The EU Voluntary Approach to Corporate Social Responsibility in Comparison with Regulatory Initiatives Across the World

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Summary

Since 2001 the European Union has raised the question whether the EU should have promoted the development of an overall European framework on corporate social responsibility. As to the role of public authorities, the Commission emphasized that public policy has a key role in encouraging a greater sense of corporate social responsibility and in establishing a framework to ensure that business integrate environmental and social considerations into their activities. Yet, the European Commission position is that the approach towards corporate social responsibility must be voluntary beyond legal compliance, thus restraining its role essentially to endorsing and facilitating. Despite such EU voluntary approach, numerous regulatory initiatives have been undertaken across the world. This paper presents a comparative analysis of initiatives undertaken by public authorities in relation to corporate social responsibility in several OECD countries, with a special focus on the regulatory framework. In particular this analysis will attempt to identify trends in the development of national corporate social responsibility strategies across the world and to assess whether public authorities have opted for the introduction of binding rules or encourage the voluntary integration of environmental and social considerations into business operations through soft-law mechanisms or have preferred a third way where regulatory instruments co-exist with volunteer initiatives. This should allow to issue some recommendations on how the EU could contribute to a more coherent and clearer European framework in relation to these issues.

Keywords: Corporate Social Responsibility, EU, Regulatory Framework

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Introduction

In 2001, the European Commission presented a Green Paper entitled "*Promoting a European framework for corporate social responsibility*". This document's purpose was essentially to launch a debate "on how the European Union could promote the concept of corporate social responsibility both at the European and international level, how to make the most of existing experiences and encourage the development of innovative practices to bring greater transparency and to increase the reliability of evaluation and validation."" [EC Green Paper, 2001]. It thus invited public authorities at all levels to express their views on how to build a partnership for the development of a new network for the promotion of corporate social responsibility, taking into account of the interests of both business and stakeholders.

Further to the consultation process on the Green Paper, the Commission presented a Communication, [EC Communication, 2002] whereby it acknowledged that in principle, adopting corporate responsibility strategy "is clearly a matter for enterprises themselves, which is dynamically shaped in interaction between them and their stakeholders." Nevertheless, it was emphasized that as there is evidence suggesting that corporate social responsibility creates value for society by contributing to a more sustainable development, "there is a role for public authorities in promoting socially and environmentally responsible practices by enterprises". Moreover, the need for public action to promote corporate social responsibility was also grounded on inadequate governance at the global and national levels [EC Communication, 2002]".

The 2002 Commission's communication was followed by a Multistakeholders' forum that brought together all the concerned stakeholders with the EU Commission to discuss about future development and features of the EU strategy for corporate social responsibility and subsequently by a new Communication, whereby the Commission clearly affirmed the voluntary nature of corporate social responsibility "an approach involving additional obligations and administrative requirements for business risks being counter-productive and would be contrary to the principles of better regulation [EC Communication, 2006]. The Communication emphasized that a strong business commitment to corporate social responsibility as well as an overall supportive role of public authorities towards this issue have become particularly important as regard their contribution to the respect for human rights and the rule of law as well as the sustainable functioning of democracy and market economy, be it on a local, national, European or global scale.

This article intends to present a comparative analysis of initiatives undertaken by public authorities in relation to corporate social responsibility, with a special focus on the regulatory framework[1]. The identification of the role that has been played over the last years by public authorities across Europe may be helpful in order to issue some recommendations as to the public approach that the EU should encourage in member States and applies itself. A comparison with some cases outside Europe may also facilitate to better understand the extent and scope of European public policy on the matter. For the purpose of this investigation "public authorities" will only refer to Government authorities at the national, regional and the local level. The analysis will address public policies implemented both in some EU member States (France, Italy, Belgium, UK, Denmark, Poland) and in some non-EU countries (US, Australia, Canada, Norway and Japan).

The role of public policy in promoting corporate social responsibility.

"Public policy choices about to what extent and how individual business decision-making should be framed by public policy intervention necessarily differ from country to country and are dependent on particular socioeconomic circumstances. Just as the drivers for corporate social responsibility differ from country to country, so too do appropriate and effective roles for the public sector." Although the lines between them may not always be clear, the World Bank has identified four main public sector roles in relation to corporate social responsibility: mandating, facilitating, partnering and endorsing (Fox, Ward and Howard et al. 2002). From our comparative analysis it can be depicted a global tendency towards a volunteer approach to corporate social responsibility. Moreover it appears that, apart from France that has implemented a considerable regulatory framework, the role of public authorities is largely intended as that of facilitator, mainly consisting on the one hand in raising awareness, training, funding research and on the other in developing or supporting management tools and mechanisms aimed at promoting a more responsible attitude of the private sector.

