Corporate Social Responsibility (CSR) and the influence on food industry

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A. Transparency in terms of food safety and quality

Numerous food scandals in recent years have changed the expectations of consumers in terms of transparency within the nutrition industry, as well as in terms of the accompanying communication. The resulting social expectations forced companies, especially within the nutrition industry, to offer a product beyond the legal obligations. This is not only affecting the quality and price for purchase, but also the company’s reputation. Such a sense of openness and transparency could improve the company’s reputation and create valuable long term confidence in product safety. One of the most popular methods used to precisely convey this form of product safety and quality is Corporate Social Responsibility (CSR). It is expected that companies work in a sustainable and transparent way and that they disclose certificates, such as MSC label, Bio-Siegel or other organic certifications.

1 Diethylene glycol wine scandal in 1985; Bovine spongiform encephalopathy (BSE) or mad cow disease in 1994; Food-and-mouth disease (FMD) in 2001; HUS or EHEC epidemic in 2011; Dioxin scandal in 2010 and 2011; Meat adulteration scandal in 2013; Animal feed scandal in 2013 and 2015.
3 Eco-labeling of fish from sustainable fisheries.
4 German quality and test label, which indicates compliance with standards for organic farming according to EU.
5 Bibi van der Zee, Green Business – Ressourcen, Klimawandel, Globalisierung, Grüne Strategien, Erneuerbare Energien (GABAL Verlag 2011) 7 f.
B. Summary of previous developments

Due to the increasing globalisation of production chains, it is only logical that the European Union [previously European Community] has initiated early steps towards Europeanisation in CSR. Already in 2001 the European Community published a first Green Paper of CSR, which led in 2002 and 2006 to European Commissions (COM) communications. These communications already indicated that a new CSR strategy will be adopted. Finally in October 2011 a Europe-wide CSR strategy 2011-2014 was published. Following this strategy, the results were summarised in a public consultation with interested stakeholders and were published by the COM in November 2014. The lessons learned should lead to a new strategy, which will have a term from 2015 to 2020.6

Therefore, this article presents the current strategy, its evaluation as well as the expectations on the new strategy. In addition to this, the so-called CSR Directive 2014/95/EU is presented.

I. CSR strategy 2011-2014

The first important outcome of this strategy was a new definition of CSR. Before this strategy was announced, the COM defined CSR as a “concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.7 By publishing the strategy 2011-2014 the primary strategic focus voluntarily changed into a mutual ”respect for applicable legislation, and for collective agreements between social partners”.8 But the main aim of this strategy was to modify and implement social, ethical, en-

environmental and stakeholder concerns into the core business operations of enterprises.

The EU declares several factors which demand to improve the political impact of CSR. Besides suggestions concerning self-regulation and co-regulation arrangements, transparency of all stakeholders is one of the most important factors. As already mentioned, the EU wanted to improve the communication, especially between enterprises and stakeholders, and wanted to support the possibility of getting more information legally provided for consumers. This aims at creating mutual confidence. Therefore, the strategy presented some international agreements which already set up standards for transparency within multinational enterprises (MNE). The OECD Guidelines for Multinational Enterprises are one of these agreements. The current Guidelines state that transparency recently represents a part of consumer protection, which can be promoted by an enterprise.

The legal nature of an OECD agreement is described as soft law. Soft law is characterised by the fact that it cannot exert any legally binding obligations. With the integration of soft law into legally sanctionable standards, known as hard law, a mandatory enforcement can be generated. However, soft law represents an excellent instrument in order to supplement hard law. Participating States have to establish National Contact Points (NCP), which are checking infringements of the Guidelines and


mediate between the disputing parties in order to find a compromise. The enforcement of the Guidelines is judicially impossible.\textsuperscript{12}

The multidimensional character of CSR is shown by these international standards. 42 OECD and non-OECD states agreed to submit to these Guidelines and provided to change their national understanding of international businesses.\textsuperscript{13} Within the strategy, the COM just describes a supporting function of public authorities. The main part of CSR should be created by the enterprises themselves. This support shall include a smart mix of voluntary and complementary regulation.\textsuperscript{14} A result of this mix will be introduced in chapter III. This approach is comparable with the idea of the invisible hand of Adam Smith. This idea presupposes that the national government creates framework conditions to promote for instance, transparency and good accountability; in return, the industry is responsible for transparency and communication with the consumers.\textsuperscript{15}

One of the most important aims of the European Council (EC) was to ensure transparency. The Green Paper of 2001 already focussed on increasing transparency in economic life, antagonizing corruption\textsuperscript{16}, enhancing the best practice of human resources management\textsuperscript{17} and setting up higher standards for the screening of sensitive data\textsuperscript{18}. Also, the Single Market Act I considered these objectives again and related them to more social and environmental themes, especially to environmental development and sustainable growth.\textsuperscript{19}

\begin{thebibliography}{9}
\bibitem{15} Berrit Roth-Mingram, ‘Corporate Social Responsibility (CSR) durch eine Ausweitung der nichtfinanziellen Informationen von Unternehmen’ (2015) 34 NZG 1341 f.
\bibitem{17} Ibid 18 no 77.
\bibitem{18} Ibid 21 no 87.
\bibitem{19} European Commission, ‘Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee
\end{thebibliography}
Against this background, the EC has committed itself to adopt legislative changes to create a framework for social and environmental transparency.\textsuperscript{20} As a result, the EC and the EP (European Parliament) introduced Directive 2014/95/EU.

