Corporate Social Responsibility in Times of Geopolitical Uncertainty

A Critical Analysis of the European Approach

By

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List of Main Abbreviations

CS3D	Corporate Sustainability Due Diligence Directive
CSR	Corporate social responsibility
ESG	Environmental, Social and Governance
EU	European Union
GDP	Gross domestic product
ISO	International Organization for Standardization
NASA	National Aeronautics and Space Administration
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
NPP	Nuclear Power Plant
OECD	Organization for Economic Cooperation and Development
SDG	Sustainable Development Goals
SME	Small and medium enterprises
UN	United Nations

Introduction

Our society is currently going through turbulent times. The COVID-19 pandemic has shown that the countries, even the ones with a strong economy and well-developed healthcare system, are unable to respond quickly and efficiently to the global disease outbreak and protect their citizens. The war in Ukraine has highlighted the weaknesses of current political arrangements both on national and international level: no country is immune to the military attacks of the nations having enough resources and cruelty to do so. The nuclear threats by Russian Federation amplify environmental risks for the whole European continent and beyond. To this adds the imminent danger of global warming: the year of 2023 was the hottest year on the modern temperature record, negatively impacting people, flora and fauna. These events, collectively referred to as geopolitical risks, bring about uncertainties as to the functioning of our society, economy and environment in the short-, medium- and long-term.

It thus becomes evident that a multi-layer approach to minimize such geopolitical risks and their impact on our society and planet is needed. In order to be successful, such approach should involve the participation of all political, economic, social and environmental actors, including commercial companies, who can work collectively on making Europe more resilient.

This book is concerned with the evaluation of the role that corporate social responsibility (CSR) of commercial companies can and should play in times of geopolitical uncertainty. Companies are main providers of capital and resources in the modern economy. Their operations can potentially impact wide groups of stakeholders, including those based overseas. As a result, it is right to presume that they can play an important role in solving some of the societal and environmental issues faced by the modern society in times of geopolitical uncertainty.

The European Union (EU) positions itself as a global leader in sustainability, human rights protection and climate change mitigation. It sets forth and implements many initiatives in this context, including United Nations (UN) 2030 Agenda for Sustainable Development and connected Sustainable Development Goals (SDG), European Green Deal and varying policies on corporate due diligence and non-financial reporting. The book assesses the impact of these initiatives on the CSR of European commercial companies. The objective is to evaluate to what extent these European policies promote and incite the development of CSR policies in times of geopolitical uncertainty.

This book examines the effectiveness of CSR of European companies vis-à-vis the challenges provoked by the war in Ukraine. The choice of this case study – a war in Ukraine – is explained by the following reasons.

A war in Ukraine is having drastic social, economic and environmental impacts not only on Ukraine, but also on Europe and beyond. The need to find alternative (non-Russian) energy sources, disruption in corporate supply chains, rising inflation and flow of Ukrainian refugees to Europe have magnified social and economic issues already present due to the COVID-19 pandemic. Russian nuclear threats and constant shelling of Ukrainian territory present environmental risks that go well beyond Ukrainian territory.

The geographical proximity between Ukraine and the EU makes it a compelling case study to assess the impact of CSR on different stakeholders in a cross-border perspective. Financial crisis, social issues and environmental risks rarely stop at the border of one country. If anything, they often converge into one turbulent shock wave. Ukraine alone is not capable of minimizing such shocks; European cooperation is needed to ensure that the continent stays resilient and competitive in times of geopolitical uncertainty. The group of possible corporate stakeholders, whose interests should be taken into account, is thus widened and characterized as being of a cross-border nature.

The topicality of this research is explained by the current awareness and preoccupation with both a war in Ukraine and the need to achieve sustainable goals by 2030. Europe is undergoing a transition towards fair, green and digital future. Will the war in Ukraine allow Europe to still meet its sustainable objectives on time? What role could and should European companies play in helping people on the European continent, both in Ukraine and EU Member States, to live in better conditions? Could commercial companies be viewed as main vectors of sustainable change, with a power to affect varying stakeholders? These are some questions that this book strives to answer. In order to answer them, we will use two main research methods.

Firstly, since this book is primarily concerned with the analysis of the legal regime underpinning CSR, we will use comparative law method. We will critically evaluate the approach of EU law vis-à-vis CSR and analyse specific initiatives on the level of two EU Member States: France and Luxembourg.

France is known as one of the leading European countries in terms of sustainability and environmental protection. To illustrate, it has adopted the rules on extra-financial reporting and corporate sustainable due diligence way before such initiatives appeared in other European countries. French law in this context serves as an example for other countries.

Luxembourg, albeit being a small country in terms of its territory and population, is one of the top European countries in the matters of economic development and financial innovation. Keen on attracting new investors and businesses, Luxembourg policymakers are constantly searching for innovative solutions to improve a country's perception by different stakeholders. This also concerns sustainable development and sustainable finance, which makes Luxembourg an important jurisdiction to consider for the purposes of the present research.

Secondly, this book is based on the extensive use of empirical data regarding the consequences of the war in Ukraine and the CSR policies of European companies. Each theoretical argument and/or observation is supported by empirical data. This approach allows us to offer a study based on applied legal research methods, i.e. discussing how specific fundamental legal concepts and theories can be effectively applied in practice in order to minimize the social, economic and environmental impacts of geopolitical uncertainties on the European continent and its population.

