

CORPORATE SOCIAL RESPONSIBILITY AND SELF-REGULATION

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In the field in Corporate Social Responsibility (CSR), international private regulation or self-regulation refers to numerous regulatory frameworks. Soft Law is the other definition which is often used for private regulation. However, some scholars distinguish them from each other. Different examples of International Private Regulations in field of CSR can be mentioned as frameworks for monitoring, codification and certification of firm's compliance with different environmental, labour, human rights and anti-corruption standards. Such frameworks have cross boundary effect and in contrast with treaties are the product of collaboration among enterprises and NGOs. This paper will try to compare and contrast numerous aspects of public and private regulations, and provide answers for questions regarding different types of international private regulations, their advantages and disadvantages in field of Corporate Social Responsibility. As a result of the study in the paper was also presented the most popular CSR initiatives including some industry driven initiatives assigned to a specified groups of international private regulations.

KEYWORDS

CSR, international private regulations, public regulations, soft law, industry driven regulations

1 INTRODUCTION

International private regulation can be considered as one of the most attractive tools in domain of Corporate Social Responsibility which plays a significant role in formation of regulatory frame work in this area [Scott 2011]. Academic and business society is facing with growing importance of private international regulations in field of CSR in a way that such privately formed regulations have outnumbered international treaties from the dawn of new millennium [Scheltema 2014]. Their importance is expected to grow even further due

to growing trend in number of international private regulations which seems to take even faster pace in future.

Additionally, international private regulations are filling regulatory gap in absence of public regulations. Another reason for increasing popularity of international private regulation is of possibility for their higher effectiveness in comparison with public regulations. Additionally, inability of states in governing markets in global level is an accepted fact in business society. Even internationally recognized standards are interpreted and implemented in a non-harmonized manner across the globe.

Starting with the definition of Corporate Social Responsibility, it has been defined in a very broad term. "CSR has been described as anything from a philanthropic program, to internal management systems, to code and ultimately a regulation" [Sheehy 2012]. While companies claim to practice CSR by being involved in everything from giving a donation to providing substantial sources to finance environmental friendly projects [Sheehy 2012]. Understanding CSR as a regulatory issue is an important step to take in the process of properly defining it. However, such definition will subject the CSR to inherent challenges of regulatory systems including: identification of coherent regulatory objectives, design and implementation of appropriate structure at organizational level, establishment of coherent rules and increasing systematic effectiveness via identification of motivational schemes in order to improve compliance [Sheehy 2015]. As a result, CSR will form a regulatory system following the goal of giving reformulated answers to questions in shady areas of intersection between economics, politics, society and environment [Sheehy 2012].

Current research paper intends to define different international private regulations and different types of it which are applicable to the practice of CSR, nature of their interaction with public international law, advantages and disadvantages of their application to CSR area and conclude reasons for their popularity. For this reason, first part of research will be allocated to legal features of Corporate Social Responsibility. Second part discusses definition and different types of international private regulations in CSR area. Third part presents examples of most popular CSR initiatives and their assignment to a specific groups of regulations. Final part evaluate advantages and disadvantages of regulating CSR with international private regulations while the fourth and last part of the article will be conclusion on proceeding discussions.

2 MATERIALS AND METHODS

In the paper, authors present study on different types of international private regulations that applies to Corporate Social Responsibility and their relations with public international regulations. On the basis of electronic research in academic legal databases, an extensive comparative study has taken place among existing literature on application of different international private regulatory frameworks in the arena of Corporate Social Responsibility. In the study the

authors used the method of descriptive and comparative analysis and the method of synthesis.

3 LEGAL FEATURES OF CORPORATE SOCIAL RESPONSIBILITY

The need for defining legal characteristics of CSR becomes evident by considering it as a private-self regulatory system. Such legal features can be defined as: CSR is a private rule system which has been developed by non-state players of for-profit sector, following explicit rules format like codes of conduct and its application is voluntary at enterprise or industry level [Sheehy 2012].

