Westfälische Wilhelms-Universität Münster

UNIVERSITEIT TWENTE.

The Future of the European Corporate Social Responsibility Strategy

If and how is it possible to establish a reporting requirement that makes coherent disclosure on environmental, social and governance information mandatory for European companies?

Bachelor thesis handed in on August 31, 2011 by:

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Abstract

This bachelor thesis deals with the future of the European corporate social responsibility (CSR) strategy. CSR was officially defined in 2001 by the European Commission 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" (European Commission 2001, p. 6).

As the introduction of non-financial reporting requirements is regarded as an effective means to bring forward the European CSR strategy, this thesis attempts to identify if and how a reporting Directive could be implemented that makes disclosure on economic, social and environmental activities mandatory and that requires European business to use coherent reporting standards.

While some scientific papers focus on legal possibilities to implement a reporting requirement, little research has yet been done on how to govern a coherent proceeding. Applying Donnelly's theory "The Regimes of European Integration – Constructing Governance of the Single Market", this thesis attempts to fill this research gap and helps to explain why some policy proposals are less feasible at European level than others.

Data is gathered from relevant academic papers and from documents of European institutions, involved stakeholders and forums dealing with the European CSR strategy.

The main contribution of this thesis is to show that the prerequisites for making CSR disclosure mandatory all over Europe and for setting coherent guidelines are not fulfilled. Nevertheless, the thesis projects that further development in European reporting policy is possible and that cooperation could be governed by establishing a "parallel regime". Issuing a reporting Directive that slightly extends the EU Accounts Modernisation Directive (2003/51/EC) by a "comply or explain" principle and that recommends the use of international recognised reporting guidelines for larger companies, the EU could strike a new path in the years ahead in order to strengthen the whole European CSR strategy.

1. Introduction

With power comes responsibility – this is nothing new for business. History shows that every time the economic system won power, social or political actors or even business actors themselves opposed this progress. In the first half of the 19th century, severe working and living conditions gave rise to the formation of trade unions and political parties all around Europe that served as valves of public pressure (Mathis 2008, p. 6). Paternalistic industrialists (e.g. Krupp) developed social fallback systems and as a consequence of the civil resistance, European governments finally issued first social insurance regulations. Nowadays, company law provides European companies and especially transnational corporations with several privileges: "separate legal personality, limited liability for shareholders and the ability for the company itself to become a shareholder in other companies (full legal capacity)" (European Coalition for Corporate Justice 2009, p. 8). On the downside, one of the unfavourable and unintended consequences of this company structure is a governance gap in international trade. Multinational enterprises (MNEs), for instance, profit from operations of overseas branches that may act under lower legal requirements than the headquarters and thus are able to shield itself from liability for human rights and environmental abuses (ibid.).

The challenges of globalisation are therefore considered to be a decisive factor that gave birth to the concept of corporate social responsibility (CSR). Due to the breakthrough of new communication technologies like the Internet, it can be said that "globalisation created a big new market for products and services, while at the same time (it) created a vast pool of well-informed consumers" (Mathis 2008, p. 61). Increased public sensitivity for environmental and human rights matters culminated in public expectations on companies' corporate responsible behaviour. As national politics and international organisations were not able to deliver an adequate framework for responsible business behaviour, business itself became pro-active to develop CSR as a tool to satisfy the accountability demand. Under the pressing need to protect its brands from critical consumers, the economic system took over increasing responsibility (ibid., p. 38).

CSR therefore seems to be a contemporary and business-driven response to a recurrent dilemma: How much freedom must be granted to business in order to guarantee a maximisation of profits and competitiveness? And how much social, health and environmental regulations are needed to prevent that business can act at any costs? Since the emergence of the industrial society and the spread of democratic government this conflict is an ongoing bargaining process, whereby arrangements have to be negotiated,

confirmed and applied continuously.

Having recognised the need to improve the accountability framework in which European business operates, the European Commission wants to promote CSR activities in European companies. Against the background that companies are confronted with challenges of global competitiveness such as climate change, scarcity of raw materials and a population decrease, it became more and more apparent that their social responsibility also increased. Considering the fact that the EU has the biggest commercial power worldwide (in 2008 the EU has transacted almost 20% of the worldwide trade), political institutions need to create global framework conditions, where companies can act responsibly (European Parliament 2010). The concept of corporate social responsibility was officially introduced in the EU through the July 2001 Green Paper on CSR which defined it 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" (European Commission 2001, p. 6). Many civil society organisations and trade unions think that the strategy is insufficient. As expected, they do not favour the voluntary approach, while the business sector devotes its effort and enthusiasm to enhance this approach as a core element of the whole European strategy (Voiculescu 2007, p. 378).

Whereas the EU has chosen a more stimulating and voluntary approach, several Member States (e.g. UK, Denmark, France) follow a more mandatory approach. Apart from other measures, they have decided to introduce CSR reporting legislation that makes disclosure on environmental, social and governance (ESG) information mandatory in certain industries or companies. Reporting requirements are considered as an effective means to bring forward CSR activities because they provide at best comparability over time and between enterprises. As thus consumers and investors can make more informed choices, companies are imposed to compete in terms of "sustainability" and "responsibility".

In recent years, the question arises whether the future of the European CSR strategy lies in a more prominent role of the EU by creating such a disclosure requirement. Would not it be nice if the EU issues a reporting requirement that makes disclosure on environmental, social and governance information mandatory for all European companies and that specifies the use of coherent, at best international accepted reporting guidelines? The bachelor thesis aims at examining whether this maximum demand is feasible. While some academic papers focus on legal possibilities to implement a reporting requirement,

little research has yet been done on how to govern a coherent proceeding. This thesis aims at filling this research gap by showing which governance pattern is more likely than others.

Although there are endless books, journal articles, reports and essays on CSR from a management perspective, there are only a moderate number of scholars who have written about CSR politics and the role of governments (Mühle 2010, Rieth 2009, Albareda, Lozano & Ysa 2007, Fox 2002). A range of books relate to CSR as a phenomenon of social science and ask what factors gave rise to this concept (Curbach 2009, Bode 2007, Mathis 2008, Raupp, Jarolimek & Schultz 2011). In the last few years, an increasing number of publications give a descriptive overview about global and European practices of CSR (Idowu & Filho 2009, Habisch, Jonker & Wegner 2005, van Wensen, Broer, Klein & Knopf 2011, Riess & Welzel 2006). Disclosure on CSR activities is discussed as a subcategory in CSR policies. Some academic contributions focus on corporate social responsibility reporting practices, like Loew, Ankele, Braun & Clausen (2004) Perrini (2005) and Delbard (2008). Most helpful for this thesis were summaries of European Multistakeholder Forums that have discussed the idea of coherent CSR reporting at European level (European Multistakeholder Forum on CSR 2004, 2009). Only two background papers could be found that follow a similar question like this bachelor thesis (Global Alliance for Responsibility, Democracy and Equity 2007, European Coalition for Corporate Justice 2009). They also ask how reporting can become a relevant tool at European level but from a legal point of view.

To find an answer to the research question, this thesis follows a deductive approach by applying Donnelly's theory about constructing governance of the single market (Donnelly 2010). He found out that European Member States created in the last few years different policy regimes to govern the single market and identified norms as decisive factors for cooperation. The analysis part of the bachelor thesis will reveal whether the conditions are fulfilled, which Donnelly regards as being necessary for successful coherent proceeding. This will help to assess whether a European reporting requirement is possible to come into existence or not and how the Member States will probably govern cooperation. This thesis argues that the maximum demand outlined above cannot be achieved but that further cooperation is possible. It could most likely be governed through a slightly extended version of the Accounts Modernisation Directive (2003/51/EC) within the framework of a "parallel regime".

2. Theory: The Normative Approach to European Economic Integration

Against the background of the many different theories of European integration that have emerged in recent decades, this thesis is based on the contribution of Shawn Donnelly. In order to understand his normative approach to European integration, the context of key European integration theory has to be considered. Thereafter, the main points of Donnelly's approach will be explored. Finally, it will be shown how the theoretical findings contribute to the analysis part.

Why and how do communities like the European Union come into existence? Why do sovereign states proceed to build such forms of international cooperation? In order to find new answers to this fundamental question of European integration theory, Donnelly distinguishes his approach from out-dated integration theories that have lost their explanatory strength.

