

Corporate social responsibility (CSR) and its implementation into EU Company law¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, verifies to what extent Member States are supporting the development and the implementation of corporate social responsibility (CSR) strategies in the business community, with particular focus on due diligence requirements. It also provides recommendations for developing a comprehensive and structured approach to CSR for the whole of the EU.

Policy-makers face the question of whether companies are to meet duties to prevent, identify, manage and mitigate any possible negative impact that they may cause on society as a whole (and thus human rights, health, environment and so on), including those impacts produced along their global supply chain. Such process is known as 'corporate social responsibility' (CSR), a term we use here as a synonym for 'responsible business conduct' (RBC).

This Study aims at providing an overview of national CSR policies and legislations within selected Member States (France, Germany, Italy, the Netherlands, Poland and Spain), and an assessment of how these Member States have implemented European Union (EU)'s legislation and resolutions on CSR.

A notion of CSR under international law instruments

Various initiatives at international level, such as the ones adopted by the United Nations (UN), the Organisation for Economic Cooperation and Development (OECD) and the International Labour Organisation (ILO), highlight companies' duties to behave responsibly and respect human rights. The UN Global Compact, in particular, supports companies in carrying on their businesses responsibly, by aligning their strategies and operations with the UN's Ten Principles on human rights, labour, environment and anti-corruption ("UN Guiding Principles"). It also supports companies in taking strategic actions that advance broader societal goals, such as the UN Sustainable Development Goals (UN 2030 agenda), focusing on collaboration and innovation. Such principles are derived from the Universal Declaration of Human Rights, the ILO's Declaration on Fundamental

¹ [Full study](#) in English



Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN's Convention Against Corruption.

Similarly, at OECD level, the OECD Guidelines for Multinational Enterprises ("OECD Guidelines") recommend business enterprises to conduct due diligence in order to identify, prevent or mitigate and account for how actual and potential adverse impacts are addressed by them.

CSR at EU and at Member State level: an unaccomplished work in progress

Over the last decade, the EU, through optional and mandatory provisions aimed at promoting CSR/RBC, has encouraged companies to conduct their business responsibly by a mix of voluntary and hard law initiatives, aimed at implementing the UN Guiding Principles and the UN 2030 agenda for sustainable development. Falling short of a cross-sector horizontal due diligence legislation at EU level, some of those efforts resulted in the adoption of EU law (including, but not limited to Directive 2014/95/EU, hereinafter "NFR Directive"). The NFR Directive encompasses a clarification of non-financial reporting obligations that large corporations should be subject to. It was transposed in Member States over the last decade across various pieces of legislative instruments. The EU-level measures also comprise several soft law instruments adopted by the European Commission throughout the last decade. These instruments span from the European Commission's 2011 strategy for CSR, which combines horizontal approaches to promote CSR/RBC with more specific approaches for individual sectors and policy areas, which still constitutes the cornerstone of the EU's approach to CSR. In more recent years, they also encompass several pieces of soft law providing guidance to companies as to how the reporting obligations enshrined under the NFR Directive shall be carried out. More recently, a staff working document (SWD(2019) 143) adopted by the European Commission in March 2019 lays out EU's approach to CSR. Yet, all these initiatives, as effective as they have been in bringing CSR at the front of the business decisions, have not yet concretised in an obligation under EU law for all corporations to carry out business responsibly and in respect of human rights and environment.

Assessment of Member States' policies: positive steps and challenges ahead

Overall, Member States have undertaken significant efforts in promoting CSR. Yet, in one respect, Member States' actions, with minor exceptions, have not gone far enough: putting in place mandatory due diligence duties is indeed scarce, as Member States often rely upon non-mandatory CSR provisions. While granting companies a certain degree of flexibility, such provisions do not provide for clear and specific legal duties to be applied to all companies regardless of their size; national legislations, in particular, do not provide for general tasks and duties that all companies' boards shall follow in order to prevent, promptly identify and mitigate the risks of human rights and environmental abuses in their own companies, their subsidiaries and across their supply chain. Nor do initiatives across Member States set out enforcement mechanisms and legal remedies for victims of corporate wrongdoings or mandate sanctions for non-compliance, so that CSR still remains an initiative of a largely voluntary nature.

An EU-wide cross-sector mandatory due diligence initiative and recommendations for the EU legislator

In light of the above analysis and stakeholder consultation, what has emerged is that most stakeholders support an EU-wide legislative initiative regarding social and environmental due diligence, in order to level the playing field for companies across the EU.

The policy recommendations identify what scope a new directive, laying down mandatory due diligence obligations, shall have and suggest to revise the NFR directive. We also analyse to what extent such duties should apply to Small and Medium Enterprises (SMEs). Secondly, the study tries to figure out what specific

obligations companies should comply with, and eventually recommends to put forward a cross-sector initiative, to be applied by all companies whatever their industry or sector of activity. Thirdly, the study tries to single-out specific rights that protect people damaged by a company's activities, or by actions of its subsidiaries and suppliers. Furthermore, the policy recommendations also address the question of what enforcement mechanisms the new directive should entail, also considering that EU legislations should respect the general principle of national procedural autonomy. Eventually, the study asks how the new directive fits in EU procedural law, and whether some of these EU law provisions need to be revised to accommodate the introduction of such new legislative instrument.

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