

Legal or Discretionary CSR: The Directive 2014/95/EU Analysis

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Abstract

The corporate social responsibility concept has suffered various interpretations and changes in the understanding of its voluntary nature, including some corporate functions in the legal sphere and introducing the mandatory CSR disclosure for certain groups of organizations. One of the most significant result in the CSR communication was trained by the achievement of the EU Directive which requires large undertakings functioning as public-interest entities to report on a non-financial basis. This paper addresses the legal context of developing the CSR understanding and the reporting issues in the international framework through a comparative analysis with the national constraints in Romania, in order to discriminate between the mandatory and the discretionary CSR characteristics. The identified particularities refer to the connection between the economic, the social and the environmental responsibility, describing the CSR implementation in a strong association with the legislative power and a shadowing effect of the authentic CSR voluntary construction.

Key words: corporate social responsibility, legal, discretionary

J.E.L. classification: K3, M14

1. Introduction

The credibility of the corporate social responsibility actions is often doubtful in the current global context, experiencing a high level of uncertainty and a lack of transparency, due to the deficiency in clarifying the concept and the large number of definitions assumed. The landscape of the analyzed legal documents will outline a consolidated perspective of the corporate social responsibility concept and its conversion into a more regulated field, after the assessment of the CSR disclosure particularities. The European Union approach in this area is the best presented by the main objective of the Lisbon Strategy to create a competitive economic and social system in Europe and the text of the Europe 2020 Agenda, proposing a revival development stage to achieve the sustainability performance. The Europe 2020 Strategy has three major pillars that can be easily related to the „triple bottom line” theory formulated by Elkington (1997): (1) smart growth, for a competitive economy sustained by an innovative and knowledge-based system; (2) sustainable growth, focusing on the green economy principles and (3) inclusive growth, suggesting a direct approach to the social cohesion targets (European Commission, 2010).

This paper presents one of the most influential regulatory framework for the organizations in the CSR context, the Directive 2014/95/EU, starting from the existing transparency needs in this field and the increasing number of environmental, social or anti-corruption norms. The research hypothesis brings a new insight in the modern structure of the corporate social responsibility, where the legal characteristics are prevailing the discretionary ones, conducting to the idea of a hybrid form of CSR and to a new definition of the subject. In this context, corporate social responsibility is represented only by the voluntary measures assumed by the organizations in order to achieve high levels of well-being for the community, their employees, their shareholders or other stakeholders, including the environment. This view is in accordance with the theories that highlight the commitment of a company to the CSR aspects on a voluntary basis (Commission of the European Communities, 2001; Eilbert and Parket, 1973; Jones, 1980), suggesting a strong

incompatibility between CSR and the mandatory national or international requirements.

2. Theoretical background. The responsible corporate behavior in Romania: only a strategy?

In Romania, the CSR initiative was born after the fall of the communist regime and the international investments of the multinational corporations (MNEs) in the local economy, aligning in the same time the national legal framework with the *acquis communautaire* in the post-accession period. Considering the People dimension, strengthening the relationship between the employer and the employee is an essential part of raising the employee identification with the organization, supporting the CSR activities through the employee volunteerism and increasing the financial performance of the company. Even if the most of the CSR actions directed to the employees are focused on the training modules and the career planning options, the human rights principles and the anti-discrimination procedures, the payment systems or the benefits, there is a clear position of the state authorities in regulating these issues. Moreover, there is a direct necessity "to adapt the existing social institutions by considering the actual risks people face today and those that they will face in the future" (Schipor, 2016, p. 136) in order to organize the labor market in accordance with current economic and social challenges.

The referential document in this field is the Labor Code, which establish the main obligations in the labor relations and the control public institutions, while the Constitution of Romania guarantees the freedom of labor. The Labor Code presents the main rights concerning the working time and its daily or weekly distribution, the remuneration policy without any discrimination and the minimum salary value, which are sets by the state in order to better organize the labor market and to protect the employees from possible abuse in the field. On the other hand, the MNEs accelerate their profitability through the human resources investments and highlight the training opportunities as part of their social responsibility towards their employees, while the Labor Code establishes the employer obligation to assure the access of their employees to the training programs, depending on dimension.

Furthermore, the same document describes the situations concerning the collective bargaining process and the protection right of the personal data, which is an important issue emphasized by the banks or other financial organizations under the CSR umbrella. According to the national regulation, the employer is also responsible for the health and safety of its employees, specifying that „any employee benefits from the appropriate working conditions, social protection, safety and health at work, as well as respecting his dignity and conscience without any discrimination” (Labor Code, 2018, p. 10). In this direction, some CSR measures promote a healthy lifestyle among the employees, including special discounts for therapy treatments, while others offers medical or health care services. In the CSR reporting section, a large group of organizations prove the attachment to labor principles like fighting against the forced labor or respecting the equal treatment for their employees, but these articles are also included in the Labor Code and suggest the changing optics of CSR from voluntary to mandatory, creating a diffuse CSR strategy and a meaningful marketing experience.