CSR is a self-regulatory, private system

It is essential to understand CSR as a private and self-regulatory system. Such understanding will help to separate it from other forms of regulation like public, voluntary and non-enforceable regulations. CSR has two main characteristics: first one is its self regularly nature which is a type of regulation which should not be confused with sources of regulation like industry sponsored standards and second one is its private nature. We should not confuse self-regulation with private regulation as self-regulation might be done either by public or private bodies. However, private regulation is neither initiated by public authorities nor its implementation or enforcement depend on them. It is also important to distinguish CSR from voluntary regulations as in many occasions voluntary regulations have public origin [COM 2011]. Finally, it is a mistake if CSR is considered as non-enforceable regulation [Matach 2005]. As private regularity systems do not use court and other forms of public enforcement system [Bronwen 2007]. However, CSR enforcement is either through bestowal and awards on the basis of compliance or expulsion from group as a result of not compliance [King 2000].

Role of Codes and Standards

General format for introduction of private self-regulatory systems is to establish them in the format of codified rules where common examples are “codes of conducts” and “standards” [Sheehy 2012]. However, it is wrong to considering CSR as mere codes or standards as such definition will derail us from substantive focus on subject matter which is identification and avoiding social costs of for-profit activities. Codes might contain rules which have no substantive rights and fail to form an effective regulatory system. Therefore, it is not correct to limit CSR to the definition of codes without considering fundamental reasons behind formation of a regulatory system [Sheehy 2015]. The same applies to standards, as standards are part of a regulatory system not a regulatory system as a whole.

CSR as a Normative System

Corporate Social Responsibility is considered to be a norm based on regular system with proponents towards positive and substantive obligations [Sheehy 2012]. General norms of CSR advocate minimizing the harm and maximising the non-organizational benefits [Forest

2008]. By codification of such norms, CSR will turn into a formal practice and a systematized area of law.

CSR and motivation for compliance

Like any other regulatory system, effectiveness is a fundamental question for CSR. While compliance in public regulatory system can be imposed via punishment, private self-regulatory systems like CSR do not have access to public resources such as court to punish cases of noncompliance. As a result, CSR and similar private self-regulatory systems should take different approaches to solve the problem of compliance. Some scholars claim that public pressure as a result of negative information dissemination can be a good source of motivation for compliance [Gunningham 1995]. Others consider formalizing norms via codes [King 2000] and membership in an elite club [O'Hare 1982] as sufficient motivation for compliance. However, none of above mentioned explanations seems to be satisfactory. Sheehy [Sheehy 2011], introduce the CSR Motivation Framework as a useful method for identification and explanation of motivations for compliance with CSR regulations. While staying within the economic model of the firm, CSR Motivation Framework will provides changes to norms and business practices in order to comply with CSR regulations.

4 DEFINITION AND DIFFERENT TYPES OF INTERNATIONAL PRIVATE REGULATIONS IN CSR AREA

Some scholars consider international private regulations in the field of Corporate Social Responsibility as equal to self-regulation [Backer 2007]. Therefore, in order to define the international private regulation, it is necessary to find meaning of self-regulation and its scope of applicability. Self-regulation has very broad meaning and covers numerous types of international private regulatory frameworks. Among different meanings of self-regulation, we can point at set of private rules which in cooperation with others have been formed by people who are bond by them [Overmars 2011]. Another definition for self-regulation can be the framework for establishing and/or enforcing rules within the legal framework by societal actors [Giesen 2007]. Businesses and non-governmental organizations are main players in the game of defining international private regulations. Despite the fact that international private regulations are applicable across national borders, they are different from treaties as a result of absence of states authorities in their establishment process. They are also different from national and domestic form of private regulations due to their cross border application and more general content [Curtin 2011]. Despite the fact that international private regulations and soft law have been used interchangeably, they should be differentiated from each other as well. To be more precise, soft law has more public origin as in most of occasions it is elaborated by public regulator while it is not a part of public regulation. Therefore, it lacks the capability of imposing hard sanctions. On the other hand international private regulations enjoy capability to impose hard sanctions while being regulated by private entities. Among various kind of existing private

international regulations in CSR, different examples can be ones which codify, monitor or even certify compliance of enterprises with environmental and labour standards, anti-corruption acts and human rights. In addition to CSR related forms of international private regulations, such regulations can be increasingly found in all business spheres for example financial regulations established by rating agencies and accounting firms.

