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How to Incorporate Corporate Social Responsibility into DNA of the Companies?

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Abstract

In my presentation I would like to treat corporate social responsibility (CSR) from a legal perspective and especially discuss how to achieve an effective application of the CSR codes and principles. In this respect I would like to discuss solution proposals such as emphasizing compliance programs or certification systems and especially the question how CSR principles could be regulated by legislations with binding character, as hard law instruments. This is also mentioned as the ultimate goal of the CSR in the summary of European Commission's Multi-Stakeholder Forum "*The ultimate goal of CSR should be to embed social responsibility into DNA of companies, rendering it obsolete through normative compliance*". Corporate Social Responsibility, is an approach that companies should conduct their business in a responsible and fair way and that they should take responsibility of their impact on society. CSR, has different pillars such as sustainability, environment, human rights, investment, public procurement etc… Among all these different subsectors, I will treat the applicability of the CSR principles mostly from the sustainability perspective. Since CSR has so many different facets and propose a general policy of good conduct rather than concrete specific rules and legal provisions, stays as a vague concept and need to be defined and concretized. CSR has no description and is not regulated in the national codes and legal systems. However, there are a lot of regulations, guidelines and standards prepared by international authorities and organizations and the European Commission.

Keywords: incorporate corporate, social responsibility, DNA of companies

Introduction

The CSR can be considered as a component of the social state system adopted by many European countries against harsh capitalism in the economic life. Since the main element of capitalism is the absolute target of maximizing the profit, corporations, especially multinational companies are the pioneers of this system. Thus, in corporate law, the corporation's purpose is defined as to make maximum profit, rather than social duties toward society and stakeholders. Longtime the question whether such a social responsibility could be imposed on corporations was in the center of SCR discussions. The idea was that corporations contribute to the economy by making maximum profits, not by taking social responsibility. However, the aim to maximize profits can lead to unfair business acts and can cause damages to workers of the company, consumers, suppliers, competitors, the society, economy and the environment. Therefore, the harsh capitalist system based on profit maximizing should be balanced and moderated to protect insider and outsider interests related to corporations.

CSR propose to corporations a general duty to follow fair and good business practices. But there are several drawbacks that prevent an effective application of such a social responsibility system for the companies. Some of these come from the nature of the concept itself such as generality of the CSR policies for example. The more a CSR code is sectoral and specific, the more has chance to be applied. Another problem comes from the voluntary character of the CSR regulations and codes which are based mostly on soft law instruments and are not binding. The fact that CSR consist mostly of soft law instruments, prevent CSR to have a real impact and to be applied and enforced in private law. Several regulations and codes have been prepared by the international organizations such as UN, OECD and etc. These are not mandatory and companies are not obliged to adopt these general policies.

Companies might prepare specific codes for their own business on the related sector. Once a company adopt such a CSR policy, there are enforcement difficulties as well. As long as the so-called policy is not incorporated into a contract between parties, it is difficult to hold responsible a company, relying on its own CSR code, which is usually written under the form of a general good conduct policy and not as a specific contractual obligation. Because of all the above-mentioned drawbacks mostly related to soft law nature of the CSR codes, there are many discussions about adopting and imposing binding CSR rules to companies and redefining the purpose and the role of the corporations. Among them there are also ideas to create new hybrid model of companies closer to cooperatives with both social and economic purposes. In the light of these discussions and ideas, my aim is to examine different proposals regarding the applicability and effectiveness of the CSR principles and to question whether CSR

principles could or should be subject to binding legal provisions on the national or international level.

Corporate Social Responsibility (CSR) is a multidisciplinary domain, related to so many fields such as sociology, economics, business ethics, public relations and management etc... In my presentation I would like to treat corporate social responsibility from a legal perspective and especially discuss how to achieve an effective application of the CSR principles through legal instruments. There have been so many discussions and ideas with regard the question how CSR can be incorporated genuinely into companies' structure and activities. This is mentioned as the ultimate goal of the CSR, in the summary of European Commission's Multi-Stakeholder Forum as follows "*The ultimate goal of CSR should be to embed social responsibility into DNA of companies, rendering it obsolete through normative compliance*".