Since neorealist international relations scholars could not explain the emergence of the phenomenon "Europe", various new theoretical concepts were developed at the beginning of the European integration process. In marked contrast to the realist view, that assumes that mutual mistrust and a certain degree of permanent insecurity (security dilemma) hamper long-term cooperation and alliances, liberalism starts from the assumption that lasting peace is possible, if mutual benefits are to be expected. Humans are rational beings that are capable of learning and therefore cooperation among states can be achieved, even in anarchic structures. In the early stages of European integration, two strands of liberalism were opposing one another: neofunctionalism and intergovernmentalism. Neofunctionalism recognises that cooperation in noncontroversial "low politics" (trade, technology) may lead to spillover effects (Haas 1958). This subsequently results in the integration of "high politics" while national politics are more and more replaced by European decision-making processes. As opposed to this, intergovernmentalism and liberal intergovernmentalism reject the idea of spillover effects. They claim that integration highly depends on the decisions concerning speed and extent of European integration process made by the governments of the Member States. Hence, cooperation can only be far-reaching and successful if similar interests prevail. European supranational institutions are regarded to be mere servants of the states (Moravcsik 1993). While liberal intergovernmentalism emphasises the importance of nation states, governance approaches argue that other institutions and actors also play a decisive role, too. Hooghe and Marks (2001), representatives of the Multilevel Governance approach,

state that EU Member States share competences with European institutions. Likewise, subnational actors go beyond the mere national context. For example, since the Lisbon Treaty, Council and European Parliament are legislators on equal footing. Another group of scholars emphasises a further characteristic of the EU: Network governance by private and public actors (Eising & Lenschow 2007). Most recent developments in European integration theory are based on Scharpf who thought of the EU differently. He regards the EU as a high-complex governance system and his idea of focusing on modes and forms of governance in the distinct policy areas has influenced the contemporary integration theories (Scharpf 2001).

„Why did we get more integration in one area and not another?“ (Donnelly 2010, p.7) According to Donnelly, neofunctionalism, liberal intergovernmentalism, along with the other approaches mentioned, cannot explain the varying degrees of integration in the European internal market (ibid., p. 246). His theoretical contribution hence tries to fill this research gap because it can explain why there are backlashes and different degrees of integration (ibid., p. 246). He criticises that so far relatively little attention has been paid to norms and the way they have influenced European integration efforts. He follows the constructivist and structurationist tradition of European integration theory, whose research interest and starting point are “rules, norms and patterns of behaviour that govern social interaction. These are structures, which are on the one hand, subject to change if and when the practice of actors changes, but on the other hand structure political life as actors re-produce them in their everyday actions.” (Christiansen and Jorgensen, 1999, p. 5)

Donnelly bases his normative approach on regime theory. He considers his theory as an alternative to teleological and neofunctionalist approaches (Donnelly 2010, p. 3). Starting from the premise that states remain the main actors in international cooperation, he states: “There is no reason to believe that the state allows itself to be hollowed out, nor that it exploits international cooperation to withdraw from various forms of accountability to voters and their representatives. The cases show that governments are capable of managing this when they choose to do so.” (ibid., p. 246) According to Donnelly, the fact that the Member States continue to safeguard their own persistence in the convergent European framework indicates that European integration will never reach the point of pure supranationalism. It is more likely that states rather prefer ways of multilevel governance as the highest form of integration (ibid., p. 249).

Following regime theory, Donnelly is convinced that European integration can take place - and already takes place - by means of regime development. According to the most common definition, which was first put forth by Krasner, a regime constitutes "a set of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations." (Krasner 1983, p. 2) In sum, regimes are abstract entities of international cooperation among multiple states or actors, intended for governing overlapping policy issues (e.g. GATT).

According to Donnelly, the advantage of regime-based governance in the European integration process lies in the fact that the Member States can still guarantee a certain "social embeddedness" of their economies. "They can ensure that areas of economic and social policy that they want to see liberalized are given the legal framework to do so, whilst the areas that they want to remain embedded in a deeper complex of institutional commitments, remain so as well." (Donelly 2010, p. 247).

"How do we explain the timing of regime development? What factors were necessary and sufficient to generate a policy-specific regime in Europe?" (ibid., p. 240) Donnelly's theory focuses on norms as endogenous factors that influence European integration processes. With his contribution to regime development, Donnelly stands in the tradition of theorists, who emphasise the importance of role assignment, acting routine, and rituals in international relations (Müller 1993, p. 23). Earlier, Kratochwil already exposed that regimes only emerge in settings prestructured by norms (ibid., p. 24). Donnelly analyses the current developments in the governance of the single market and concludes that "prior agreement of EU leaders on key constitutional norms was a prerequisite for regime development, and that this agreement had to support the thick constellation of national, socially embedded norms." (Donnelly 2010, p. 3) In sum, his thesis states that national constitutive and regulative norms have great impact on whether or not a European regime - as a form of European constitutionalization - can be successfully created (ibid., p.18).

According to Donnelly´s understanding, "norms are socially defined expectations of what is appropriate. They define at the national level what the state legitimately does and at the European level what both European and national actors legitimately do and how they do it." (ibid., p 13) Norms are based on what the author calls "archetypal narratives". Those can be described as attitudes shared by the people or, in Donnelly's words, as "social constructions that, once created through social agreement, remain in the foreground or the background of thought about public policy as a resource on which people can draw

in their discussions." (ibid., p. 13) For example, the perceptions of the state as a "nightwatchman state" or "nanny state" constitute archetypal narratives. Likewise, the different views on business as "an honest builder (beneficial), a gambler (opportunistic), or a trickster (which the state can legitimately restrict)" serve as such metaphors (ibid., p. 14). Although Donnelly stresses that norms are constant structures, he also acknowledges that they are not "monolithic entities". Rather, they are "dual in nature": norms influence the actors' thinking and acting; vice versa, agents are able to change the structure they live in through agency (ibid., p. 13). Donnelly distinguishes between constitutive norms "which define the entities and actors that are legitimately involved in whatever is being governed" and regulative norms, defining the interaction between actors in the governing process (ibid., p. 18). Thereby, it is important that European constitutional norms include EU-member state relations as well as state-business relations. If national norms are very diverse, efforts to supranationalize or harmonize the national policies will fail (ibid., p. 2). According to Donnelly, generally three governance outcomes are possible: "collusion (commitment to delegation or harmonization), coexistence (commitment to national responsibilities and cooperation), or collision (the absence of an agreement)" (ibid., p. 19).

Donnelly identifies the independent variables "public sensitivity" and "norms" as influencing factors for "regime development" (table 1.1). Testing the impact of national constitutive and regulative norms on whether European governance is supranational, intergovernmental, mixed (multilevel), or non-existent, he develops a typology of probabilities about regime development (ibid., p. 18):

Table 1: Effect of norms and public sensitivity on regime development (original see appendix A.a)

	High sensitivity	Low sensitivity
Norm divergence	Intergovernmental regime	Parallel regime
Norm convergence	Multilevel regime	Supranational regime

(Donnelly 2010, p. 74)

The first variable, the degree of public sensitivity, describes whether there is a small and coherent or a large and diverse public interest within the Member States on the policy issue under question (ibid., p. 71). In general, low public sensitivity allows for a wider political scope for action than high public sensitivity. The second variable, "norm

divergence/convergence" stands for the mutual agreement on regulative and constitutive norms among the Member States. The more the norms converge, the more the Member States are willing to "let go" sovereignty.

Combination 1: Intergovernmental regimes prevent any delegation of responsibility beyond the nation state. Thus, governments keep their national regulatory primacy. But these regimes are more than simply intergovernmental politics. "Intergovernmental regimes, (…) require the Member States to designate the national bodies responsible for managing the policy issue, to establish rules governing the jurisdiction of national bodies in cases of transnational activity subject to regulation, and to set out how those national bodies are supposed to interact" (ibid., p. 73).

Combination 2: When national norms differ enormously and hence there is no way to achieve a compromise how to harmonise a specific policy issue, but common rules are expected as mutual advantage, then parallel regimes will be the result. "The resulting rules require rule conformity at the international level and must allow rule diversity at the national level." (ibid., p. 75) This often occurs when sensitive social or economic policies are involved. The accounting standards regime illustrates how a parallel regime works: while national accounting standards remain in place, an additional single set of international accepted standards is mandatory to inform investors in a transparent way throughout the single market. The advantage of regulating things twice is that parallel regimes are "a method of avoiding deadlock in the pursuit of common gains under conditions of diversity." (ibid., p. 76) Parallel regimes differ slightly from the open method of coordination (OMC), which also aims at generating general policy commitments. OMC is regarded to be weaker as it only serves as a "process of mutual exchange of ideas and policy learning." (ibid., p. 76).

Combination 3: Multilevel regimes allow supranational rule-setting. Of course EU Member States only give up sovereignty when norm convergence exists among them. Multilevel regimes differ from pure supranationalisation insofar as "a significant impact on domestic institutions makes a division of labour between the national and supranational levels of government politically preferable to outright delegation." (ibid., p. 77) Not only national legislators, but also a group of international policy specialists govern the policy area towards commonly defined goals (ibid., p. 78).

