

Brief analysis of the international legal framework of corporate social responsibility

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Abstract

This paper focuses on the main international legal documents providing guidance recommendations and principles on corporate social responsibility (CSR), considered it as a sustainability tool. A special attention is paid to the provisions of European Union regarding corporate disclosure of non-financial information and transparency. The non-financial information report has to include consultation rights, health and safety environment, social dialogue, fulfilment of the obligation of non-discrimination etc. Despite the fact that it is not necessary a comprehensive report on CSR matters, the outcome would consist in demonstration that the disclosure of information on policies, outcomes and risks will enable companies and their stakeholders to develop a very good strategy of corporate governance policy.

Keywords: *international law, corporate social responsibility (CSR), transparency, non-financial disclosures, sustainability.*

JEL Classification: K13, K23

1. Definition and scope of corporate social responsibility

During the time, the notion of corporate social responsibility (CSR) received various meanings. In 1953, Howard Bower, the author of this concept, defined CSR as: “*the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society*”.²

In a broader sense, CSR refers to the impact of the business organizations on a whole society. The same approach is found in the vision of the Romanian Government, which considers CSR as a concept referring to the responsibilities business organizations towards society and environment.³

In the same way, CSR is described by European Union legislator as “*a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*”.⁴

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² Bowen H., *Social Responsibilities of the Businessman*, reprinted by University of Iowa Press, Iowa City, 2013, p. 6

³ The Government of Romania, *Strategia Națională a României de Promovare a Responsabilității Sociale 2011-2016*, p. 9.

⁴ The European Union’s (EU) *Green Paper Promoting a European framework for Corporate Social Responsibility*, 2001.

In a specific sense, CSR determines the social and environmental responsibilities that companies should undertake in relation with all its stakeholders.

Moreover, in the fulfilment of these responsibilities, companies have to disclose the CSR information to the stakeholders. In the literature, it was emphasized that the CSR reporting practices is an efficient tool for the reputation of the companies, helping them to improve their transparency and credibility.⁵

Usually, CSR represents a corporate policy adopted voluntarily by business organizations and incorporated in codes of conduct or in guidelines, proving commitment of companies to social responsibility.

All these self-regulatory instruments form a body of soft laws which have an important contribution in elaboration of universal standards of CSR. Taking into account the specificity of the soft laws, it is necessary to be stipulated hard rules in order to increase the responsibility of the business organizations.

CSR lies at the crossroads of numerous branches of law including corporate law, labor law and environmental law at international and European Union levels. “*All of these areas contribute importantly to the development of CSR, and ultimately to respond to the serious challenges that this world faces*”.⁶

In elaboration of this paper was used a qualitative research method in order to analyze the role of international law and the regulations of European Union of CSR in development of a legal framework for incorporation social, environmental and ethical responsibilities into policies of the business organizations.

2. International legal framework

At international level, the CSR polity emerged from the cross-border activity of multinational corporations (MNCs) and other large business organization which, due to their size, have power to significantly influence the communities in which they operate. On the other hand, MNCs have to solve several legal, social, and ethical issues problems, issued in different countries around the world.

Therefore, it is important to establish an international dialogue and cooperation by various jurisdictions to facilitate the development of regulatory frameworks capable of transcending national boundaries.⁷

As is mentioned in literature: “To achieve this balance, command and control regulation is supplemented by self-regulation, international hard and soft regulation, and the workings of the markets. The most common response of industry to command and control regulation is that of self-regulation, which involves the

⁵ Buturoaga C.M., *Corporate Social Responsibility (CSR) Business Practices and Stakeholders Considered Relevant for the Energy Sector: The Case of Romania*, Communications of the IBIMA, Vol. 2017, p. 28.

⁶ Tineke Lambooy, *Legal Aspects of Corporate Social Responsibility*, “Utrecht Journal of International and European Law”, no. 30(78) 2014, p. 1.

