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Corporate Social Responsibility Reporting on the Rise

A good reason why board members, management and legal counsel must care about human rights

Corporate Social Responsibility (CSR) is becoming increasingly mainstream. More and more companies integrate some form of CSR strategy into their operations. Alongside with it, the importance of CSR reporting is growing towards becoming standard practice among big enterprises. This paper gives an overview of the following: (i) main sources for CSR, (ii) main sources for CSR reporting and (iii) initiatives of investors, stock exchanges and legislators to promote CSR reporting – even to the extent that CSR reporting becomes mandatory.

1. CSR Initiatives

During the last decades a series of international initiatives have been calling for more responsible business conduct and several standards on CSR have been developed.

Probably the most famous CSR standards, the **UN Guiding Principles on Business and Human Rights**, were based on the framework "Protect, Respect and Remedy" developed by UN Special Representative John Ruggie. The three pillars of the framework recognize the obligation of States to protect human rights, the duty of enterprises to respect human rights, and the right to appropriate and effective remedy when human rights are breached.

These principles were integrated in the 2011 version of the **OECD Guidelines for Multinational Enterprises**, the only multilaterally agreed and comprehensive code of responsible business conduct that the 44 adhering governments – accounting for 85% of foreign direct investment – have addressed to multinational enterprises and have committed to promoting.

- **Authorities on CSR**
  - **UN Guiding Principles on Business and Human Rights**
  - **OECD Guidelines for Multinational Enterprises**
  - **UN Global Compact**
- **Authorities on CSR/CSR Reporting**
  - **Global Reporting Initiative (GRI)**
  - **Sustainability Accounting Standards Board (SASB)**
  - **International Integrated Reporting Council**
- **Pressure to report on CSR from**
  - **Investors (e.g. Principles of Responsible Investment)**
  - **Stock Exchanges (e.g. SIX Swiss Exchange)**
  - **Legislators (e.g. Directive 2014/95/EU and initiative on corporate responsibility in Switzerland (*Konzernverantwortungsinitiative*)**

A significant role in the promotion of CSR is also played by the **UN Global Compact (UNGC)**, a pact between adhering enterprises and the UN, according to which the adhering enterprise commits to respecting and promoting the ten general principles of the Global Compact and to communicate about its progresses on a yearly basis. Currently over 9,000 companies from 168 countries are members of the UNGC.

The **ILO Tripartite Declaration of Principles concerning Multinational Enterprises**, the **ISO 26000** Standards, or the recent **Recommendation by the European Council on Human Rights and Business** are only some of other important CSR initiatives to be mentioned.

2. CSR Reporting

The call for more socially responsible corporate conduct has also led to the need for more transparency about the impacts of the enterprises' activities on environment and society and about their efforts in CSR. In order to help businesses meet these expectations, multiple standards on CSR reporting, serving as guidelines for reporting on CSR issues, have been developed. Some of these guidelines are widely used and thus have gained substantial importance.

a) Global Reporting Initiative

The probably most used reporting standards were developed by the **Global Reporting Initiative (GRI)**, an international, independent organization which started its work in the late 90s.

The first version of its guidelines on CSR accounting was launched in 2000 and has since then been repeatedly amended. The latest generation (the GRI Standards), were only just released in October 2016.

The GRI guidelines have found wide application, with over 4,000 enterprises – among which many of the largest enterprises worldwide – reporting according to GRI guidelines or with reference to them in 2015.

The GRI guidelines are often used in combination with other initiatives or frameworks, such as the UNGC. Indeed, the GRI has strategic partnerships with the OECD, the UNEP and the UNGC and its framework enjoys synergies with further organizations and initiatives.

Reports based on the latest GRI Standards include, next to contextual information about the organization and on the management approach for each material topic, specific disclosures on material topics regarding economic, environmental, and social issues.

b) Other Standards

Next to the GRI, other organizations have also developed guidelines for CSR reporting directed at enterprises.

To mention are namely the **Sustainability Accounting Standards Board (SASB)** and the **International Integrated Reporting Council**.

