

From the paradigm of responsibility for sustainability to the EU law on corporate social responsibility

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Abstract: Sustainability has roots going back thousands of years and its evolution goes from the ethical dimension and collective responsibility to international and even national law dimensions and individual responsibility. The EU and EU law have consistently endorsed sustainability and recently they have moved to the issuance of a set of new provisions deserving a developed analysis and critical exploration facilitating their deeper understanding. The need for such an exploration is magnified by recent crises, such as the Covid-19 pandemic and the war in Ukraine, which have multispectral consequences. Since the evolution of sustainability projected into the individual responsibility of business CSR is pretty organic, the appreciation of the new stage of CSR and the teleological interpretation of its framework demands (i) a presentation of theoretical premises represented by the summary of the evolution of the conceptual understanding of responsibility for sustainability along with (ii) the identification of data and method. Based on that, there is presented (iii) a practical overview of EU milestones in the CSR evolution with an implied shift from the collective accountability over individual liability to corporate responsibility. This allows (iv) for selecting the three most relevant instruments of EU policy and law about the sustainability and individual responsibility for it and juxtaposing their teleological interpretation with comparative evolutionary notes and content analysis employing both quantitative aspects (key word counts and frequency or concentration) and qualitative aspects (Delphi assessment and LIWC). Such an exploration, interconnected via Meta-Analysis offers the potential for (v) pioneering conclusions about the modern paradigm of social responsibility, including the revelation of EU law preferences regarding CSR.

Key words: EU; law; policy; responsibility; CSR; sustainable development.

JEL: K32; K33; M14; O38; O44; Q01; Q56.

Introduction

Current Western society is deeply rooted in ancient philosophy, Christianity and Roman law [MacGregor Pelikánová, 2017], which have consistently endorsed individual responsibility and private ownership in the context of the morality of individuals and ethics of the society. Consequently, our normative individual beliefs (morality) and the community standards distinguishing good and bad (ethics) are determinants and causes of sustainability, digitalization and other post-industrial features and commands of modern European integration, EU law and the EU social market economy [Balcerzak & MacGregor Pelikánová, 2020; Lafferty, 2019]. EU law and national laws of all EU member states, regardless of whether from the continental law family or common law family, include explicit provisions about the responsibility of all Private law subjects, both natural persons and legal entities,

for their own action or omission and their direct or indirect impacts and consequences: contractual and extra-contractual legal liability.

Regarding this liability in the case of the absence of a contract, i.e. extra-contractual liability, a rather progressive evolution has occurred during recent decades in European jurisdictions. Namely, regarding a Private law subject, it has expanded from his duty to „not to do bad” to a much broader duty to „prevent harm” to another super broad duty to „do good” to others and even the entire society. Consequently, businesses in the 21st century are expected by the society, and even partially demanded by the law, to engage in behaviour which conventionally belonged into the sphere of the international law and its subjects (states and international organizations) or, utmost, National Public law and its subjects (state, regional and local authorities). The EU and EU law are examples of that.

Indeed, the EU is persuaded about the sustainability called for by the UN and deeply convinced that a smart, sustainable and inclusive growth, along with the development of EU fundamental principles and intellectual property commitment [MacGregor Pelikánová, 2019], will lead to the EU world leadership [Turečková & Nevima, 2018]. After a set of initiatives and projects, which often ended in disappointment, the EU has learned that this requires the active support from all stakeholders, including businesses. The sustainability concern exhibited since classical Antiquity needs to turn into a modern concept of sustainability linked to shared values and enjoying the support and commitment by all stakeholders, including businesses. Indeed, there is no doubt that European businesses have a responsibility going beyond a mere profit generation for their investors, i.e. they are accountable for their operations vis-a-vis the entire society. Consequently, the modern concept of sustainability resting on the economic, environmental and social pillar is recognized and (should be) embraced by European businesses engaging in their corporate social responsibility („CSR”). To put it differently, modern businesses should accept a set of social responsibilities: economic, legal, ethical, etc. [Sroka & Lörinczy, 2015; Sroka & Szántó, 2018].

