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## **CSR**

# **CORPORATE SOCIAL RESPONSIBILITY AND THE ROLE OF THE LEGAL PROFESSION**

## **A GUIDE FOR EUROPEAN LAWYERS**

### **UPDATE NO. 2 - JUNE 2008**

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The Council of Bars and Law Societies of the European Union (CCBE) has issued this guidance to European lawyers advising corporations on Corporate Social Responsibility (CSR).

CSR is an instrument of positive change inside businesses. It sets the framework and defines the manner in which a business must operate to be able to meet the ethical, legal, commercial and public expectations that a society has of any company.<sup>1</sup> These guidelines serve as a starting point for the corporate lawyer in creating new legal solutions for his client.

This guide explains:

- why companies should be interested in CSR; and
- why lawyers should advise on CSR.

The guide also provides information on how to pursue this topic further and explains the current CSR initiatives at a European and world-wide level.

The CCBE recently established a CSR discussion group for drafting this guide. The CCBE would like to thank Claes Cronstedt, Claes Lundblad, Yvon Martinet, Mauro Pizzigati, Birgit Spiesshofer, Sune Skadegard Thorsen, Marco Vianello and Carita Wallgren for their participation in this discussion group.

The CCBE would appreciate any comments on the guide, and your feedback on this initiative.

For your comments or further information, please contact the CCBE at [ccbe@ccbe.eu](mailto:ccbe@ccbe.eu)

CCBE  
September 2003

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1 MCE Management Centre Europe

The CCBE Working-Group on CSR decided to update its September 2003 guide on CSR. The update is due to, both the response of readers to the first edition of the guide, and secondly, the growing number of positive developments that have taken place in the field of CSR since the first edition.

Since September 2003, CSR has achieved greater prominence on International, European and National levels. In line with these developments, more and more companies are taking an active interest in CSR and companies today have a greater understanding of the need to incorporate CSR practices into their day to day decisions.

The updated guide, in addition to explaining recent developments, also highlights to a greater degree the reasons why lawyers should be involved in CSR. The task of explaining why more companies should be interested in CSR is also addressed in the update.

The CCBE would like to thank Claes Cronstedt, Birgit Spiesshofer, Sune Skadegard Thorsen and Marco Vianello for their continued participation in the CCBE discussion group on CSR and for drafting this guide.

The CCBE will continue its work and update the guide when necessary.

We hope that you find this update to be of interest.

CCBE  
April 2005

Since the CCBE initially drafted its guidelines on Corporate Social Responsibility (CSR) in September 2003, the pace of change in the field of CSR, and its implications for lawyers, has been enormous. In recent years, the CCBE has observed that a large number of law firms have become involved in CSR and some have produced CSR reports.

What is noticeable is the extent to which clients are increasingly requesting, and demanding, information from law firms with regard to CSR policies that law firms have in place. This information is also being requested of law firms by new recruits and existing employees. It is being observed that clients are demanding that law firms sign and adhere to the client's CSR policy and/or code of conduct, and/or that the law firm can explain the extent to which CSR criteria are being satisfied by the client's law firm e.g. with regard to diversity.

CSR, and specifically its implications for the legal profession, are featuring regularly on programmes at many international events and conferences relevant to the legal profession. Furthermore, it is being observed that more and more Bars and Law Societies are recognising the importance of CSR and its implications for the legal profession. This has been evidenced by the results of a CCBE questionnaire in which the Bars and Law Societies considered CSR to be an important area for branding and for the legal profession in the future.

As a way of background to the CCBE's involvement in CSR, the CCBE established a Working Group on CSR in 2002. The Working Group was created with the aim of getting lawyers involved in advising on CSR, and to develop methods and tools to assist law firms to deal with this internally. This goal remains unchanged. What has changed since 2002 is the fact that in 2002 CSR was viewed by many as a new and fashionable trend. However, in 2008 it is clear that CSR has become an integral part in doing business in the global arena and therefore lawyers can no longer afford to neglect CSR as an area for the legal profession.

The current update follows from the CSR guidelines of September 2003 and the update in April 2005. This update provides, in a concise manner, an overview of issues that today's lawyer needs to focus on.

The CCBE would like to thank Carl Bevernage, Birgit Spiesshofer, Claes Cronstedt, Sune Skadegard Thorsen, Marco Vianello and Ramon Mullerat for all their work in drafting this guide.

We hope the current edition is of interest to you.

CCBE  
June 2008

*“Corporate social responsibility is now in every reasonable chief executives agenda, not always at the top, but it’s there”.<sup>2</sup>*

From a corporate perspective, CSR is addressed using various approaches. In general they can be described as the principled, the issues or the stakeholder approach. The principled approach asks business to consider and act upon its impact on internationally agreed principles for sustainable development. The issues approach describes corporations that base their CSR work on reactions to issues that appear in the media or in NGO campaigns against the company or its peers. The stakeholder approach asks the company to engage in a broad interaction with its stakeholders to identify which issues it should address under CSR. The stakeholders and issues approaches may lead to challenges that may prove counterproductive to company goals on CSR i.e. disappointing stakeholders by not meeting their expressed expectations, or by being considered reactive and not proactive. The principled approach as proposed by the 2007 UN Global Compact summit may therefore provide for the most solid foundation.

Representatives of the business world instinctively understand that values such as honesty, fairness and responsibility are necessary to be able to run a successful business. Many fortunes have been made, and are still being made, through unacceptable business methods. However, development with the global liberalisation of markets have been towards more transparency and corporate accountability. This makes it less attractive to conduct business that is contrary to the values of society.

CSR represents business taking more direct responsibility for managing its social and environmental impact, becoming more openly accountable not simply to employees and their shareholders, but also to wider ‘stakeholders’ including investors, consumers, local communities, environmental and other interest groups.

CSR has both an internal and an external aspect. The internal aspect refers to the CSR policy that a corporation itself should have devised and implemented. The external aspect of CSR is wider and refers to a corporations role and responsibility towards stakeholders and society at large. It should also be noted that there is an on-going discussion on the relationship between CSR and Corporate Governance.

The term CSR has many connotations. For example, the European Commission believes that CSR is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”<sup>3</sup> The World Business Council for Sustainable Development (WBCSD) believes that “Corporate social responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large”.<sup>4</sup>

The term CSR is used throughout the guidelines as covering corporate responsibilities in relation to the full triple bottom line.<sup>5</sup> This is in accordance with the use of the term by many actors in the field, hereunder the European Union. However, the CCBE acknowledges that there is a trend towards using the term Corporate Responsibilities as the comprehensive description of social, environmental and economic responsibilities.

It is interesting to note the fact that lawyers are already carrying out CSR activities in an everyday manner without realising it. CSR also encompasses compliance, and while compliance standards vary between jurisdictions, globalisation and CSR call for an international layer, a level playing field, determining a set of essential standards that cannot be ignored anywhere in the world.

<sup>2</sup> Steve Hilton and Giles Gibbons, Good Business, p. 55.

<sup>3</sup> Commission Green Paper 2001 “Promoting a European Framework for Corporate Social Responsibility”, COM(2001)366 Final

<sup>4</sup> World Business Council for Sustainable Development CSR: Meeting changing expectations, pg.3

<sup>5</sup> See part III “Corporate risks and opportunities and the Triple Bottom Line”.

More and more companies adopt and implement rules for social responsibility because they know only too well how the market really works today. It is a matter of risk management, of creating an effective organisation and of creating a good market position.

Current developments can be illustrated under the following three categories:

**(a) International developments:**

At an International level, there have been developments in connection with the UN Convention on Corruption, Global Compact, Equator Principles, the International Criminal Court, UN Principles for responsible investment, to name but a few ([more details on these initiatives can be found in the Annexes](#)).

Prof. John Ruggie, appointed in 2005 by the UN Secretary General as Special Representative on the issue of human rights and transnational corporations and other business enterprises (SRSG), published his third report in April 2008. This final report forms an important yardstick with regard to the development of CSR in recent years. During the last three years of his mandate the SRSG has produced two 'interim' reports on human rights in a corporate context. The first report, published in March 2006, contained an outline of the major challenges within the field and the second one, published in March 2007 highlighted a number of inadequacies in the relationship between human rights and business. The April 2008 report proposes a framework around which to structure the debate and the development. In this way, the SRSG can influence further developments by outlining a solid foundation on which to build. The SRSG presents "a conceptual and policy framework to anchor the business and human rights debate and to help guide all relevant actors.