The book is divided into five chapters. Each of them offers a different perspective on the CSR in times of geopolitical uncertainty.

Chapter 1 will discuss the concept of CSR, its main theories and the importance of ethical and philanthropic components during geopolitical uncertainties. It will also evaluate the concepts of accountability and transparency towards stakeholders as a precondition for efficient CSR policies.

Chapter 2 will analyse major geopolitical risks faced by modern society, with a particular focus on the war in Ukraine and its social, economic and environmental impacts on the European continent. The idea behind this chapter is to familiarize readers with the impacts of the war on environmental, social and economic aspects of the European society.

Chapter 3 will examine the approach of EU law to CSR in times of geopolitical uncertainty. Namely, we will evaluate the impact of EU Pillar of Social Rights, European Green Deal, Corporate Sustainable Due Diligence Directive and the EU assistance to Member States welcoming Ukrainian refugees. This will permit us to ascertain whether the current EU legal framework as regards CSR is efficient – from a legal and economic perspective – in allowing and motivating companies to engage in socially important actions that benefit corporate stakeholders.

Chapter 4 will focus on the approaches taken by France and Luxembourg as regards CSR. The idea behind this comparison is to present country-specific initiatives that help national companies to strengthen their CSR in times of geopolitical uncertainty and overcome some of the historical social and economic challenges.

Chapter 5, a culmination of the research conducted throughout this book, will discuss the role of a commercial company as a proponent of positive social and environmental changes on a global scale. It will lay down a new model of CSR, which specifically applies during the times of geopolitical uncertainty.

Chapter 1

Corporate Social Responsibility: State of the Art

Introduction to chapter 1

The notion of CSR has attracted widespread attention in the recent decades. An increase in the number of commercial companies throughout the globe made policymakers aware of the role that these companies can play in alleviating some of the environmental, social and economic issues in our society. In order to overcome the challenges faced by modern society – armed conflicts, climate change, worsened hunger, inequalities, pandemics and financial downturn to name but a few – the efforts of all members of the society are necessary. As such, a commercial company can and should play an important role in enhancing our society.

How can we define CSR and corporate stakeholders in times of geopolitical uncertainty? What motivations do the companies have to adhere to CSR given that it is still largely a voluntary concept? How can we evaluate whether a company effectively complies with declared CSR policies? These are some of the questions that this chapter strives to answer.

Section 1. Definition of Corporate Social Responsibility

Introduction

The development of our society has introduced the concepts such as ethics, culture and social responsibility into our everyday lives. These notions are based on different socially oriented values, e.g. respect for the elderly and disabled people, mutual help and rules of conduct "in public". Such norms of socially acceptable conduct help build a responsible and inclusive society, whose objective is to protect the rights and interests of all stakeholders.

Businesses have undergone similar changes. Modern commercial companies are no longer solely focused on making financial profits for their shareholders but are striving to contribute to the greater good. This type of corporate conduct is called CSR, which is at the heart of the analysis conducted in this book.

In search of a definition

According to the European Commission, CSR is "a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis". [1] Even though this definition was elaborated by the European Commission in 2001, it remains very topical in the times of current geopolitical uncertainty, e.g. a war in Ukraine. The geopolitical risks and their consequences require us to rethink the role that commercial companies can and should play in contributing to the greater good during such turbulent times of our history.

The rethinking of CSR – a role that a company plays in our society – is a dominant theme of modern society, which becomes even more prominent in the current geopolitical realities: pandemic COVID-19 and shortage of the vaccines, climate change, war in Ukraine and in other countries, financial downturn and rising inflation, worsened hunger in developing countries and challenges to the protection of human rights. The idea behind making a commercial company a socially responsible one is to ensure that it strives not only to make profits, but also to contribute to the needs of society in a broader sense (environment, human rights, etc.). A commercial company is now perceived as an active player on the social scene that can help to resolve societal issues (hunger, illnesses, global warming, etc.).

[1] Green paper, Promoting a European framework for corporate social responsibility, COM/2001/366 final. The definition is reaffirmed in 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, Com/2011/0681 final.

CSR can be described as the conduct of businesses that aims to resolve societal issues in a broader community. This highlights the "proactive" component of CSR, i.e. not merely considering social and environmental aspects during corporate operations, but taking active steps towards the improvement of these aspects. A company is qualified as being socially responsible if, during its business activities, it operates in ways that enhance our society. It is no longer enough for a company to not harm the environment or avoid discriminating employees to be considered socially responsible. What is needed is to take proactive approach to improve the lives of people and animals[2] and contribute to the protection and improvement of the environment. Such proactive approach requires companies to consider the interests of all stakeholders on a local, national and international scale, and go beyond what is required by existing legal rules.

The awareness of current political, economic, and environmental issues made people more conscious as to the impact of our generation on the planet and its population. Campaigns on social media allow informing a large number of people about the issues our society and planet are facing. As a result, CSR has gained significant attention. Potential clients of the company want to feel that a company makes a positive impact on the society. A socially responsible company is now emotionally attractive for people who believe that, by using the services or the products of the company, they too can contribute to a greater good.[3] Some examples include "green businesses", "fair trade" and "bio" products.