Since crises magnify differences, the COVID-19 pandemic even further accelerates pre-existing trends and induces a move to a new stage of CSR [Dahlke et al, 2021; MacGregor Pelikánová & MacGregor, 2020]. Heuristics and qualitative trend-base analysis suggests that this pandemic is unique and that, along with the EU’s policy response, it affects

macroeconomic performance in a particular manner [Zinecker et al, 2021a], as well as other dimensions of the European integration [MacGregor Pelikánová & MacGregor, 2020], including the impact of changing conditions on business decision-making [Zinecker et al, 2021b]. This leads to a fundamental research question – how exactly does this new stage of CSR look like, namely what kind of businesses responsibility is semi-imposed by the EU and EU law in the current turbulent times [MacGregor Pelikánová et al, 2021c].

The need for such an exploration is magnified by recent crises, such as the Covid-19 pandemic [MacGregor Pelikánová et al, 2021c] and the war in Ukraine, which have multispectral consequences [Dahlke et al, 2021; MacGregor Pelikánová & MacGregor, 2021]. Since the evolution of CSR is pretty organic, the appreciation of the new stage of CSR and the teleological interpretation of its framework demands (i) a presentation of theoretical premises represented by the summary of the evolution of the conceptual understanding of responsibility for sustainability along with (ii) the identification of data and method. Based on that, there is presented (iii) a practical overview of EU milestones in the CSR evolution, with an implied shift from the collective accountability over individual liability to corporate responsibility. This allows (iv) for selecting the three most relevant instruments of EU policy and law about the sustainability and individual responsibility for it and juxtaposing their teleological interpretation with comparative evolutionary notes and content analysis employing both quantitative aspects (key word counts and frequency or concentration) and qualitative aspects (Delphi assessment and LIWC). Such an exploration, interconnected via Meta-Analysis, offers the potential for (v) pioneering conclusions about modern paradigm of social responsibility, including revelation of EU law preferences regarding CSR.

Theoretical premises – Evolution of the conceptual understanding of responsibility for sustainability

In classical Antiquity, morality as a system of principles concerning the distinction between right and wrong or good and bad behavior was strongly determined by the tribal setting. Such a semi-collectivist morality could easily be transformed in a systematic constellation of concepts about right and wrong behavior, i.e. ethics. Christianity brought a focus on the individual as a free being able to make choices between good and bad and be accountable for that. Over time, state and other authorities have transformed certain

of these personal moral values as systematized by ethics into a structured enforceable system of law. Hence, ethics are both a source of law and interpretation plus application guidelines for law. Therefore, over thousands of years, the sustainability concerns have progressively made their way from religious and philosophical teachings to the applicable positive law, and since the 19th century has shaped a special branch of business accountability – CSR. Hence, the description and analysis of CSR and its evolution demands an appreciation and understanding of the prior sustainability concerns evolution, as well as the current parallel evolution of the modern concept of sustainability. Plainly, the understanding of the evolution of CSR and an appreciation of its latest stage demands a deep engagement with foundations and concepts linked to sustainability concerns, both from the spheres of ethics and law [Sroka & Lörinczy, 2015; Sroka & Szántó, 2018].

Since Classical Antiquity, numerous kinds of ethics interact [Hooker, 1996; Law, 1999], while three have played a predominant role with a direct impact on the EU current setting – (i) Bentham utilitarian or consequentialist ethics (good results), (ii) Kantian deontological ethics (good intentions), (iii) Aristotelian ethics (good sense of human life) [MacGregor Pelikánová, 2021]. The rather broad perception of Aristotelian ethics reflected the dual perception of justice – the geometrical model of distributive justice reflected by the public law and the arithmetical model of corrective justice reflected by the private law. The advent of Christianity with the Bible brought a new stage for the perception of justice and the implied responsibility. Namely, the synalagmatic and pragmatic attitude became an integral part of durable social interaction. To put it differently, the biblical desire for a just and ongoing growing prosperity vested in the concept of sustainability became not only an issue and command from God and the elites, but instead everybody became individually responsible for their behaviour towards other individuals [MacGregor Pelikánová, 2021].