As a general remark, Governments appear as a critical driver of relevant initiatives: they may act in several ways and opt for, or combine, different tools in order to promote corporate social responsibility. As to governmental authorities' involvement, the United Kingdom emerges as a unique case since a Ministry has been set up to deal specifically with corporate social responsibility and develop the relevant governmental strategy. The ministry is one of the three Ministries directly under the Secretary of State for Trade and Industry in the Department for Trade and Industry. Moore states "the argument that government is a major driver of the comparatively well-developed and institutionalised CSR is precisely because government has been explicit about it (e.g. through encouragement, the Minister of CSR) and through the organisations, partnerships and standards it has precisely encouraged firms to do CSR by joining, reporting, partnering [Moore, 2001]. Apart from this case, in most countries responsibilities on corporate social responsibility issues are attributed either to the Ministry of the environment or the Ministry of social matters.

As to "partnering" role, this may consist of establishing private-public partnerships, defining national action plans that include the business sector in the attainment of sustainable development objectives or setting- up multistakeholders' forum. The role that is played by the business sector is very different, but there is a general tendency of public authorities to associate them in the definition and adoption of non-regulatory initiatives. In some countries – Germany, Norway and Denmark – the participation of different representatives from the private sector is part of a more comprehensive strategy carried out by the Government in order to foster civil society involvement in the attainment of sustainable development objectives. Along with the adoption of a national strategy on sustainable development many countries (Belgium, France, UK, Poland, Germany) have established a Council that brings together many stakeholders with a consultative role in the implementation of such strategy.

Fox, Ward and Howard identify the "endorsing" role in various forms, including policy documents, public procurement and direct recognition of the efforts of individual enterprises. Actually, in most countries Governments or public authorities have created a web site providing information on corporate social responsibility or award prizes to socially responsible companies. Moreover, initiatives have been taken by Governments upon occurrence of important international events such as the EU presidency (Italy, Belgium,

Denmark, UK) or presidency of the G8 Summit (France). As a general remark such raising awareness initiatives may consist of on the spot events such as national or international conferences or may be part of a wider and consolidated strategy. There is also an increasing interest towards the inclusion of social or environmental criteria in public procurements, in most cases through soft-law instruments (including guidelines or recommendations that set preferential awarding criteria for responsible enterprises), but in some countries specific mandatory provisions have been issued or are under review.

The "Mandating Role"

As mentioned above the EC Commission's notion of corporate social responsibility is based upon a voluntary approach that goes beyond legal compliance: "the EU role does not imply the adoption of a legal framework but mainly consists in fostering corporate social responsibility among enterprises, developing the exchange of experience and good practice between enterprises and facilitating convergence and transparency of corporate social responsibility practices and tools" [EC Communication, 2002].

One should ask whether this statement implies that a regulatory framework of whatever nature should be excluded as a whole or if innovative regulatory techniques could be encouraged as an instrument to promote responsible practices. The debate between the two opposite approaches is wide and there are valuable arguments to support both voluntary and mandatory standards. Companies in general argue against legal duties: they are worried about a "one-size-fits-all" approach based upon mandatory or standardised provisions that would stunt creativity and increase the regulatory compliance burden and relevant bureaucratic costs. On the other side, NGOs highlight that the generalised use of widely acknowledged and accepted practices and tools would enhance the credibility of information, foster transparency and improve legal certainty.

The fact that the EU Commission has endorsed a voluntary approach to corporate social responsibility should not necessarily mean that any form of regulation or other form of public intervention would be superfluous [De Schutter, 2004]. Indeed, the remark that best practices would be driven by the forces of the market can not disregard that consumers need to have access to proper and reliable information that would allow them to make aware choices. As the report recently submitted to European Parliament has pointed out [*Corporate social responsibility: a new Partnerhip*], it exists currently heavy limitations on corporate social responsibility in relation to "cost, comparability and independence". Therefore, it is necessary "to develop a professional framework" that would allow for comparisons and better visibility of corporate social responsibility actions. Coherence of regulation is at stake and calls for some key guidance in order to approach the regulatory "optimum" of corporate social responsibility.