The proposed framework rests on three pillars:

- State duty to protect against human rights abuses by third parties, including business;
- Corporate responsibility to respect human rights;
- Effective access to remedies for victims of human rights abuses.

The three elements of the framework are complementary and mutually reinforcing, providing for the achievement of sustainable progress. The SRSG starts the report by stressing the importance of using a principled approach to address the debate. The Bill of Human Rights is thus the point of departure: The SRSG warns against the application of a limited list of rights, e.g. core labour rights, that corporations should be responsible for. Empirical studies annexed to the report demonstrate that corporations can in fact impact all rights, in all regions of the world and in all sectors. The framework proposed by the SRSG is supported by both NGOs and business associations, such as the International Chamber of Commerce, the International Organisation of Employers, and the Business Leaders Initiative on Human Rights. It is expected that the SRSG will have his mandate prolonged for another two years by the UN Human Rights Council in June 2008. Such resolution must be expected to ask the mandate to make the content of the framework more concrete and operational.

**(b) European developments:**

At a European level, the EU response to the CSR debate emanated from the European Commission's call to business for help to combat social exclusion in the mid 1990s, coupled with the European Parliament resolution of 1999 calling for a binding code of conduct to govern EU companies' environmental, labour and human rights compliance worldwide, together with the 2000 call of EU Heads of State for businesses to support CSR as part of the Lisbon Agenda. The Commission Green Paper on CSR in the early 2000s put CSR on the agenda for EU institutions, and the setting up of a European Multistakeholder Forum enabled a debate to take place amongst stakeholders. The European Commission also published in March 2006 a Communication on CSR entitled "Implementing the Partnership for Growth and Jobs: Making Europe a pole of excellence on CSR".<sup>6</sup>

In this Communication, the Commission announces backing for a European Alliance for CSR.

<sup>6</sup> COM(2006)136 final.



This is an open alliance of European enterprises to further promote and encourage CSR. The alliance is a political umbrella for CSR initiatives by large companies, small and medium-sized enterprises, and their stakeholders. It is not a legal instrument to be signed by enterprises, but rather a vehicle for mobilising the resources and capacities of European enterprises and their stakeholders in the interests of sustainable development, economic growth and job creation.

The Communication acknowledges that enterprises are the primary actors in CSR, but also stresses the important contribution of non-business stakeholders. In the text, the Commission states that “it continues to attach utmost importance to dialogue with and between all stakeholders”, and recognises that “without the active support and constructive criticism of non-business stakeholders, CSR will not flourish.”

The Communication underlines the potential of CSR to contribute to sustainable development and to the European Growth and Jobs Strategy. The Commission suggests that CSR practices, while not a substitute for public policy, can nevertheless contribute to a number of public policy objectives, such as: skills development, more rational use of natural resources, better innovation performance, poverty reduction, and greater respect for human rights.

In its report, the European Parliament underlines that CSR policies should be promoted on their own merits, neither as a substitute for appropriate regulation in relevant fields, nor as a covert approach to introducing such legislation.<sup>7</sup> Agreeing with the Commission of the term, the European Parliament defines CSR as “the voluntary integration of environmental and social considerations into business operations, over and above legal requirements and contractual obligations”. The Parliament called on the Commission to encourage dissemination of good practice resulting from voluntary CSR initiatives and that the Commission should also consider establishing a list of criteria for enterprises to respect if they claim to be responsible.

The European Parliament welcomed the Commission Communication’s objective to link CSR to the economic, social and environmental aims of the Lisbon Agenda and the trend for larger companies to publish voluntary social and environmental reports in recent years. The Parliament also reminded the Commission to bring forward a proposal on the annual accounts of types of companies which includes requirements for social and environmental reporting alongside financial reporting.

The European Parliament, in its report, also recalls previous consideration given to the appointment of an EU Ombudsman on CSR to undertake independent enquiries on CSR-related issues at the request of companies or any stakeholder group.

It is also noteworthy that EU-based transnational companies with production facilities in third countries have to abide by core ILO standards, social and environmental agreements to achieve worldwide balance between economic growth and environmental standards. The European Parliament wants SMEs to participate in CSR, and suggests that the European Commission targets their participation by jointly working with intermediary bodies, offering specific support for the participation of cooperative/social economy businesses through their specialist associations.

The European Parliament recommends that future CSR research goes beyond the simple “business case” for CSR, to focus on the link between competitiveness and sustainable development, at the macro level (the EU and Member States), the meso level (industry sectors and supply chains) and the micro level (SMEs), and the interrelationship between them, as well as the impact of current CSR initiatives and possible violations of CSR principles.

### (c) National developments:

In addition to events taking place at an International and European level, it is evident that governments at a national level are ranking CSR as a major issue. National governments have become aware of the growth in CSR, and governments in addition to the public are increasingly highlighting and imposing CSR standards.

<sup>7</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2006-0471+0+DOC+PDF+V0//EN>

As an example, some legislation in European countries requires listed companies to prepare a detailed and certified report on CSR as part of the annual report, as in France, the UK and the Netherlands.

### Germany

In Germany the debate on Corporate Responsibility was focused first on environmental protection. The concept of CSR, coming from an Anglo-Saxon background, reached Germany only in the 1990s and has only recently become a widely discussed issue at a governmental and society level. At a governmental level, the Federal Ministry for Employment and Social Affairs has been nominated as the centre of competence for all CSR issues. The Federal Government plans to develop a transparent CSR-concept and to implement a multi-stakeholder-forum. The Federal Ministries for Environment and for Economic Cooperation and Development launched guidelines and initiatives, such as

- Corporate Social Responsibility – an orientation from an environmental perspective (2006), Sustainable Development in Enterprises, Management Tools for the Implementation of Corporate Social Responsibility and Corporate Sustainability (2007),
- Round table for a Code of Conduct for German enterprises doing business in developing countries, in particular, regarding standards for local suppliers.

The Federal Government took decisions with regard to the following measures:

- Indication of the regions of origin of consumer products (e.g. with regard to production conditions);
- Introduction of additional publication obligations for enterprises with regard to their compliance with environmental and social standards; and
- Introduction of the obligation that suppliers of German enterprises comply with environmental and social standards.

Large Corporations have also to report in their annual report on non-financial indicators in so far as they have an impact on the success of the enterprise.

The Council for Sustainable Development, which is considered to be the most important advisor to the government with regard to CSR, presented in September 2006 the report "Corporate Responsibility in a Globalised World – a German Profile of Corporate Social Responsibility", followed by a multi-stakeholder conference in September 2007.

The representative organisations of the German industry created a joint platform ([www.csrgermany.de](http://www.csrgermany.de)) in order to enhance the exchange of information between corporations and stakeholders. The German Industry Associations participate in the European Alliance for CSR and in "open coalitions of cooperation" and "laboratory meetings" formed under the umbrella of this alliance.

### Denmark

The understanding of CSR in Denmark has evolved from emphasising the promotion of 'the inclusive labour market' to the current emphasis on an "international approach to CSR" and "strategic CSR" which are key concepts in the Government Strategy to Promote Corporate Social Responsibility as launched in May 2008.<sup>8</sup>

According to the strategy, the Danish Government abandons the previous strong focus on the inclusive labour market. According to the Government, corporations obtained the best conditions

8 The Danish Government (May 2008): Handlingsplan til fremme af virksomhedernes samfundsansvar. Available at [www.oem.dk](http://www.oem.dk) in Danish. The Ministry of Economic and Business Affairs will translate it into English – available at the same website: [www.oem.dk](http://www.oem.dk)

for attracting and retaining a diverse workforce<sup>9</sup> through the inclusive labour market focus. For 15 years the inclusive labour market was promoted initiating a wide range of initiatives such as promoting a system of mentors for new employees from disadvantaged groups and state subsidies to the wages of persons with disabilities, persons with reduced work capacity and minorities.