The expansion of commerce by the Hanseatic League and North Italian Renaissance, and later on by colonialism, induced the re-organization of business models by moving from the sole proprietorship over to a guild system to company and corporate settings, which was critical for launching the industrial revolution in the 18th century. Exactly during these times, companies and corporations have been recognized as capable to become legal entities, aka artificial persons with a legal, aka juridical, personality, and thus subject of the law able to be responsible and even legally liable. In parallel to this evolution towards the responsibility

of businesses taking the form of companies and corporations, sustainability has become materialized. The ephemeral biblical idea was made manifest especially in the German setting. Then, the early European Enlightenment brought a concern to pro-actively support sustainability. In the 17th century, John Evelyn in England and Jean Baptist Colbert in France became concerned about the diminishing forests and began to push the idea of sustainability and the need to maintain resources, especially in the context of industries such as wood, timber and mining. It needs to be pointed out that Jean Baptiste Colbert was a truly famous French minister of finance, because he avoided the bankruptcy of the French economy by supporting manufacturing, equal taxing, inventors' protections, and at least indirectly, showing sustainability concerns [MacGregor Pelikánová et al., 2021 Sustainability].

In 1713, Hans Carl von Carlowitz, the head of the Royal Mining Office in the kingdom of Saxony, published his influential book, *Sylvicultura Oeconomica*, about *Nachhaltigkeit*, while condemning short-term thinking and mere immediate money-making concerns, offering recommendations and even ecological concerns. Those who were involved in mining became considered responsible vis-a-vis the entire society. The foundation for the CSR of businesses was laid down, in particular the individual responsibility of businesses active in the forest and wood industry. Further, in 1832 in Prague, Emil André published his leading book, *Einfachste den höchsten Ertrag und die Nachhaltigkeit ganz sicher stellende Forstwirtschafts-Methode*, in which he emphasized the importance of long-term responsibility in dealing with resources [MacGregor Pelikánová et al., 2021a].

The 20th century made the *Nachhaltigkeit* to go from long-term to eternal, aka *perpetuitas*, dimension and started the pathway from the ethical setting to the law setting [Schüz, 2012]. In 1948, the United Nations ("UN"), as an international organization and subject of international law, made the Universal Declaration of Human Rights ("UDHR"), bringing a common standard of achievements for all peoples and all nations, as well as setting, for the first time, fundamental human rights to be universally protected. Despite its international law nature, individual rights and duties are included in the UDHR, see provisions such as that everyone has the right to a standard of living (Art. 25) and the duty to the community (Art.29). At the same time, it must be admitted that UDHR does not deal with sustainability and CSR *per se*.

In the 1960s, in a large part of the Western world, there emerged a reinforced interest in social progressive values, along with political awareness under the auspices of “communitarianism” and in the 1970s this was transformed into an individualist focus marked by a set of world crises and a general move from Keynesian economic theory to neoliberal theory [Balcerzak & MacGregor Pelikánová, 2020]. In 1972, academia voiced its concerns about the ongoing development and presented the conviction that sustainability is based on environmental, social and economic pillars, and that the challenges of the reconciliation of available resources in the context of an increasing world population must be addressed [Meadows et al., 1972]. This value judgement about the reconciliation of the needs of the current generation and the ability of future generations to meet their needs became a hot topic and the interaction and overlap of the economic (profit), environmental (planet) and social (people) became its visualization [Marinova & Raven, 2006].

This trend reached the international law level in 1987, when the Gro Harlem Brundtland Commission prepared, and the UN published, the UN Annex to document A/42/427, called the Report of the World Commission on Environment and Development Report: Our Common Future (“Brundtland Report 1987”). Importantly, the 300 page-long Brundtland Report 1987 defined sustainability as “meeting the needs of the present without compromising the ability of future generations to meet their own needs”. It is often overlooked, but the Brundtland Report 1987 radically demands a major shift in the way governments and individuals approach the issues of environment, development and international cooperation. A number of influential UN documents followed and ultimately led to the UN Resolution A/RES/71/1, made during a historic UN Summit in September 2015 and entitled Transforming our world: the 2030 Agenda for Sustainable development (“UN Agenda 2030”), which brought with it its 17 Sustainable Development Goals (SDGs) and 169 associated targets, and has progressively moved into national settings. The UN Agenda 2030 is founded upon the five Ps and is an aspirational plan of action for people, planet, prosperity, peace and partnership. The UN Agenda 2030 has contributed to the employment of the multi-stakeholder model [Van Tulder, 2017] and cross-sector partnership [Van Tulder et al., 2016] for sustainability resources [Balcerzak & MacGregor Pelikánová, 2020]. The UN Agenda 2030 is an international law instrument not binding private law