In this respect I would like to discuss whether could or should be attributed a mandatory character to CSR principles and whether CSR principles can be integrated in the mandatory national legislative system. There are many debates whether CSR principles should be regulated as part of the mandatory national legislative system or not[1]. Corporate Social Responsibility is an approach that companies should conduct their business in a responsible and fair way and that they should take responsibility of their impact on the society. CSR has different pillars such as sustainability, environment, human rights, investment, public procurement etc… Since CSR has so many different facets and propose a general policy of good conduct rather than concrete specific rules and legal provisions, stays as a vague concept and need to be defined and concretized.

CSR has no description and is not regulated in the national codes and legal systems. However, there are a lot of regulations, guidelines and standards prepared by the international authorities and organizations and the European Commission. The concept of CSR can be considered as a component of the social state system adopted by many European countries against harsh capitalism in the economy. Since the main element of capitalism is the absolute target of profit maximizing, corporations, especially multinational companies are the pioneers of this system. Thus, in corporate law companies' purpose is defined as to make maximum profit, rather than social duties towards society and stakeholders. Longtime the question whether such a social responsibility could be imposed on corporations was in the center of CSR discussions.

The idea was that corporations contribute to the economy by making maximum profits, not by taking social responsibility. However, the aim to maximize profits can lead to unfair business acts and can cause damages to workers of the company, consumers, suppliers, competitors, the society, economy and the environment.

[1] See debates **Mullerat Ramon**, The Global Responsibility of Business, in Corporate Social Responsibility, The Corporate Governance of the 21st Century, Editor Mullerat Ramon, 2011, p.4.

Therefore, the harsh capitalist system based on profit maximizing should be balanced and moderated to protect insider and outsider interests related to corporations. CSR propose to corporations a general duty to follow fair and good business practices. But there are several drawbacks that prevent an effective application of social responsibility system.

One of the drawbacks comes from the characteristic of the concept itself such as the generality of the CSR policies for example. The more a CSR code is sectoral and specific, the more has chance to be applied. Thus, sectoral approach is gaining more importance nowadays; different codes for different sectors are being regulated. Another problem comes from the voluntary character of the CSR codes which are not binding and are mostly based on soft law instruments. Thus, there are many discussions concerning adopting and imposing binding CSR rules to companies and redefining the purpose and the role of the corporations. Among them there are also ideas to create new hybrid model of companies closer to cooperatives or non-profit organizations having both social and economic purposes. In the light of these discussions, I will discuss the problems regarding efficiency of CSR principles and the question whether CSR principles could or shall be subject to mandatory legislative regulation.

What is CSR?

Concerning the definition of the CSR, there is no internationally agreed one uniform definition. In the OECD report on Corporate Social Responsibility, codes of conducts are described as "*commitments voluntarily made by companies, associations or other entities which put forward standards and principles for the conduct of business activities in the marketplace*."[1]. CSR is also defined as a "*concept whereby companies voluntarily decide to protect the interests of a broad range of stakeholders while contributing to a cleaner environment and a better society".* According to the definition of the International Chamber of Commerce, *"CSR is a voluntary commitment by businesses to manage their roles in society in a responsible way.".* There is no one unique and uniform text of CSR internationally introduced and accepted. There are various international initiatives among which there is no priority. Therefore, different terms are used to name CSR principles such as ethical guidelines, codes of ethics, corporate credos, codes of business conduct or codes of conduct.

CSR is the term used to mention an approach and a policy that might be adopted by companies or associations. These principles are usually of general character and constitute mostly a framework rather than specific rules and provisions. They are not directed to answer legal problems case by case. Thus, these codes of conduct can be described as flexible, vague and imprecise, non-binding principles that complement

[1] The OECD Report on Corporate Social Responsibility: Private Initiatives and Public Goals prepared in 2001; **Cronstedt Claes**, Some Legal Dimensions of Corporate Codes of Conduct, in Corporate Social Responsibility, The Corporate Governance of the 21st Century, Editor Mullerat Ramon, 2011, p.445.

mandatory national rules. CSR is a multidimensional domain comprising different pillars. These pillars, in other words sub-fields gathered under CSR, cannot be defined with an identical and uniform manner. There is no one uniform and precise content that is generally agreed and accepted at the international level. This is one of the drawbacks that complicate the application of CSR. Thus, CSR appears to be, not more than a general, theoretical, idealistic sum of principles.