Combination 4: Supranational regimes and institutions stand in marked contrast to intergovernmental regimes as the policy-making authority is completely transferred to a level beyond the nation state. The probability to establish a supranational regime is

considered to be very low. If substantive policy decisions were made, all Member States would be forced to fully implement them. By doing this, "any perceived policy deviations from existing national preferences or the risk of significant deviations are likely to be perceived as costs, and must be fully considered." (ibid., p. 79).

Donnelly mentions two prerequisites that must be fulfilled, in order for his typology to be valid: first of all, "regimes are only possible when Commission, Parliament, and Member States, where they have decision-making powers, agree on both constitutive and regulative norms" (ibid., p. 72). The mere existence of policy goals and the necessity to take action is insufficient to create a regime. If there is neither agreement on the constitutive nature of the EU in that policy area on the one hand, nor on the regulative norms detailing the interaction one the other, negotiations will end in backlash (ibid., p. 19). Second, "normative structures found within the Member States condition what is feasible at the European level rather than the other way around." (ibid., p. 5) As Member States are highly institutionalised and have strong and thick perceptions about the nature and the duties of public policy, decisions made at European level have to rest "on the shoulders of national ones". (ibid., p. 1) Donnelly uses the example of the Draft Constitutional Treaty (DCT) to support his conviction. In this case, any attempt to create a treaty as source of identification failed because of its top-down approach. As opposed to this, regime norms created at European level have undergone a bottom-up process. Therefore, "successfully articulated European norms preserve and reinforce national ones, or they will not come about." (ibid., p. 6) Regarding his typology, Donnelly concedes that these two independent variables are not sufficient to yield regime development, "but they indicate from which direction the demand for a regime is likely to come and what the outcome will be if the actors are successful at constructing a regime." (ibid., p. 71)

In short, Donnelly points out that the most recent developments at the Single European Market show how integration and governance take place by regime creation. His contribution fills the research gap on the question of why there are different degrees of integration in distinct policy fields – a fact that other approaches are not able to explain. The normative approach is a theory that tries to answer the question of which factors influence regime form and development. These factors are "public sensitivity" and "norm divergence/convergence" among the Member States. Consequently, "regimes, as a form of European constitutionalization, must themselves be explicit, socially embedded down to

the national level, and resonate with national polities to have any chance of success." (ibid., p. 3).

In the further course of this thesis, his approach will be used to assess and predict the possibility and form of a European CSR reporting regime. Donnelly himself proposes that "this approach can be used to analyse any other public policy area and the prospects for constitutionalizing the EU member state relationships, together with its form (collusion, coexistence, or collision) and purpose." (ibid., p. 245) It will serve as a basis for identifying the necessary prerequisites. Against the background of the presented theory, the following hypothesis can be concluded: A CSR disclosure regime is possible to come into existence, if:

1. there is a given demand to take action at European level
2. agreement on both constitutive and regulative norms among the Member States and between them and the European institutions can be reached.
3. The degree of norm convergence/divergence and the degree of public sensitivity influences the form of the regime outcome.

3. Methodological Approach

This thesis is a result of a desk-research and clearly follows a deductive approach. The theory of Donnelly about regime creation is applied to a new policy area, the European CSR strategy. In the course of this thesis, the following research question shall be answered: if and how is it possible to implement a reporting Directive that makes disclosure on economic, social and environmental activities mandatory and that requires European business to use coherent reporting standards?

Donnelly's normative approach to European economic integration implies that this could be done through regime creation. As he reveals conditions that must be fulfilled in order to attain successful cooperation among the Member States, his theory will help to find out whether regime creation in the field of ESG disclosure is possible or not.

It is assumed that CSR reporting is one means to bring forward more and serious CSR activities in European companies. The creation of a European reporting regime (Y= dependent variable) is possible if X_1, X_2 and X_3 (= independent variables) are fulfilled.

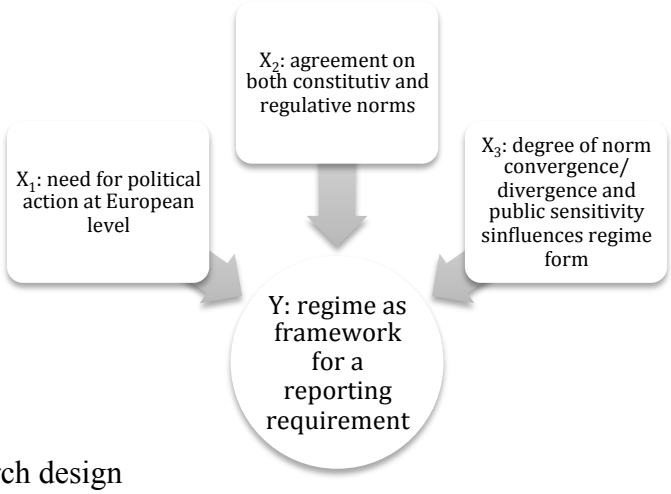

Fig. 1: Research design

The theoretical expectations of this thesis are tested by analysing primary and secondary sources. The major part of the literature that is used for this thesis has been published in recent years. As this topic is very specific and contemporary, books are barely used. The overview on the political developments with regard to the European CSR strategy is generated with the help of the official websites of the European Commission, legal documents and additional literature. Academic papers that explain the rise of reporting requirements are used for the background information part. Additionally, literature is presented that summarises the roles of public actors in CSR and current papers provide an overview on CSR policies that are already implemented by European Member States. The summaries and position papers of different EU discussion forums turned out to be the most valuable sources because the information were specific, up to date, transparent and reflect the view of many different involved actors on the public discourse. Nevertheless, it is a debatable point whether some stakeholders have such a powerful position, as it appears to be in the Multistakeholder Forums. The Commission has decided to work more closely together with business actors (European Alliance for CSR 2006) and so it remains uncertain if the Commission would listen during a real legislative procedure in the same manner to civil society organisations or trade unions. Comparisons with already established regimes, such as the company law regime and the accounting standard regime help to investigate the last two hypotheses. If the circumstances are similar (norm convergence/divergence and public sensitivity is alike) then the form of the regime will resemble.

4. Background Information

Introduction to the Concept of Corporate Social Responsibility (CSR)

Whereas responsible business behaviour has been an issue of dispute since centuries, the particular idea of corporate social responsibility can be traced to the 1950. The conceptual

basis on the subject was laid down by Howard R. Bowens book “Responsibilities of the Businessman” (1953). Stating that American business has an strong impact on the life of citizens, Bowen concludes that enterprises have a responsibility to society and must take into account their expectations and values (Raupp, Jarolimek & Schultz 2011, p. 9). Milton Friedman’s claim the only responsibility of business is to generate profit (Capitalism and Freedom, 1962), aroused criticism, which has lead to the further development of the CSR concept. Nowadays, a plethora of approaches and definitions prevail that try to describe the diffuse term. There are so many understandings that critics even describe it as meaningless (Curbach 2009, p. 28).

Closely related to CSR is the concept of corporate citizenship (CC), which “is concerned with the company’s engagement in the community (…). The corporation is seen as citizen itself, which encompasses several rights and responsibilities similar to those of individuals” (Bode 2007, p. 12). Both CC and CSR are recognised as contribution of the economic system to the sustainable development of the society as a whole.

Archie B. Carrols pyramid of business responsibility (figure 4.1) is a widely accepted illustration of the various CSR approaches (Loew, Ankele, Braun & Clausen 2004, p. 18). The four subsequent levels reflect the different understandings on business responsibility:

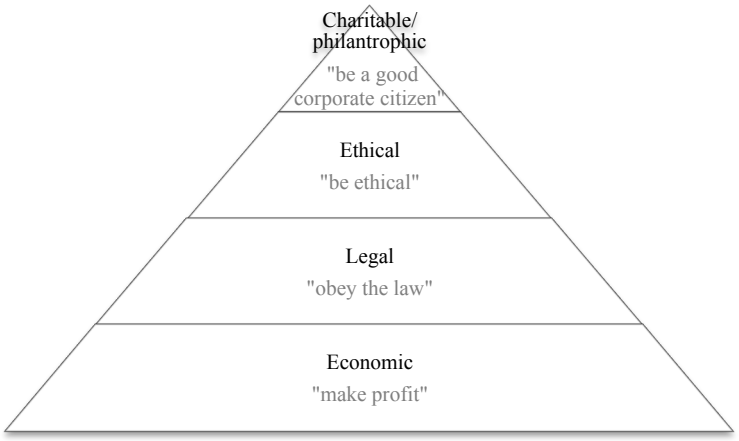

Fig. 2: Carroll’s CSR pyramid (Carroll 1991, p. 42.)