subjects, and so definitely not imposing legal liabilities and duties to business, but it has the potential to be an impulse for national laws to do so. Indeed, sustainability is not merely a topic for international law subjects, instead it should be a priority and perhaps even a responsibility for all stakeholders, including businesses. Indeed, businesses should be responsible towards the entire society, i.e. socially responsible, for the sustainable development, which represents a general direction to create a better world by balancing social, economic and environmental factors [Polcyn, 2021; Zikic, 2018]. The next step is to move such a responsibility from the sphere of ethics into the sphere of the law, namely national law, as CSR ... and the following step could be the expansion towards the shared value command and further development of the multi-stakeholder model, while paying particular attention to consumers and investors, especially the young ones [MacGregor Pelikánová & Hála, 2021].

In the 21st century, sustainability is not only a concern of states and their governments [Griffiths, 2018], but also of businesses, see the multi-stakeholder sustainability model [MacGregor Pelikánová et al., 2021b] and shared values as its pillars [Washburn et al., 2018]. This is iconically depicted by the famous Carroll's pyramid, with the required economic and legal layers along with the expected ethical and desired philanthropic layer [Carroll, 2016]. Indeed, shared value policies and principles linked to the eternal search for "good", and sustainability should benefit by a multi-spectral support across the society [MacGregor Pelikánová et al., 2021b] while facilitating the move of the political and economic setting to "a more sophisticated form of capitalism" [Porter & Kramer, 2019, pp. 323–346]. Businesses, regardless whether large or small, regardless from what industry [Polcyn, 2021], have to team up with governments, NGOs and even competitors to capture the economic benefits of social progress [Kramer & Pfizer, 2016]. They need to be open-minded and listen in order to find a strong symbiosis with customers and investors [MacGregor Pelikánová & Hála, 2021; Polcyn, 2021]. The EU, in particular the European Commissions, has recognized and endorsed this trend and e.g. the current Commission of Ursula van der Leyen has been proclaiming from its beginning [European Commission, 2020] its commitment to sustainable development [European Commission, 2021a], SDGs [European Commission, 2021b], a holistic approach along with multi-

stakeholder features [European Commission, 2021c] and to real (not illusory) and measurable outcomes [European Commission, 2021d].

Since crises magnify differences and bring about both challenges and opportunities, perhaps they are the vehicle par excellence to bring progress as stated by Einstein [D'Adamo & Lupi, 2021], the current EU and its law should be heralding the responsibility for sustainability by each and every stakeholder and businesses via their CSR in particular. It should induce business to put sustainability and CSR in their business models [Schaltegger et al. 2018; Razminiene 2019; Petera et al., 2021], and, in particular, in internal moral constitutions of businesses — codes of ethics [Van Tulder & Kolk, 2001]. Well, before checking the newest policy and law documents, it is instructive to see the EU law milestone paving the way from the concept of sustainable development to the mandate of CSR disclosure.

Methodology

The explored data and employed methods are determined by the aim of this paper, namely to identify a modern paradigm of social responsibility, including the revelation of EU law preferences regarding CSR. This can be achieved by two steps – firstly, to research and identify critical EU policy and law instruments about sustainability and individual responsibility for it, aka CSR, and secondly, to select the three most relevant and current instruments of EU policy and law about sustainability and individual responsibility and explore them. Naturally, a pre-requirement for both these consecutive steps is a robust overview of theoretical premises about the evolution of a conceptual understanding of responsibility for sustainability, as implied by the academic literature about the sustainability and CSR.

To perform the first step, research in the EU law e-platform EurLex database and e-justice [MacGregor Pelikánová, 2018] needs to be done while targeting primary law and secondary law, and in the Commission e-platform ec.europa.eu, in particular https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility-responsible-business-conduct_en, while targeting policy instruments. The primary law information is to be obtained from treaties and in particular their provisions addressing the sustainability and sustainable development. The secondary law information is to be obtained

from pertinent Regulations and Directives. A rather mechanical and literate interpretative approach is to be employed.