In the OECD guidelines for multinational companies, areas of responsibility are mentioned such as, disclosure, human rights, employment and industrial relations, environment, bribery, consumer interests, science and technology, competition and taxation. Most commonly, areas such as human rights, environment, sustainability, labor security are the issues considered as the main pillars of the CSR principles. What kind of practices can be given as examples? Reducing CO2 emissions, reducing costs of the essential pharmaceuticals in the developing countries, improving workplace standards could be given as examples of CSR practices related especially to sustainability. Although don't exist a uniform definition, sustainable development can be defined as "*meeting the needs of the humanity while preserving the conditions of the nature, in a society socially cohesive and equa*l". The definition in the Report of the World Commission on Environment and Development is as follows "*meeting the needs of the current generation without compromising the ability of future generations to meet their own needs*"[1].

Why CSR?

Nowadays there is an increasing tendency to introduce and adopt CSR policies, both in the corporate life, academia and the international area. This trend has been described as "*mushrooming prevalence*" of the codes of conduct[2]. There are so many motives and reasons giving rise to the emergence of the CSR principles and codes of conduct. One of the reasons is the changing role of the companies in the society. In most of the studies it is emphasized that today companies are expected to take a proactive role towards society and its members. Especially in the developed countries, consumers and the rest of the society have the awareness to assess whether corporations comply with CSR standards. This awareness has impact on customers, consumers and other market actors' behaviors towards companies. Accordingly, complying with CSR standards is closely related with the business success,

[1] Report (titled Our Common Future) of the World Commission on Environment and Development, Annex to document A/42/427, 1987; **Smith**, p.471; **Martin**, p.94.
[2] **Cronstedt**, p.445.

advertising and public relations policy of the corporations, especially of the big and well-known companies[1].

Nowadays, especially in the developed countries, adopting a CSR policy might have direct impact on the companies' reputation, thus on their business and competitiveness in the market. Another driving force is the emergence of multinational companies, and their investment in the developing countries. The fact that their contractors, suppliers or distributors in the developing countries are integrated in the multinational companies supply chain, as it is indicated in the OECD guidelines, caused to "*blur the boundaries of the enterprise*"[2] and extended the multinational companies' responsibility. Since multinational companies have a bigger impact on the economy and the society, there is a stronger belief that multinational companies should have a social responsibility[3]. Another reason is that CSR overlap with the traditional principles of commercial law such as combating unfair practices. CSR is closely related with the unfair practices in the opposite direction and meaning. Acts of companies such as violating workers' rights or giving harm to the environment can constitute free-riding and unfair competition[4]. Thus CSR, with its preventive impact on unfair practices, serves to the unfair competition law's aim to combat unfair practices.

What is the Essential Role of Companies?

While first CSR principles had been emerging, the role of the company in the society has long been questioned. The debate was whether companies shall have any obligation towards society other than shareholders and whether they can have social role in the society[5]. Regarding this question there were two main approaches in the US, where CSR first blossomed. First was the classical approach, which is also called as "shareholder primacy", that define the company as a private property and that the company's main role is towards its own shareholders and this can be achieved through profit maximization. One of the famous phrases representing this approach

[1] **Cronstedt**, p.444; **Shestack**, p.120; **Williams A. Cynthia**, Corporate Social Responsibility and Corporate Governance, in The Oxford Handbook of Corporate Law and Governance, Editor Gordon N. Jeffrey, Ringe Wolf-Georg, 2018 p.647, 649.
[2] OECD Guidelines 2011, p.13; **Shestack**, p.123; See for the change of companies from a hierarchical unit into a complex heterarchically fragmented structure with subsidiaries, distributors and suppliers. **Beckers**, p.7,9.
[3] Concerning the influence of big companies on governments see **Martin**, p.103.
[4] **Cronstedt**, p.444.
[5] See for the debates in the US and UK **Beckers**, p. 5-6.

is of the Friedman Milton as follows "*the only social responsibility of the business is to increase its profits*"[1].

Thus, companies are mostly directed to have higher economic and financial performances in the short term. On the other hand, the counter approach relied on the idea that companies should consider not only shareholders' interests but stakeholders' interests and might have social responsibilities. In the context of corporate governance (CG), the concept of stakeholder includes shareholders, customers, employees and potential investors. In the context of CSR, stakeholder may comprise a bigger circle, in addition to customers and employees, contractors, suppliers, the environment and the rest of the community can be included in the concept. This bigger circle including society can be defined as "social stakeholders".