The CSR holds businesses accountable for providing solutions to the problems in our society. One of the principles of the CSR is that a company has a "moral duty" to allocate a portion of its profits to the community in order to enhance the quality of life of its stakeholders. This

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2 On the reasons to treat animals as corporate stakeholders see Smart, JA., "Animals as Stakeholders", forthcoming published version in (2022) Animals and Business Ethics (Springer), available at https://philarchive.org/archive/SMAAAS-2 ; Janssens, M., "Animal Business: an Ethical Exploration of Corporate Responsibility Towards Animals" (2022) 7 Food Ethics 1.

3 Asemah-Ibrahim, MO., Nwaoboli, EP and Asemah, ES., "Corporate Social Responsibility in War Ridden-Zones of Russia-Ukraine from February to July 2022" (2022) 5 GVU Journal of Communication Studies 1, 2.

accountability can be seen on the example of a surge in donations to charities, organization of free professional workshops, etc.

Industrial Revolution and CSR

Ditlev-Simonses argues that even though companies have been formed for hundreds of years, it is the industrialization that resulted in the significant expansion of businesses and the need to regulate their activities.[4] Undeniably, the evolution of our society between 1.0 and 5.0 industrial revolutions has led to the challenges of combing the profit-making objectives of businesses and the interests of constantly widening groups of stakeholders. This is because companies can now potentially extend their business activities throughout the globe and, consequently, their actions can be beneficial or detrimental for a very wide group of stakeholders.

A dictionary Brittanica characterizes an Industrial Revolution as "process of change from an agrarian and handicraft economy to one dominated by industry and machine manufacturing".[5] Noble et al. define industrial revolutions as "times of rapid change, achieved through innovation".[6] An Industrial Revolution is a catalyst for mass production, which allows manufacturing large quantities of standardized products (goods and services) quickly and cost-efficiently. It was made possible by using automated machinery and, from the 21st century onwards, internet-based services and devices.

The First Industrial Revolution dates back to the 1760s. It is linked to the discovery of the steam engine, which had drastically improved the manufacturing industry (e.g. textile production and transportation). The First Industrial Revolution had initiated the mass production and mass transportation on a global scale.

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4 Ditlev – Simonses, CD., A Guide to Sustainable Corporate Responsibility: From Theory to Action (Palgrave Macmillan, 2022), Ch. 2 "Sustainable Corporate Responsibility", 9.

5 Available at https://www.britannica.com/event/Industrial-Revolution

6 Noble, SM. et al., "The Fifth Industrial Revolution: How Harmonious Human – Machine Collaboration is Triggering a Retail and Service [R] evolution" (2022) 98 Journal of Retailing 199, 200.

The Second Industrial Revolution occurred between the 1870 and 1914. It's also known as Technological Revolution and is marked by the use of electricity in the mass production and transportation. One of the factors that contributed to the Technological Revolution was a discovery of the high resistance electric light by Thomas Edison. As a result, the factories were able to operate more efficiently and produce large quantities of goods at a reduced cost. In addition, the widespread deployment of electricity promoted the developments in communication technologies, such as telephone and radio. The automobiles and aeroplanes have also been developed during the Second Industrial Revolution.

The arrival of digital computers in the late 20th century marked the beginning of the Third Industrial Revolution. These machines, albeit being simple ones in comparison with modern devices, introduced the possibilities of using electronics and information systems to achieve further automatization of production. The invention of the internet opened endless opportunities for data storage and connectivity.

The Fourth Industrial Revolution, which took place at the beginning of the 21st century, is synonymous with the use of smart machines and technologies, as well as increased connectivity. This allows, *inter alia*, for a continuous flow of information between different users and an expansion of business operations on a global scale, i.e. facilitating international marketing and sale of services and goods, including through online marketplaces. Artificial intelligence, smartphone apps, digital platforms and cloud services are some examples of the smart technology used daily by individuals and companies.

The Fifth Industrial Revolution, which is occurring during the writing of this book,[7] is based on the holistic collaboration between humans and

[7] The first mention of the Fifth Industrial Revolution has appeared in 2019–2021. See Gauri, P. and van Eerden, J., What the Fifth Industrial Revolution Is and Why It Matters, 16 May, available at https://europeansting.com/2019/05/16/what-the-fifth-industrial-revolution-is-and-why-it-matters/ ; What Will the 5th Industrial Revolution Look Like?, 21 April 2020, available at https://aryunetworks.com/what-will-the-5th-industrial-revolution-look-like/ ; Xu, X. et al., "Industry 4.0 and Industry 5.0 – Inception, Conception and Perception", (2021) 61 Journal of Manufacturing Systems 530.

machines. The technologies like Chat GPT allow for an increase in production, without necessarily leading to the dismissal of the employees who have previously fulfilled the tasks taken upon by artificial intelligence. Instead, the businesses are looking for new ways to reconcile the well-being and job satisfaction of their employees with the use of new technologies to improve business operations. Noble et al. argue that the Fifth Industrial Revolution involves the consideration of well-being of different stakeholders in their interactions with machines. [8] This also includes using smart technology to tackle societal and environmental issues, e.g. creating digital platforms to promote gender equality and using robots to clear radiation-contaminated soil. This highlights the importance of adapting CSR to the changing environment in which companies conduct their activities, and making use of available digital resources to achieve a greater good.