To perform the second step, proper methods for explorations and analyses, such as methods of legal modeling and methods of systemic interpretation, including a teleological approach focusing on the “spirit of the law”, are to be employed and lead to the identification of key documents. Their selection is done based on their validity, applicability, relevancy and currency. Regarding their exploration, a thematic analysis (involving both induction and deduction) of the conceptual background points to categories and key words for the legislative data assessment [Vourvachis & Woodward, 2015]. They are to be used for the content analysis of key documents [Krippendorff, 2013], which entails both quantitative aspects presented by automatic word counts (frequency and concentration of pre-set key words) and qualitative aspects [Kuckartz, 2014] presented by manual category, meaning identification (manual outcome of a simplified Delphi with Likert-style scoring automatically verified via artificial intelligence instruments such as LIWC) [Boyd, 2017; Tausczik & Pennebaker, 2010]. This predominantly qualitative content analysis [Silverman, 2013] uses as informal constants categories and key words identified by the thematic analysis of the conceptual background data and, along with the relevancy-validity criterion, helps in the selection process.

Ultimately, the following three key documents are selected, i.e. identified: Directive 2013/34 from 2013/2014; SWD(2019)143 Commission Staff Working document - Corporate Social Responsibility, Responsible Business Conduct, and Business and Human Rights: Overview of Progress (SWD CSR RBC 2019) from March 2021; and Regulation 2019/2088 from November 2019. Their multi-disciplinary contextual and evolutionary exploration and interpretation is done while focusing on a teleological and purposive interpretation approach and paying particular attention to the comparative juxtaposition of the evolving (pre)legislative wording, while further taking advantage of the above-mentioned content analysis. The formal dogmatic approach is to be applied. Regarding terminology, logic and the employed logic processes and procedures, such as analysis, synthesis, abstraction, generalization, comparison, separation and classification will be explored in an open-minded manner. The semi-proposition must be compared while strictly maintaining standards and requirements of the methodology of comparative law [Eberle, 2011].

Due to the conviction that more information is available than conventionally admitted and realized [Schmidt & Hunter, 2014], especially considering the scientific model of both direct and indirect causality [Heckman, 2005], a holistic and heuristic Meta-Analysis is used and offers pioneering conclusions about a modern paradigm of social responsibility, including the revelation of EU law preferences regarding CSR.

EU law milestones – From sustainable development to CSR disclosure

In 1957, the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community were signed. They declared as their objective *“a harmonious development of economic activities, a continuous and balanced expansion”*, see Art. 2 TEEC. The lack of a reference to the environment and/or sustainable development became an issue two decades later and various environmental groups began to voice their critical opinion in this context in the 1970’s [Bär & Kraemer, 1998].

In 1992, the Treaty of Maastricht creating the EU (TEU) was signed in 1992 and entered into force in 1993. All twelve member states of the European Communities agreed via the Maastricht Treaty about a new stage in the process of European integration towards a shared European citizenship, a single currency and common foreign and security policies. However, the ambitious tenor was rather declaratory, the EU did not have a legal personality and the expectation of the advent of an EU constitution failed in the following years, ultimately forcing the EU to go for plan B – the reform Treaty of Lisbon. Regarding objectives, a merely indirect step towards sustainability and CSR was made. Namely, one of the objectives was stipulated as *“to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social coherison and through the establishment of economic and monetary union, ultimately including a single currency ...”* (Art. B).

Due to the planned enlargement and need to increase democratic aspects, the amendment of TEU was prepared and materialized in 1997 by the signature of the Treaty of Amsterdam [Bär & Kraemer, 1998]. It brought for the first time a direct and explicit command for sustainable development by stating *“Article 2. The Community shall have as its task, by establishing a common market and an economic and monetary union ... to promote*

throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.” Only a few years later, in 2000, the Lisbon European Council set for the EU a new strategic goal for 2010 – “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.” Even more importantly, as a part of the strategies to be mobilized to this effect, the European Council made “*a special appeal to companies’ corporate sense of social responsibility regarding best practices on lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development.*” In sum, sustainability and, even more, the CSR made their entry into the positive EU law and policy framework in the context of the EU fear regarding global competition and the role played by others, such as the USA [De Schutter, 2008].