Both these organizations set themselves the goal of developing standards that allow the integration of CSR reporting within existing, financial accounting.

What is more, the (provisional) SASB Sustainability Accounting Standards are industry specific: they include accounting standards for 79 industries in 11 sectors.

Other examples of reporting standards include the **UN Reporting Framework for Business and Human Rights**, which provides guidance for companies to report on how they respect human rights and is based on the UN Guiding Principles on Business and Human Rights mentioned above, or the reporting system of the **Carbon Disclosure Project**.

According to the GRI database, over 5700 companies have published CSR reports in 2015, either based on GRI guidelines or other standards.

3. Sources of Pressure to Report on CSR

Among the driving forces of CSR initiatives are not only NGOs or society as a whole, but increasingly also other specific market players, such as investors or exchanges. Legislators are also becoming more active, with recent developments showing a tendency towards making CSR reporting legally binding.

a) Investors

Investors have been expressing their desire for more transparency with regard to Environmental, Social and Corporate Governance (ESG) issues, both individually and collectively.

For instance, **Larry Fink, CEO of BlackRock**, the world's biggest asset manager, in an open letter to the CEOs of leading companies in the US and in Europe, criticized short term thinking and invited CEOs to invest more in long-term value. In order to generate sustainable returns, he affirmed, also environmental and social factors need to be considered, since ESG issues have real financial impacts. BlackRock has thus been making efforts to integrate ESG considerations into its investment processes, and expects companies to have management strategies in place for these issues.

Collectively, investors (including asset owners, investment managers and service providers) namely have developed the **Principles of Responsible Investment (PRI)** in partnership with the UNEP Finance Initiative (UNEP FI) and the UNGC. The main objective of these principles is to encourage investors to integrate ESG considerations into their investment decisions and in seeking disclosure on these issues by the entities in which they invest. In signing them, the participating investors publicly commit to adopting and implementing the PRI. Nearly 1,500 investors from over 50 countries and representing USD 60 trillion are signatories to the PRI, including UBS, Credit Suisse, Swiss Re and other Swiss institutional investors.

Also to mention is a further project about responsible investment that was initiated by the PRI, UNEP Finance Initiative and The Generation Foundation. This project focuses on ending the debate on whether fiduciary duty may be a barrier to integrating ESG consideration into investment decisions. The project followed a report by the PRI, UNEP FI, UNEP Inquiry and UNGC (Fiduciary Duty in the 21st Century), which recommended that long-term investment value drivers, including ESG issues, be integrated in investment decision-making – otherwise being a breach of fiduciary duty – and made specific recommendation for institutional investors, financial intermediaries and policymakers.

b) Stock Exchanges

Similarly to investors, exchanges have also been engaging in projects promoting the integration of ESG considerations into investment decisions by enhancing corporate transparency on these issues.

For instance, over 60 exchanges have joined the **Sustainable Stock Exchanges Initiative (SSE Initiative)** as partner exchanges, and thereby have publicly committed «to promoting long term sustainable investment and improved ESG-disclosure and performance among companies listed on our exchange». The SSE Initiative has also published the Model Guidance on Reporting ESG-Information to Investors – a voluntary Tool for Stock Exchanges to guide Issuers, which is meant to serve as a template for exchanges to develop their own guidance for listed corporations on reporting of ESG information.

The **World Federation of Exchanges (WFE)** – the largest association of exchanges worldwide, representing over 200 exchanges and other market infrastructure providers that are home to more than 45,000 listed companies – has established a sustainability working group, which has published a recommendation to the WFE member exchanges to use the Model Guidance on Reporting ESG-Information to Investors just mentioned. The working group regularly publishes updates on the developments of CSR reporting requirements by the exchanges members to the WFE.