A short analysis of five stages of Industrial Revolution allows us to understand the impact that they have on the business activities and the challenges they represent for stakeholders. For example, while the increase in the mass production has led to the maximization of profits for businesses, labour regulations were too slow to adapt to the changing working conditions. As a result, employees were sometimes forced to work in dangerous conditions without specific protection and guarantees, e.g. in asbestos-related industries.[9] To this adds the growth and longevity of the population, as well as an increase in political, economic, social and environmental risks for people. It thus comes as no surprise that the issue of CSR became a key point on the agenda of policymakers.

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8 Noble, SM. et al., supra note 6, 199.

9 In France, the dangers related to the work in asbestos-related industries were only recognized in 1998. Article 41 of the Law no. 98–1194 of 23 December 1998 on the financing of social security for 1999 introduced an early retirement benefit for asbestos workers. See also Cour de cassation, Assemblée plénière, 5 April 2019, 18–17.442; Cour de cassation, Civ. 2e, 21 September 2023, 21–19.776 B on the anxiety prejudice of workers in asbestos-related industries.

UN 2030 Agenda for Sustainable Development

Conscious about global challenges that our modern society is facing, the UN has adopted the 2030 Agenda for Sustainable Development, which consists of 17 SDG.[10] These goals include: i) no poverty; ii) zero hunger; iii) good health and well-being; iv) quality education; v) gender equality; vi) clean water and sanitation; vii) affordable and clean energy; viii) decent work and economic growth; ix) industry, innovation and infrastructure; x) reduced inequalities; xi) sustainable cities and communities; xii) responsible consumption and production; xiii) climate action; xiv) life below water; xv) life on land; xvi) peace, justice and strong institutions; and xvii) partnerships for the goals.[11] Each goal is based on specific targets to be achieved, with a total of 169 targets for 17 SDG. SDG promote universal values, which are relevant and applicable in all UN Member States.

Ditlev-Simonses highlights the fact that consistent efforts are being made to achieve these targets by 2030 and businesses play a crucial role in accomplishing them. [12] Every stakeholder of our global society, ranging from individual consumers to big multinational companies, has a role to play in achieving these goals and making our society an inclusive and safe place for everyone. The author argues that social and environmental issues should not be only seen as challenges to overcome, but as opportunities to grow and improve. As the forthcoming discussion in this book will show, the EU made use of these challenged to establish a clear policy – European Green Deal – to become a zero net greenhouse gas emissions zone by 2050.

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[10] General Assembly of United Nations, Transforming Our World: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

[11] See Katila, P. et al. (eds.), Sustainable Development Goals: Their Impacts on Forests and People (CUP, 2020).

[12] Ditlev – Simonses, CD. supra note 4, Ch. 1 “Introduction”, 2.

Globalization and CSR

The globalization has brought about another key issue to be considered: cross-border and international character of corporate activities, both from the perspective of profit maximization and CSR. The connections between a company and its stakeholders go beyond national borders. To illustrate, a French-based company may conduct operations on other continents and potentially impact local community and environment there (both in positive and negative ways).[13] As such, businesses need to act responsibly on the global scale.

Reasons to adhere to CSR

Companies may have varying motivations for adhering to CSR policies. Often, such objectives are concomitant. We classify them into three main categories.

First, a company may use CSR as a means to achieve specific economic goals. By implementing CSR policies, it can stand out from competition, attract new clients and increase its sales. In addition, by engaging in more environment-friendly business practices, a company can reduce its costs, e.g. by providing customers with digital receipts instead of paper ones and receiving tax incentives and financial grants for the use of renewable energy solutions. Some authors criticize the use of economic goals as a single reason for CSR compliance since this may lead to greenwashing.[14]

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[13] Overseas subsidiaries of the French company TotalEnergies SE may potentially harm people and environment in Uganda and Tanzania. See TJ Nanterre, ord., 11 February 2021, n° 20/00915 discussed in Métais, P. and Valette, E., "Devoir de vigilance : vers une option de compétence ?", Dalloz Actualité. Affaires-Civil, 17 January 2021, available at https://www.dalloz-actualite.fr/flash/devoir-de-vigilance-vers-une-option-de-competence

[14] Laufer, WS., "Social accountability and corporate greenwashing", (2003) 43 Journal of Business Ethics 253; Delmas, MA. and Burbano, VC., "The drivers of greenwashing", (2011) 54 California Management Review 64; Berrone, P., Fosfuri, A. and Gelabert, L., "Does greenwashing pay off? Understanding the relationship between environmental actions and environmental legitimacy", (2017) 144 Journal of Business Ethics 363; Balluchi, F., Lazzini, A. and Torelli, R., "CSR and Greenwashing: A Matter of Perception in the Search of Legitimacy" in Del Baldo, M. et al. (eds.), Accounting, Accountability and Society: Trends and Perspectives in Reporting, Management and Governance for Sustainability (Springer, 2020).