With the strategy the Danish Government adopts 'the international approach to CSR'. The Government stresses that CSR shall be approached using the framework provided by the UNGC, appreciating also the UNGC proposed 'principle-based approach'.<sup>10</sup> The Government explicitly refers to the application of internationally recognised conventions as the basis for CSR:

"To make Denmark known for responsible economic growth it is necessary that the work of Danish corporations on Corporate Social Responsibility takes its point of departure in a framework which is internationally known and recognised. Even though it might seem appealing for the Danish Government to develop Danish principles or certification schemes for CSR these would inevitably stem from a particular Danish context. A Danish framework for CSR without connection to internationally recognised principles would thus not to the same degree contribute to the competitiveness of the corporations in the global markets (...)".<sup>11</sup>

Under four headings the strategy outlines 30 action points ranging from legal requirements to account for CSR in their annual reports for the 1,000 largest corporations, institutional investors, investor associations, and state owned corporations; over ensuring the systematic incorporation of CSR considerations in future state procurement based on the conventions forming the basis of the UN Global Compact; to establishing advisory services for corporations through Danish representations abroad.

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9 Ibid.

10 Confer the UNGC Geneva Declaration, 2007, paragraph 10:  
[http://www.unglobalcompact.org/docs/summit2007/GENEVA\\_DECLARATION.pdf](http://www.unglobalcompact.org/docs/summit2007/GENEVA_DECLARATION.pdf)

11 Translation provided for by the author

#### (a) Corporate Risks and Opportunities

*“The 21st century company will be different. Many of the world’s best-known companies are already redefining traditional perception of the will of the corporation. They are recognising that every customer is part of the community, and that social responsibility is not an optional activity”.*<sup>12</sup>

Companies are growing more and more aware of the need to consider CSR issues and to take account of CSR in their decision-making process. There are many risks and opportunities for companies in addressing or failing to address CSR.

Some of the risks are as follows:

- Increased civil and criminal litigation against companies and management;<sup>13</sup>
- Loss of top talents;
- Loss of investors;
- Increased cost of capital;
- Decline in stock value;
- Loss of customers and business partners;
- Loss of public contracts and public procurement procedures e.g. World Bank, European Union, European Bank for Reconstruction and Development;
- Loss of business partners;
- Exposure to naming and shaming campaigns and blacklisting campaigns; and
- Loss of brand value.

On the other hand, the opportunities can be summarised as follows:

- Enhanced corporate image and added brand value;
- Attract and retain top talents;
- Enhancing job satisfaction, loyalty and identification;
- Access to quality business partners;
- Obtaining the status of a “preferred partner”;
- Customer satisfaction and loyalty;
- Improving risk management;
- Lower insurance fees;
- Favourable access to capital markets;
- Attracting Socially Responsible Investment (SRI), which is mushrooming;<sup>14</sup>
- Contribution to the development of stable global markets

<sup>12</sup> Tony Blair, Former UK Prime Minister.

<sup>13</sup> Business and Human Rights, A Progress Report, p.18, Office of the UN High Commissioner for Human Rights, January 2000

<sup>14</sup> See for example survey by UK Social Investment Forum/Just Pensions that SRI investments in UK are up from £22.7bn in 1997 to £224.5BN in 2001

- Establishing a good footing with public authorities and the general public;
- Creating a basic reference point and language for partnerships; and
- Public relations opportunities.

In addition to the risks and opportunities, a number of factors should be mentioned in order to highlight issues that companies should be aware of:

### *(1) Sphere of influence and complicity*

The extent to which a company or its directors may assume liability for own acts or for complicity in government or third person activities needs to be clearly defined. The questions are being deliberated under the terms 'sphere of influence' and 'complicity' respectively.

The 'sphere of influence', describes the relationship of a company to its workers, consumers, members of a local community, business partners and other stakeholders that may be influenced by company actions or omissions. A company has the power to influence its stakeholders to a certain degree. The degree of a company's influence varies according to the size of the company, the type of partnership, operation, issues at hand etc. In some situations, companies will have a substantial degree of influence over certain partners and can use this influence to promote important issues, such as the upholding of human rights. In other situations, the company is too small and distant to influence the stakeholders.

However, 'sphere of influence' is not a legal concept. The corporate responsibility to respect human rights is not a fixed sphere nor is it based on influence.<sup>15</sup> But it is useful in encouraging companies to 'do no harm' to those who are closest. A more descriptive and legally viable concept is 'proximity' which could lead to 'complicity' in human rights violations.

In order to avoid entering the zone of legal risk of being accused of complicity, a prudent company should carefully assess any relationship which may result in contributing to the commission of violation of human rights committed by someone else, the perpetrator. Such contribution could be expressed in many ways such as to facilitate, enable or exacerbate the commission of a crime or to assist, encourage or lend moral support to the perpetration of such crime, including silent presence coupled with authority.

It does not matter what the nature of a company's conduct is, if it contributes to a violation. It could be supplying goods, buying or selling materials, hiring security forces, providing infrastructure or tools, financing, providing information or advice.

Whether the principal perpetrator has not been legally tried or convicted is irrelevant, and this does not affect the responsibility of the accomplice.

Principles of tort in common law countries and the law on non-contractual obligations in civil law jurisdictions, including national and international criminal law, may be applicable.

### *(2) Parent liability for subsidiaries*

It is acknowledged that the corporate environment has changed under the liberalisation of markets and global transparency. One aspect of the changing environment is the challenge faced by the courts in regard to the liability of parent companies for the acts and omissions of their subsidiaries.

A route to bringing a claim against a parent company is to sue it jointly with the subsidiary company to establish that both of them share responsibility for the harm caused. It will allow plaintiffs to avoid the problems of piercing the corporate veil because it does not involve holding the parent liable for the acts of its subsidiary but rather for its own acts or omissions.

If the parent company had the requisite level of knowledge and its conduct has caused harm – the parent company can be held jointly liable for the subsidiary's violation.

<sup>15</sup> Ruggie, 7 April 2008 report, page 20, p. 72

### *(3) Directors liability*

A company should be aware that violations of laws and regulations can lead to directors being held personally liable for wrongful acts on the part of their company and employees. Such liability can be in the form of civil or criminal liability. Although there are different rules in different jurisdictions, the notion is emerging that neglect of CSR obligations may lead to directors' liability.

CSR is also being discussed more and more within the context of Corporate Governance (CG). *CG and CSR are based on common principles:*

A paper by the European Confederation of Directors' Associations (ecoDA) titled "CSR: What's in for directors?" provides as follows:

"... there are different reasons to encourage directors to deal with CSR:

- Since the board has to pay attention to ethics and since CSR provides the organisation-wide effects of decisions, the board has to deal with CSR.
- CSR can help directors to comply with their duty of care.
- Taking corporate social responsibility into account enables the company to reduce risks."

The same paper provides examples of duties in a number of different European countries:

In the United Kingdom, the 2006 Companies Act, published in November 2006, includes measures that provide greater clarity on directors' duties, including making clear that the directors have to act in the interests of shareholders, and in doing so have to pay regard to the longer term, by having regard to the interests of employees, suppliers, consumers and the environment.

In Spain the board of directors "will ensure that the company abides by the laws and regulations in its relations with stakeholders; fulfils its obligations and contracts in good faith; respects the customs and good practices of the sectors and territories where it does business; and upholds any additional social responsibility principles it has subscribed to voluntarily".

## **(b) The Triple Bottom Line**

### *1. Content of CSR provisions (PPP)*

In order to understand the scope of CSR, it is necessary to understand the triple bottom line.

Sustainable development for business is made operational by the triple bottom line, popularly described by the three Ps; People, Planet, Profit. In short companies seek to find sustainable solutions for their relationship with human beings (hereunder in the relationship with employees, suppliers, customers, local communities and other stakeholders), the external environment (including biodiversity and animal welfare) and the economy (including the economy of the community).

### *2. Accountability/Supervising standards*

The following boxes present indicative lists of areas under the triple bottom line reflecting present developments. The areas mentioned are not intended to be exhaustive, but merely to give an overview of current developments.

