

From the diversity of ineffective CSR instruments to a legally binding ethical balance sheet

Christian Felber, March 2018

The battle against legally binding corporate duties in the UNO

Since the 1970s, there have been regular attempts within the UN to adopt and enforce a binding catalogue of obligations for companies under international law, particularly as a result of repeated human rights violations by (transnational) companies, for example through National Socialism in Germany. So far, however, all attempts have failed, starting with the establishment of the UN Centre for Transnational Corporations (UNCTC) in 1973 and including the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights in 2003. Currently, a new “[Treaty Process](#)” is under way, but, once more, with little chance for success.

Abundance of voluntary reporting standards

At the same time, more and more voluntary reporting standards and CSR instruments have been developed: the ILO’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ([MNE Declaration](#)), the OECD Guidelines for Multinational Enterprises, ISO 26 000, the UN Guiding Principles on Business and Human Rights, the Global Reporting Initiative (GRI), Deutscher Nachhaltigkeitskodex, B Corporations or the [Common Good Balance Sheet](#). These reporting standards vary to a large degree and achieve different things. So far, the only common feature: they are voluntary!

Voluntary CSR

Until 2011, the voluntary option was the core characteristic of the [EU’s understanding of CSR](#). This was not the case from the outset, but there was a heated debate on the legally binding nature of social responsibility, which was decided by the industry lobbies. Voluntary implementation has long been the first and foremost characteristic of CSR. This development stands in stark contrast to the additional international rights of action for transnational corporations (TNC) in bilateral and regional trade and investment protection agreements (ISDS). Property is more strictly protected under international law than human rights. Property, in fact, is protected better than labour rights, social security, distributive and tax justice, consumer protection, the protection of minorities, health, the environment or the climate.

EU directive on non-financial reporting

The EU directive on non-financial reporting (214/95) was adopted at the end of 2014 and has been implemented in 2017 in most member states. Enterprises “of public interest” with more than 500 employees are now obliged to draw up and publish a non-financial report containing information on human rights, diversity, labour rights, the environment, health and anti-corruption measures - in addition to the financial statement. In Germany, they can, but do not have to choose between several more established standards, such as the UN Global Compact, the OECD Guidelines or ISO 26 0000. The directive itself had already been strongly watered down – it goes back to an initiative of the European Parliament in 1999 - and has in some cases been further watered down in the laws of member states Germany and Austria. Only a few hundred companies are affected in both countries. In the case of corporations, the “non-financial report” does not have to be included in the annual report and, thus, does not have to be audited by a certified public accountant. Only the fact that a report exists has to be confirmed. The contents have no legal consequences whatsoever.

This means that not only those companies that make little effort to act responsibly or even deliberately ignore human rights violations, health hazards or the violation of labour standards will continue to be treated equally with ethically exemplary performers. In addition, the arbitrariness with which reporting standard may be chosen creates inequality of competition. Those who decide to report and comply more ambitiously enjoy no incentive whatsoever for their efforts and achievements in responsibility and ethics.

ECG's Three-Step Strategy

1. Defining meta-criteria for reporting standards

In order to make the law (EU directive and national implementation) more effective in the future, we have developed eight criteria for non-financial reporting (CSR standards).

universal (all values and relevant issues)	legally binding
measurable and comparable (e. g. using points)	externally audited
generally understandable (for the public)	public (on all products, websites, shop doors)
developed in a participatory process	linked to legal incentives (taxes, tariffs, ...)

In a first phase, those reporting standards that meet these criteria to the greatest extent possible will be included in the revised EU directive, meaning that companies must apply one of these standards and have it audited: An externally audited result is a mandatory prerequisite for participation in this first round.

2. Merger into a singular EU standard

In Phase 2, the legal standards are integrated into a unified ethical reporting standard (“common good balance sheet”) according to the above-mentioned criteria. In the same way that all companies have to prepare a uniform statutory standard for their financial statements (in Germany, according to the German Commercial Code (HGB) and in Austria, according to the Austrian Commercial Code (UGB)), they have to apply an ethics report standard in the same way, which is audited externally and applies to all companies. For small businesses, a “compact version” can be developed with little effort (exists in the ECG movement since April 2017).

3. Integrated Business Success Report

As soon as the Ethics Report Standard is available, or already during its development, the Ethics Report and the Financial Report can be combined into a holistic business success report that measures both the extent to which the goals have been reached (ethics report) and the availability of funds (financial balance sheet). At the same time, the result of the main (ethics) balance sheet has an influence on the financial (means) balance sheet. The better the ethical performance of a company, the greater the advantages in taxes, customs duties, interest rates, public contracts, etc. so that responsible products and services become cheaper than unethical products and services. Moreover, ethical business practices improve a business's long-term health and only responsible businesses are able to persist in the marketplace!

This integrated success report can first become EU standard (“Ethical Internal Market”) and later WTO or, even better, UN standard (“Ethical World Trade” instead of “Free Trade”). The integrated success report would become an entry ticket to the world market and a license to trade. The better the result, the easier it is for companies to trade and access the global market. In case of severe and repeated violations of ethical minimum standards, “ethical insolvency” occurs and the business license expires.

Schedule	Until 2015	2016-2020	2021-2025	2026-2030
Strategic phase	First generation of CSR standards: diverse but ineffective	Second generation of CSR standards: All those who meet the meta-criteria are included in the EU directive.	All the standards listed in the Directive will be merged into one ethical balance sheet, which will have legal consequences.	Financial and non-financial balance sheets are merged into an integrated reporting standard which becomes first EU, then WTO or directly UN standard.