**Compilation of CoE written comments regarding**

**the General Comment on State obligations under the ICESCR in the context of business activities by the UN Committee on Economic, Social and Cultural Rights**

**Comments by the Secretariat of the PACE Committee on Social Affairs, Health and Sustainable Development**

The General Comment is a very comprehensive and detailed document already. We only wish to highlight selected additional issues which might be taken into account by the UN rapporteurs:

* In relation to the right to social security (mentioned in paras. 3 and 31), references are made to General Comment No. 19 (2008). However, in subsequent years, various UN bodies and in particular the ILO have put emphasis on the need for a social protection floor. It might be useful to more explicitly reflect this development in the General Comment on State obligations under the ICESCR in the context of business activities.
* Where the minimum wage is evoked, such as in para. 19, we believe it would be important to add a word ‘living’ so as to read “the minimum living wage” because establishing or maintaining a minimum wage that suits the business sector’s needs but does not provide for minimum subsistence of workers is meaningless.
* Concerning the right to health, it would be appropriate to stress the link with environmental issues and obligations by evoking the right to a healthy environment which is important not only as part of extraterritorial obligations but also inside each country. The importance of a better legal protection of the right to a healthy environment was already underlined by the Assembly in its Recommendation 1885 (2009) on Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, and reiterated in Resolution 1816 (2011) on Health hazards of heavy metals and other metals.
* Generally speaking, in any comment to be presented to the General Comment on State Obligations, we would recommend that reference be made to central Council of Europe instruments in this field, i.e. notably the European Social Charter and its treaty system (including the Collective Complaints procedure) and the [Committee of Ministers’ Recommendation CM/Rec (2016) 3 on human rights and business.](https://www.coe.int/en/web/human-rights-rule-of-law/-/human-rights-and-busine-1)

**Comments by the Department of the European Social Charter**

Businesses and their modes of operation are crucial to the objective of ensuring social rights as guaranteed by the European Social Charter. While application of the Charter is ultimately a state responsibility it is obvious that without the full engagement of business actors with basic social rights the objective will be difficult, perhaps even impossible to achieve.

Proper implementation of the Charter rights, in particular the employment-related rights, will go a long way towards preventing human rights abuses by business actors. For a listing of the relevant rights, see §16 of Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business and §32 of its Explanatory Memorandum (cited below).

Collective bargaining between employers and workers’ organisations is a key regulatory factor in ensuring human rights compliant behavior by business and the European Committee of Social Rights has stated that where “use is made of agreements concluded between employers’ organisations and workers’ organisations, in accordance with Article I.b, States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.” (Confederation of Swedish Employers v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003, §27).

Moreover, reference is made to the Committee’s decision in LO/TCO v. Sweden, where it stated *inter alia:*

“121. The Committee further considers that legal rules relating to the exercise of economic freedoms established by State Parties either directly through national law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by, further to the Charter, national laws, EU law, and other international binding standards. In particular, national and EU rules regulating the enjoyment of such freedoms should be interpreted and applied in a manner that recognises the fundamental importance of the right of trade unions and their members to strive both for the protection and the improvement of the living and working conditions of workers, and also to seek equal treatment of workers regardless of nationality or any other ground.

122. Consequently, the facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking to provide services in the territory of other States – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated, from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater *a priori* value than core labour rights, including the right to make use of collective action to demand further and better protection of the economic and social rights and interests of workers. In addition, any restrictions that are imposed on the enjoyment of this right should not prevent trade unions from engaging in collective action to improve the employment conditions, including wage levels, of workers irrespective of their nationality.” (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013).

A few remarks *en vrac* on the drafting of the General Comment:

* More space could be devoted to discussing and exemplifying how the social rights in the Covenant are being threatened directly by business practices and indirectly also by way of state policies to promote and facilitate business (allocation of resources, free movement of capital and goods, privatization, liberalizing work regulations, flexibilising labour markets, etc.).
* Despite several references to the exposure of women and girls to human rights abuses by business the specific problem of pay discrimination of women seems to be referred to only implicitly through the generic notion of fair remuneration practices.
* Surprisingly little attention is devoted to the consequences of the “fourth industrial revolution” in general and of new communication technologies, internet, etc. in particular, on business practices and employment at both national and transnational level (“Uberisation”, Amazon Mechanical Turk, digital exclusion, “big data”, etc.).
* The General Comment could put more emphasis on the importance of social dialogue and collective bargaining as a means to preventing human rights abuses by business actors.
* References could usefully be made to other international social rights instruments, such as the European Social Charter and the relevant ILO Conventions.
* Using the three levels of obligations – respect, fulfill, protect – to structure the draft does little for the clarity of exposition here and makes for repetitive reading.

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***Recommendation* *CM/Rec(2016)3***

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16. The European Social Charter, the European Social Charter (revised) and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) are other key instruments that afford protection against business-related human rights abuses, in particular with regard to the rights of workers. Member States which have ratified these instruments accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which all the rights and principles set out in Part I of the European Social Charter (revised) may be effectively realised, and should consider increasing the number of accepted provisions.

[…]

***Explanatory Memorandum***

[…]

*Obligations under the European Social Charter (revised)*

32.        Paragraph 16 of the Recommendation reiterates that the European Social Charter (revised) is another key legal instrument that affords protection against human rights abuses by companies, in particular with regard to the rights of workers. It complements the ECHR with regard to social and economic rights. The 1996 European Social Charter (revised) (ETS No. 163), which has gradually replaced the 1961 European Social Charter (ETS No. 35) contains rights such as, for example, the right to work (Article 1); the right to just conditions of work (Article 2); the right to safe and healthy working conditions (Article 3); the right to a fair remuneration sufficient for a decent standard of living (Article 4); the right to organise (Article 5); the right to bargain collectively (Article 6); the right of children and young persons to protection (Article 7); the right to protection of health (Article 11); the right of children and young persons to social, legal and economic protection (Article 17); the right of migrant workers and their families to protection and assistance (Article 19); the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Article 20); the right to information and consultation (Article 21); the right to take part in the determination and improvement of the working conditions and working environment in the undertaking (Article 22); the right to protection in cases of termination of employment (Article 24); the right to protection of workers’ claims in the event of the insolvency of their employer (Article 25); the right to dignity at work (Article 26); and the right of workers’ representatives to protection in the undertaking and facilities accorded to them (Article 28). Whereas under Part I of the European Social Charter (revised), State Parties accept as the aim of their policy the attainment of conditions in which all the rights and principles of the Charter may be effectively realised, under Part II they have to accept only a given number of the “hard core” provisions and an additional number of articles or numbered paragraphs which they may select. An overview of the rights and related case law of the European Committee of Social Rights may be found in the document “Existing obligations of member States under Council of Europe treaties and other instruments in the context of human rights and business” CDDH-CORP(2014)08. The European Social Charter and/or the revised version have been signed by the 47 member States of the Council of Europe and ratified by 43 of them. The Recommendation suggests that member States should consider increasing the number of accepted provisions and that those which have not yet ratified the 1996 European Social Charter (revised) and the 1995 Additional Protocol providing for a system of collective complaints (ETS No. 158) should consider doing so. These are key objectives of the “Turin process”, which aims at reinforcing the normative system of the Charter within the Council of Europe and in its relationship with the law of the European Union, and which calls on member States to improve the implementation of social and economic human rights in Europe, along the civil and political rights guaranteed by the ECHR.

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