### Social Responsibility (People)

- Labour rights: Slave, forced or compulsory labour; child labour; freedom of association/collective bargaining; non-discrimination/equal opportunities; rest, leisure and holidays; minimum wages; health and safety;
- Right to work: Protection against unjustified dismissals and technical/vocational guidance and training;
- Right to life;
- Development rights: Right to education; to health; to adequate food and fair distribution of food; to clothing; to housing; to social security; to enjoy technological development;
- Right to hold opinions & freedom of expression, thought, conscience and religion;
- Right to a family life;
- Right to privacy, e.g. surveillance, personal information, drug testing;
- Minority rights to culture, religious practise & language and cultural rights (indigenous peoples);
- Right to peaceful assembly;
- Right to take part in political life;
- Informed consent to medical / biological trials; and
- Moral & material interests from inventions.

### Environmental Responsibility (Planet)

- UN Convention on Bio-Diversity: in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer;
- The Precautionary Principle (if in doubt about negative environmental impact of a given action – abstain);
- Use and handling of GMOs (Genetically Modified Organisms);
- Air emissions and impact on global warming (greenhouse gases);
- Impact on the ozone layer (Montreal Protocol Annexes);
- Prohibition of use of certain materials and substances, hereunder safe handling/transport of dangerous substances;
- Distance to residential neighbourhoods for production sites;
- Soil, ground water and surface water contamination;
- Treatment and reduction of waste water;
- Water consumption and leakage;
- 'Eco-efficiency', consumption of raw materials, and consumption of energy;
- Export of waste and re-use of material;
- Subsidising of environmental projects (e. g. protection of the rainforest etc.); and
- Animal welfare.

### Economic Responsibility (Profit)

- Financial profit, economic growth and asset creation;
- Business ethics, corruption and bribery, conflict of interest;
- Direct and indirect economic impact on communities through spending power (suppliers, consumers, investors, tax payments and investments), and geographic economic impact;

- Economic impact through business process: outsourcing, knowledge, innovation, social investments in employees and consumers;
- Monetary support for political parties, lobbying, and other 'political' activities;
- External economic impact from pollution, internalisation of externalities, value of consuming products;
- Stock exchange behaviour, including insider trading;
- Economic regulation, tax incentives, redistribution;
- State contracts and State Subsidies;
- Intellectual property rights, hereunder patents, pricing and the impact on economic and societal development potential;
- Anti-trust & competition, including market impact and 'alliances';
- Board and executive remuneration and role of accountants;
- Donations; and
- Taxes, including 'transfer pricing'.

In practice, it is not possible to describe each bottom line quite as simply as illustrated. Grey zones exist between the lines. For example, corruption and bribery will belong to the 'economic' bottom line as having an immediate impact on the economy of the community, notwithstanding that the practice has human rights implications as well in the form of discrimination and non-equal access to law.<sup>16</sup> The 'environmental' bottom line describes the impact on the external environment, notwithstanding that the environment has great impact on the right to health of people. Consequently, most reporting strives towards a holistic approach embracing all three bottom lines in one report. The figure below mentions some of the many existing instruments in relation to the three bottom lines.

Social responsibility	Environmental responsibility	Economic responsibility
ISO 18000 (and upcoming ISO 26000 guidelines)	ISO 14000 series	IAS (International Accounting Standards)
Amnesty International Human Rights guidelines for Business	E-MAS	ISO 9000 series
ICC guidelines	Life Cycle Assessments	
ETI Base Code	Business in the Environment's Index	
ILO declaration on fundamental principles concerning multinational enterprises and social policy	Environmental Technology Partnership Initiative	
Caux Principles	ICC guidelines	
Sigma		
Global Sullivan Principles		

<sup>16</sup> A few human rights are not of immediate concern for business and should remain the overriding obligation of the state structure. These rights are found in the International Covenant on Civil and Political Rights (ICCPR): Art 9 – 10: the right to freedom and personal safety (arrest and detention), Art 11: prohibition against imprisonment for non-fulfilment of a contractual obligation, Art 12: the right to liberty of movement and freedom to choose residence, Art 13: the right to seek asylum, Art 14 – 15: the right to a fair trial and prohibition against retroactive punishment, Art 16: the right to recognition as a person before the law, Art 20: prohibition against inciting war and against hate speech, and Art 26: equality before the law. However, business should be conversant in relation to all the rights as the State's performance in these areas may have an impact on business opportunities and certainly has an impact on possible complicity in Human Rights violations and on the public's perception of the legitimacy of the company to conduct business in a certain territory. In a few incidences the company may even be directly involved when selling goods and providing services to the violating government or, with the pace of privatisation, taking over the government function as such.



UN Global Compact
Global Reporting Initiative (for reporting)
Balanced Business Scorecard
Compliance Programmes
Dow Jones Sustainability Index
FTSE4good Index
EFQM Business Excellence model
London Benchmarking Group
OECD Governance Principles
OECD principles on multinational enterprises

Finally, as a prerequisite, every company is expected to comply with international, regional, national and local laws and regulations directly applicable to the corporation.

Compliance to such regulation will in most societies fulfil several of the areas mentioned in the boxes above, but in many cases a company may not be able to prove CSR only by demonstrating legal compliance.<sup>17</sup> Beyond this compliance, there is another area that we might describe as Corporate Social Opportunity, which is motivated by competitive advantages i.e. economic incentives.<sup>18</sup>

<sup>17</sup> In 2001, in order to encourage sustainable behavior by firms, France passed Article 116 of the Loi sur les Nouvelles Régulations Economiques (NRE). France became the first country to mandate “triple bottom line” (financial, environmental and social) reporting for firms. All French corporations listed on the Paris Stock Exchange are required to report on the sustainability of their social and environmental performance. There are also similar developments taking place in a number of other countries.

<sup>18</sup> See Corporate Risks and Opportunities under III

CSR may affect lawyers in three ways: (1) lawyers can be requested by clients as suppliers of services to submit themselves to the client's CSR policy, (2) lawyers can be requested by their clients to advise on CSR policies and compliance schemes, and (3) lawyers may have to assist in audits in order to verify compliance.

#### (a) CSR and lawyers as suppliers of services

The task of advising on CSR issues has not always been seen as falling to the legal profession. This has resulted in CSR being an under-developed area for lawyers. However, as companies increase their commitment to CSR, they will start to demand from their legal advisers that they are conversant with the area and able to provide advice.

In order to assess the growing involvement of the legal profession in the area of CSR, the CCBE Working Group on CSR sent a questionnaire in April 2007 to CCBE member Bars and Law Societies on the issue of CSR. The questionnaire had two parts – one part for Bars and Law Societies, and one part for law firms. The questionnaire arose due to the CCBE Working Group observing an increasing need for the legal profession to be involved with the issue of CSR, and the increased impact of CSR on the legal profession. It was felt that a questionnaire would provide a useful overview of how CCBE member Bars viewed CSR and whether CCBE member Bars and Law Societies believe that CSR will be an issue in the future.

All Bars and Law Societies that responded to the questionnaire indicated that they are very interested in knowing more about the relevance of CSR to the legal profession, and a number of Bars indicated that they could foresee CSR being an issue in the future for their Bar. All Bars indicated that they regard CSR as being important for the reputation of the profession. It is clear from the responses that Bars and Law Societies foresee CSR as a growing area for the legal profession.

An important aspect to consider is the fact that companies involved in CSR impose CSR requirements on suppliers, and as law firms are also considered suppliers of services they are being asked to comply with the clients code of conduct. This raises a number of questions, in particular as law firms may be asked by numerous clients to sign their code of conduct. By way of signature the compliance with the clients code of conduct becomes part of the contractual relationship with binding effect and enforceability. Therefore law firms increasingly start to develop their own code of conduct.

The following case-study illustrates how a company might be reluctant to take advice from a lawyer if the lawyer is not familiar with CSR policies and CSR implementation.