As mentioned above, Governments have promoted corporate social responsibility across the world through a wide range of instruments that are mainly focused on their facilitator role and are therefore aimed at fostering responsible practices beyond legal compliance. Nevertheless our comparative analysis shows that several member States have implemented various soft-law and hard-law initiatives in various sectors, that should be more carefully evaluated.

Actually most States have adopted a legislative or administrative framework in relation to disclosure of corporate ethical, social and environmental considerations. However, regulatory tools may be rather different from case to case: while some states have adopted a comprehensive set of rules on these issues – France, Belgium – other states have only introduced a limited number of provisions – Norway, Italy, the United Kingdom, Germany, Australia, Denmark.

Even among States that have decided to introduce a legal framework there is a different approach to regulation and the legal force of the concerned provisions on corporate social responsibility is not the same in all the studied countries. Whereas some countries have adopted binding regulations – France, the United States, Germany, Australia, Denmark, the United Kingdom, Norway – others have preferred a soft-law approach through the adoption of non-binding guidelines – that is the case of Japan, Poland and Austria. Moreover, in several countries a double approach has been chosen: binding rules co-exist with soft-law mechanisms – France, the United States, the United Kingdom, Belgium, Germany, Denmark, Norway and Italy.

Another distinction may be made between states where the only legal rules have been adopted only or predominantly either at the central or at the local levels – like in Italy – and those where initiatives are undertaken at the two – central and local – levels – like in the U.S. and Belgium. The rules that have been adopted at the local level do not replace national regulations, but they introduce additional requirements mainly in relation to local public tenders. That is the example of Italian regions that introduced requirements for the respect of environmental, ethical and social criteria in its evaluation of offers of public procurement – the same kind of provisions exists in the U.S. and in Belgium.

Regulatory initiatives

Soft-law instruments

Soft-law instruments are the most commonly used legal measures to encourage the integration of environmental and social concerns by corporations and can be adopted in the form of guidelines, toolkits, codes of conduct or voluntary labels.

Guidelines are the most widely diffused instrument: they are mainly designed to encourage the disclosure of environmental or sustainable issues by companies. In Austria, the *Guidelines for sustainability reporting* have been developed by various public authorities with other stakeholders. They are meant to standardize and facilitate the reporting on sustainable management issues and are addressed to all Austrian enterprises. In Australia, specific guidelines have been issued by the *Securities and Investment Commission* – an independent governmental body in charge with the enforcement and regulation of company and financial services laws – to protect consumers, investors and creditors: they are designed to help product issuers to meet their legal disclosure obligation under the *Corporations Act 2001*, but they also provide guidance on the disclosure of how labour standards or environmental, social or ethical considerations are taken into account in selecting, retaining or realising an investment. In Japan the Ministry of the Environment has promoted environmental reporting with various methods including the publication of E*nvironmental Reporting Guidelines.* The purpose of these guidelines is to provide a significant tool for environmental communication and to fulfil corporations' accountability in relation to environmental issues. Guidelines are

mainly addressed to major corporations, but the Japanese Government has also issued *"Eco-Action 21", Environmental Activity Evaluation Program*, in order to enable small and medium-sized enterprises to implement environmental management programs, to carry out sustainable activities and to publish environmental reports.

Norway is a very interesting case: ethical guidelines have been issued based upon the recommendations made by a Government appointed committee and are not addressed to companies but to the Government itself that shall take them into account in the management of the *Government Pension Fund*. The committee identified two ethical obligations for the management of the Government Pension Fund. Firstly, the Fund must be managed with a view to achieving high return that will enable coming generations to benefit from the country's petroleum wealth. Secondly, the fundamental rights of those affected by companies in which the Fund invests must be respected. This ethical basis is promoted through three instruments: 1) exercise of ownership rights in order to promote long-term financial returns, based on the UN Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises; 2) negative screening of companies from the investment universe that either themselves, or through entities they control, produce weapons that through normal use may violate fundamental humanitarian principles; and 3) exclusion of companies from the Fund's investment universe where there is considered to be an unacceptable risk of contributing to serious or systematic human rights violations, serious violations of individuals' rights in situations of war or conflict, severe environmental damages, gross corruption and other particularly serious violations of fundamental ethical norms. It is interesting to note that based upon such provisions, a huge investment in shares of a company which has been considered not compliant with the above criteria was withdrawn in 2005 [OECD, 2007].