Additional amending and reforming treaties, including the 2007/2009 Treaty of Lisbon, have followed and led to the current consolidated version the TEU, which states in Art.3 para 3 “*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*” Indeed, the entire EU constitutional trio of primary sources, i.e. TEU, TFEU and Charters, have acquired social and environmental dimensions [Polcyn et al., 2019]. These followed a number of ideas and initiatives about, among others, social and environmental reporting, but the modernized accounting directives were a true challenge to be agreed upon and the work on them extended from 2001 to 2013 and several times it was described as a “failure” [De Schutter, 2008].

In 2014, a new reporting duty was imposed upon certain European businesses, increasing their social responsibility and boosting their CSR. Namely, the long awaited Directive 2013/34 on the annual financial statements, consolidated financial statements and

related reports of certain types of undertakings (“Directive 2013/34”) was amended by Directive 2014/95/EU as regards the disclosure of non-financial and diversity information by certain large undertakings and groups [MacGregor Pelikánová & MacGregor, 2020]. Pursuant to this amendment, i.e. the updated version of Directive 2013/34, public-interest entities with over 500 employees must disclose information about how they address five challenging categories: (i) environmental protection, (ii) social responsibility and treatment of employees, (iii) respect for human rights, (iv) anti-corruption and bribery and (v) diversity on company boards (age, sex, background)

In 2019 came Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (“Regulation 2019/2088”), which lays down harmonized rules for financial market participants and financial advisers on transparency in regard to sustainability disclosure, in particular so-called sustainable investment. No transposition is needed and this regime applies from the 10th of March, 2021 (Art. 20) on the territory of the entire EU.

On the 21st of April, 2021, the Commission published COM/2021/189 final proposal for a Directive amending Directive 2013/34, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting. The goal is mainly to change the wording of Directive 2013/34 to support the European Green Deal, a set of policy measures intended to combat the climate crisis by transforming the EU into a modern, resource-efficient and competitive economy, with no net emissions of greenhouse gases by 2050. Furthermore, the directive is part of the bigger Sustainable Finance package, which enables the Green Deal by helping to channel private investments behind the transition to a climate-neutral economy.

This primary and secondary law evolution was naturally organically intra-related with strategic policy instruments prepared by the Commission and in order to avoid inherent complexity [MacGregor Pelikánová & MacGregor, 2020], it is illustrative to present an overview of them, see Table 1.

Table 1. EU strategic policy instruments for the sustainability and CSR

Date	Number	Title
2001-05	COM(2001)264	A sustainable Europe for a better world: A European strategy for Sustainable Development (EU Sustainable Development Strategy)
2001-07	COM(2001)366	GREEN PAPER. Promoting a European framework for Corporate Social Responsibility
2010-03	COM(2010)2020	Europe 2020: A strategy for smart, sustainable and inclusive growth (Europe 2020 Strategy)
2011-10	COM(2011)681	A renewed EU strategy 2011-14 for CSR
2019-01	-	Reflection paper: Towards A Sustainable Europe by 2030
2019-03	SWD(2019)143	Commission Staff Working document - Corporate Social Responsibility, Responsible Business Conduct, and Business and Human Rights: Overview of Progress (SWD CSR RBC 2019)
2019-2024		The six policy priorities of the Von der Leyen Commission (6 Commission priorities for 2019-24) – A European Green Deal, A Europe fit for the digital age, An economy that works for people, A stronger Europe in the world, Promoting our European way of life, A new push for European democracy.
2021-04	COM/2021/219	Better regulation: Joining forces to make better laws

Source: Own work by the Author based on EurLex.

Documents relevant for the EU sustainability and CSR setting but not directly generated by the EU include the UN global compact, UN guiding principles on business and human Rights, UN 2030 agenda for sustainable development, ISO 26000 guidance standard on social responsibility, OECD guidelines for multinational enterprises, OECD due diligence guidance for responsible business conduct and Social policy principles for multinational enterprises by the International Labour Organization, see https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility-responsible-business-conduct_en . Since so far no case law by the Court of Justice has developed, this supplementary source with a strong input not only for the interpretation cannot be used.