In 1998, 42 pharmaceutical companies filed a lawsuit against the government of South Africa and Nelson Mandela as President. The industry was concerned about a new law that seemingly would enable the South African government arbitrarily to authorise generic drugs thus undermining corporate patents. Following various delays and interested parties' interventions the trial was to be heard in Spring 2001. Interestingly the majority of arguments by both parties to the case were explicitly based on the parts of the South African constitution that reflect international human rights. The lawsuit was initiated by local lawyers and in some instances corporate head-offices were not even aware of the lawsuit.

The case displays an excellent example of what happens if legal advisors to corporations are not aware of the possible implications on Corporate Social Responsibilities of their acts.

The lawsuit was used in a well-coordinated international manner by the powerful NGOs, Oxfam International and Médecin Sans Frontières to expose the entire industry starting February 2001. The campaign that was soon supported by NGOs worldwide primarily addressed affordability of drugs in the economic developing world.

Arguments for the plaintiffs included the rule of law, right to property, equality rights, freedom of expression and opinion, lack of participation in the parliamentary process, the right to participate in material gain of one's inventions (patents) the right to equality for the defendants (not that of the pharmaceutical companies, but that of HIV/AIDS patients), right to human dignity, right to life, right to health, the right to food, the right to water and social security, rights of children and

women's rights.

The attorneys representing the industry would have saved their clients considerable resources and loss of reputation had the CSR implications of the law suit been expected, and the lawsuit would probably never have been filed, at least not without an appropriate issue management plan. The industry appeared to be taken by surprise when the campaign was launched.

Fortunately for the Industry the courts in South Africa never had to balance the rights of legal persons against those of physical persons. The process could have continued for quite a while leaving the painful debate open. A settlement was reached on 19 April 2001, 2 months after initiation of the campaign, but the campaign continued.

Beyond the resources spent by the industry during the campaign, the court case and the campaign led to considerable loss of reputation. The upside of attorneys neglecting CSR is that most large pharmaceutical corporations today have policies and strategies to address their global impact on the right to health.

### (b) Lawyers as Advisors

The following are some of the reasons for why lawyers should be involved in advising on CSR:

#### (i) Access to management

Lawyers are specialist advisers to corporations and the emissaries of justice, fairness and morality. This must reflect on their responsibilities to follow and influence the fast legal developments of CSR.

CSR should be, and is already, part of company policies and integrated into Corporate Governance strategies and decision making. In this regard, the lawyer has a number of responsibilities:

- The lawyer should make the company management aware that CSR has a legal framework which they will have to deal with;
- CSR must be considered as an area where negligence may very well result in losses of a considerable size for the involved company. If the lawyer, due to ignorance, did not respond adequately to CSR issues when advising the client, this may very well lead to liability;
- Lawyers should advise that many companies are being and will increasingly be subject to legal proceedings at home and abroad – whether the alleged violations have been committed by their direct operations in other countries or through their subsidiaries and even if another subject, and not the company, is the actual violator (complicity); and
- The lawyer should know that there is an increasing call to hold companies legally accountable for crimes. This, together with the increase in the number of crimes under international law, has created uncertainty as regards the conditions under which companies can be held accountable.

The lawyer also has a number of advising opportunities that might take place, as the case may be, together with other experts. These advising opportunities can be divided into long-term and short-term assignments.

For longer term assignments:<sup>19</sup>

- Analyse strengths, weaknesses, opportunities and threats (SWOT-analysis) of a given company in relation to CSR;
- Design CSR policies;
- Design a strategy for the company to address CSR adequately;

<sup>19</sup> It is recommended that longer-term tasks be performed in co-operation with either in-house or external competencies in organisation management – including crisis management, communication, human resources, training etc. depending on the objectives of the client.

- Integrate CSR under existing risk management and compliance programmes;
- Design and implement concrete projects under CSR;
- Create CSR screening systems for investments;
- Develop a framework for supply chain management systems with due regard to the participation of SME's;
- Develop a framework for CSR as part of Quality Management;
- Implement in-house training on CSR; and
- Integrate CSR into existing risks and quality management schemes and compliance programmes.

For short-term assignments:

- Consider the 'what, why and how' of a CSR approach - its challenges, dilemmas and opportunities;
- Undertake CSR assessments of affiliates, branches, investment opportunities, suppliers, licensees or other partners;
- Undertake CSR assessments as part of due diligence;
- Respond to media or NGO criticism;
- Provide assurance statements on CSR reporting in relation to scope, relevance and compliance with international standards;
- Undertake assessment of concrete CSR projects;
- Network with other companies and/or associations;
- Coordinate and supervise the CSR work of the company; and
- Assess the legal implications of CSR reporting and advertising.

#### *(ii) Legal professional privilege and CSR*

In the implementation of CSR policies, their supervision and auditing, lawyers have a special and unique role to play due to legal professional privilege. Although the legal basis, the content and the structure of the attorney-client privilege may vary from country to country, there is a common thread and goal applicable throughout all Member States, i.e. that correspondence, documentation and information entrusted by the client to the attorney or otherwise gathered in the course of the client relationship by the attorney shall be treated as confidential and shall in general be protected against discovery.

A CSR policy is only credible when the company supervises and audits its implementation in its day-to-day business. So far at least in Europe no "safe-harbour-rules" apply, i.e. there is no legal regime in place which would guarantee a company undertaking a CSR audit not to be held liable by the competent authorities or a public prosecutor on the basis of information or documentation generated in the course of such audit. Thus, a company voluntarily undertaking a CSR audit might suffer a disadvantage compared to its competitors which do not undertake such an effort. As long as no "safe-harbour rules" exist in order to encourage companies to examine honestly and carefully their operations, the attorney-client privilege, applied in accordance with the national rules and regulations, can help to encourage enterprises to undertake assessments and audits, and to generate eventually (detrimental) information. Such information may lead to (silent) remediation measures and thereby enhance CSR compliance and good corporate and social governance.

There is a fundamental dispute whether CSR should cover only voluntary standards beyond compliance with legal provisions, or, as John Ruggie described it, the standards and practices governing corporate “responsibility” (the legal, social, or moral obligations imposed on companies) and “accountability” (the mechanisms holding them to these obligations). Ruggie formed 5 clusters which he laid out along a continuum, starting with the most deeply rooted international legal obligations and ending with voluntary business standards:

1. State duty to protect against violations of human rights by business entities.
2. Corporate Responsibility and Accountability for international crimes.
3. Corporate Responsibility for other human rights violations under international law.
4. Soft Law Mechanisms.

There are currently 3 types of soft law mechanisms that address Corporate Responsibility and Accountability:

- Standards by intergovernmental organisations (ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy; OECD Guidelines);
- Accountability mechanisms added by some intergovernmental initiatives, e.g. IFC (International Finance Corporation) impact assessments; Ombudsman review; accountability spillover effects to banks adhering to the Equator Principles; and
- Multi Stakeholder Forums (e.g. Voluntary Principles on Security and Human Rights in the Extractive Sector; Kimberley process certification scheme (Kimberley) to stem the flow of conflict diamonds; the Extractive Industries Transparency Initiative (EITI) establishing a degree of revenue transparency in the taxes, royalties and fees companies pay to host governments).

#### 5. Self Regulation

With respect to internal codes of conduct, in general, codes of conduct should:

- Be applied at every level of the organisation;
- Be based on universally agreed standards;
- Be included in training for local management, workers and communities on implementation;
- Have emphasis on gradual improvements to standards, and to the code itself;
- Include ongoing verification, which should be developed and performed carefully following defined standards and rules; and
- Enable benchmarking.

Based on these principles, each company should tailor its own code adapted to its specific environment and resources to ensure acceptance and compliance with it. The code of conduct can take the form of a manual governing the day to day business of the company. It is the natural role of the lawyer to be involved in the drafting of such documents.

The importance of CSR has increased in recent years as a result of the recognition of the essential contribution of business to social, environmental and economic progress, and because of pressure from consumers, investors, employers, governments, NGOs and public opinion. It can be said that CSR is in a period of transition, however, the vision is clear although the means to get there is under discussion. A growing number of businesses already have CSR as a priority in their agendas. It is the lawyers' role to assist their clients in positioning their business successfully in this new legal landscape.