Nevertheless, we argue that compliance with CSR for purely economic reasons may be a catalyst for further profound changes in the corporate philosophy. For example, by engaging in market research on "green practices", corporate officers may understand the importance of such responsible conduct for the wide group of stakeholders and adhere to this conduct in the long-term.

Secondly, businesses may "upgrade" their CSR commitment to attract highly skilled employees that are able to take a company to the next level of corporate performance. Nowadays, employees are conscious about preserving work – life balance. They pay close attention to the working conditions. As such, a choice to take a job is often based on the working environment offered by a potential employer, and not just a salary: a possibility to work remotely, complementary health insurance, on-site nursery for young children, professional training, etc. Specific arrangements as regards remote work are made for people living in one country (e.g. France, Belgium or Germany) and commuting to work in a neighbouring country (e.g. Switzerland, Luxembourg, Liechtenstein). In order to attract and keep talented people, companies are willing to not only provide for a competitive salary, but also adapt their working conditions for a particular candidate.

Thirdly, the policymakers across the globe are moving away from voluntary CSR principles (soft law) to obligatory legal rules (hard law). Historically, the CSR was mainly employed via soft law. Examples include international standards, e.g. standards from the International Organization for Standardization (ISO), that incite companies to comply with the industry best practice in the areas of employees' health and safety, as well as environmental protection. For example, ISO 26000 defines the scope of CSR by looking at seven central points: i) organizational governance; ii) human rights; iii) working conditions in the company; iv) environment; v) fair practices; vi) treatment of consumers; and vii) communities and local development. However, the weakness of soft law lies in its non-binding nature.[15] Because the principles

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15 Guzman, AT. and Meyer, T., "International Soft Law", (2010) 2 Journal of Legal Analysis 171.

set forth by soft law are not mandatory, companies may decide not to adhere to them or adhere partially. This leads to the absence of harmonized approach as regards CSR.

As a result, hard law rules were introduced to establish minimum standards of CSR. Since hard law rules are mandatory, companies may face heavy sanctions for non-compliance – this adds to the incentives of companies to comply with CSR. In addition, the companies are eager to analyse different normative provisions, both on national and international level, to ensure that their corporate activities are fully compliant with the strictest regulatory approach. This allows companies to conduct their operations on a cross-border basis without engaging any further costs for compliance, since they have already adapted their operations to the requirements of the strictest regulatory approach.

Conclusion

This section has reviewed a historical underpinning of the CSR and main reasons for the companies to comply with CSR. We have highlighted the need to take a proactive approach to the understanding of CSR: it is no longer enough not to harm stakeholders; what is needed is to take actions aimed at enhancing their lives.

Section 2. Theories of Corporate Social Responsibility

Having discussed the concept of CSR, it is important to analyse its theories in order to gain a better understanding of the different approaches as to the role and objectives of the company in a global society. It is beyond the scope of this book to consider all existing theories of CSR as our focus is on those approaches that are relevant in defining a role that companies should play in the times of geopolitical uncertainty.[16] In this context, we will analyse three theories of CSR: i) pyramid of

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[16] For an overview of existing theories of CSR and their classification see Lütge, C. and Uhl, M., Business Ethics: an Economically Informed Perspective (OUP, 2021), 256–274.

CSR; ii) triple bottom line; and iii) stakeholder theory.

The pyramid of CSR

Caroll has introduced a four-block pyramid of CSR in his seminal paper published in 1991.[17] According to this theory, a pyramid of CSR includes four components or responsibilities: economic, legal, ethical and philanthropic.

First, since the onset of trade and commerce, companies were created as economic entities whose objective was to provide goods and services to consumers to make profits. The profit motive was the primary and main incentive for entrepreneurship.[18]

Caroll distinguishes several principles of the economic component of a company: i) commitment to be as profitable as possible and maximize earnings per share; ii) maintain a strong competitive position and a high level of operational efficiency; and iii) a success of the firm is defined by its consistent profitability.[19] These principles help, *inter alia,* to distinguish between profit and non-profit companies.

As the previous discussion has evidenced, CSR implies that companies should not solely focus on maximizing profits for their shareholders. Nevertheless, this profit maximization is still the primary reason for the existence of a commercial company. Without profit maximization, there will hardly be enough potential shareholders to ensure that the company has sufficient statutory capital to operate and expand its activities. In turn, this means that such company could not engage in any type of activity, including the fulfilment of its CSR policies. Put it differently, a company that can make a positive impact on society and environment is a company that has enough resources to do so. These resources are directly linked to the profits generated by corporate activities.

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17 Caroll, AB., "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders" (1991) 34 Business Horizons 39.

18 Ibid., 40.

19 Ibid.

Secondly, companies should conduct their business activities in accordance with the applicable legal rules. No company could trespass the law in order to maximize its profits. Caroll argues that this is a part of the social contract between a company and society, whereby businesses must pursue their economic objectives within the legal framework.[20] To illustrate, whilst a company has a right to conduct business activities to make profits for its shareholders, it also has an obligation to share a part of these profits with the society by paying taxes.