Regarding the Profit dimension, the Law no. 31/1990 for enterprises is very large in addressing the conditions to operate on the market, while for the financial sector it can be noted the Government Emergency Ordinance no. 99/2006 regarding the credit institutions and the capital adequacy. According to the Law no. 363/2007, the state delineate the unfair business practices between aggressive or misleading, while for the credit institutions there is also the Law no. 193/2000 which refers to the abusive clauses like the extension of the contract by invoking the tacit consent of the client or the amendment of the contractual terms only by the wish of the trader, without clear reasons. In the same extent, the Law no. 288/2010 for the approval of the Government Emergency Ordinance no. 50/2010 is dedicated to the credit agreements for the consumers and specifies a set of rules to be followed by the credit institutions in the agreement format or content, using the proper size of the letters or offering valuable options for the clients regarding the credit repayment methods.

On the other hand, the environmental concern in Romania is emphasized by a collection of normative documents which expands the CSR vision to various issues related to the nature, soil and atmospheric protection, the waste management or the environmental assessment. In this context,

there is little operating space in the Planet dimension for the economic agents that must comply with the environmental regulation, comprising the waste transport or its storage, batteries or accumulators waste, electrical or electronic equipment and waste oils, protection of natural habitats, wild flora and fauna, environmental authorization procedures. The Law no. 104/2011 includes the main obligations regarding the quality of the air, being considered the European Union provisions of the Directive 2008/50/EC and the Directive 2004/107/EC, connecting the People-Planet dimensions with the major goal of protecting the environment, as a whole, and the human health and establishing the public authorities with competencies in the environmental protection and air quality assessment. Most of the companies that mention their responsibility towards the environment are only complying the law or seek material advantages from their responsible use of natural resources, proving more cost-oriented efforts through the green energy solutions or the efficient use of energy or water.

3. The Directive 2014/95/EU analysis

The sustainability reporting validates the CSR results by encompassing credibility, significance and completeness, if there are used international standards and CSR disclosure frameworks to guide the companies' efforts in this area. Thus, the reports „should include relevant information and appropriate reviews in terms of both coverage and data quality” (Akisik and Gal, 2014, p. 266). The integrity of many corporations is influenced by the disclosure practice in the CSR field, even if there is no consensus regarding the measurement tools, the high sustainability performance levels or the general content of the CSR reports. The basic temptation is to disclose more on the positive results, to neglect the negative outputs or to provide CSR data difficult to compare, while the extension of the legislative framework emphasize the attempt of the corporations to communicate the actions taken in order to respect the law under the appearance of corporate social responsibility. The Global Reporting Initiative proposal in terms of international voluntary reporting remains the most important standard used by various types of organizations to declare their CSR commitment, in accordance with the „triple bottom line” approach.

The Directive 2014/95/EU of the European Parliament and of the Council amending the Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups was adopted in 2014 and creates the basis for a new stage in the CSR understanding, putting a special emphasis on the normative part of CSR. The document can be considered as a milestone in the renewed CSR composition, assigning less value to the voluntary characteristics of the concept and mixing the pillars of responsibility through the disclosure of non-financial data, which „is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection” (European Parliament and the Council of the European Union, 2014, p. 1). Starting from the idea that the large undertakings have significant impacts on several Member States and the necessity to establish a minimum legal requirements in the non-financial field for the stakeholders in order to present in a fairly and comprehensive way their CSR policies, the Directive associates the three-pillars approach with the following responsibility matters: the environment, the social and employee-related issues, the human rights principles, the anti-corruption measures and the fight against bribery acts.

According to the Directive 2014/95/EU, the large undertakings which are public-interest entities and the public-interest entities which are parent-undertakings of a large group and have an average number of more than 500 employees are required to present a non-financial statement or a consolidated management report, in the case of those that are members of groups of undertakings, that should include the relevant data for the responsibility matters considered above. The non-financial statement must include: (1) a short description of the business model followed by the undertaking; (2) a presentation of policies for each responsibility matter developed by the Directive 2014/95/EU; (3) the main results of the mentioned policies; (4) the main risks resulting from the operational activity of the undertaking connected to the established responsibility matters and the risk management procedure; (5) a set of non-financial key performance indicators applicable to the considered business. The second part of the analyzed Directive refers to the corporate governance statement, which include the obligation to report the diversity policies concerning the age, gender

or professional and educational experience for the management, administrative and supervisory bodies.