Weak Point and Critics of the CSR

The fact that CSR consist mostly of soft law instruments, prevent CSR to have legal consequences and to be applied and enforced in private law conflicts. Countless regulations and codes have been adopted worldwide by the international organizations such as UN, OECD and etc. These are not mandatory, and companies are not obliged to adopt these general policies. Companies might regulate specific codes for their own business concerning the related sector. Once a company adopts such a CSR policy, there are enforcement difficulties as well. If the so-called policy is not incorporated into a contract between parties, it is difficult to hold responsible a company, relying on its own CSR policy, which is usually written under the form of a general policy of good conduct and not as a specific contractual obligation. The fact that different legal forms are all of voluntary character constitutes the weakest point of the CSR.

The voluntary character of the international initiatives is indicated in the OECD guidelines for Multinational Enterprises, which is one of the most important international initiatives on CSR introduced by international organizations. It is indicated that the guidelines provide voluntary principles and standards that can be observed by companies. But they are not legally enforceable[2]. These guidelines aim to "*complement and reinforce private efforts to define and implement responsible business conduct.*"[3] "*The countries adhering to the Guidelines make a binding commitment to implement*" them into their national law system. This means that the "*adhering countries give political commitment to observe and promote the Guidelines*'

[1] **Friedman Milton**, The Social Responsibility of Companies is to Increase its Profits, New York Times Magazine, 1970.
[2] OECD Guidelines 2011, p.17 N 1.
[3] OECD Guidelines 2011, p.15 N 7.

principles". Therefore, companies, in principle, are not legally obliged to follow these guidelines, which are defined to be "self-imposed".

On the other hand, companies might be forced to comply with specific CSR requirements, as a result of specific legal regulations concerning the stock exchange or tender bids offered by the public authorities[1]. Another drawback and a point of critic gathers around the fact that, usually companies adopt a general CSR policy, only as a part of their marketing and public relations policy, but in a non-committing manner[2]. And these kinds of codes engender problems of enforceability. At the end CSR rules cannot be applied to the harmful acts of the companies. This might reinforce doubts concerning the fact that CSR principles not being genuinely integrated into companies' DNAs, rather are destined to be tools for companies to advertise, make a reputation and thus obtain more profits[3].

Which Are the Legal Instruments?

One of the questions concerning CSR is which legal instruments would be most efficient to integrate CSR into corporate business practices. There are many different legal forms under which CSR principles might be regulated. The International regulatory initiatives introduced by the International Organizations prevail in this voluntary area. Non-governmental or inter-governmental organizations such as OECD have been introducing several initiatives concerning CSR[4]. These initiatives set usually a framework of a CSR policy that can be adopted by the companies or by states. It is arguable that they can be considered as a replacement of the national mandatory codes and rules[5]. Can these initiatives replace the national legal provisions? In this respect, the international initiatives won't reflect the will of a national parliament, unless they are approved and incorporated by a national parliament into national legal system. This can lead to a question of legitimacy of these rules and can make difficult to attribute them a mandatory character.

OECD Guidelines for Multinational Enterprises provide principles and standards of good practice that are addressed to the governments or multinational companies. Under these Guidelines, recently OECD has been developing a sector-specific guidance in areas such as agricultural supply chains, textile and garment supply

[1] **Cronstedt**, p.447.
[2] See in **Shestack**, p.125; The author expresses this fact as follows "It is customary for many corporate company to trumpet their CSR accomplishments".
[3] See regarding use of CSR practices as a way to distract public attention from other less ethical practices of the companies such as pharmaceutical companies which adopt a CSR policy but on the other hand don't take any steps to reduce costs of the essential medicines in the developing countries. **Martin**, p.101.
[4] **Cronstedt**, p.446. Some of these international initiatives can be cited as follows; EU Green Book 2001, EU Multi-Stakeholder Forum on CSR, White Paper and Communication of the European Commission on CSR, OECD Guidelines on Multinational Enterprises, 2013.
[5] **Becker**, p.4.

chains, mineral supply chains, which may encourage the adoption of the guidelines by companies. Other than international initiatives, the most common way is the self-regulatory approach which means that companies might adopt and regulate their own CSR principles. Nowadays most of the multinational or big companies choose to adopt a CSR policy to enhance and protect their reputation. In this case CSR rules are regulated and shaped by the companies, them-self. Since in most of the national legal systems, there are no binding provisions concerning social responsibility, the codes of conduct or statement of ethics can be regulated under any form depending on each company's own situation and approach.