The social contract is seen as an agreement concluded between a commercial company and the society, whereby each party has its rights and obligations.[21] This contract grants permission to the company to operate within the society and generate profits in exchange for fulfilling specific duties. Some authors argue that "in return for being provided with an institutional framework for their operations as well as access to markets for resources and products, firms implicitly consent to meet certain expectations society has about their behaviour".[22] As such, the social contract encompasses the obligations of the company to comply not only with existing legal rules, but also with wider social expectations, such as adherence to ethical values.

Thirdly, an ethical component includes those activities that the society sees as moral, even though they may not be mandated by law. Caroll asserts that "ethical responsibilities embody those standards, norms or expectations that reflect a concern for what consumers, employees, shareholders and the community regard as fair, just, or in keeping with the respect or protection of stakeholders' moral rights".[23] He distinguishes the following principles that embody the ethical component of CSR: i) conducting business activities in line with the expectations of social and ethical norms; ii) acknowledging the changes in the ethical

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20 Ibid., 41.

21 Lütge, C. and Uhl, M. supra note 16, 270–274.

22 Gray, R., Owen, D. and Maunders, K., "Corporate Social Reporting: Emerging Trends in Accountability and the Social Contract" (1988) 1 Accounting, Auditing & Accountability Journal 6 cited in Lantos, GP. "The boundaries of strategic corporate social responsibility" (2001) 18 Journal of Consumer Marketing 595.

23 Caroll, AB. supra note 17, 41.

norms and complying with them; iii) avoiding compromising ethical standards in order to achieve business objectives; and iv) acknowledging that corporate integrity and ethical behaviour go beyond simple compliance with existing laws and regulations.[24]

Fourthly, a philanthropic component includes corporate activities, which are viewed by a society as the conduct of the "good corporate citizen". According to the good corporate citizen approach,[25] companies are responsible members of society and take a proactive position in addressing societal challenges. To illustrate, a good citizen should care about elderly people (medical assistance, pension), active population (good working conditions) and future generations (educational and sports facilities).

A separate subcategory of the obligations of a good corporate citizen is a duty to be sustainable, i.e. meeting the needs of the present without compromising the ability of future generations to meet their own needs, e.g. preserving natural resources.[26] Companies as good citizens should support, via their business activities, long-term economic, social and environmental sustainability. A specific emphasis is made on the need to engage with and invest in the communities in which a company operates. This includes supporting local economic development, educational initiatives, healthcare programmes, environmental conservation projects and other community-based initiatives that address local needs and priorities.

Caroll advances the argument that the main difference between ethical and philanthropic activities is that the latter is not expected in ethical or moral sense. [27] Even though the society may expect a company to contribute a part of its profits to the development of the local community, not doing so will not be considered unethical. As such, philanthropy is regarded as discretionary, even though there will always be an expec-

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[24] Ibid.

[25] Lütge, C. and Uhl, M. supra note 16, 272–274.

[26] United Nations, Rapport Brundtland. Notre avenir à tous, 1987, 14.

[27] Caroll, AB. supra note 17, 42.

tation that companies should engage in this type of socially appraised conduct.[28]

We argue that a fine line between ethical and philanthropic conduct is blurred in the current geopolitical realities, whereby companies are expected to contribute to the minimization of negative societal impacts of several geopolitical factors, such as global pandemic and its impact on physical and mental health, war in Ukraine and its consequences both in Ukraine and foreign countries, combatting the effects of climate change, rising inflation and inequalities around the globe. This can be achieved by donations, either directly or indirectly, to those in need, e.g. providing free temporary housing to the people at risk of poverty, including refugees, or allocating a part of corporate profits to the start-up working on new ways to treat viral diseases. As such, we suggest that philanthropy becomes an integral part of ethical conduct that is lawfully expected by corporate stakeholders.

The main advantage of the pyramid of CSR is the recognition of the importance of four components of CSR, which have to be complied with in order for a commercial company to be a socially responsible legal entity. Caroll does not try to negate the fact that a company's primary purpose is to make profits; rather, he rightly argues that this primary purpose should not be the only objective of the company's existence. As such, the adherence to the four elements of CSR enables the satisfaction of the interests of all stakeholders, including shareholders, public authorities, employees, customers and a society in a wider sense.

Triple Bottom Line

The Triple Bottom Line (TBL) theory was developed by Elkington.[29] According to this theory, the companies should focus on three different directions in their business activities. The first is a classical one – the "corporate account" bottom line which is measured as a profit and loss

[28] Ibid.

[29] Elkington, J. "Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development" (1994) 35 California Management Review 90.

account. The second is "people account", which defines how socially responsible a company is towards people. The third is "planet account", which looks at how responsible a company is towards the environment. These values are known as "Three Ps": Profit, People and Planet.

TBL theory defines CSR as a sum of three main spheres – economic, social, and environmental – which includes three additional sub-spheres: social-environmental, environmental-economic and economic-social.[30]

These spheres consist of the following elements:

- economic: profit, cost saving, economic growth, research and development;
- social: standard of living, education, community, equal opportunity;
- environmental: natural resources use, environmental management, pollution prevention (air, water, land, waste);
- social-environmental: environmental justice, nature resources stewardship, both locally and globally;
- environmental-economic: energy efficiency, subsidies and incentives for use of natural resources;
- economic-social: business ethics, fair trade, workers' rights.