The analysis of the three most relevant instruments of EU policy and law about the sustainability and individual responsibility for it – Directive 2013/34, SWD CSR RBC 2019 and Regulation 2019/2088

The overview of primary and secondary EU law and related EU policies provided above reveals that currently there are basically only two EU law instruments specifically and exclusively dealing with sustainability – Directive 2013/34 and Regulation 2019/2088. However, there are a number of related policies, with the most recent and CSR focused being SWD CSR RBC 209. Therefore, the following teleological interpretation and content analysis, both manual simplified Delphi with Likert-style scoring and automatic LIWC, can be completed and juxtaposed in order to facilitate a critical thematic analysis involving both induction and deduction and ultimately, via Meta-Analysis, generate propositions about a modern paradigm of social responsibility, including the revelation of EU law preferences regarding CSR.

Chronologically, the first of this trio of documents is Directive 2013/34, naturally as updated especially in 2014. Its exploration was done while selecting the most relevant category – formal writing - the LIWC processing led to results presented in Table 2, to which Delphi-Likert style scoring and comments were added.

Table 2. Content analysis of Directive 2013/34

Traditional LIWC Dimension	Directive 2013/34	Average for formal language	Scoring	Citation (Art.19a) and Comments
I-words (I, me, my)	0.84	0.67	- - -	<i>“shall include a non-financial statement information to the extent necessary for an understanding ... including”</i> – formalistic, declaratory, general, vague
Positive Tone	0.24	2.33	- -	
Negative Tone	0.36	1.38	-	
Social Words	2.90	6.54	+	
Cognitive Processes	11.22	7.95	+	
Allure	0.60	3.58	-	
Moralization	0.00	0.30	-	
Summary Variables				
Analytic	99.09	87.63	+	Good v. Weak authenticity.
Authentic	33.70	28.90	--	

Source: Own work by the Author based on EurLex, LIWC and Delphi.

Directive 2013/34 has a strong Categorical-Dynamic Index (“CDI”) and represents superior analytical thinking that focuses on reasoning and arguments, but not on intuition, friendliness or a personal approach. Interestingly, this rather cold, professional and rigid inclination does not hurt the authenticity. At the same time, Directive 2013/34 attempts to

be neutral and not moralizing, and this ultimately leads to a tone which is neither positive nor negative. As a matter of fact, the tone is rather negative and not alluring. Manual Delphi suggests a formalistic, declaratory, general and vague tenor, along with a weak authenticity, i.e. the authenticity assessment is different and depends upon the selected methodology.

Chronologically, the second of this trio of documents is Directive SWD CSR RBC 2019. Its exploration was done while selecting the most relevant category – formal writing - the LIWC processing led to results presented in Table 3, to which a Delphi-Likert style scoring and comments were added.

Table 3. Content analysis of SWD CSR RBC 2019

Traditional LIWC Dimension	SWD CSR RBC 2019	Average for formal language	Scoring	Citation and Comments
I-words (I, me, my)	0.14	0.67	-	<i>“The EU has made progress revealed a high rate of approval for the Commission’s action” – self-laudatory.</i>
Positive Tone	2.47	2.33	+	
Negative Tone	0.69	1.38	-	
Social Words	3.70	6.54	+	
Cognitive Processes	10.97	7.95	++	
Allure	1.78	3.58	-	
Moralization	4.25	0.30	++	
Summary Variables				
Analytic	93.90	87.63	-	Absence of self-reflection, Reliance on the out of EU drive
Authentic	16.52	28.90	--	

Source: Own work by the Author based on EurLex, LIWC and Delphi.

The policy instrument SWD CSR RBC 2019 has a strong CDI and represents superior analytical thinking that focuses on reasoning and arguments, but not on intuition, friendliness or a personal approach. This rather cold, professional and rigid inclination hurts the authenticity. At the same time, SWD CSR RBC 2019 attempts to be neutral, but still slips into strong moralizing. The tone is not alluring. Manual Delphi suggests a self-laudatory tenor, a lack of self-reflection and a strong reliance on external sources, such as policies of the UN or ISO.

Chronologically, the last of this trio of documents is Regulation 2019/2088. Its exploration was done while selecting the most relevant category – formal writing - the

LIWC processing led to results presented in Table 4, to which Delphi-Likert style scoring and comments were added.