There is no doubt that CSR and its relevance to the legal profession is growing at an enormous pace. It is expected that CSR, in its own right, will engage lawyers more and more in years to come. Currently there appears to be a concentration on the voluntary nature of CSR. This is sure to change in years to come. There are numerous government commitments, commitments from international organisations and increased CSR procurement requirements that are sure to change the status of CSR, and thus the areas of specialisation for lawyers

It must also be stressed, as mentioned in part IV, that law firms are considered as suppliers of services and companies involved in CSR can impose CSR requirements on suppliers of services, and as suppliers of services they could be asked to comply with their clients code of conduct. It will be inevitable for the CCBE to deal with these aspects in the future.

The CCBE recommends that due consideration be given to the need for lawyers to be aware of CSR issues and on the need for professional training in CSR in order that lawyers can understand its importance.

“CSR can play an important role in advancing sustainable development. Many businesses have already recognized that CSR can be profitable and CSR schemes have mushroomed. (...) CSR is no longer just a job for marketing departments”.<sup>20</sup>

European initiatives (non-exhaustive)

### 1. Manifesto of Enterprises against social exclusion (1995)

At a EU level, the debate on CSR dates back to 1995 when a group of EU companies and Jacques Delors, then President of the European Commission, launched this Manifesto.

### 2. EU Lisbon Summit, March 2000

The Manifesto led to the creation of a European Business Network promoting business-to-business dialogue and exchange of best practices on CSR-related issues. However, it was with the European Summit in Lisbon in March 2000 that CSR was put at the top of the EU political agenda. For the first time, EU Heads of State made a special appeal to companies' sense of responsibility to help in achieving the new EU strategic goal of becoming the most competitive and inclusive economy in the world by 2010.

### 3. European Parliament's Code of Conduct, December 1998 and 2002

In 1998, the European Parliament published a European Code of Conduct regarding the activities of Trans-National Corporations (TNCs) operating in developing countries.<sup>21</sup> The European Parliament passed a first resolution to promote the accountability of European-based TNCs by supporting initiatives in the field of codes of conduct. In the resolution, the European Parliament stated its support for voluntary codes of conduct as a substitute for international regulation. Furthermore, the European Parliament called upon the European Commission and Council to come to terms with the subject of a “European Monitoring Platform” and proposed to organise hearings on the subject.

In May 2002, the European Parliament voted for new legislation to require companies to publicly report annually on their social and environmental performance, to make board members personally responsible for these practices, and to establish legal jurisdiction against European companies' abuses in developing countries. The package is part of a new EU Framework for CSR and represents a major step towards establishing international regulation for TNCs. The Parliament also voted to:

- Set up a European CSR Forum to give rights to stakeholders, such as consumer and activist groups, to oversee policies alongside business and trade unions;
- Set up a European Social Label to endorse products where there is respect for human and trade union rights;
- Introduce the wider social and environmental impact of companies' performance in European negotiations between employers and trade unions;
- Make all EU financial assistance to business subject to compliance with basic standards, including setting up a blacklist against companies guilty of corruption; and
- Mobilise the European Unions trade and development programmes to tackle abuses by companies in developing countries.

<sup>20</sup> European Commission: Corporate Social Responsibility: new Commission strategy to promote business contribution to sustainable development, IP/02/985, 2 July 2002.

<sup>21</sup> European Parliament: European criteria for companies operating in developing countries LDCs: towards a European code of conduct, INI/1998/2075.

#### 4. European Commission (2001, 2002)

The EU published a Green Paper in July 2001.<sup>22</sup> It covers a wide range of topics, including responsible actions during corporate restructuring, promoting “work/life balance” and corporate codes of conduct and social rights. The Green Paper was intended to function as a “launch-pad for debate”; encouraging companies to take the “triple-bottom-line” approach. The Green Paper consists of 2 sections. The internal section focuses on CSR practice involving employees and relates to issues such as, investing in human capital, health and safety, and managing change. The external section focuses on CSR on a more wide range of stakeholders, including local communities and international communities, business partners and Human Rights. The consultation process aimed to develop a new framework for the promotion of CSR based on European values.

In July 2002, the European Commission published a new strategy to promote business contribution to sustainable development.<sup>23</sup> The policy paper calls for a new social and environmental role for business and sets up a ‘European Multi-Stakeholder Forum’ to exchange best practices, establish principles for codes of conduct, and seek consensus on objective evaluation methods and validation tools, such as ‘social labels’. The Commission’s strategy is designed to:

- Promote the business case for CSR in order to make it attractive to more companies, in particular Small and Medium Enterprises;
- Promote external evaluation and benchmarking of companies’ social and environmental performance in order to make CSR credible;
- Manage a European Multi-Stakeholder Forum in order to focus discussion on CSR; and
- Ensure that EU policies are CSR-friendly.

The European Commission has published a follow-up Communication to the conclusions of the European Multi Stakeholders Forum.

#### 5. Council Resolution, February 2003<sup>24</sup>

This Resolution calls upon Member States to promote CSR at a national level; to continue to promote dialogue with social partners and civil society; to promote transparency of CSR practices; to exchange information and experiences and to integrate CSR into national policies and into their own management.

#### 6. Other initiatives to promote CSR in Europe

- SustainAbility UK<sup>25</sup> - an independent management consultancy to promote the business case for sustainable development with the mission to help create a more sustainable world by encouraging the adoption of practices which are socially responsible, environmentally sound and economically viable, all of which satisfy the triple-bottom line of sustainable development.
- UK Ethical Trading Initiative (ETI) 1998<sup>26</sup> - focuses on managing an organisation’s supply chain in a socially responsible manner. ETI seeks to encourage a shared approach to the sourcing of goods and services that leads to a raised standard of living for workers around the world.

22 Brussels COM (2001) 416 Final. Commission of the European Community- [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/greenpaper\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf)

23 See [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/csr2002\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr2002_en.pdf)

24 OJ. 2003/C 39/2.

25 See <http://www.sustainability.com>

26 See <http://www.somo.nl/monitoring/project/fo-3-1.htm>



- CSR Europe<sup>27</sup> - helps companies to share their knowledge and experience on CSR. It is a business-driven membership network whose mission is to encourage companies to advance in ways that stimulate job growth, increase employability and prevent social exclusion thereby contributing to a sustainable economy and a more just society. CSR Europe's Resource Centre includes a 'best practice' database, a publications list, links to related organisations and details of CSR Europe's programs.
- Copenhagen Centre (TCC)<sup>28</sup> - promotes voluntary partnerships between business, government and civil society in order to provide opportunities for the less privileged to be self-supporting, active and productive citizens. TCC aims to become a 'European house for CSR', providing forums to facilitate the continuing debate.
- European Academy of Business in Society<sup>29</sup> - in July 2002, leading European business schools and more than 60 major multinational companies teamed up to launch a large research and teaching project on the business case for CSR.
- Small and medium sized enterprises (SMEs) and CSR - CSR is not just the business of TNCs. According to a recent survey 50% of Europe's SMEs are already involved in CSR ranging from 32% in France to 83% in Finland.<sup>30</sup> According to another survey 41% have an environmental policy, 28% make charitable donations, 15% consider ethical issues when outsourcing and 13% have a diversity policy.<sup>31</sup>

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27 See <http://www.csreurope.org>

28 See <http://www.copenhagencentre.org/main>

29 See <http://www.csreurope.org/whatwedo/default.asp?pageid=306>

30 Observatory of the European SMEs, "European SMEs and Social environmental responsibility".

31 Grant Thornton, "European Business Survey 2002".

*“We are not asking corporations to do something different from their normal business; we are asking them to do this normal business differently”.*<sup>32</sup>

Among world-wide CSR initiatives, the following are the most prominent:

### 1. The ILO’s Tripartite Declaration of Principles 1977<sup>33</sup>

The ILO adopted a Tripartite Declaration of Principles concerning TNCs and Social Policy in 1977. The Declaration was updated in 2000 in the light of the 1998 ILO Declaration of Fundamental Principles and Rights at Work. The Declaration’s value lies both in its comprehensive content, which covers all aspects of social policy from industrial relations to training and employment, and in the fact that it is addressed to a wide range of key economic actors and workers’ organisations.