Different Types of International Private Regulations

There are numerous types of international private regulations in practice. Relevant regulations to CSR are either developed by industries or collaboration between industry and NGOs. While industry driven regulations are more focused on the rule making, second type follow different objectives due to involvement of public interests [Cafaggi 2011]. As a result, they involve different levels and types of public interest based on the composition of their governing body. Therefore, it is possible to witness outcome of differences between industry driven regulations with collaborative driven regulations in their models of governance, enforcement mechanisms with emphasize on choice between judicial and non-judicial enforcement. In accordance with criteria of enforcement, it will be possible to define main groups in international private regulations in field of CSR as following:

- Group 1. International private regulations originated by industry or a defined professional community including codes of conducts and roles of for example preventing child labour in toys and clothing industry.
- Group 2. International private regulations which are outcome of multi stakeholder model. While being popular in field of CSR, leadership of multi-stakeholder model consists of different stakeholder groups like industry players, NGOs, consumer representatives or even government representative. Forest Stewardship council with governing body composed from representatives of social and indigenous groups, environmental organizations and economic organizations can be a remarkable example of this group of international private regulations. Other examples can include: Global Compact and OECD guidelines for multinational enterprises.
- Group 3. International private regulations which have been initiated with multi-stakeholder model in which governing body has discretion for resource allocation. Examples can be mentioned as guidelines of International Financial Organization which are extensively used in loan agreements and certification schemes which are used in Eco-Labels.
- Group 4. International private regulations which are used in the format of contractual agreement between stockholders. Example can be Model Mining Agreement with covering CSR norms in sections 22-27 [Cafaggi 2013]. It worth to mention that contractual model of international private regulations is also popular in CSR area.

Table 1. The CSR initiatives compared with types of regulations

NAME OF SELF-REGULATION	DESCRIPTION	TYPE OF REGULATION
OECD guidelines for Multinational Enterprises	The Guidelines are far-reaching recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.	Group 2
Caux Round Table (CRT) Principles for business	The CRT Principles for Business are a worldwide vision for ethical and responsible corporate behaviour and serve as a foundation for action for business leaders worldwide. As a statement of aspirations, The CRT Principles aim to express a world standard against which business behaviour can be measured. The Caux Round Table has sought to begin a process that identifies shared values, reconciles differing values, and thereby develops a shared perspective on business behaviour acceptable to and honoured by all.	Group 1
UN Global Compact	The largest global corporate citizenship initiative to date, the UN Global Compact provides a network of UN agencies, business, labour, non-governmental organisations and public institutions working to promote companies internalizing ten principles in the areas of human rights, labour, environment and anti-corruption. Once a commitment is made by the CEO of a company joining the initiative, the company has to integrate the principles into its business operations, contribute to broad development goals (including the Millennium Development Goals), advance the ideals of the UN Global Compact and communicate annually on progress.	Group 2
Account Ability's AA1000-Principles Standard	Account Ability's AA1000 series are principles-based standards to help organisations become more accountable, responsible and sustainable. They address issues affecting governance, business models and organizational strategy, as well as providing operational guidance on sustainability assurance and stakeholder engagement. The AA1000 standards are designed for the integrated thinking required by the low carbon and green economy, and support integrated reporting and assurance.	Group 1
Dow Jones Sustainability Indices	Stock market indices measure the performance of the world's sustainability leaders. Companies are selected for the indices based on a comprehensive assessment of long-term economic, environmental and social criteria that account for general as well as industry-specific sustainability trends. Only firms that lead their industries based on this assessment are included in the indices. The indices are created and maintained according to a systematic methodology, allowing investors to appropriately benchmark sustainability-driven funds and derivatives over the long term.	Group 1