⁷ Jennifer A Zerk, *Multinationals and Corporate Social Responsibility – Limitations and Opportunities in International Law*, Cambridge University Press, 2006, p.309.

issuance of codes of conduct, both at the individual level and the aggregate industry level, and the institution of compliance programs within the firm.”⁸

Most international regulations regarding CSR result from public international bodies such as the Organization for Economic Cooperation and Development (OECD), International Labor Organization (ILO), United Nations (UN), the International Standards Organization (ISO), etc.

a) *OECD Guidelines for Multinational Enterprises*. In 1976, was adopted the *OECD Guidelines for Multinational Enterprises* (the Guidelines), a set of voluntary principles and standards for responsible business conduct in areas such as human rights, supply chain management, disclosure of information, anti-corruption, taxation, labor relations, environment, competition, and consumer welfare. It was updated in 2000 to include new CSR concerns. The Guidelines express the shared values of 39 countries consisting of the 30 OECD members and 9 non-member countries. Despite the fact that the Guidelines represents a formal commitment of the signatory parties to promote their observance among MNEs, for MNEs is voluntary.

b) *ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*. The International Labor Organization, a specialized agency of the United Nations focusing on labor issues has 178 member states to date. In order to promote the positive contributions of MNEs to economic and social progress, ILO adopted Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Tripartite Declaration), which stipulates that:

- MNEs should obey national laws, respect international standards, honor voluntary commitments and harmonies their operations with the social aims of countries in which they operate;

- governments should implement suitable measures to deal with the employment impact of MNE's;

- in developing countries, MNE's should provide the best possible wages, conditions of work (including health and safety) and benefits to adequately satisfy basic needs within the framework of government policies, etc.

These voluntary provisions of the Tripartite Declaration are addressed to governments, employers and workers' organizations in both home and host countries.

c) *ISO 26000*. The International Standards Organization with the assistance of more than 225 CSR specialists from 43 countries and 24 organizations issued the ISO 26000, a set of guidelines in order “to encourage voluntary commitment to social responsibility and (...) lead to common guidance on concepts, definitions and methods of evaluation.”⁹ The original date for the publication of ISO 26000 was 2008, but has since been moved to 2010.

d) *UN Global Compact*. In 1999, United Nation elaborated Global Compact consisting in 10 fundamental principles relating to human rights, labor standards, the environment and anti-corruption, based on:

⁸ Antonio Vives, *Corporate Social Responsibility: The Role of Law and Markets and the Case of Developing Countries*, Chicago, „Kent Law Review” 83(1)/2008, p. 213.

⁹ ISO 26000:2011, *Linii directoare privind responsabilitatea sociala*, ASRO, Bucharest.

- The Universal Declaration on Human Rights;
- The International Labor Organization's Declaration on Fundamental Principles and Rights at Work;
- The Rio Declaration on Environment and Development; and
- The United Nations Convention against Corruption.

The Compact is considered to be the world's largest corporate responsibility initiative, with 3000 corporate participants and other stakeholders involved.¹⁰

e) *UN Norms*. Based on the existing international provisions regarding human rights and labor standards, UN issued the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (UN Norms) in order to establish a comprehensive legal framework of the responsibilities of companies regarding workers' rights, corruption, security and environmental sustainability.

The UN Norms state that MNEs have an obligation to 'promote, secure the fulfilment of, respect and protect human rights recognized in international and national law'. The UN Norms is not a formal treaty under international law and therefore is not legally binding.

3. European Union's legal framework

In the view of the European Commission, CSR is the interests of businesses as "*it can bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management, and innovation capacity*".¹¹

In order to increase the integration of the European common market, it has been developed a mechanism of harmonization of the CSR provisions, so-called information model.¹² In this regard, one of the most recent steps is the adoption of the CSR Directive¹³ which requires to the business organizations reporting on an array of non-financial aspects, as a key aspects of their CSR policies.

The CSR Directive uses a "comply or explain" regulatory technique, known as a moderate form of harmonization, consisting in development of a uniform information channel at European level, which enables signaling CSR engagement to investors.

¹⁰ The UN Secretary General Remarks at the launch of the Principles for Responsible Investment, New York Stock Exchange, 26 April 2006, available at: <<http://www.un.org/apps/sg/sgstats.asp?nid=2006>>, accessed at 6 November 2018.

¹¹ European Commission (2011b), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU strategy 2011–14 for corporate social responsibility, Brussels, 25 October, COM (2011) 681 final, para. 1.1.

¹² Stefan Grundmann, *European Company Law*, 2nd edition, ed. Intersentia, Cambridge, 2011, p. 165 et seq.

¹³ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance. OJ L 330, 15 November, pp 1–9, (CSR Directive).