We argue that the main advantage of TBL lies in the set of specific elements that can be used by a company to access its performance in different sub-spheres of CSR. The impact to be achieved in each of the sub-spheres is not static; rather, it represents a dynamic approach that strives to respond to the current societal and environmental needs. A

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[30] Zak, A. "Triple Bottom Line Concept in Theory and Practice" 251, 253 in Rojek-Nowosielska, M. (ed.), Research Papers of Wroclaw University of Economics n° 387: Societal Responsibility of Organizations. Directions of Changes (Publishing House of Wroclaw University of Economics, 2015), available at https://www.dbc.wroc.pl/Content/28934/Zak_Triple_Bottom_Line_Concept_In_Theory_And_Practice_2015.pdf

company should adapt its CSR policy in light of the priorities for a specific period of time.

ESG

Some of the elements used in TBL theory correspond to the metrics employed to assess the environmental, social and governance (ESG) performance of the company.[31] ESG factors represent non-financial risks and opportunities inherent in the corporate activities. Such elements are taken into account by investors and financial institutions when making a decision on whether to invest in or issue a loan to a particular company.[32]

ESG factors include the evaluation of the corporate activity vis-à-vis the following metrics:

- environmental: climate change, carbon emissions, air and water pollution, biodiversity, deforestation, energy efficiency, waste management, water scarcity;
- social: customer satisfaction, data protection and privacy, gender and diversity, employee engagement, community relations, human rights, labour standards;
- governance: board composition, audit committee structure, bribery and corruption, executive compensation, lobbying, political contributions, whistleblower schemes.

Companies that address ESG risks and strive to mitigate them have

31 See Conmy, S., "What is ESG and Why is it Important?", Corporate Governance Institute, available at https://www.thecorporategovernanceinstitute.com/insights/guides/what-is-esg-and-why-is-it-important/

32 Giese, G. et al., "Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance" (2019) 45 The Journal of Portfolio Management 69; Gillan, SL., Koch, A. and Starks, LT., "Firms and social responsibility: A review of ESG and CSR research in corporate finance", (2021) 66 Journal of Corporate Finance 101889; Amel-Zadeh, A. and Serafeim, G., "Why and How Investors Use ESG Information: Evidence from a Global Survey", (2018) 74 Financial Analysts Journal 87.

better access to capital, lower borrowing costs, and increased investment opportunities as investors seek out socially responsible investment options that align with their own values and risk preferences. This encourages companies to develop new products, services, or business models that address social or environmental challenges, thus driving business innovation and improving sustainability.

Stakeholder theory

The stakeholder theory was developed by Freeman.[33] This theory asserts that the company's stakeholders are people and entities that are affected by the business activities of the company. The stakeholders are the groups without whom a company cannot exist. These groups include customers, consumer advocates, owners, community organizations, governments, suppliers, environmentalists, special interest groups, employees, the media and competitors.[34] The stakeholder theory is thus based on a view that a company operates in an ecosystem of different participants whose interests are vital for the success of the company itself. As a result, the company should take into account the interests of its stakeholders if it wants to ensure its own long-term well-being.

Undeniably, business organizations do not operate in isolation; the actions they undertake will have an impact on their surroundings.[35] This relationship is reciprocal, i.e. the activities of companies will directly influence the environment and society; the changes they bring will in turn affect the company. For example, if a business organization exhausts natural resources in the geographical area where it operates, there will be no future input for its commercial operations.

According to the stakeholder theory, the continued existence of the company requires the support of its stakeholders. Their consent must

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[33] Freeman, RE., Strategic Management: A Stakeholder Approach (Pitman, 1984); Freeman, RE., "The Politics of Stakeholder Theory", (1994) 4 Business Ethics Quarterly 409.

[34] Stratling, R. "The legitimacy of corporate social responsibility", (2007) 4 Corporate Ownership and Control 80, 81.

[35] Asemah-Ibrahim, MO., Nwaoboli, EP. and Asemah, ES. supra note 3, 3–4.

be sought, and the company's activities should be adapted to gain their approval. [36]The interests of the shareholders do not have primacy over the interests of other stakeholders, which implies that profit maximization is not the ultimate goal of corporate existence. Rather, the objective of the company should be to find a balance between the satisfaction of the interests of all stakeholders.[37]

The advantage of the stakeholder theory lies in its affirmation that no stakeholder is more important than another (in a static sense), which requires a company to find a balance between satisfying the interests of all stakeholders in a specific situation. This theory advocates for a dynamic approach to CSR, meaning that a particular group of stakeholders can be prioritized during a specific period of time. To illustrate, a company may decide to allocate a part of its profits to finance the reconstruction of the residential area damaged by a natural disaster, which means that there will be fewer resources left to engage in other social projects. By balancing the interests of all stakeholders, companies can fulfil their CSR based on the current preoccupations of a global society.

Importance of corporate philanthropy

Each of the discussed theories contributes to the understanding of CSR as a dynamic and flexible socially enhancing conduct, which goes beyond what is required by law. CSR is largely based on the concept of ethics, i.e. doing what is moral. We argue that the ethical conduct should also include a philanthropic component. This is especially important in times of geopolitical uncertainty, which calls for a consideration of and caring for the needs and interests of enlarged groups of stakeholders (e.g. people affected by war in another country).