FTSE4Good	The FTSE4Good Index Series is designed to measure the performance of companies demonstrating strong Environmental, Social and Governance (ESG) practices. Transparent management and clearly-defined ESG criteria make FTSE4Good indices suitable tools to be used by a wide variety of market participants when creating or assessing responsible investment products.	Group 2
The Equator Principles	The Equator Principles is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects. It is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.	Group 3
UNEP FI	Finance Initiative, launched by the United Nations Environment Program (UNEP) in 1992. Initiative was founded in the context of the Earth Summit in Rio, as a platform associating the United Nations and the financial sector. The need for this partnership arose from the growing recognition of the links between finance, environmental, social and governance challenges, and the impact of banking, insurance and investment institutions on creating a more sustainable world.	Group 2
FORGE Group's Guidance on corporate social responsibility management and reporting	The FORGE Group is a consortium of financial institutions, non-governmental organisations, British Bankers' Association and Association of British Insurers. The FORGE guidelines were developed during external stakeholder process, incorporating comments from a wide range of groups, including the industry's trade associations, the government, mutual, and investor owned financial institutions, non-governmental organisations and special interest groups.	Group 3
Collecchio Declaration	The first civil society statement on the role of financial sector and sustainability, and was signed by over 100 civil society organizations. According to the declaration, financial institutions could and must play a positive role in advancing environmental and social sustainability. Declaration called to embrace six commitments that reflect civil society's expectations of the role and responsibilities of the financial sector in fostering sustainability and take immediate steps to implement them.	Group 2
Global Reporting Initiative Sustainability Guidelines	Comprehensive tool to assist in the development of CSR report. Using the Global Reporting GRI guidelines is voluntary. The guidelines have been planned in such a way as to be applicable to all organizations, regardless of size, type and location of the company. By using the GRI Guidelines, reporting organizations disclose their most critical impacts – be they positive or negative – on the environment, society and the economy.	Group 2
ISO 26000	The standard was launched in 2010 following five years of negotiations between many different stakeholders across the world. Representatives from government, NGOs, industry, consumer groups and labour organizations around the world were involved in its development, which means it represents an international consensus. ISO 26000:2010 provides guidance rather than requirements, so it cannot be certified to unlike some other well-known ISO standards. Instead, it helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.	Group 1
The Oil and Gas Industry Guidance on Voluntary Sustainability reporting	The guidance has been the principal industry-specific framework for use by oil and gas companies reporting on environmental, health and safety, and social and economic performance. The second edition of this document provides significant added guidance on reporting as an engagement process, including detailed "how-to" steps for reporters, clearer focus on assessing "material" issues, and improved technical indicators for use in reporting sustainability performance.	Group 4
The Global Mining Initiative	The International Council on Mining and Metals (ICMM) was founded in 2001 to improve sustainable development performance in the mining and metals industry. It brings together 23 mining and metals companies as well as 34 national and regional mining associations and global commodity associations to address core sustainable development challenges. ICMM serves as an agent for change and continual improvement on issues relating to mining and sustainable development. We require member companies to make a public commitment to improve their sustainability performance and report against their progress on an annual basis. In addition, to augment these efforts, we engage with a broad range of stakeholders (governments, international organizations, communities and indigenous peoples, civil society and academia) to build strategic partnerships.	Group 4
The Extractive Industries Transparency Initiative	Global Standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society working together. Countries implementing the EITI disclose information on tax payments, licences, contracts, production and other key elements around resource extraction.	Group 2

Source: developed based on information contained on the following websites: <http://mneguidelines.oecd.org/about/>;
<http://www.cauxroundtable.org/index.cfm?menuid=8>; <https://www.unglobalcompact.org/what-is-gc>; <http://www.accountability.org/standards/>;
<http://www.djindexes.com/sustainability/>; <http://www.ftse.com/products/indices/FTSE4Good>; <http://www.equator-principles.com/>; http://fessud.eu/wp-content/uploads/2013/04/The-genesis-and-evolution-of-CSR-self-regulation-with-special-reference-to-the-case-of-financial-institutions_Working-paper-70.pdf; <http://www.iso.org/iso/home/standards/iso26000.htm>; <http://www.ipieca.org/publication/oil-and-gas-industry-guidance-voluntary-sustainability-reporting-2010-update>; <http://www.icmm.com/about-us/about-us>; <https://eiti.org/eiti>

Tab. 1 presents the most popular initiatives in the field of CSR including some industry driven initiatives. Each of the initiatives has been shortly described and assigned to particular groups of international private regulations, identified in accordance with criteria of enforcement.

From the organizational perspective, first three groups (group 1, group 2, group 3) show similarity as in all of them private regulation is the product of an organization [Koppel 2010]. In practice, regulations are created and monitored by using memberships and different types of standards. Meanwhile, multi-stakeholder models enjoy the even distribution of power among participants which results in collaborative attitude among parties [Zumbansen 2011]. Some cases of multi-stakeholder model include key constituencies in their organization. Whereby key constituencies are in charge of setting international private regulations and enforcement mechanism while granting a degree of control.