In some countries, i.e. Austria and Poland, guidelines may have a broader scope. Along with reporting guidelines, in Austria the *Federal Ministry for Social Security, Generations and Consumers' protection* has been involved, together with *Respect – Institute for Integrative Tourism and Development* –, and *Jumbo Touristik* –an Asian tour operator –, in a project aimed at developing a *Code of Conduct for the protection of children from sexual exploitation in Travel and Tourism*. This project is not limited to reporting but also includes training of personnel in the country of origin and at travel destinations and information to travellers provided in catalogues, ticket slops, home-pages. In addition, the Code of Conduct encourages the inclusion in contracts with suppliers of a clause repudiating commercial sexual exploitation of children. The Austrian social partners in the tourism sector signed the Code in 2001. In Poland, the Council of Ministers has adopted the *Guidelines concerning the inclusion of environment protection principles in sector programs*. The Guidelines are intended to set objectives aimed at establishing equilibrium between the various sectors and indicate actions that should favour changes in relation to production and consumption.

Public authorities may also encourage the adoption of responsible practices acting as consumers: in this respect the guidelines adopted by the Province of Milan, through the resolution n° 380 of 2005, are an important example. They set criteria for the establishment of a register of suppliers of goods and services. In order to be included in the register, companies must submit a statement attesting that they are aware and have executed the *Ethical Code of the Province of Milan*.

Another type of soft-law initiatives promoted by public authorities, are toolkits providing guidance for reporting or assessing corporate social responsibility performance. In Canada, the Government has created a *"sustainability reporting toolkit"*, published on an official website, with the clearly affirmed purpose of assisting companies in learning more about

sustainability reporting, assessing the need to report and creating an effective report. In particular a corporate sustainability report is defined as "a vehicle to communicate with stakeholders on a company's economic, environmental and social management and performance". Similarly, in Italy, the Ministry of labour and social affairs has presented a project called "*Corporate Social Responsibility – Social Commitment*" that aims at promoting companies' ethical behaviour and their active participation in national and local welfare schemes. As a preliminary step, the project envisages the dissemination of a socially responsible culture among companies through awareness-raising, adequate training and information activities. As a further development, companies that voluntarily agree to participate in the project should adopt a "social statement" according to pre-defined guidelines and complying with a set of indicators. Eventually, companies that decide to participate actively in social initiatives and give a financial contribution to a social fund qualify for fiscal and financial benefits. It must be highlighted that the actors involved in the project are companies, the *Ministry of Labour and Social Affairs* and the CSR Forum – which includes social partners, the government and non-government organisations. In Denmark, the *Social Index* was launched in 2000 by the Danish Ministry of Social Affairs (now under the responsibility of the Ministry of Employment). It is a self-assessing tool for measuring a company's degree of social responsibility –focusing on employment and social inclusion policies – and consists of a set of questions to be answered by the company's employees. The parties involved have then to agree on the company's score (the result is a number between 0 and 100). The *Social Index* can be also used to communicate how socially responsible a company is to its employees and external stakeholders.

Belgium and the United Kingdom appear as very interesting laboratories since several soft-law initiatives have been taken. For instance, in Belgium a *cooperation agreement* has been signed between the federal State, the Regions and the German Community in relation to social economy. Pursuant to this agreement, federal authorities have undertaken to examine legal possibilities concerning the introduction of social clauses in certain public procurements. Further to this agreement a decision has been issued by the Council of Ministers which has set forth a specific procedure in order to introduce a mechanism applying a social clause in public tenders favouring the inclusion of disadvantaged groups. It also allows for environmental criteria to be taken into consideration, in addition to price and quality of products and services. A circular has also been adopted in relation to sustainable purchases containing a list of recommendations addressed to federal public services. Public authorities are encouraged to require suppliers to issue a statement attesting that they comply with the principles set forth in the circular. In addition, Belgium has set out specific regulations regarding labelling requirements and has created a specific national label. A Belgian *Social Label* has been created by the law of 27 February 2002. It attests that the whole supply chain's compliance with the main principles contained in eight ILO Treaties. It is interesting to note that in case of violation of the above requirements or in case the enterprises refuse to submit to controls, complaints may be brought before the Secretary of State. The assessment of a violation may result in the label withdrawal. Practical implications on corporate social responsibility as a whole of such a label remain, however, limited since only 5 products have been labelled so far. In the United Kingdom, in addition to some binding legal provisions, many soft-law instruments have been adopted. Among them we may recall; first, the *London Principles,* launched by the City of London and supported by the Prime Minister and several investment and management funds, which propose conditions under which financial market mechanisms can best promote the financing of sustainable development. Secondly, the *Voluntary Principles on Security and Human Rights* are a joint initiative among the governments of the United States, the United Kingdom, the Netherlands and Norway, companies of the extractive and energy sectors and non-governmental organizations. As mentioned on its official website

"*the participants have developed a set of voluntary principles to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms*". Lastly, the *Green Claims Code* sets out the informational standard that the public can expect about the environmental impacts of products. The Government first launched the code in 1998, following wide consultation with business, consumer and environmental organisations.