According to Carrols pyramid, a lot of activities could be labelled as CSR. A more narrow understanding assumes social responsibility only if, first, there is a relationship between CSR initiatives and the core business of enterprises, second, if the initiative constitutes a voluntary action and, third, if it deals (implicitly) with the sustainability of resources (Raupp, Jarolimek, & Schultz 2011, p. 11). With regard to the scope of CSR, the Triple-Bottom-Line (“people, planet, profit”), mainly coined by Elkington, specifies that

corporate social responsibility takes effect in social, environmental and economic areas (ibid.).

The European corporate social responsibility strategy is based on these theoretical concepts. It aims at promoting initiatives of enterprises that go beyond legal requirements investing on a voluntary basis in human capital, environment and in their relationship with stakeholders. Thereby the strategy rejects the more obligatory "corporate accountability" stance, which would advocate placing companies under legal provisions to improve their environmental and social standards.

Public Sector Roles in CSR

CSR does not only affect business, but also public policy. Although the concept has been developed and applied to the greatest extent by private business actors, European governments become more and more drivers adopting public policies in order to support the business world. CSR is thus increasingly perceived as a cooperation concept. While business actors are believed to take over responsibility in a socially, environmentally and economically sound manner, the non-profit sector serves as critical partner monitoring and formulating demands and goals regarding the CSR activities. The different possible policies of public authorities may range from soft ("raising awareness") to hard ("legislation") measures (see appendix A.b). Obliging enterprises to publish reports on their CSR performance constitutes one of the hardest policies possible (Albareda et al. 2007, p. 398).

The roles generally prescribed to governments are as follows: Mandating, Facilitating, Partnering and Endorsing (Fox 2002, p. 3). Taking over a mandating role, public authorities determine legal provisions and set minimum standards that must be fulfilled by business actors. They define for example emission limits, working standards or guidelines to use the best technology available. Assuming the facilitating role governments may set incentives in order to stimulate the engagement of key actors in CSR activities. Here, the public sector plays a "catalytic, secondary, or supporting" role by issuing, for instance, disclosure regulations (ibid., p. 5). Partnering means that public authorities work closely together with stakeholders and private actors in order to bring forward CSR initiatives. In this role, governments act as "participants, convenors or faciliators" in order to increase dialogue, information sharing and best practice exchange (ibid., p. 5). Working groups, workshops and forums are typical manifestations of the partnering role. The fourth public sector role, endorsing, prevails when governments demonstrate their favour for CSR in policy documents or establish award schemes that honour best practice examples.

The European Corporate Social Responsibility Strategy

The history of the European integration process shows that the social dimension of the European Union is closely related to the development of the internal market, especially with regard to the free movement of persons and services (Witte 2010, p. 30). The more the internal market proceeded, the more framework conditions for social responsible activities of European business emerged to set minimum standards. The concept of corporate social responsibility has found its way into the European agenda from the 1990s onwards (see appendix A.c). The most important steps of the European CSR strategy will be outlined in the following.

The Lisbon Strategy, launched in 2000, is considered as starting point of the following CSR activities of the European Union. Therein, the Union has set itself the new strategic goal "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." (European Council 2000) The aims of the Lisbon Agenda were addressed through a range of more specific strategies.

In 2001 the Green paper "promoting a European framework for corporate social responsibility" was completed with the aim of making the appeal made to companies by the Lisbon European Council more concrete (European Commission 2001, p. 6). By defining corporate social responsibility 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", the European Commission has chosen a more stimulating and voluntary approach (ibid., p.7). The main target of the Green paper was to launch a wide debate among business and stakeholders on how the European Union could promote CSR (ibid., p. 24). In doing so, the Commission took into account already existing international activities in the field of CSR, whereby the European approach is believed to constitute an integral part of those initiatives. Against this background, the Commission proposed to provide an overall European framework that may promote coherent practices and secondly aims at ensuring effectiveness and credibility through best practice comparisons and independent verification (ibid., p. 7).

With the Communication in 2002, the European Commission presented a summary of the more than 250 responses to the Green Paper, written by organisations, academics, politicians, European institutions and other interested persons. The comments reflected the fundamental conflicts of interests concerning CSR. While the business actors emphasised the importance of the voluntary approach, other actors saw, quite the opposite, the need for

a more regulative approach. “In the view of businesses, attempts to regulate CSR at EU level would be counterproductive, because this would stifle creativity and innovation among enterprises which drive the successful development of CSR**,** and could lead to conflicting priorities for enterprises operating in different geographical areas.” (European Commission 2002, p. 4). Trade unions and civil society organisations opposed this view and called for a “regulatory framework establishing minimum standards and ensuring a level playing field”. They called for a close involvement of all stakeholders in the CSR process and advocated effective mechanisms to ensure the enterprises accountability for its social and environmental impacts (ibid.). Investors recommended improving disclosure and transparency of CSR practices and consumer organisations as well emphasised the importance of complete information about the way the European companies produce their goods. Other European institutions gave their generally favourable opinion on the CSR strategy, whereby the European Parliament argued in favour of involving all interested actors in a Multistakeholder Forum and supported the idea of reporting on CSR activities.

The newly established European Multistakeholder Forum took place for the first time in the period from 2002 to 2004 and was well attended by a large number of different organisations, including business groups, trade unions, employer´s organisations and non-governmental organisations (European Multistakeholder Forum on CSR 2004a, p. 3). The aim of the Forum was to exchange ideas how to further develop the European CSR strategy. The recommended future initiatives are threefold: “raising awareness and improving knowledge on CSR”, “developing the capacities and competences to help mainstreaming CSR” and “ensuring an enabling environment for CSR” (ibid., p.12).

The next step in the European CSR strategy constituted the Commissions Communication “Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility” in 2006. The Communication states that the Commission has realised that enterprises are the primary actors in CSR and therefore the Commission aimed at working together more closely with the European business to best achieve its objectives (European Commission 2006, p. 2). The Communication thus constituted the launch of the European Alliance on CSR. “The Alliance is an open alliance of European enterprises, for which enterprises of all sizes are invited to express their support. It is a political umbrella for new or existing CSR initiatives by large companies, SMEs and their stakeholders. (...) It is a political process to increase the uptake of CSR amongst European enterprises.” (ibid., p. 3) However, the Communication says that “utmost importance” shall be attributed to the dialogue with all stakeholders and therefore

the Commission proposed to hold meetings of the Multistakeholder Forum at regular intervals (ibid.).

In 2006, 2009 and 2010 again plenary meetings of the European Multi-stakeholder Forum on CSR took place. The aim of all these meetings was to review the progress made regarding CSR and to discuss further development opportunities of the European CSR strategy.

Disclosure on Environmental, Social and Governance (ESG) Information

Reports about non-financial issues emerged from the 1980s onwards as preventive measures to "greenwash" the image of environmentally damaging businesses. American companies, especially chemical concerns saw themselves forced by the "right to know"-legislation to disclose what kinds of toxic chemicals were used in their business processes. The reports embodied a response to the increased public ecological awareness. International conferences, like the Rio World Summit in 1992, contributed to the eco-trend and asked the private actors to take over responsibility. As first initiatives, the EMAS (Eco-Management and Audit Scheme) and the ISO 14000 norm were implemented. Since the 1990s, the focus of non-financial reports has broadened to social as well as economical issues; a development that was influenced by the concept of sustainability (Rieth 2009, p. 219). The Global Reporting Initiative (GRI) is one of the most famous attempts to standardise ESG disclosure at international level. According to its own presentation, the GRI is "a network-based organization that produces a comprehensive sustainability reporting framework that is widely used globally. The Reporting Framework sets out the principles and performance indicators that organizations can use to measure and report their economic, environmental, and social performance." (Global Reporting Initiative 2011)

Instead of making specific CSR activities compulsory, reporting approaches aim at providing companies with an instrument to disclose their activities in economic, social and environmental fields. Reporting initiatives are based on the assumption that companies' activities are influenced by peer pressure. Reporting provides an incentive for companies to measure their efforts over a specific period of time and compare their own development with competitors. As there is now agreement on the "business case" for CSR, that the advantages of implementing CSR outbalance the cost, business actors are keen on implementing strategic CSR initiatives. Aiming at being better than the market competition, managers try to present their companies as more responsible and more sustainable (Curbach 2009, p. 159).