International private regulations can be found easily out of CSR area. Among most well-known models of them it is possible to point at NGO led model of standards and their monitoring systems. Examples can be standards set by Oxfam International and Amnesty International. Other type is international private regulation introduced by experts. Example can be ISO set of standards.

5 ADVANTAGES AND DISADVANTAGES OF INTERNATIONAL PRIVATE REGULATIONS IN CSR

As mentioned earlier, international private regulations are among popular tools in field of CSR and their applicability is constantly increasing. Also European Commission has issued a call for self and co-regulations in CSR area in order to encourage enterprises in meeting their social responsibilities [COM 2011]. There are different advantages for popularity of them in relevance to CSR including:

- Different national legislations and codes of conduct can impose a high cost on enterprises. Therefore, introduction and application of international private regulations can be a proper response to such diversity for the purpose of increasing harmonization and reduce costs.
- There is no doubt about weakness of public international law. In contrary, private international regulations can play a significant role in enhancement of CSR through different types of relations with public sphere as discussed in part two of this article.
- New technology has created a new challenge for public law makers as internet has shifted the law making sphere from public to private and from national to international which has direct application to relevant regulations to CSR [Pauwelyn 2012].
- Introduction of technical standards are mostly done by standardization organizations (which are mostly private) rather than public rule makers. Example can be regulations regarding safety which among others the ones which have been set by private international regulations are more popular. The reason can be intent of private standardization organizations to move from product standards towards process standards which is difficult for states to monitor.

- It is accepted that in contrary with public law which creates legal certainty and stability, private regulations provide more flexibility in relations to regulatory design as well as sanctions. It happens that private regulation partially substitute the public regulation due to its more flexibility, lower costs and higher efficiency [Balleisen 2009]. However, in some occasions, private international regulations will completely replace public regulations. Example is the area of standards for best practices to targeted stakeholders regarding environmental and climate change policies in which private sector will be asked by public rule makers for defining the best practices and standards which can provide flexibility and adaptability to change in short notice [Express Group 2010].

Despite the fact that international private regulations have popularity due to their advantages, they also show some disadvantages which are expandable to CSR area. First disadvantage is ineffectiveness of international private regulations in protection of certain interests like vulnerable assets and people. However, this is not applicable in CSR as human rights have complete coverage in international private regulations. Second disadvantage of international private regulations is absence of legitimacy due to their nature of being set by private organizations instead of state legislative bodies. Third, can be negative effect on market activities as a result of reducing competition. Fourth is voluntary nature of adoption of international private regulations, which will result in emergence of free riders who enjoy result of currently applicable international private regulations without becoming manager and undertaking necessary commitments. Finally, lack of enough protection against environmental and human rights violations can be considered as another disadvantage for them.

6 CONCLUSION

International private regulations are more and more accommodated in different areas of business in the wake of public and state regulations. Since their presence has been welcomed in field of CSR, this paper tried to provide a results of the study on different types of international private regulations applied to CSR, their advantages versus disadvantages of applying them in the practice of Corporate Social Responsibility. The authors have gathered the most popular initiatives in the field of CSR including some industry driven initiatives and assign them to identified groups of international private regulations in accordance with criteria of enforcement. In conclusion it is possible to mention that according to existing evidences the applicability of private international regulations will increase in field of CSR. However, we have to bear in mind that the question is about the level of effectiveness of these regulations. Authors believe that due to multidimensional nature of CSR, different elements affect effectiveness of international private regulations in field of CSR which should be considered in practice and at empirical level. Therefore, a multi-level approach is suggested in process of setting and implementing international private rule making for CSR. Such approach may consist of two level processes including making rules based on

necessities for rule setting process in addition to elements for evaluation and measuring effectiveness of such rules after their implementation. We can suggest legal, economic social and behavioural factors as most fundamental elements to be considered in both levels of the process of setting international private regulations in CSR. Therefore, the future research could focus on different dimensions of effectiveness (economic, social, environmental) of self-regulations in the area of Corporate Social Responsibility.

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