### 2. The Global Reporting Principles (GRI), 2000<sup>34</sup>

The Global Reporting Initiative (GRI) was established in late 1997 with the mission of developing globally applicable guidelines for reporting on the economic, environmental, and social performance, initially for corporations and eventually for any business, governmental, or non-governmental organisation. The GRI’s goals are to:

- Elevate sustainability reporting practises world-wide to a level equivalent to financial reporting;
- Design, disseminate, and promote standardised reporting practises, core measurements, and customised sector-specific measurements; and
- Ensure a permanent and effective institutional host to support such reporting practises world-wide.

### 3. The Global Compact 2000 (“GC”)<sup>35</sup>

A. The GC, an initiative to promote CSR - the GC was announced by the UN Secretary-General at the World Economic Forum in Davos in 1999 and formally launched in 2000 as one measure to respond to the challenges of globalisation. The GC is an initiative intended to promote CSR and citizenship in the new global marketplace. It brings companies together with UN organisations, international labour organisations, NGOs and other parties to foster partnerships and to build a more inclusive and equitable global marketplace. It aims, in the words of Kofi Annan, to contribute to the emergence of “shared values and principles, which give a human face to the global market”.

The GC, a voluntary initiative - The 1200 companies engaged in the GC are diverse and represent different industries and geographic regions. The overall mission is to bring about a more stable and inclusive global economy. Corporate leaders participating in the GC agree that globalisation, which only a few years ago was seen by many as an inevitable and unstoppable economic trend, is in fact highly fragile and may have an uncertain future. Indeed, rising concerns about the effects of globalisation on the developing world – be they related to the concentration of economic power, income inequalities or societal disruption – suggest that, in its present form, globalisation is not sustainable. The GC was created to help organisations to redefine their strategies and courses of action so that all people can share the benefits of globalisation, not just a fortunate few.

The GC is not a regulatory instrument, a legally binding code of conduct or a forum for policing management policies and practices. Neither is it a “safe-harbour” allowing companies to sign-on without demonstrating real involvement and results. The GC is a voluntary initiative that seeks to provide a global framework to promote sustainable growth and good citizenship through committed and creative corporate leadership.

<sup>32</sup> Kofi Annan, Former UN Secretary-General, on the role of corporations in environment.

<sup>33</sup> See <http://www.ilo.org>

<sup>34</sup> See <http://www.globalreporting.org>

<sup>35</sup> See <http://www.unglobalcompact.org>

## B. The GC's 10 Principles<sup>36</sup>

Companies that sign the UN Global Compact commit to support and advance the Global Compact's 10 Principles on human rights, labour, the environment and anti-corruption. These principles are based on internationally accepted principles to improve global society.

### Human rights

- Business should support and respect the protection of internationally proclaimed Human Rights;
- Make sure they are not complicit in Human Rights abuses.

### Labour Standards

- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced and compulsory labour;
- The effective abolition of child labour.

### Environment

- Eliminate discrimination in respect of employment and occupation;
- Business should support a precautionary approach to environmental challenges;
- Undertake initiatives to promote greater environmental responsibility;
- Encourage the development and diffusion of environmentally friendly technologies.

### Anti-corruption

- Businesses should work against all forms of corruption, including extortion and bribery.

## 4. The OECD Guidelines for TNCs, 2000<sup>37</sup>

The OECD Guidelines are a set of recommendations addressed by governments to TNCs operating in or from adhering countries. Although non-binding, they are supported by OECD countries from which most TNCs originate. Their aim is to help TNCs operate in harmony with government policies and societal expectations. In keeping with the notion of CSR and to promote the contribution of business to social development and the promotion of basic workers' rights, the Guidelines provide voluntary principles for responsible business conduct in fields such as employment, industrial relations, Human Rights, environment, competition, information disclosure and taxation, combatting bribery, and consumer protection.

## 5. The ICC Guidebook on Responsible Business Conduct, February 2002<sup>38</sup>

The Group on Business in Society has developed the ICC Guidebook on Responsible Business Conduct. Its main purpose is to make practical suggestions to companies on how to approach CSR issues in order to help position individual company principles within the existing framework of generic business principles, government codes of conduct and new initiatives, as well as broader social values. The Guidebook's secondary purpose is to explain to those outside business how companies are addressing CSR issues. Reinforcing the positive role of business society through the encouragement of CSR and good corporate citizenship constitutes one of the ICC's strategic priorities.

36 The tenth principle on anti-corruption was included in June 2004

37 See <http://www.oecd.org>

38 See <http://www.oecd.org>

## 6. Social Accountability (SA) 8000<sup>39</sup>

The Council on Economic Priorities Accreditation Agency has established SA 8000, a standard for assessing labour conditions in global manufacturing operations. SA 8000 addresses issues including prison labour, wages, child labour, and health and safety and relies on certified monitors to verify factory compliance with the standard.

## 7. Global Sullivan Principles<sup>40</sup>

The Global Sullivan Principles are aimed at promoting equal opportunity in South Africa and a set of Principles were developed in 1999 to guide the global behaviour of TNCs on labour, ethics, and environmental practices.

## 8. UN Convention on Corruption

The UN Convention is the first legally binding global convention against corruption. In October 2004, 111 states had signed the Convention, which will enter into force when ratified by 30 states (at present 8 States have ratified the Convention). With the new Convention, the UN is in line with other international organisations, like the OECD, the EU and the European Council in the fight against corruption.

The Convention's key elements relate to prevention, criminalisation, extra-territoriality international co-operation and asset recovery. The Convention breaks new ground regarding the prevention of corruption by requiring the establishment of anti-corruption bodies and by encouraging states to enhance transparency in the financing of election campaigns and political parties. It also calls for countries to actively promote the involvement of NGOs and community-based groups, as well as other elements of civil society, to raise public awareness of corruption.

The Convention will affect not only the public sector, but also the private sector and all companies that do business in signatory countries. The national authorities shall cooperate with entities in the private sector to ensure the effective implementation of the Convention.

The Convention contains both mandatory and optional provisions. Companies operating internationally and wishing to incorporate internal safeguards against corruption will have to be aware of how the different governments have implemented the provisions of the Convention.

## 9. International Criminal Court (ICC)

The International Criminal Court was established in July 2002. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The Chief Prosecutor from the newly established International Criminal Court (ICC) has announced that he intends to pursue individuals from multinational companies to court, when the prosecution can establish that companies participated in violations that form part of the remit of the ICC, i.e. gross human rights violations, crimes against humanity and genocide.

The issue is disputed as to whether corporate complicity in such crimes can lead to personal criminal liability for the company representatives, but it could be interpreted as possible with reference to Article 25 and Article 28 (b) of the Rome Statute of the ICC.<sup>41</sup> The Rome Statute also provides for reparations to victims under Article 75.

39 See <http://www.sa-intl.org>

40 See <http://globalsullivanprinciples.org>

41 The statute can be accessed at the following website address: <http://www.un.org/law/icc/statute/romefra.htm>

## 10. Equator principles

A high profile initiative was launched in autumn 2002 named the "Equator Principles".<sup>42</sup> The participating financial institutions proclaim that "In adopting these principles, we seek to ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices".

Sixty-one financial institutions from twenty-four countries have adopted the Equator Principles. These financial institutions operate in over 100 countries. As a result, the Equator Principles have become the project finance industry standard for addressing environmental and social issues in project financing globally. The principles require that the participating institutions make impact assessments on projects to be financed.

The Equator Principles have a general reference to international laws and reflect in specific some human rights considerations such as:

- Protection of human health;
- Use of dangerous substances;
- Major hazards;
- Occupational health and safety;
- Fire prevention and life safety;
- Land acquisition and land use;
- Involuntary resettlement; and
- Impacts on indigenous peoples and communities.

These principles are all contained under the general application of international law (human rights).

The trend is definitely that financial institutions, including the major international institutions such as the International Monetary Fund, European Bank of Reconstruction and Development and the World Bank, are approaching Social Responsible Investments from an angle of mainstreaming – whether it relates to procurement or assessment of impact from projects to be financed.