Table 4. Content analysis of Regulation 2019/2088

Traditional LIWC Dimension	Regulation 2019/2088	Average for formal language	Scoring	Citation (Art.1) and Comments
I-words (I, me, my)	0.39	0.67	---	<i>“lays down harmonized rules for financial market participants ... and the consideration of adverse”</i> – terminological inconsistency
Positive Tone	0.39	2.33	--	
Negative Tone	0.91	1.38	-	
Social Words	1.96	6.54	+	
Cognitive Processes	10.82	7.95	++	
Allure	0.91	3.58	-	
Moralization	0.00	0.30	-	
Summary Variables				
Analytic	99.16	87.63		Fragmented, not coherent.
Authentic	22.46	28.90		

Source: Own processing by the Author based on EurLex, LIWC and Delphi.

Regulation 2019/2088 has a strong CDI and represents superior analytical thinking that focuses on reasoning and arguments, but not on intuition, friendliness or a personal approach. This rather cold, professional and rigid inclination only moderately hurts the authenticity. At the same time, Regulation 2019/2088 attempts to be neutral and not moralizing. Again, the tone is not alluring. Manual Delphi suggests a fragmented approach with a problematic terminology. In particular, the “harmonization” is conventionally understood as an instrument reducing differences and taking the form of Directives, while standardization means direct cancellation and replacement, and so taking the form of a Regulation. Indeed, each Regulation is directly applicable and does not require any transposition ... but Regulation 2019/2088 appears rather vague and fragmented.

Conclusions

The concept of sustainability and responsibility, in particular individual responsibility, has millennial roots and has undergone a rather linear, smooth and slowly progressing evolution, strongly marked by ancient philosophy, Roman law, Christianity, the Hanseatic

model and *Nachhaltigkeit*, as well as UN endeavors in the 20th century. In 1997, the EU crossed the Rubicon and decided to join by launching an EU journey towards sustainability, both on the state and individual business levels. Undoubtedly, the drive and momentum towards the responsibility for sustainability and ultimately to CSR was matched by initial enthusiasm. However, it almost immediately became clear that such an approach is much too ambitious and the focus shifted toward merely informing. Nevertheless, even this appeared to be a challenge, taking over ten years. Ultimately, Directive 2013/34 came with its superior analytical and cold thinking that focuses on reasoning and arguments with a problematic authenticity. Over one decade ago, there came the policy instrument SWD CSR RBC 2019, taking a similar analytic attitude and adding to it a strong moralizing aspect and reliance on external sources and output, and achieving an extremely low authenticity. This grim authenticity outcome is indicated by both automatic LIWC and manual Delphi, and is cemented by self-explanatory quotations and citations. Regulation 2019/2088 attempts to continue the analytic thinking while improving authenticity and trying to stay away from moralizing. Again, the tone is not alluring and confusion is added by conceptual and terminological issues. However, these propositions and suggestions are not conclusive due to the inherent and inevitable limitations of the performed research, methodology, study and analysis. Indeed, a further ongoing observation and exploration of law and policy instruments are necessary, as well as particular attention needs to be paid to the case law of the Court of Justice of the EU, which could have perhaps the last word.

Nevertheless, it can be now safely argued that the modern paradigm of social responsibility is definitely more fragmented on the EU level than on the global level, where the UN manages to move continuously and systematically forward, see Agenda 2030 with 17 SDGs. The linear evolution can be observed in general, but not in particular with respect to the modern European integration process under the auspices of European communities and the EU. Indeed, the so-called CSR European style is undergoing a rather cyclical evolution dominated by over-ambitious optimistic enthusiasm confronted with realism and suspicious of stakeholders. The Commission, with its policies, is probably getting the message, the Council of ministers and Parliament with their Regulations and Directives are definitely getting the message while correctly heading towards a framework inducing CSR and leaving a good part of the enforcement to the public-at-large, in particular

consumers and investors. After all, ostracism is a democratic procedure and has basically only two pre-requirements – free critically thinking individuals and proper relevant information. Hence, the EU, especially the Commission, should be less patronizing, moralizing and dictatorial, and more facilitating and inducing regarding CSR, so Europeans could organically transition into sustainable development based on shared values and “promoting our European way of life”, as repeatedly advanced by the current President of the Commission, Ursula von der Leyen.

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