In Germany, the adoption of guidelines is part of a more comprehensive strategy aimed at involving the civil society in sustainable issues: the government has set up a *Round Table on Corporate Codes of Conduct* gathering representatives of various ministries, social partners, companies and NGOs with the aim to improve social and labour conditions in developing countries. This round table was set up upon the initiative of the *German Ministry for Economic Cooperation and Development* and comprises enterprises, trade unions, non-governmental organisations and ministries. It pursues the aim of improving labour and social standards in the developing countries with the instrument of codes of conduct. The German government also supports several multi-stakeholder-initiatives aiming at the development and implementation of codes of conduct, such as the "*Common Code for the Coffee Community"* and the "*Social Responsibility Mode*" established by the *Foreign Trade Association of the German Retail Trade*.

Hard-law instruments

The definition of a specific and binding legal framework remains controversial and has concerned only a minority of States such as France, Belgium, UK, Germany. In Italy innovative provisions have been adopted at local level whereas in Norway, Denmark and Canada such provisions have a rather limited scope. Great attention worldwide is being directed to reporting activities of companies: although a legislative or administrative framework in relation to ethical, social and environmental issues has been set up in most states, only a few countries have nevertheless adopted a comprehensive set of rules on these issues. As a general remark, binding provisions mainly concern three areas: disclosure of social and environmental issues, socially responsible investment and public procurement.

In this respect France is certainly the country where binding instruments play the most remarkable role. Specific legal binding provisions have been introduced in relation to all the three categories identified above: i.e disclosure and reporting, public procurement and socially responsible investment. Since March 2001, the French law on public procurement authorises the inclusion of social and environmental considerations among the clauses of public procurement contracts (art 14). A new reform, which is being presently elaborated, will introduce sustainable development and high quality environment in public procurement criteria**.** Pursuant to the law on the *New Economic Regulations* [Law n°2001-240 of May 15 2001], listed companies are mandated to report on the sustainability of their social and environmental performance. The law applies to French quoted companies at group level and internationally. They are required to report on a set of qualitative and quantitative social indicators – which have been specified by a decree- but it must be highlighted that it does not provide guidelines for reporting. The Law is also criticized because it does not provide specific indicators, auditing requirements and sanctions in case of violation. The law on *public pension reserve fund* adopted in July 2001 [Law n°2001-624 of July 17, 2001] requires disclosure of social, environmental & ethical criteria used for investment. "The management

board [...] implements the investment policy guidelines … and regularly reports to the supervisory board and particularly relates on how these guidelines have taken into account social, environmental and ethical considerations." The *Law on the generalisation of Employee Savings Plans* adopted in February 2001 [Law n°2001-152 of February 19, 2001] requires that the employees' saving funds "specify the social, environmental or ethical considerations the fund management company must take into account when buying or selling stocks and securities The fund's annual report indicates on how these considerations have been taken into account".

In addition to France, other countries have issued binding regulations concerning disclosure obligations: in Belgium, the new O*ccupational Pension Law* of 13 March 2003 [Law n°50-1340 of March 13th, 2003] requires pension fund managers to disclose in their annual reports to what extent they take into account ethical, social and/or environmental criteria in their investment policies. These annual reports are public documents. The Government of the United Kingdom has been actively promoting corporate environmental reporting for several years. Great attention has also been paid to socially responsible investment. July 2000 saw the enactment of the United Kingdom's *Pensions Disclosure Regulation.* The regulation requires that trustees of occupational pension funds disclose in the "Statement of Investment Principles", first, the extent – if at all – to which social, environmental or ethical considerations are taken into account in their investment strategies and, secondly, their policy – if any – in relation to the exercise of rights – including voting rights –attached to investments. As a result, the pension funds soon started to require more information from the firms they invested in, which forced greater numbers of these firms to publicise information on their social and environmental performance. The recently enacted company law reform [Companies Act 2006] has introduced specific reporting requirements on environmental and social issues, that however are subject to certain limits: they only concern listed companies and must be disclosed as long as they are necessary for an understanding of the development, performance or position of the company's business.