It can be included in the articles of the association. The most common way is the statement of ethics or codes of conduct announced on the web site of the company. Other than that, such a policy can be cited among the general terms and conditions of the contracts as well. The form and language may vary from a more general and abstract type of statement to more specific, precise and commitment like statement. Most of the cases these statements are written in a non-committing manner. One of the most important questions is whether this kind of general statements can be considered as an obligation from the side of the company? Can this kind of statement of ethics have legal consequences? Another approach could be through introducing certification or evaluation mechanisms to assess whether companies comply with CSR principles. This can be voluntary or mandatory.

There are several assessment standards or indexes worldwide which work on a voluntary basis. Companies might choose to be assessed and reported by these assessment mechanisms such as CSR Index of Business in the Community in the UK or The Arcturus CSR Assessment Survey . Another legal instrument could be to integrate CSR into national legislative system and regulate it as part of the mandatory legal system. In other words, states might codify CSR rules as binding enforceable rules. There are so many discussions whether CSR should be part of the mandatory enforceable legislative system or not. Recently there have been an increasing number of studies and researches about the legal consequences and enforceability of the CSR principles, in most of them the idea of a mandatory legislative system prevails. Whereas there are opinions supporting the counter argument that CSR should remain as voluntary principles and should be based on self-regulation system by the companies . What is the Correlation between CSR and Corporate Governance?

It is necessary to clarify the correlation between CSR and corporate governance. Can we consider CSR principles as corporate governance codes of the 21th Century? Can we consider corporate governance codes as a fundament of the CSR principles? With regard the correlation between these fields, one can ask the question whether CSR could be incorporated into corporate governance codes. This question is important

especially in the countries where mandatory codes of corporate governance are adopted. One can ask the question whether can be attributed a mandatory character to CSR principles, by interpreting them within the corporate governance codes of conduct and relying on the existing national corporate governance codes. Some authors' remark is that CSR is expanding into corporate governance. Some others mention that, corporate governance principles provide solid foundations on which broader CSR principles can be further enhanced. Although it depends on the national legal system of each country, one of the common traits is that both CSR and corporate governance are mostly regulated in the form of voluntary or semi-voluntary codes of conduct, as soft law instruments and codes of best practice. In this respect, we should emphasize that corporate governance rules are regulated in the national legal systems of the EU countries, mostly as a semi-voluntary code of conduct which along with voluntary codes of conduct, also sets forth several binding rules especially for listed companies. While there is a close connection between these two, there are distinctions as well. Especially in the first half of the 20th century, corporate governance codes were directed mostly to protect shareholders' interests. Corporate governance rules regulate mostly the relations between group of interests inside the company such as shareholders, managers, directors and employees and destined more to resolve inner conflict of interests from the perspective of shareholders' protection. However, CSR is deemed to be more related to external area, the market and the society that surrounds the company.

The historical process how these two types of codes have appeared and evolved is different as well. The corporate governance codes appeared worldwide, especially in the US and EU as a reaction to corporate failures and financial crisis. In order to deal with corporate failures resulting from the gap on the managing and the supervision of the companies, corporate governance codes, reinforced the management, board's accountability and the disclosure and included rules concerning the composition of the board of directors, such as independent members or committees. However, CSR principles did not evolve directly as a result of corporate failures and financial crisis, rather as a result of other factors among which the liability issue of the multinational companies comes forward.

Conclusion

With regard the correlation between corporate governance and CSR, although corporate governance and CSR aim to protect different areas and interests, they both have similar aims of setting standards of best practices for business entities. The recent stakeholder approach prevailing in the corporate law and corporate governance might open a door to attribute a mandatory character to CSR principles.

The concept of stakeholder could be interpreted with a broader meaning that interest groups such as, suppliers, contractors, the rest of the community and the environment, can be included in the context of stakeholders under the mandatory codes of conduct of corporate governance, depending on the national legal system of each country. With regard the question whether CSR principles should be regulated as mandatory rules or not, as far as we observe the latest academic researches and ideas, there is a prevailing tendency to suggest and support a mandatory enforceable legislative system for CSR. This approach seems to prevail over the counter approach which suggests that CSR should remain as part of the voluntary principles. It is hard to answer this question with one unique response for all areas of the CSR. Since there are so many pillars under CSR, as suggested, this question could be handled separately for each of the pillars depending on each one's specifications.

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