Where the group of undertakings does not proceed is some of the mentioned policies, the non-financial statement shall define the reasons for this situation, in a clear and acceptable way, while the omission of such data can be used when the disclosure will affect in a substantial form the commercial position of the undertaking. The same Directive provides a deadline for preparing the non-binding guidelines on non-financial reporting, as a methodology that can be used in the implementation process „to help companies disclose high quality, relevant, useful, consistent and more comparable non-financial (environmental, social and governance-related) information in a way that fosters resilient and sustainable growth and employment, and provides transparency to stakeholders” (European Commission, 2017, p. 4). According to the Communication from the Commission 2017/C 215/01, the terminology should be understandable and consistent, disclosed in an unbiased manner and presenting a clear distinction between facts and interpretations. Moreover, the document is directly linked to the stakeholder approach, encouraging corporations to consider the CSR communication needs of all categories of stakeholders related to their business. The same guideline highlights the advantages of presenting coherent data, easily to be compared over time, in order to allow investors, customers or other stakeholders to monitor the performance, the impact and the progress of non-financial key indicators.

For every thematic aspect proposed by the Directive 2014/95/EU, the methodology for reporting non-financial information provides useful examples of key performance indicators (KPIs), such as: (1) for the environmental issues – energy performance, energy consumption from non-renewable sources, greenhouse gas emissions or other pollutant emissions, extraction of natural resources, impact on the biodiversity and natural capital, waste management indicators; (2) for the social and employees matters – gender diversity, employee turnover, number of employees with disabilities, the employee consultation processes, the number of employees working under temporary contracts and average training hours per year per employee considering the gender, employees entitled to parental leave (by gender), number of employees involved in high risks activities, the number of occupational accidents, types of occupational diseases and injury; (3) for the human rights field – the complaints process, suppliers and operations at risks of human rights violation, the availability of websites and other facilities for people with disabilities, respect for freedom of association, measures for fighting against any form of human exploitation, including forced or compulsory labor, child labor or the unsafe working situations; (4) the anti-corruption fight and the bribery problem – procedures, policies and standards in the field, number of legal actions on anti-competitive behavior, number of employees which were trained in the issue, resources used to preventing such actions, internal control process.

The Directive 2014/95/EU was partially integrated into the Romanian law through the Order of the Ministry of Public Finance no. 1938/2016, describing the categories of organizations which are subject of the norm as public-interest entities with more than 500 employees (average number) during the considered financial year or the public-interest entities which are parent-company of a group with the same characteristics. The document also transposes the provisions of the Directive 2014/95/EU regarding the main fields which are required for disclosure and the content of the non-financial statement, with the constitutive parts described in the present paper. Nevertheless, it can be noticed the difficulty in addressing the CSR issues without a generally accepted disclosure framework and measurement tools that can lead to a vague reporting process, the lack of transparency due to the fact that there is no obligation to check the content of the non-financial statement by a third authority or the sustainability circle that may be promoted by such a law, without a complete system of implementation criteria.

4. Conclusions

The CSR initiative in Romania is still in an embryonic phase, being developed after the fall of the communist regime, the MNEs trend and the accession to the European Union. The analysis provides a plenty of normative examples with the major goal to align the Romanian legal framework to the *acquis communautaire*, while the Directive 2014/95/EU regarding the disclosure of non-financial and diversity information by certain large undertakings and groups has the most

significant effect in the CSR implementation, increasing the transparency of the reporting process. The Directive was integrated into the Romanian law through the Order of the Ministry of Public Finance no. 1938/2016, supporting the Labor Code provisions regarding the main rights concerning the remuneration policy, the working time and the labor relations, the environmental laws in the fields of the waste management, the environmental protection and assessment or the economic regulations, with a special emphasis on the ethical values in achieving profit. The EU Directive is a step ahead for the proper implementation of CSR policies, transforming it in a more regulated concept and adjusting in an appropriate manner the corporate behavior for a better compliance with the sustainability needs.

The voluntary nature of corporate social responsibility has profoundly changed in the last decades, trained by both the international or national constraints. Considering the extension of the legal reference framework on this subject, there is an increasing confusion between the mandatory responsibility and the discretionary responsibility, even if the concept imposes a dissociation of these evolving phases. The plenty of laws, orders of Ministry, international directives or normative documents are the result of the lack of transparency and uncertainty in this field, due to the misleading practices of corporations in their communication process. The CSR concept remains strongly associated with the „triple bottom line” approach in the effort to found a connection between the economic, the social and the environmental responsibility, relationship strengthened by the current regulation context and the reporting standards, while the proportions between legal and voluntary activity has deeply converted into a more law-dominated ratio, with a tough shadowing effect of the authentic CSR voluntary design. Refining the concept, the CSR term is best outlined by the voluntary actions of organizations in their attempt to increase the quality of life of all stakeholders and to reach a sustainable development, in general.

5. References

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