In Germany, since 2001 certified private and occupational pension schemes are required to report whether they take into account ethical, ecological and social aspects in their investment policies. Such legal framework must be inserted in the context of the Government sustainability strategy promoting acceptance of global responsibility and involvement of all stakeholders in sustainable development. Canadian legislation is particularly interesting in relation to disclosure obligations: pursuant to section 459.3 of the *Loi sur les banques*, in addition to accounting annual reports major banks are required to disclose how they contribute to Canadian economy and society. In Norway, the 1999 *Accounting Act* mandates that all companies include environmental information in their annual financial reports and the Norwegian Environmental Department has developed its own standards for environmental reporting. These obligations have then made wider requiring that all companies who are legally bound to keep accounting records include in the directors' report a report on the company's impact on the external environment, as well as on the status of and measures relating to the working environment and gender equality

Regulations may be introduced in order to facilitate the shareholders' activism. In Canada an amendment brought to the *Canada Business Corporation Act* allows the submission of shareholder's resolution for the purpose of promoting general economic, political, racial, religious, social or similar cases – which was previously prohibited.

The Danish Parliament passed an act that enables public authorities to stipulate certain social obligations in relation to enterprises that either provide services for the public authority or are receiving grants from the public authority. In Italy, innovative regulations to encourage the

inclusion of social and environmental criteria in public procurement have been adopted at the local level. In this respect, we should mention two initiatives implemented respectively by the Regions Umbria and Marche: they have set forth regulations providing for the establishment of a regional public register for local enterprises. Registration may be obtained by companies that are able to attest their CSR commitment – for instance through the SA 8000 certification – and it is considered as a preference title for the awarding of a public tender. Registered companies are also eligible to benefit from financial support to obtain further certifications on these issues.

In some cases, a socially responsible attitude is encouraged through corporate governance or compliance mechanisms.

New provisions on socially responsible investment are being introduced. In Australia amendments to the 2001 Australian Financial Services Reform Act have introduced a new requirement: all products with an investment component must include disclosure of the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention and realisation of the investment. In 2003, the Australian Securities and Investments Commission (ASIC) released Practice Statement 175, which requires advisors providing personal financial advice to enquire whether environmental, social or ethical considerations are important to their clients. In Belgium the *Ordonnance of 1st of June, 2006* issued by the *Région de Bruxelles-Capitale* states that the region's public authorities must require that at least 10% of the amounts of the financial markets that they promote be invested in funds or financial products which apply social, environmental or ethical criteria. In Italy in May 2007, the *Consob* (the Authority responsible for controlling the Italian market for financial products) adopted an enactment resolution of the *Single Text on financial market* that for the first time has introduced specific disclosure and information obligations for professional investors that offer socially responsible products.

Concluding remarks

The above comparative analysis has showed that a wide range of initiatives have been developed by national authorities around the world. There is a role for public policy in the area of corporate social responsibility, but that role is not necessarily a regulatory one. In fact in most countries national authorities try to encourage the business sector to be "socially responsible" and to take part to the national strategy on sustainable development mainly through non-regulatory instruments such as raising awareness or public-private partnership initiatives.

However, it can not be disregarded that legal rules have been adopted in various countries, even if with different scope and extent. Although binding regulations exist in many countries, the wide diffusion of soft-law instruments such as guidelines shows a clear tendency of public authorities: intervening through a smooth approach in order to promote the application of socially responsible practices.

Public authorities essentially define the rules and the role of private actors is very limited in this phase. However, it appears that in some countries different combinations of instruments co-exist, with a predominant combination of binding provisions and instruments of voluntarism or of self-regulation. In other words, many countries have introduced binding regulations that, however, do not impose well defined obligations, but leave the companies

free to decide how and to what extend they agree to enforce them: a multifaceted approach applies that combine different types of instruments.

One example of such a combination can be found in the functioning of the France regulation on common funds (FCPE). Such regulation requires companies to disclose how they take into account social, environmental or ethical considerations, without specifying how this assessment should be carried out and therefore giving a certain freedom of action to companies. The same considerations apply to the UK Pensions Disclosure Regulation: pension funds are required to disclose how they take into account these issues, without providing precise obligations or sanctions in case of violation.

