sustainable development,<sup>9</sup> identified multinational companies as actors or sectors of activity which will be called to play a part in the promotion of environmentally responsible, sustainable development. The resolution also identified the creation of codes of conduct for enterprises as specific action required to be taken for the implementation of this program.<sup>10</sup> Another example of this trend occurred in early 1994, in a hearing on "social clause and international trade" organized by the European Parliament Committee on External Economic Relations, the majority of the members of the European Parliament concurred that a social clause on international trade rules is indeed needed.<sup>11</sup>

On the other end of the spectrum as early as 1977, the Ministers of Foreign Affairs of the then nine Member States of the European Community, acting within the framework of Political Cooperation, approved a code of conduct for companies with subsidiaries, branches or representation in South Africa.<sup>12</sup> Under this Code--which provides no incentives--European enterprises *inter alia* needed to take measures to abolish any practice of segregation in and out of the workplace, to establish objective non-racial criteria in determining wages and filling vacancies, to permit their workforces to freely select their representatives and to report annually as to the measures taken in implementing the Code. Review of the annual report of each company was entrusted to the national government.<sup>13</sup>

In 1991, the Ministers For Foreign Affairs of the twelve members of the then European Community, again under the sphere of political cooperation, reviewed the application of the Code of Conduct by 244 companies with branches in South Africa and issued a statement in which the Member States reaffirmed their commitment to promote the full implementation of the Code.<sup>14</sup> As of 1993, however, because of improved conditions in South Africa it was suggested that the reporting requirement by companies be replaced by the Heads of Mission that

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<sup>9</sup> *Official Journal of the European Communities*, part. C No. 138 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> EP Hearing on Social Clause and International Trade in REUTER TEXTLINE, AGENCE EUROPE (April 1, 1994).

<sup>12</sup> 9 BULLETIN OF EUROPEAN COMMUNITIES 46 (1977). *see* Appendix.

<sup>13</sup> *Id.*

<sup>14</sup> *Positive Evaluation of European Companies Operating in South Africa* REUTER TEXTLINE, AGENCE EUROPE, May 17, 1991 (available in Nexis-Lexis).

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would report on development of labour conditions and especially in the area of equality of opportunities.<sup>15</sup>

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<sup>15</sup> *Commission Office in South Africa to Become Delegation* REUTER TEXTLINE, AGENCE EUROPE, (1993).

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**FINLAND**

A review of the material available in the Library indicates that Finland does not provide any incentives for responsible social behavior of its corporations operating abroad.

It should be noted, however, that Finland provides tax incentives to those companies which operate in certain developing regions of the country, if such corporations increase their industrial production output, modernize their machinery, or promote tourism in the areas concerned. Some tax incentives are also granted to certain types of corporations due to the nature of their activities, but this concerns only corporations operating inside the country and has no connection with responsible social behavior abroad.

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**FRANCE**

The result of a search of French law in the Law Library collections on the subject of incentives for socially responsible corporations abroad is negative.

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**GERMANY**

Germany does not grant any tax preferences to German corporations as an incentive for socially responsible conduct abroad. The absence of such legislation may have several reasons. Among them may be a reluctance to complicate the tax laws. In addition, there may be a hesitancy to enact extraterritorial legislation. Moreover, such legislation might be viewed as being contrary to German business interests.

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**REPUBLIC OF IRELAND**

A search of Irish laws and legal literature has not revealed any regulations on any legal incentives provided to Irish domestic corporations to act socially responsibly abroad. The only relevant item found in a database search is a letter published in the Irish Times, complaining that: "In the present GATT round, governments are negotiating away their rights to regulate transnational corporations at the national level. At the international level, the UN Code of Conduct, aimed at regulating the TNCs extensive economic, social and environmental abuses, has been effectively squashed by Northern countries at the behest of corporate lobbyists." \*

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\* Letter from Rev. Sean McDonagh, IRISH TIMES, Sep. 9, 1992. Copy attached.

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**POLAND**

Polish law does not contain any provisions on legal incentives, such as tax benefits, etc., for domestic corporations to act socially responsible abroad. This situation is quite understandable since, until recently, Polish private companies were not able to invest abroad.\* Therefore, the law in this area has not yet had time to develop.

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**RUSSIAN FEDERATION**

The law of the Russian Federation does not contain any provision on legal incentives such as tax benefits, etc., for domestic corporations to act socially responsible abroad. This situation is caused by the fact that, until recently, no private Russian companies were allowed to operate abroad. Even though present Russian Federation law allows Russian foreign economic activity, the legal standards in this area are subject to continuous change.\*\* Therefore, the law in this area has yet not developed fully.

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\* See, Foreign Trade Research Institute, POLAND'S FOREIGN TRADE POLICY 1993-1994 (Warsaw, 1994).

\*\* See "Russia; Draft foreign trade law aims to tighten state regulation," BBC Summary of World Broadcasts (Dec. 23, 1994).

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**SWEDEN**

A review of the material available in the Library indicates that Sweden does not provide any specific incentives, in the form of reduced taxes or otherwise, to domestic corporations for responsible social behavior while operating abroad.

However, Sweden has several laws which provide financial assistance, support and subsidies for the promotion of domestic regional policy. These laws are aimed at encouraging business relocation to the less industrialized and less populated areas in Sweden in order to stimulate regional economic activities and create work for the local population.

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**SWITZERLAND**

Switzerland does not have tax legislation that would favor Swiss companies for engaging in socially responsible conduct in their activities outside of Switzerland.

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**UNITED KINGDOM**

The British approach to the activities overseas of multinational corporations (MNCs) is one of "enlightened self interest."\*\*\*\*\* The liberal view is based on the fact that the UK serves as the headquarters of many MNCs, and the City of London is their financial backer. The benefit derived by the country is reflected in the government policy of giving MNC "free reign to do as they wish."\*\*\*\*\*

The major concerns that have arisen with regard to the activities of MNC are that they may impact on national monetary policy, evade taxation and affect labor relations. These concerns, however, have not resulted in any specific domestic legislation. There are no special incentives provided to MNCs to act with social responsibility abroad.

An 11-member official committee, known as the Greenbury Committee, is expected to recommend a code of conduct for companies.\*\*\*\*\* The issues to be examined by the committee appear to relate to domestic corporations, but an expected recommendation on greater disclosure may have ramifications for MNCs based in Britain.

With regard to the incorporation in H.R.910 of the so-called MacBride Principles, it should be noted that Britain has remained opposed to their application in Northern Ireland. The legislation on fair employment and affirmative action in the province is viewed as covering the same ground.

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\*\*\*\*\* John Farrar, COMPANY LAW 754 (1995).

\*\*\*\*\* David Bailey, et al, MAKING TRANSNATIONALS ACCOUNTABLE 217 (1994). In a study which includes a detailed examination of the record of a major MNC based in Britain, the authors advocate the creation of a British Center on Transnational Corporations to monitor the performance and impact of MNC.

\*\*\*\*\* *Reuter Textline*, Mar. 2, 1995 in NEXIS.

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**INCENTIVES FOR RESPONSIBLE CORPORATE BEHAVIOR ABROAD**

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