## 11. International Organisation for Standardisation (ISO)

The International Organisation for Standardisation (ISO) will develop an international standard for addressing the social responsibility of organisations worldwide. The objective is to produce "a guidance document, written in plain language which is understandable and usable by non-specialists" and not intended for use in certification.

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<sup>42</sup> [www.equator-principles.com](http://www.equator-principles.com)

There are a number of other initiatives which promote CSR and Human Rights:

### 1. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie

This report presents a conceptual and policy framework to anchor the business and human rights debate, and to help guide all relevant actors. The framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The three principles form a complementary whole in that each supports the others in achieving sustainable progress.

### 2. Principles for Global CSR

The Principles for Global CSR were developed by the US-based Interfaith Centre on CSR, the Canadian-based Ecumenical Council for CSR and the UK-based Taskforce on the Churches and CSR. These principles are based on international covenants regarding the rights of indigenous persons, employees and women.

### 3. Declaration of Principles on Human Rights and the Environment, 1994

The Declaration was prepared by a group of experts on Human Rights and environmental protection convened by the UN. It was the first international instrument that addressed the linkage between Human Rights and the environment and demonstrates that accepted environmental and Human Rights principles embody the right of everyone to a secure, healthy and ecologically sound environment.

### 4. World Business Council for Sustainable Development<sup>43</sup>

The World Business Council for Sustainable Development is a coalition of 125 TNCs committed to the environment and to the principles of economic growth and sustainable development. It develops co-operation between business, government and other organisations concerned with the environment and sustainable development, encourages high standards of environmental management in business and business leadership, undertakes policy development to create a framework for business, shares best practice and has developed a global network.

### 5. International Business Leaders Forum (IBLF)<sup>44</sup>

The International Business Leaders Forum (IBLF) is an organisation that promotes international leadership in responsible business practices, to benefit business and society. It operates in over 60 countries and works with leaders in business, civil society and the public sector in transition economies in order to achieve social, economic and environmentally sustained development.

The IBLF encourages continuous improvement in responsible business practices, develops geographic or issue-based partnerships, contributes to an enabling environment and provides the conditions for these partnerships to flourish.

### 6. Aarhus Convention - UN ECE<sup>45</sup>

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and Human Rights, and establishes that sustainable development can be achieved only through the involvement of all stakeholders. It focuses on interactions between the public and governmental authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

43 See <http://www.wbcsd.ch>

44 See <http://www.iblf.org>

45 See <http://europa.eu.int/comm/environment/aarhus/>

## 7. Apparel Industry Partnership (AIP) 1996<sup>46</sup>

The Apparel Industry Partnership (AIP) was initiated in 1996 to take steps to protect workers worldwide and to give the public the information it needs to make informed purchasing decisions. AIP is comprised of apparel and footwear companies, a university, Human Rights groups, labour-religious organisations and consumer advocates. AIP released a historic agreement establishing a workplace Code of Conduct and Principles of Monitoring.

## 8. Voluntary principles on security and Human Rights 2000<sup>47</sup>

Some governments, companies in the extractive and energy sectors (BP, Shell, Chevron, Texaco, Conoco, Freeport, McMoran, Rio Tinto), and NGOs (Human Rights Watch, Amnesty International, International Alert, Lawyers Committee for Human Rights) have developed a set of Voluntary Principles to guide companies in maintaining the safety and security of their operations within an operation framework that ensures respect for Human Rights and fundamental freedoms. These Principles are designed to provide practical guidance that will strengthen Human Rights safeguards in company security arrangements in the extractive sector. They address three areas: engagement with private security, engagement with public security, risk assessment supporting security arrangements consistent with Human Rights.

## 9. Institute of Social and Ethical Accountability (ISEA)<sup>48</sup>

The Institute of Social and Ethical Accountability (ISEA) combines the terms “social” and “ethical” to refer to “the systems and individual behaviour with an organisation and to the impact of an organisation’s activity on stakeholders”. Its new international standard, AccountAbility 1000, has at its core the importance of stakeholder engagement in the social and ethical accounting process.

## 10. New Partnership for Africa’s Development (NEPAD)<sup>49</sup>

The New Partnership for Africa’s Development (NEPAD) was established in 2001 in Nigeria and is comprised of 15 African countries. The organisation is modelled after the Marshall Plan, a programme of development that successfully re-built Europe after World War II. NEPAD hopes to ensure political and economic stability in return for increased foreign investment, as well as better access to trade and debt relief.

## 11. International Alert<sup>50</sup>

International Alert is an NGO committed to the peaceful transformation of violent conflict. Its Business and Conflict programme is designed to address the twin problems of the corporate sectors potential for negative impact on conflict and the insufficient understanding amongst governments, multi-lateral institutions, NGOs and the corporations themselves of the role business can play in addressing the structural causes of conflict.

## 12. Other organisations

In the last years, Human Rights organisations (Amnesty International, Human Rights Watch, Lawyers’ Committee on Human Rights), labour organisations (International Confederation of Free Trade Unions), corporate accountability organisations (Global Exchange, Clean Clothes Campaign, Global Witness), anti-corruption organisations (Transparency International), religious, shareholder, student and environmental organisations have committed greater resources and attention to corporate action on Human Rights. In April 2004, the Business Leaders Initiative on Human Rights (BLIHR) has produced its first report which looks at building understanding about human rights issues for business. This first report signals the beginning of a three- year initiative by a group of international businesses.

46 See <http://ur.rutgers.edu/news/ACLA/flap99.htm>

47 See <http://www.state.gov/g/drl/rls/2931.htm>

48 See <http://www.accountability.org.uk/>

49 See <http://www.nepad.org/>

50 See <http://www.international-alert.org/>

There is an abundance of information available on CSR. The CCBE would suggest that as a starting point lawyers could consult the following documents and websites:

<http://www.csreurope.org> – CSR Europe is a business-driven membership network. Its mission is to help companies achieve profitability sustainable growth and human progress by placing corporate social responsibility in the mainstream of business practice.

<http://www.csrwire.com> - CSRwire seeks to promote the growth of corporate responsibility and sustainability through solution-based information and positive examples of corporate practices.

<http://www.bsr.org> - Business for Social Responsibility (BSR) is a global organisation that helps member companies achieve success in ways that respect ethical values, people, communities and the environment.

<http://www.business-humanrights.org> - Business & Human Rights Resource Centre is a charity promoting greater awareness and informed discussion of important policy issues.

<http://www.unglobalcompact.org> - the Global Compact seeks to advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation.

<http://www.ilo.org> – This is the website of the International Labour Organisation.

<http://www.hrw.org> - Human Rights Watch is dedicated to protecting the human rights of people around the world.

<http://www.goodmoney.com> – This website provides information on Social, Ethical and Environmental Investing and Consuming & Corporate Accountability.

<http://www.inform.umd.edu/crge/resources/interest.htm> – This is an association of academic units and individual faculties on the University of Maryland Campus whose mission is to promote, advance, conduct, research, scholarship, and faculty development that examines the intersections of race, gender, and ethnicity with other dimensions of difference.

<http://eumc.eu.int> - The primary task of the European Monitoring Centre on Racism and Xenophobia (EUMC) is to provide the Community and its Member States with objective, reliable and comparable information and data on racism, xenophobia, islamophobia and anti-Semitism at a European level in order to help the EU and its Member States to establish measures or formulate actions against racism and xenophobia.

<http://www.socialinvest.org> - The Social Investment Forum site offers information, contacts and resources on socially responsible investing.

<http://www.idealswork.com> - This website is committed to make socially and environmentally responsible behaviour essential to the success of any business.

<http://www.ethicalcorp.com> - Ethical Corporation's mission is to provide balanced, informed, unbiased, useful original content on the issues in and around corporate social, environmental and financial responsibility through publishing and learning events.

<http://www.bitc.org.uk> - Business in the Community is a unique movement of 700 member companies committed to continually improving their positive impact on society.

<http://www.international-alert.org> - International Alert is an NGO committed to the peaceful transformation of violent conflict.