For various reasons ESG disclosure can be advantageously. Business actors participating in the "European Workshop on Disclosure of Environmental, Social and Governance Information" (2009) agree on the following arguments: ESG disclosure can promote CSR and sustainability issues within the enterprise and a commitment to CSR is sometimes useful and necessary for winning new contracts with governments or other businesses. ESG disclosure allows companies to feature in sustainability indexes and it can help to improve stakeholder dialogue. Collaboration between enterprises and NGOs or other stakeholders and their involvement can be a useful tool to understand their expectations. Furthermore, ESG disclosure provides a "social licence to operate" that helps to meet the criticism and demands of stakeholders and consumers and it can be used to prove that the company has complied with human rights (p. 3). The main challenges and problems faced by enterprises regarding ESG disclosure are that the intended recipients of the reports are not satisfied but complain about "arbitrary selection of data and indicators, inaccuracy of data, lack of comparable data between enterprises, failure to link ESG information to company strategy, lack of forward-looking analysis, and an excessive marketing approach." (ibid., p. 4) Furthermore, the communication with consumers is especially problematic. Either many intended recipients do not read the published reports, or information does not even reach the consumer. Some consumers are even confused with the information. A big problem facing enterprises are the high costs connected with collecting and publishing ESG information. Finally, internal resistance hampers the possibility to use ESG disclosure as a tool to drive internal change (ibid.). Enterprises may also chose to completely oppose ESG disclosure when they consider it being a unnecessary cost, or when they have alternative possibilities "to provide costumers with the right amount of the right ESG information at the right time" (ibid., p.5).

Reporting Policies among the European Member States

Until now, real public policy strategies among the European states are seldom. Only a few governments pursue coherent and extensive CSR strategies; still, rather isolated initiatives overweigh. Especially the old European Member States show increasing interest in CSR activities, which is proven by the wide range of new laws (Riess & Welzel 2006, p. 5).

Throughout the whole Union the environmental aspect is best implemented out of the three categories of CSR. This is not surprising, because environmental regulation has been increasing over the last 30 years in the EU, putting many obligations on companies (Delbard 2008, p. 403). The imbalance between the strict environmental regulations and

the liberal approach to the other aspects of CSR is criticised by Delbard as an "European regulatory paradox" (ibid., p. 397).

Public policy initiatives in the field of CSR strongly differ among the Member States. This is mainly due to political culture and tradition that influence the state-business relationship and thus the attitude of the governments to engage in CSR. Those Member States that actively encourage CSR often have a political culture that is cooperative, transparent and handling the challenges of globalisation successfully. "Success has been particularly evident in those countries where the political environment has been taken into account and where overregulation of the business community's social and environmental activities has been avoided." (Riess & Welzel 2006, p. 2) Research has shown that the understanding of CSR and thus the initiatives taken by the governments are highly influenced by a country's social, cultural and political context (Albareda et al., p. 405). Most notably, the different approaches to CSR show striking similarity to the different types of welfare states in Europe:

Table 2: Models of government action in the development of CSR-endorsing public policies in 15 EU countries (Albareda et al. 2007, p. 401)

Model	Characteristics	Countries
Partnership	Partnership as strategy shared between sectors for meeting socio-employment challenges	Denmark, Finland, the Netherlands, Sweden
Business in the community	Soft intervention policies to encourage company involvement in governance challenges affecting the community (entrepreneurship and voluntary service)	Ireland, the United Kingdom
Sustainability and citizenship	Updated version of the existing social agreement and emphasis on a strategy of sustainable development	Germany, Austria, Belgium, Luxembourg.
	Regulatory	France
Agora	Creation of discussion groups for the different social actors to achieve public consensus on CSR	Italy, Spain, Greece, Portugal

The countries of the partnership model can be characterised by an extensive and comprehensive welfare state. Compared to the other states, Denmark, Finland, the Netherlands and Sweden have rapidly acknowledged the important contribution of business actors in addressing and resolving social problems in the past. For many companies in these countries "being socially responsible is simply inherent to their way of doing business" (ibid., p. 401). The positive relationship between business actors and public sector is typical for the Scandinavian political culture (ibid). In Ireland and the

United Kingdom, however, CSR initiatives emerged as an innovative solution for a deficit in social governance during the end of the 20th century. Since then, companies became more and more involved in the community in order to contribute to local social improvements. In their roles as facilitators, both governments try to provide incentives for CSR activities by soft regulation (ibid., p. 402). The "sustainability and citizenship" group expects companies to act as "good citizens" and go beyond their compliance with national legislation, taking over social responsibility for sustainable development. The relatively sound welfare states mainly promote and create incentives for CSR activities. Special attention is attributed to France due to its particularly regulatory approach regarding CSR. The Agora countries, which represent the less developed welfare states in the European Union, were the last ones that introduced CSR initiatives. Through multistakeholder forums, expert groups and working committees the agora states try to construct social consensus in order to determine the role to be played by the governments (ibid., p. 404).

Some public authorities of the European Member States have already begun to implement CSR reporting requirements. Here, European business clearly surpasses American efforts, where ESG disclosure is not that common. In 2003 a Directive was issued that gave a first requirement to report on CSR activities in addition to annual financial reports. The Accounts Modernisation Directive (2003/51/EC) says: "To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters." (Directive 2003/51/EC, p. 18) Apart from implementing the Modernisation Directive, several European Member States have adopted laws that go beyond its requirements (Knopf, Kahlenborn, Hajduk, Weiss, Feil, Fiedler & Klein 2011, p. 27). Figure 3 provides an overview of public policy reporting frameworks:

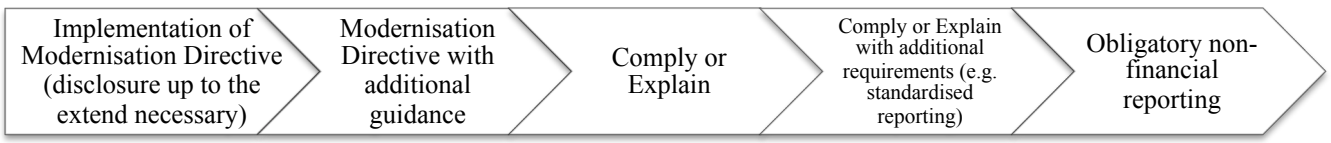

Fig. 3: Overview of public policy reporting frameworks (Knopf et al. 2007, p. 28)

In the Netherlands, CSR reporting became mandatory in 2008 for management boards of stock-listed companies with a balance sheet of more then 500€ million on the basis of a "comply or explain" approach: It requires Dutch companies to report how they comply with the Dutch "corporate governance code", or to explain where and why not. A

"transparency benchmark" scheme publicly compares and rates the transparency performance of participating companies on a yearly basis (Knopf et al. 2011, p. 28; European Workshop on Disclosure of Environmental, Social and Governance Information 2010b, p. 3).

Denmark made ESG disclosure obligatory for its biggest 1.100 companies and state-owned companies from 2009 onwards. CSR as such is still voluntary but Denmark requires companies to report annually on their CSR policies on a "comply or explain" basis and encourages its enterprises to use international recognised guidelines (UN Global Compact, GRI, OECD) (Knopf et al. 2011, p. 28).

Similar to the provisions of the Modernisation Directive, the UK´s Companies Act 2006 defines that almost all companies have to report on "environmental, employee, social and community matters or essential contractual or other arrangements" to the extent necessary for an understanding of the business (van Wensen, Broer, Klein & Knopf 2011, p. 60). In 2008 a Climate Change Act was issued which in relation to corporate reporting demands the government to publish standards how enterprises shall measure and report their emissions. Furthermore, "the government must also introduce regulations requiring reporting by companies by April 2012 or explain to the UK Parliament why it has not done so." (Knopf et al. 2011, p. 29).

Spain does not yet have a legislative approach to ESG disclosure beyond the existing EU requirements, but a draft law on sustainable economy sets requirements on state-owned companies to publish reports according to commonly accepted standards. Those standards and characteristics of CSR reports remain to be defined. (European Workshop on Disclosure of Environmental, Social and Governance Information 2010b, p. 4; 2009, p. 6).

France was the first country that made public disclosure mandatory: "the tradition of non-financial reporting in France can even be traced back to the 1970s, when the President of the Republic obliged all companies with 300+ employees to publish a social review ("bilan social") that included more than 100 performance indicators." (van Wensen et al. 2011, p. 58) The 2001 Loi sur les Nouvelles Régulations Economique Act on New Economic Regulations (NER) provides a list of social and environmental issues that listed companies should address in their annual reports. The Grenelle 2 Act has recently extended the NRE law. It establishes new environmental laws and intensifies reporting duties: "Article 83 extends, under conditions, the obligation of the NER law to all companies of 500 employees and more, to present a social and environmental report. This

would affect around 2,500 companies. To further inform and train all types of stakeholders on reporting issues a platform website project on CSR has been created." (ibid., p. 59). Article 53 of the first Grenelle law "announces that France will propose a working framework at the EU level for the establishment of social and environmental standards allowing for comparison between the companies." (Knopf et al. 2011, p. 28). France thus believes that the European level is the appropriate one for sustainability reporting (European Workshop on Disclosure of Environmental, Social and Governance Information 2010b, p. 3).