\section*{II. Results of the public consultation of CSR strategy 2011-2014}

At the end of April 2014, the COM started a public consultation to assess the first CSR strategy and to gain some empirical value of a wide variety of stakeholders. The COM enabled two ways to participate in the assessment for the stakeholders. On the one hand, it was possible for anyone to fill out an online form to give individual feedback. Secondly, the COM arranged a multi-stakeholder forum to which around 450\textsuperscript{21} people participated. The majority of the participants were mainly representatives from industry and non-governmental organisations.\textsuperscript{22} Ninety\textsuperscript{23} of them took the opportunity to express how their experiences with the strategy were and reported on their practical work.

In general, it can be noted that the respondents see the COM as one of the central actors in the field of CSR. 80\% of the respondents confirm the importance of the role of the COM, but at the same time every second re-
spondent highlighted that there could be more potential for dedication. Overall private actors are regarded as the key figure within CSR. The COM's work is assessed by around two-thirds of the respondents as at least useful. In particular, the results highlighted the inter-relationship between industry and society. The adoption of Directive 2014/95/EU is also mentioned.24

As a central task for the future, the paper presents the enhancement of transparency.25 In the form of product traceability from the origin, through processing to the consumer, the transparency creates a unique sense of product safety, which can mean a product be consumed without hesitation. It is not surprising that measures of CSR by 79% of respondents are considered as important for medium-term and long-term competitiveness.26

Another point of this consultation was to identify why CSR is important for companies. The respondents indicated that even if the economy is more trustful than authorities, consumers distrust the economic world because they see an excessive imbalance between their own distinct power and the power of the business world. CSR can therefore change this perception and can strengthen the confidence of consumers in industry.27

III. Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

Directive 2014/95/EU, also known as the CSR-Directive, became legally valid at the end of 2014. Member States of the EU have until the end of 2016 to implement this Directive into national law, so that the report requirements will be compulsory for the first time in the fiscal year 2017.

25 Ibid 3.
26 Ibid 33.
27 Ibid 34.
As already mentioned, the COM sets itself the task to spread transparency between enterprises and consumers. In addition to the efforts to structure the financial system to be more transparent and responsible, the non-financial aspects, at least regarding enterprises with an average number of 500 employees during the fiscal year, become more important. These enterprises should also report about social, environmental and employee matters. This includes, for example, a description of the business model and an exposition of applied due diligence processes which permit an evaluation of the results of the business model, as well as non-financial indicators that are significant for the business purpose. It is expected that approximately 6,000 enterprises in Europe will be affected. In Germany, MNE have to expect fines up to 50,000 € for infringements of reporting obligations. This disclosure should increase the confidence of consumers in the industry and in product safety.

For several times, Nestlé published a comprehensive sustainability report, setting up a presentable example for the nutrition industry. The latest report was published in 2014. The reports describe Nestlé by different indicators like the number of employees and annual revenues. Subsequently it lists individual business units such as “food and nutrition security” or “supporting nutrition and health”. The presentation of single units is a good example to show how transparency could improve the communication with consumers. For example, Nestlé describes its cooperations with authorities such as the WHO, EFSA and other organisations. Aim of the cooperations is to create standards for the certification of products within the Nestlé Nutritional Profiling System (NNPS). Every Nestlé product

29 Ibid art 19 a (1) lit a) – c); Andreas Glaser, ‘Corporate Social Responsibility (CSR): Erweiterung der (Lage-) Berichterstattung um nicht-finanzielle Informationen zur Erhöhung der Unternehmens transparentenz in Umwelt- und Sozialbelangen’ (2015) 2 IRZ 55.
needs to have this certificate to reach the highest level of quality and safety standards. Simultaneously, existing products are critically examined. As a result of this consideration, Nestlé proclaims the aim to reduce salt, sugar and fat in their products.\footnote{31 Nestlé, ‘Nestlé in society – Creating Shared Value and meeting our commitments 2014’ (2014) 10 ff., 51 f. <https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-in-society-summary-report-2014-en.pdf> accessed 1 February 2016.}

It should be noted that subsidiaries are seen as independent units and are therefore not covered by the reporting requirements of large enterprises, if the parent enterprise is reporting about them in a consolidated management report. This also applies to subsidiaries that would otherwise be defined as a large enterprise in accordance with the Directive.\footnote{32 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1, art 19 a (3), art 29 a (1) lit a), (2), (3).} Such an exception presupposes that the interested consumer is dealing with the corporate structures in order to get the information, provided that they are covered by the Directive.