Exchanges individually are also enhancing their requirements for listed corporations with regard to CSR reporting. In Switzerland, the **SIX Swiss Exchange** has only just recently proposed an amendment to its Corporate Governance Directive, according to which, even though it shall remain optional, if a listed company decides to publish a CSR reporting, the report must be based on a recognized standard and must be publicly available on the company's website for at least five years. The amendment is not yet in force as of today, but could be implemented within the next one or two years. Interestingly enough, during the consultation process, Ethos – a foundation promoting sustainable investment, member of the PRI, and whose members are institutional investors – has requested that CSR reporting for companies listed at SIX Swiss Exchange become mandatory.

c) Legislators

Besides some binding requirements on CSR reporting for listed companies imposed by exchanges, the initiatives and instruments mentioned so far are of legally non-binding nature, thus to be considered as soft law. However, there have also been recent developments that show a tendency and a want for legally binding instruments, in order to make CSR reporting mandatory – at least to some extent.

aa) European Union

Directive 2014/95/EU has introduced an obligation for large enterprises of public interest (i.e. in particular listed companies, credit institutions and insurance undertakings) and with more than 500 employees, to include in their management report a non-financial statement relating at least to environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. The information to be disclosed, amongst others, includes the description of the policies pursued in relation to these matters. If an enterprise does not pursue a policy in relation to one of these matters, it needs to explain why (principle of comply or explain). Enterprises may rely on national, Union-based or international frameworks for their reports, and if they do, they need to specify which one they relied upon.

Member states were due to transpose the directive into national law by 6 December 2016, and the obligation to report a non-financial statement shall apply for the financial year starting in 2017.

Certain large enterprises established within the EU will thus soon have to mandatorily report on CSR matters. This will also affect EU subsidiaries of Swiss corporate groups if the parent company does not publish a consolidated CSR report according to the directive and if the subsidiary itself falls within the directive's scope. It can also affect Swiss subsidiaries of European company groups, since there is an obligation for company groups to report on consolidated basis, hence including information to be gathered and provided by the (Swiss) subsidiaries. Lastly, other companies may also be affected if they maintain significant business relations with an enterprise that falls within the directive's scope, since the latter's reporting duty can extend to information regarding its chain of supply.

bb) Switzerland

A motion requesting the introduction of an obligation to carry out a due diligence on human rights and environment in accordance with the UN Guiding Principles, and to report on it, was submitted in September 2014. It was discussed in the Swiss parliament in early 2015, but the matter was dismissed by both the Federal Council and the National Assembly (though only narrowly), on the grounds that the proposal goes beyond the solution adopted in the EU and would thus disadvantage Switzerland as a business hub.

Merely a provision on transparency for companies directly or indirectly active in the extraction of raw materials has found its way into the federal council draft for the amendment of Swiss corporate law (*Aktienrechtsrevision*) in the new art. 964a et seqq. These new provisions require the concerned companies to annually report about their payments to government authorities. The report is to be approved by the board of directors and published electronically, and must be publicly available for at least 10 years.

The dismissal of the introduction of a general duty for CSR due diligence and reporting has led a group of now 80 organizations of civil society to launch a popular **initiative on corporate responsibility** (*Konzernverantwortungsinitiative*), which has been submitted in October 2016 and is due to be put to popular vote in 2019 the earliest. The initiative requests the Federation to take measures to strengthen respect for human rights and the environment through business, and wants to introduce a duty to respect internationally recognized human rights and environmental standards. This duty would apply to Swiss companies, as well as subsidiaries of Swiss corporate groups or companies otherwise controlled by a Swiss company, which may also include control resulting from the exercise of power in a business relation. The initiative further wants to introduce an obligation for companies to carry out appropriate due diligence to identify impacts on human rights and the environment, to take appropriate preventive measures, to cease existing violations and account for the actions taken. In case of breaches of internationally recognized human rights or environmental standards companies shall be liable for damages caused, unless they prove that they have in fact taken all due care to avoid the damage or that the damage would have occurred anyway.

If the initiative is adopted, obligations for Swiss companies – in particular Swiss corporate groups – in relation to CSR will significantly increase and, most importantly, will go clearly beyond the duty of CSR reporting.

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