5. Analysis

Is it possible to establish a coherent requirement that amends the Accounts Modernisation Directive (2003/51/EC) and makes reporting about economic, social and environmental activities mandatory for European companies? Could it also require companies to use the same at best international guidelines to guarantee as much comparability as possible? If yes, how could a governance framework for such a provision or a more realistic alternative look like? The following part of the paper argues that the mentioned maximum demand is not possible to come into existence, as the three prerequisites for regime creation are not sufficiently fulfilled:

1. Need for political action at European level
2. agreement on both constitutive and regulative norms among the Member States and between them and the European institutions
3. degree of norm convergence and public sensitivity that influences the form of the regime outcome.

However, further development in the European CSR reporting policy can be achieved within the framework of a "parallel regime". A next step could consist of issuing a reporting Directive that extends the EU Accounts Modernisation Directive (2003/51/EC) by a "comply or explain" principle and that recommends the use of international recognised reporting guidelines for larger companies.

If - Demand for Political Action

The concept of CSR reporting has increasingly attracted attention all over Europe. More and more stakeholders call for a coherent approach among the Member States. Drawing on the well-known "policy cycle" - a scheme that intends to structure and generalise policy processes in an ideal-typical manner - the discussion about pan-European CSR disclosure has already passed the first stage "problem definition" and now deals with "agenda setting"

and "policy formulation" (see appendix A.d). A mandatory reporting approach is regarded as a possible and effective means to strengthen and further develop the European CSR strategy. An overview of the past developments in the discussion at European level shall demonstrate the demand for political action at European level.

Even before the Commission issued the Green Paper on corporate social responsibility, it appeared from the Commissions Communication "A European Union Strategy for Sustainable Development" that business shall be mobilized to take a pro-active approach towards sustainable development by reporting about their economic, environmental and social performance (European Commission 2001). "All publicly-quoted companies with at least 500 staff are invited to publish a 'triple bottom line' in their annual reports to shareholders that measures their performance against economic, environmental and social criteria. EU businesses are urged to demonstrate and publicise their world-wide adherence to the OECD guidelines for multi-national enterprises, or other comparable guidelines." (ibid., p.8).

In the following Green Paper the Commission criticises that companies' approaches to social reporting are as varied as their approaches to corporate social responsibility. (European Commission 2001, p. 18). It appreciates that many multinational companies are now disclosing environmental, health and safety reports, but reports addressing human rights and child labour are still not common. To make the reports useful, the Commission recognises the need to develop a common understanding about what kind of information shall be disclosed. Furthermore, it has to be decided on the format to be used and the reliability of the evaluation and audit procedure (ibid., p. 18). The Commission considers it necessary to enable European enterprises, especially SMEs, to report on their corporate social responsibility activities. However, attention is also directed to the "greenwashing" characteristic of those reports and therefore "verification by independent third parties of the information published in social responsibility reports is also needed to avoid criticism that the reports are public relations schemes without substance." (ibid., p. 19)

In the Commissions Communication 2002 various means are exposed that may contribute to the convergence and transparency of CSR practices and tools. These are codes of conduct, management standards, measurement, reporting and assurances and labels. The Commission (2002) regards lack of transparency as one challenge for the further diffusion of CSR (p. 7). With regard to reporting, the communication indicates, that "triple bottom line reporting" is still considered as a good practice. The guidelines developed by the Global Reporting Initiative (GRI) are regarded as a good example set.

According to the Commission they could serve as a basis for coherent reporting (ibid., p. 14). Behind this background, the Commission invites the Multistakeholder Forum to prepare commonly agreed reporting guidelines and measurement criteria by mid 2004 (ibid., p.15).

The European Multistakeholder Forum 2004 has shown that most notably NGOs and trade unions would like to introduce obligatory reporting, at least for larger companies (European Multistakeholder Forum on CSR 2004b, p. 11). As opposed to this, business and employer organisations that participated in this round table were against reporting obligations. They argued, that if there is no demand for information, then companies should not be forced to disclose their activities. "There was concern that obligations to report would stifle innovation and reduce flexibility." (ibid., p. 11) Whereas NGOs and trade unions emphasised the importance of third parties assessing the CSR performance of companies to get credible and transparent information, business actors argued that internal auditing and verification procedures should not be denigrated in terms of credibility. NGOs and trade unions strongly supported the idea that reporting should be drawn on established international standards. Trade unions pointed out that process indicators as well as performance indicators are important (ibid., p. 19). In general there were very different opinions whether mandatory declaration or reporting should be recommended or not (ibid., p. 19).

Compared to the Commission that seems to be more in line with the business point of view, the Parliament has proceeded to claim for a more regulatory stance towards CSR (Mühle 2010, p. 197). In 2008 it put regulatory means back on the agenda: "It's the idea that companies' financial reporting, annually, should incorporate not simply financial results but social and environmental results as well in a mandatory fashion, not in a voluntary fashion (…). In my view and that of the European Parliament, it´s the ultimate appropriate regulation unleashing voluntary market forces to support and intensify CSR. If only we can have the transparency of information, fair and appropriate information, without cost in administration in the way the reports are produced, then we can enable investors, graduates who want to start work with the company, and customers to chose. All of those can then make voluntary market based choice to reward better companies." (Howitt 2008). The GRI indicators are thereby regarded as "not the only answer(s), but (…) extremely credible one(s)." (ibid.).

In the session "Transparency and CSR" the 2009 Multi-stakeholder forum on CSR dealt with the question whether or not an obligatory framework for CSR disclosure should

be developed and how sanctioning mechanism could look like. As it says in the summary of the session: "Il semble que la conscience commune ait toutefois beaucoup évoluée depuis deux ans sur le rôle que pourrait jouer l'Europe et sur la responsabilité de la Commission pour la création d'un cadre de référence fixant les objectifs et indicateurs du reporting (…)."[1] (European Multistakeholder Forum on CSR 2009, p. 1).

The most recent developments in the field of a CSR reporting approach appear from the "European workshop on disclosure of environmental, social and governance (ESG) information", which was held from 2009 to 2010. The participants discussed the advantages and disadvantages of five hypothetical scenarios dealing with the question how European public policy on ESG disclosure could look like in 2015. The scenarios were based on ideas put forward by stakeholders in position papers prior to the workshop and reflect the opinion expressed during the meetings. As it appears from the summary of discussions, the participants of the workshop agreed all in all that public policy on ESG disclosure is one element to transition into a sustainable economy (European Workshop on Disclosure of Environmental, Social and Governance Information 2010a, p. 3). They exposed that scenario 1 "no change" has many disadvantages but were also aware of the opposition that will arise due to a new Directive that was proposed in the other scenarios. The stakeholders guessed that many Member States will resist on principle the idea and that the business sector will strongly oppose a requirement with determined reporting guidelines (ibid., p. 14). "The revised Directive may imply significant additional costs for enterprises covered by its scope (…). Alternatively, the question is whether the additional costs are balanced by the benefits. We will not achieve a sustainable economy without incurring some costs. We should discuss how these costs can best be shared, but not assume that doing nothing has no costs." (ibid., p. 12) This overview shows that a large number of involved actors expect further political action at European level. However, the following shows that this does not necessarily mean that there is a chance for an extended Directive.

If - Agreement on Constitutive and Regulative Norms

Donnelly exposes that the mere demand for taking decisions from stakeholders and politicians is not sufficient to create a new European regime. Regime establishment is rather a question of agreement on constitutive and regulative norms of all involved actors. The establishment of the company regulation regime, the financial market regulation

[1] "It seems as if the common awareness concerning the European role and the Commissions' responsibility creating a framework that sets reporting targets and indicators has much advanced during the last two years."

regime and the accounting standards regime have shown that Member States appear to be more open to delegation of responsibility when national and European regulation are so similar that they become substitutable. The member states ensured that all these regimes contributed to the further enhancement of national institutional capacity because regime creation means nothing less than restriction of the degree of freedom that national governments and regulatory bodies have in decision-making.

In the course of the negotiations, first of all, consensus must be built on the question which actors are considered as adequate and legitimate to govern the policy area in question. In order to find an agreement on the constitutive norms of the regime, the Member States will balance pros and cons how much the primacy of the state should be defended and preserved while simultaneously harmonisation, simplification and the provision of legal certainty shall not be hindered. The main governing actor could continue to be the Member States, or power could be delegated to European institutions (European Commission) or an independent supranational institution.