A critical point are the exceptions which Member States may make to exempt undertakings from the mandatory reporting requirement. The Member States have the possibility to take measures to exempt from the reporting requirement under the Directive, provided that the undertaking concerned makes a report corresponding to national requirements.\footnote{33 Ibid art 19 a (4) and Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [2013] OJ L 182/19 art 30 (1), art 34.} If 28 Member States will create their own guidelines for reporting, the result will be a diverse mix of different reporting standards which will not be comparable. It will be difficult to reach the goal of using transparency as an indicator of the safety of products, especially in the case of cross-border operating enterprises.

The original idea of the voluntary nature of CSR is adopted explicitly with this Directive, but it does not contain any substantive requirements
for CSR, it only defines an obligation to increase transparency. This Directive should represent a positive composition between the expectations of a legislative framework, and the individual liberty of industry to be self-determined within business. With an exception for Small and Medium-sized Enterprises (SMEs), the EC and the EP made a smart move to create no bureaucratic burdens at the expense of the middle class. It remains to be seen whether the additional burden for reporting obligations and the sanctions for breaches of the requirements will lead to a disproportionate burden of large enterprises, or whether the consumers will appreciate the information.

IV. Expectations of the strategy 2015-2019

The president of the European network for CSR, Étienne Davignon, chose prudent words to describe the expectations and further developments desired for the CSR strategy. He demanded to “unleash the full potential of CSR as it is already defined. European CSR Strategy 2020 should not only focus on a common understanding of CSR to minimise risk, compliance and transparency but also to support companies to take advantage of opportunities to innovate of products and services that create shared value and sustainable living for all”.

The results of the public consultation affirm the statement of Étienne Davignon. Accordingly, 80% of the respondents desire a further commitment on CSR of the COM. How this exactly should be implemented is not discernible from the published document. However, enhancing the transparency plays a crucial role (cf. chapter II). It is of utmost importance that the COM establishes a standard, modelled similar to the Global Reporting


Initiative (GRI) benchmarks, in order to make things more comparable with each other. If the comparability stays at the previous level, then the reader will only be able to draw a conclusion when great effort is expended.

A groundbreaking change to the current strategy can thus be achieved keeping in mind that the reporting requirements are expanded. For example, it is only partly understandable why subsidiaries may profit from their parent enterprise’s trade, so that they can build up secure trading relations, but in contrast to independent companies, are not taken into the obligation when it concerns the reporting requirements. Here, structures of MNEs are strengthened rather than to promote healthy competition. Similarly, the threshold of reporting must be reduced to a level where more companies are affected by the regulation. Obviously, SMEs will carry a heavier burden than before, but here it has to be expected that political instruments will be created which just absorb those extra burdens. This can be done through compensation or through direct involvement of suppliers in the reports of reportable enterprises. Such involvement of SME makes particular sense, if the economic importance of this is significant for the preservation of prosperity. In Germany, more than 60% of all employees are salaried by SME and this number of SME is responsible for around 55% of GDP.

Finally, the new strategy needs to have a stronger effect on harmonising national rules as of yet. The degree of harmonisation is, with numerous exceptions which MS can make through individual exceptions, very low. Again, establishing comparative figures, as it claims the GRI can be helpful to reduce the national solo attempts

C. Summary

So far, the main purpose of the COM was to raise awareness for Corporate Social Responsibility. Initially set heavily on self-binding instruments, this area is now regulated more and more. In particular, Directive 2014/95/EU put it in the public eye. The guiding principle of this Directive is the comparability and disclosure of sustainable and responsible corporate governance. The public consultation has shown here how high the acceptance and the importance of such a commitment are. Especially the area of transparency can be found in all stages of development of CSR in Europe. Those times where companies could exclusively seek to dedicate to classic marketing instruments for sales promotion operations, seem to be over. The serious respect for environmental and social responsibility of a company influences the purchase decision of consumers increasingly. Despite everything, the Directive grants a degree of latitude through numerous exceptions and the necessary implementation into 28 diverse Member State laws. This makes an intensive scientific comparison of the reported data appear impossible. A much better handling of the reporting would have been possible through an initiative which would have evaluated reportable factors regarding their durability beforehand. Only with such a basis, is a reporting that is to combine the interests of 28 Member States comparable and usable for further purposes. The Directive therefore promises a new era of transparency of MNE. Certainly, the Directive helps to make known more about specific processes, but the future will show whether this will help to understand the globalised value chains through not completely comparable standards. That future food crises can be prevented due to the Reporting Directive is unlikely. It is hoped that future scandals can be rapidly and extensively clarified. In the area of food quality, the obligation to disclose can probably make a greater progress. An illustration of sustainable economic activity and an increasing recognition by the consumer may be a step forward. Again, the future development will provide more clarity.