More in details, the above comparative analysis of the initiatives taken shows that most of them concern the following sectors:

- *Social, environmental and ethical disclosure and reporting obligations*

Specific disclosure and reporting requirements concerning social, environmental and ethical issues have been introduced in most countries. In 7 countries – France, Australia, Norway, Denmark, the United Kingdom, Germany, Canada – the disclosure of how social, environmental and ethical issues are taken into account is required by specific provisions. In Denmark, the Green Accounts Act regulates stand-alone environmental reports, while social reporting is encouraged though Guidelines. In Austria and Japan, sustainable reporting is encouraged only through soft-law mechanisms such as guidelines. As to whom the provisions apply, the nature of the concerned entities is varied: listed and not listed companies, pension funds, investment funds.

- *Public procurement*

Respect for social, environmental and ethical issues is taken into account in awarding public tenders in the following countries: France, Belgium, Italy, the United States and Denmark. As McCrudden has put it: “procurement came to be seen by some governments as a method of providing (market-based) incentives to firms to adopt and fulfil CSR obligations, by linking these obligations with access to Government contracts” [McCrudden, 2007]. A distinction may be made: in France and Denmark a national law has been adopted in relation to public procurement, while in Belgium, Italy and the United States the most innovative and relevant rules have been issued by local authorities. In France, pursuant to the national law on public procurement, social and environmental considerations may be included among the clauses of public procurement contracts. In the United States, the *Sweat Free Contracting Ordinance* issued by the municipality of San Francisco obliges public suppliers and sub-suppliers to apply a code of conduct. Similar obligations are set forth by the city of Los Angeles through the *Contractor Code of Conduct.*

- *Socially responsible investment*

Regulations concerning socially responsible investment have been issued in the following countries: Austria, Germany, United Kingdom, France, Belgium, Australia, Italy and Norway. Regulations on socially responsible investment are considered as those that set-forth specific investment criteria either requiring that, or specifying how, ethical, social and environmental concerns must be taken into account. Except for Norway, the relevant rules have a general scope and the subjects are varied. In spite of several provisions, the scope of such regulations remains ambiguous: the OCDE states that “regulators have fallen short of providing any guidance on the definition of socially responsible investment or the underlying risk factors, which facilitates misinformation and mis-selling” [OCDE, 20007].

- *Labelling*

In Belgium specific regulations have been set out regarding labelling requirements. A Belgian *Social Label* has been created by the *Law of 27 February 2002*. It attests the whole supply chain's compliance with the main principles contained in eight ILO Treaties in relation to: minimum age labour requirements and prohibition of child work, prohibition to discriminate for labour and compensations, prohibition of forced labour, freedom of trade unions, right of organisation and collective bargaining. It is interesting to note that in case of violation of the above requirements or in case the enterprises refuse to submit to controls, complaints may be brought before the Secretary of State. The assessment of a violation may result in the label withdrawing. The practical implications of such a label remain, however, limited since only 5 products have been labelled so far. In Denmark, a label may be used after the positive assessment carried out through the Social Index initiative, launched in 2000 by the Danish Ministry of Social Affairs (now under the responsibility of the Ministry of Employment). If a company reaches a score above 60, certified by an independent auditor, it obtains the right to use the "S-label" for social responsibility, for 3 years.

- *Tax incentives*

Some countries have set tax advantages in order to promote specific issues falling within the scope of corporate social responsibility. It is worth mentioning the *Community Investment Tax Relief* and the *Payroll Giving Scheme* that are applied in the United Kingdom. The *Community Investment Tax Relief* offers tax incentives to encourage private investment in profit and not-for-profit seeking enterprises in disadvantaged communities, while the *Payroll Giving Scheme* facilitates employees to donate by authorising a deduction from their gross pay before tax. Corporate social responsibility may also be indirectly encouraged through tax incentives that are designed to facilitate NGOs' fund raising activities, taking into account that NGOs have played central and varied roles in the development of many corporate responsibility initiatives [OCDE, 2001].

- *Financial support*

Financial support in favour of socially responsible companies has been adopted by a limited number of countries. In particular, the project "*Fabrica Ethica*" created by the Region of Toscane in Italy provides for a financial support in favour of companies that wish to get certified in accordance with the SA 8000 standard. In the United States, the *Oversee Private Investment Corporation* (OPIC) set forth the criteria for the awarding of an export financial aid. It is interesting to note that the relevant form to be filled in by companies includes a statement on the social and environmental effects of the investment project.