Delegating power to an independent supranational institution just as with the accounting standards regime may be considered as not (yet) possible. Proponents of the idea to implement international recognised standards such as the GRI guidelines, had proposed to follow the accounting standards regime example: “Europe should rely on international standards and frameworks for ESG disclosure in the same way that it does for financial disclosure and accounting” (European Workshop on Disclosure of Environmental, Social and Governance Information 2010a, p. 16). The accounting standards regime was established due to the wish of the Commission to align European accounting standards with those of the international community. Adopting the standards that were developed by the International Accounting Standards Board (IASB), the Commission aimed at providing coherent and universally transparent information so that international capital investors could be easier attracted. The legal requirement for listed companies was formalized in 2001 with a corresponding Directive (Donnelly 2010, p. 222). To establish a global technocratic organisation had various advantages: “ensuring the transparency of information for investors, furthering the integration of financial markets in the EU, and improving the access of EU companies to finance.” (ibid., p. 226) A side benefit of this decision was that the European influence on the further development of the international standards was strengthened. The accounting standards regime created little reason for backlash in the Member States because “the collective decision of EU member states to adopt the New Accounting Strategy and the IAS regulation reflected a functional

response to a common need for increased information to bridge European financial markets, both for normal investing purposes, and to address concerns about fraud and mismanagement by directors. It required adjustment by the member states, involving great changes to accounting law, but not to such a depth that it would have many knock-on effects in other sensitive areas. Only the largest companies were affected, and the new standards were used for information only, rather than creating adjustment pressure on dividend practices or on national taxation systems." (ibid., p. 227) However, the accounting standards regime caused costs, as it required Member States to set up accounting standard boards, where they had not already existed. Donnelly considers it as important that "the import of IAS as an accounting standard in some form was already accepted and standard practice, so that concerns about the role of the state in setting standards (in Germany) or allowing national accountants' chambers to set them (in the United Kingdom) had already been dealt with." (ibid.) The same favourable framework circumstances do not prevail in the case of a European ESG disclosure regime. Although there are similarities, ESG disclosure is not common practice as accounting. Although the Member States were all obliged to implement the Modernisation Directive, ESG disclosure policies still widely differ. Furthermore, the added value of coherent standards is not yet as accepted as the use of the IAS by business actors. As Donnelly argues that norms have to rest on the shoulders of national ones and have to undergo a bottom-up process, charging an expert body with the governance of the reporting standards is not feasible.

With the Accounts Modernisation Directive (2003/51/EC), the Member States have already begun to delegate power in the field of non-financial reporting to the European level. The summary of "the perspective of public authorities" of the European Workshop on Disclosure of Environmental, Social and Governance Information (2010b) states that the participants "acknowledge the fact that the times has come to unite the efforts of the scattered European initiatives on ESG disclosure and reporting" (p. 6). It is proposed that "the different policies of EU Member States in this field should be harmonised" (ibid., p. 11) As a consequence, it is likely that the Accounts Modernisation Directive will serve as a basis for further development in European ESG disclosure policy.

It is proposed to extend the existing requirement by a "comply or explain" principle, constituting the next possible but simultaneously least restrictive step towards a more mandatory approach. Apart from implementing the Accounts Modernisation Directive some Member States have adopted laws that go beyond its requirement. "Most of them use a 'comply or explain' approach instead of permitting companies the option of not

reporting, since under European regulation information on ESG has to be included only to the extent necessary." (Knopf et al. 2011, p. 27) This means that companies either have to comply with the requirements set by the Directive, or if they do not comply they have to publish an explanation why not. Although companies are thereby allowed not to fulfil legal provision they are exposed to the stakeholder criticism and sanctions if their explanations will not be accepted. This allows taking into account individuality among enterprises but simultaneously creates an incentive for them to act in the sense of the requirement. Setting minimum CSR standards would interfere with the social and economic policies of the Member States and may be considered as impossible. Against this, the more "technical" reporting approach appears less restrictive in the eyes of the politicians. The advantages of a coherent European proceeding will convince the Member States to take action. France, one of the most powerful European states can be identified as a driving force as it believes that the appropriate level for governing the CSR reporting policy is the European one (European Workshop on Disclosure of Environmental, Social and Governance Information 2010b, p. 3).

Donnelly emphasises that agreement on constitutive norms also implies agreement between the Member States and their business actors. The strong position of European industry, which was manifested with the launch of the "European Alliance for CSR" in 2006, will prevent that too restrictive policies will be established. As coherent reporting standards largely restrict the freedom of enterprises to disclose on what they consider as favourable, strong lobby against such a proceeding can be expected. For this reason it may be considered as impossible to require European enterprises to use one common guideline. The proposed amendment of the Modernisation Accounts Directive may only recommend larger companies to use international recognised standards in order to promote comparability between the reports.

After defining the lead regulatory authority for regime governance, regulative norms must be deliberately specified. A complex set of rules that defines the rights and responsibilities of the governing actors has to be explicitly negotiated between Member States and the European institutions in order to ensure reliable ongoing governance in the policy area. The form of cooperation may be embedded into a Directive. This legislative act may serve as basis for the regime by defining the relationship between the European governance forums, the Member States and the international body. Whereas a Regulation is intended to be "binding in its entirety and directly applicable in all Member States" a

Directive leaves more leeway. As it appears from the Treaty of the Functioning of the European Union, „a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.“ (Article 288 TFEU) A Directive normally targets a period of time in which the objectives must be implemented and the Member States can still decide how they issue the intended outcome. With a Directive that requires companies to comply with European rules, national-level actors are no longer the central actors in setting reporting provisions but they continue to be involved in the process of formally adopting these standards. For the purpose of further developing the existing reporting requirement (Directive 2003/51/EC), a Directive is still adequate as it better acknowledges legal diversity among Member States than a Regulation. A number of Member States must be given the chance to catch up with the states that are more actively involved in CSR in the course of regime creation.

As a result, agreement on constitutive and regulative norms seems to be possible with regard to the less restrictive demand issuing a Directive equipped with a “comply or explain” principle that only recommends alignment with international standards.

How - Degree of Norm Convergence and Public Sensitivity

According to Donnelly’s regime typologisation, the governance form depends on the degree of “norm convergence/divergence” and “public sensitivity”. Apart from an intergovernmental, multilevel or supranational regime, it is rather likely that a parallel regime can be established.

In comparison to the intergovernmental company law regime, more norm convergence and less public sensitivity can be expected in the case of a European reporting regime. The aim of the company law regime was not to promote more cooperation but just the opposite: “using regimes to protect against erosion.” (Donnelly 2010, p. 172) So it was, for instance, not possible to create one coherent legal framework for the European corporate form “Societas Europaea” (SE), but “the ECS regulation creates twenty-seven types of SE grounded in the corporate governance and company law systems of the member states in which they are incorporated.” (ibid., p. 178) Social and economic norms are very dissimilar in the Member States and highly sensitive issues. Thus, the company law regime serves to guarantee their coexistence as independent policy-makers in order to “prevent either the free market norms and state disempowerment favoured by the Court or the social market norms favoured by the European Commission.” (ibid., p. 193) Public sensitivity with regard to the five pieces of European legislation that embody the regulative

norms of the company law regime was high. The Directives did not only affect the Member States and the European institutions, but they were also very relevant to managers, shareholders and stakeholder. During the negotiation process of the company law regime national parties felt the need to advocate their archetypal narratives about state involvement in economy (laissez-faire economic liberalism vs. social market economy), and labour organisations were afraid that employee rights could be mitigated. Different to the company law regime, more norm convergence may exist in the field of disclosure on environmental, social and governance information. Here it is possible to go further than just intergovernmental cooperation because there is agreement on the fact that only a common approach can prevent competitive disadvantages among European business in the single market. A coherent reporting requirement is rather seen advantageously and as an adequate solution to the increased public demand for "responsibility". On the other hand, in many European countries CSR policies are still in their infancy. As Donnelly emphasises that regimes have only success when they start from national norms that are commonly accepted, delegating power to a multilevel regime is therefore not expected to be likely. Taking into account the norm divergence and diversity among the Member States, complete harmonisation is not possible to come about. For the moment Member States have reasons to keep national provisions but they simultaneously agree on the advantage of a common Directive in CSR reporting policy. As a consequence, establishing a parallel regime can be regarded as an adequate response to the degree of norm divergence.