According to Chernow, a philanthropy is a "part of an implicit social contract stipulating that wealth beyond a certain point should revert to

[36] Supra note 33.

[37] Ibid.

society".[38] In other words, the businesses should voluntarily give back a part of the profits generated by their business activities. "Voluntarily" implies that such conduct is not mandated by law, i.e. paying taxes is obligatory but allocating a part of corporate profits to finance educational events in the local community is not.

The companies are able to make profits when they have enough customers to whom they can sell their goods and services. If no customer is interested in the goods or services sold by a particular commercial company, the company will not survive in the market. In addition, to produce the goods and/or provide services, environmental conditions should allow doing so (good quality of air, absence of the direct sources of radiation, etc.). It thus makes sense that a company should allocate a part of its profits to support a wider group of stakeholders, not just its direct shareholders. This can be seen as a re-investing strategy, whereby a company creates additional opportunities for its stakeholders and promotes economic growth within the society.[39] As such, a philanthropic component is present in all above-mentioned theories of CSR: explicitly in the pyramid of CSR, and implicitly in TBL and a stakeholder theory.

A concept of philanthropy was widely promoted by Andrew Carnegie, known as a "father of American philanthropy".[40] Throughout his work, he highlighted the moral duty of every person to try and make our world a better place.

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38 Chernow, R. Titan: The Life of John D. Rockefeller Sr. (New York,1999) cited in Acs, ZJ and Phillips, RJ. "Entrepreneurship and Philanthropy in American Capitalism", (2022) 19 Small Business Economics 189.

39 Acs, ZJ. and Phillips, RJ. supra note 38. Companies are the biggest holders of capital, which explains the significance of corporate philanthropy in addressing social and environmental issues (see Global Justice Now, 69 of the richest 100 entities on the planet are corporations, not governments, figures show, 17 October 2018, available at https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/).

40 Theroux, K., "A Century of Philanthropy: Carnegie Corporation of New York", American Libraries Magazine, 13 September 2011, available at https://americanlibrariesmagazine.org/2011/09/13/a-century-of-philanthropy-carnegie-corporation-of-new-york/

The Gospel of Wealth, an essay written by Carnegie in 1889, advances several ideas that lie at the heart of the modern CSR. The author argues that those having resources ("wealth") have a moral obligation to use them to enhance a global society, rather than simply accommodating or multiplying these resources for their personal benefit. Once the needs of a particular person have been satisfied, the surplus of the wealth should be distributed for a greater good. It is obvious that Carnegie implies that ethical (moral) conduct of rich persons (natural and legal persons) should include a philanthropic element. The author also highlights the inequality gap between poor and rich and the need to counteract it by engaging in philanthropy and social reform. According to Carnegie, the redistribution of the part of the wealth will allow solving social problems and contributing to long-term welfare of the society (e.g. improving access to the public healthcare, education and appropriate living conditions).

Conclusion

CSR in times of geopolitical uncertainty should be assessed through the ethical lenses, which include a philanthropic element. What benefits does a company bring to its stakeholders? Is CSR of a particular company tailored to respond to the current societal needs and preoccupations? The answers to these questions will help us to assess whether a company conducts its activities ethically and contributes to a greater good. Accountability and transparency of a company vis-à-vis its stakeholders are crucial in enabling us to evaluate whether a particular company effectively adheres to CSR. These two concepts will be discussed in the next section.

Section 3. Accountability and Transparency Towards Stakeholders

Introduction

In order to ensure long-term success of CSR, accountability and transparency towards stakeholders as regards the impact of corporate activities on society and environment are of outmost importance. These two concepts are interconnected, i.e. transparency facilitates accountability and accountability ensures complete and honest transparency.

Accountability

The accountability can be defined as "the requirement or duty to provide an account or justification for one's actions to whomever one is answerable".[41] One of the approaches to CSR is that a company is viewed as a party to a social contract; consequently, its existence is dependent upon the approval of the society.[42] The company is thus accountable to stakeholders, which collectively represent our society, for its social, economic and environmental impacts. It should take full responsibility for its actions and their consequences on people and planet.

We suggest that corporate accountability denotes a proactive approach taken by a company to discern social and environmental effects (actual and potential ones) of its activities and continuously improve such impacts. The key element here is the proactive nature of CSR: companies should not simply focus on not harming people and environment; what is needed is to bring some positive changes. A social contract requires a company to contribute to a greater good through its activities.[43] In other words, adherence to ethical conduct is one of the conditions to obtain and use a social licence to operate in a society. As such, corporate accountability should involve the account of corporate actions that benefit our society and planet in some way.

Corporate accountability includes engaging in an open and honest discussion with stakeholders – a social dialogue in a broader sense of the term – on the impact of business activities on the environment and society. It involves listening to the objections and criticism of all stakeholders,

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[41] Swift, T., "Trust, Reputation and Corporate Accountability to Stakeholders" (2001) 10 Business Ethics: A European Overview 16, 17. The author provides a literature review on different definitions of accountability.

[42] Ibid.

[43] Lütge, C. and Uhl, M. supra note 16, 270–272.