That approach of European CSR policies is, as the recitals of the CSR Directive mention, in line with national or international prescriptions of good conduct.¹⁴

The CSR Directive applies to listed companies and other “public interest entities”¹⁵ with 500 employees or more, and obliges them to publish an annual management statement “*containing information to environmental matters, social and employee-related matters, and respect for human rights, anti-corruption and bribery matters.*”¹⁶

The non-financial report must contain the “*policies, outcomes and risks related to those matters*”, to “*the due diligence processes implemented by the undertaking*”, including to “*supply and subcontracting chains*”. Moreover, it is necessary to provide an explanation referring to the “*diversity policy applied in relation to the undertaking’s administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period.*”

As mentioned above, the regulatory mechanism to implement those provisions is “comply or explain”: “*If no such policy is applied, the statement shall contain an explanation as to why this is the case.*”

Despite the fact that the non-financial statement is mandatory, if a company does not fulfill this reporting obligation, it must provide a clear and reasoned explanation for not doing so.

Moreover the Directive does provide an “emergency exit” clause (“safe harbour”); so, in exceptional cases, the domestic laws of the Member States implementing the Directive may allow companies to non-disclosure of information relating to impending developments or matters in the course of negotiation if such disclosure would be seriously prejudicial to the entity’s commercial interest. Anyway, the managers of the business organizations are collectively hold responsible for any error in such omission.

Also, in specific situations, Member States may allow the companies to provide a separate report, rather than integrating the non-financial statement in the management report, as long as the separate report is either published together with

¹⁴ Recital 9 CSR Directive lists “national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’ Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation’s ISO 26000, the International Labour Organisation’s Tripartite Declaration of principles concerning multinational enterprises and social policy, the Global Reporting Initiative, or other recognised international frameworks.”

¹⁵ Public interest entities (PIE) are listed companies, credit institutions, insurance undertakings and any other entity designated by an EU member state as a PIE (for example because they are of significant public relevance due to the nature of their business or size).

¹⁶ Recital 6, Art 19a, CSR Directive.

the management report or is made public on the undertaking's website within 6 months of the balance-sheet date – 2 months later than the management report.

Member States shall ensure the application of reporting procedure provided by CSR Directive.

In this regard, domestic legislation shall stipulate a collective responsibility of members of the administrative, management and supervisory bodies for drawing up and publishing the non-financial report in accordance with Directive' requirements. Recitals add that Member States should ensure that those procedures are available to all persons and legal entities having a legitimate interest in ensuring that the provisions are respected.

The main outcome of CSR Directive is consolidation of the transparency in European business environment; it makes business organizations more accountable to society.

*“Its effects will come over time and they can include changes of the societal role of corporations as well as of directors' duties”.*¹⁷

4. Conclusions

The above outcomes emphasize that CSR becomes a very important element of the sustainable business. It generally refers to social, economic, environmental and stakeholder responsibilities that business organizations should undertake in their activities.

CSR has to be understand an “integral element of business strategy”¹⁸ in achieving a balance between the pursuing the profits and the fulfilment their social responsibility. Thus, it constitutes an evolution in the business approach in which organizations have a pragmatic response to their stakeholders, including society,¹⁹ CSR imposes business organizations to consider the social, environmental, and economic impacts of their activities.²⁰

All these changes in the CSR movement are focused on the reconsideration of the perceptions of managers' duties.

¹⁷ Patrick C. Leyens, *Corporate Social Responsibility in European Union Law: Foundations, Developments, Enforcement*, in J.J.du Plessis, U.Varotttil, J.Veldman (Eds) *Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance*, Springer International Publishing AG Cham, 2018, p. 172.

¹⁸ M.M. Rahim, *Legal Regulation of Corporate Social Responsibility. A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy*, ed. Springer-Verlag, Berlin Heidelberg, 2013, p. 18.

¹⁹ Wilfred Luetkenhorst, *Corporate Social Responsibility and the Development Agenda. The Case for Actively Involving Small and Medium Company's*, *Intereconomics* 157/2004, p.166; Bridget M Hutter and Joan O'Mahony, *The Role of Civil Society Organisations in Regulating Business*, Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, 2004, p. 3.

²⁰ Christopher Tung, *The Legal Implications of CSR: Changing Landscape of Liability* (2006) at www.csr-asia.com/CGconference2006/ChrisTung.pdf, consulted on 1.10.2018.

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