- *Corporate governance*

The UK *Companies Act 2006* has strengthened directors' duties that are now required to also consider the impacts of their business operations on the community and the environment. In the United States**,** according to Section 406 of the *Sorbanes-Oxley Act*, all public companies, including foreign issuers, must, in their annual report, disclose whether or not the company has adopted a written code of ethics. In order for a company to meet the Securities and Exchange Commission requirements, however, their code of ethics should be designed to prevent fraud or other illegal behaviour. *Federal Sentencing Guidelines* reduce penalties for compliance lapses by companies that adopt a code of conduct and implement effective methods for communicating legal standards to their employees. To be effective, a corporate compliance program must be embraced and adopted by the corporation's board of directors,

management, and employees. As a general matter, the Guidelines are considered instrumental in creating a cohesive corporate culture.

The European Commission has repeatedly confirmed the voluntary nature of corporate social responsibility. Yet the above comparative analysis has showed that public authorities have put in place several actions around the world acting as regulators. However, the variety of actions undertaken also results in independent and uncoordinated actions and strategies across Europe: given the wide range of different measures that have been adopted in member States, an intervention at the EU level should be encouraged not only to bring greater clarity in a rather fragmentised environment but also to reduce the costs that arise from such fragmentation.

Although the EU has already adopted some directives (i.e. Directives 2003/51/EC and 2004/18/EC), or it is considering the opportunity to introduce some measures, that take into account social and/or environmental concerns in public procurement, reporting and responsible investment, relevant provisions are often criticised due to their vagueness and indefiniteness [De Schutter, 2001]. The EU development of corporate social responsibility supportive policies should not necessarily be adopted through hard-law instruments, but could also be implemented by making recourse to innovative mechanisms. Moreover, possible combinations of various instruments in different sectors also deserve greater attention.

The traditional approach to regulating corporate behaviours is often referred to as command and control regulation [Hess, 2006], in which regulating authorities impose rules to private actors in order to promote and achieve the public interest. On the other side self-regulation and voluntarism are based upon private actors own initiatives, beyond a legal framework. The proliferation of initiatives concerning corporate social responsibility does not necessarily fall within either command and control or self-regulation. Indeed, a dynamic towards a system of co-regulation can emerge from the interplay of the various practices and tools [Hennebel and Lewkowicz, 2006].

It is important to emphasise that in the last decade the EU has explored the possibility to make less use of the instrument of legislation and to reduce the existing body of European rules, making use of other modes of governance or regulation, which would be less compelling or of a non-governmental nature. In 1997 the Treaty of Amsterdam introduced a new title on employment that formalised an open method of coordination between member States in relation to social policy. This method was presented as a flexible and differentiated regulatory model in comparison to the cohesive harmonisation process that had characterised the EU until then, based upon the adoption of minimum common standards and binding rules. As Mosher has pointed out the new method could be defined as “a post-regulatory approach to governance” [Mosher, 2002]. The 2000 Lisbon Council encouraged the application of the new method to other social policy areas as a means of spreading best practice and achieving greater convergence towards the main EU goals. The European Council thus 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 the same years, the ideas of a regulatory revolution were discussed by the European Commission in, on one hand, the *White Paper on European Governance* of 2001 and, on the other hand, the *Action Plan* of 2002. Better regulation was conceived as a response to increasing complexity and lack of flexibility. Better regulation was also the object of the 2001

Communication *'Simplifying and improving the regulatory environment'* that sets out the need to clarify "the range of instruments" in order to "achieve greater effectiveness". Furthermore, on the other hand, in its *Action Plan* the European Commission drew on the use of soft law and co-regulation as mechanisms that would improve the European regulatory environment. Recommendations were further developed and enacted in the *Interinstitutional agreement on better law-making*. "Better regulation" has been identified as a key element in the renewed Lisbon strategy agenda that was adopted in 2005.

Hess has stated "the challenge facing regulators is to determine which regulatory approach to use to create the greatest social benefit. All regulatory approaches have their strengths and weaknesses depending on the situation". Such approaches could, however, be treated as complementary rather than as substitutes. [Hess, 2006; Sinclair, 1997]. As it has been pointed out "CSR is, without doubt, an area of potential importance for the re-embedding of the business enterprise in society. From the managerial perspective, it can lead to a better balancing of corporate objectives and societal risks; from the regulatory perspective, it offers the prospect of reflexive types of regulation, based on a learning process, which move away from the dichotomy between command-and-control and deregulation" [Deakin and Hobbes, 2007].

In conclusion, the increasing demand for certainty and transparency on corporate social responsibility could be answered by the EU though mechanisms that would ensure a right mix of traditional tools in an innovative way, without completely excluding the recourse to legal provisions.

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