With regard to public sensitivity, a reporting regime gets more improbable the more companies shall be exposed to the European provision and the more restrictive the requirements are intended to be. However, opposed to the company law regime, a reporting provision addresses less of affected actors, as it is more a methodological and technical issue. Likewise, less public sensitivity can be expected. Nevertheless, in the further advancement of the regime, Member States have to balance the pros and cons whether it is legitimate to impose the costs of disclosure on all companies. It appears to be a good proposal that "initial focus should be on a mandatory framework for certain kinds of enterprises which, due to their size, sector and country of operation, are more likely to have a significant impact on human rights and environment." (European Workshop on Disclosure of Environmental, Social and Governance Information 2010b, p. 11) The proposed "comply or explain" principle constitutes a less restrictive means than the demanding target to implement coherent reporting guidelines. It thus can be obliged to all

companies without yielding to massive public protest. More mandatory requirements would have prevented the emergence of a regime apart from an intergovernmental one.

A slightly extended Modernisation Accounts Directive within the framework of a parallel regime allows harmonisation of reporting policy alongside national efforts. Due to the different or as yet non-existing reporting legislation among the Member States such a regime reflects the lowest common denominator concerning CSR reporting policy. Advancement can only take place step by step. Nevertheless, it allows countries to go beyond the negotiated requirement to legislate more intense legal provisions. The example of the accounting standards regime shows that a parallel regime is favourable because the "degree of slack provided a means by which points of conflict between international and national standards could be avoided and, therefore, potential political opposition to the adoption of IAS (was hindered)." (Donnelly 2010, p. 224)

As Donnelly states that top-down approaches will not result in a successful outcome, the time is not yet ripe for implementing the maximum demand that is expressed by scholars and NGOs. Against the background of the strong position of industry in the European integration process, it is rather a debatable point whether there is ever a chance for such a restrictive policy. Furthermore, norm convergence is very unlikely because similar to the different welfare state models, CSR policies widely differ. For these reasons the prerequisites for a regime, that would enforce a mandatory reporting requirement with coherent guidelines, are not fulfilled. Due to the fact that a European reporting Directive will only be successful when it does not appear to impose its targets on the Member States, the proposed reporting Directive amends only slightly the existing reporting requirement. Thus norm convergence and public sensitivity allows for creating a parallel regime. This type of regime fits well the status quo in European CSR polic as it still allows legal diversity at the national level but does not rule out the chance for further development towards a multilevel regime.

6. Conclusion

This thesis pursued the research question if and how it is possible to implement an uniform reporting requirement that makes disclosure on environmental, social and governance information mandatory for the largest European enterprises. Against the background of the diverse status quo in European non-financial reporting policy, the fact that the Member States devote much effort to hinder harmonisation in social and economic policy and the strong position of industry the answer is that this demanding claim is not likely to become

reality. After revealing the conditions for cooperation in European CSR reporting policy – whether there is a given demand to take action at European level, whether agreement on both constitutive and regulative norms could be achieved and how the degree of norm convergence and public sensitivity may determine the possible governance form - the analysis illustrated that proponents of a mandatory regime have to think small first.

Although the implementation of the maximum demand is held unrealistic, further progress may be still possible. According to Donnelly, regimes have only a chance of success if they are built on prevailing norms of the Member States. Using the examples of the accounting standards regime and the company law regime, this thesis comes to the conclusion that agreement on both constitutive and regulative norms is only possible in case of a slightly extended version of the existing disclosure requirement. A Directive compromising a "comply or explain" principle is regarded as the least restrictive but next possible step in European reporting policy since this regulatory approach is already implemented by some Member States. Given the degree of norm convergence and public sensitivity, the EU can issue a corresponding Directive within the framework of a "parallel regime" in order strengthen the European CSR strategy.

The bachelor thesis gives an insight into the future development possibilities of the European corporate social responsibility strategy. The company law regime constitutes an illustrative example why it is unlikely that the Commission can give up its voluntary approach to CSR. Due to different welfare state patterns and the fact that economic and social norms are highly sensitive issues, setting Europe-wide CSR minimum standards by legal requirements can be considered as impossible. In the light of this background information, the choice of the Commission to follow a voluntary path in the field of CSR policy seems rather wise than weak. Precisely because ESG disclosure does not directly dictate European companies to act more "corporate social responsible", a European reporting requirement fits well into the voluntary stance. It forces business to expose itself to the market forces that consist of competition to meet best consumers' sustainability demand. The authors personal opinion is that a more obligatory approach in European ESG disclosure policy would better allow the reporting concept to take full effect.

With regard to this research design, the author wants to make the reader aware of one limitation: It is not assumed that X_1, X_2 and X_3 are the only factors being conducive to regime creation. However, in the short period of time for this research it would have been hard to develop and analyse other prerequisites. It is probable that in a real negotiation

process, for instance, the bargaining power of states that might be in favour of such a reporting requirement plays a decisive role (e.g. France). Further research could also be done to investigate the power position of European Business in the integration of the single market.

With respect to further research, it would be interesting if the assumption and theses of Donnelly's normative approach would also apply to other policy regimes. To what extent can new policies be developed at European level – to what extent do they have to reflect the norms of the Member States? A closer look at the implementation of the EU Accounts Modernisation Directive at national would provide additional useful information concerning the attitude of the Member States towards ESG disclosure.

As regards substantial assumptions, the author of this thesis is aware of the fact that other tools may also strengthen the CSR strategy of the European Union. In order to achieve a transition to a more sustainable economy, a disclosure requirement shall be seen as one instrument for management change and for the integration of sustainability into business operations and strategy. Apart from publishing non-financial reports, other means may be better to ensure timely access to location-specific information for stakeholders who are affected by company operations.

Within the framework of the CSR discourse it is important to bear in mind the necessity of fundamental changes in consumption patterns in industrialised countries (Fuchs & Lorek 2004). This raises the question to what extent CSR can be linked to global sustainable consumption governance debates.

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Appendix

A.a: Effect of norms and public sensitivity on regime development

	High sensitivity	Low sensitivity
Norm divergence	*Intergovernmental regime*	*Parallel regime*
Regime type	Coexistence: States have an incentive to create rules that protect national regulation schemes (sovereignty) from detailed supranational rulings	Collusion: States have an incentive to create rules that protect national regulation schemes (sovereignty) from detailed supranational rulings (e.g. accounting rules)
International incentives	High sensitivity makes full delegation impossible and the assertion of national responsibilities with the greatest discretion possible central to any regime	Low sensitivity makes it possible for expert groups to discuss long-term convergence
Effect of sensitivity	Results in minimum standards and rules for managing interstate coordination (Company law regime)	Results in minimum standards allowing for interpretation, process-based scheme for discussing room for voluntary convergence (Accounting standards regime)
Norm convergence	*Multilevel regime*	*Supranational institution*
Regime type	Collusion with reservations: States can easily react 'functionally' to coordinate, pool sovereignty in the pursuit of regulation	Collusion: States can easily react 'functionally' to coordinate, pool, or delegate sovereignty in the pursuit of regulation
International incentives	High sensitivity makes full delegation of rule-making less likely than local regulatory infrastructure and minor interpretative discretion	Low sensitivity makes full delegation more likely in the pursuit of efficiency and policy influence by experts (perhaps also by insiders seeking capture)
Effect of sensitivity	Results in far more detailed and ambitious rule commitments than minimum standards (Aspects of financial regulation regime)	Results in far more detailed and ambitious rule commitments than minimum standards (Aspects of financial regulation regime, eventual goal of accounting regime by IASB)

(Donnelly 2010, p. 74)

A.b: CSR policies in government-business relations

Policies		Programs
2. *CSR in government–business relations*		
Soft	Raising awareness	Identify and promote companies leading in CR
		Promote CR through websites, publications, specialist journals
		Offer CR services and support to CR initiatives in companies or partnerships
		Undertake surveys and communication campaigns
	Voluntary initiatives (facilitating and promoting)	Promotion of uptake of CR policies, publication of CR reports
		Encouraging sharing and promotion of good practice
		Promotion of SRI, environmental standards, fair trade, sustainable consumption, work-life balance, equal opportunities, employee volunteering, employee conditions, life-long learning
		Promotion of business networks
		Promotion of public–private partnerships or public–private-civil society partnerships
	Capacity building	Finance research and innovation programs
		Support business-university research programs (instruments, good practice, comparative studies)
		Develop guidelines and provide technical assistance
		Incentives for sustainability reports
	Stakeholders	Evaluation and communication programs on the impact of CR programs on stakeholders
		Market mechanisms to favor CR (price policies, competition policies, investment principles)
		Promotion of stakeholder dialogue
	International	Incentives for adopting international CR standards
		Promoting CR good practice in the south (labour standards, human rights, anti-corruption)
	Convergence and transparency	Promote standardization across CR management models, standards, reports, indicators and auditing systems
		Promote fair trade labeling systems
		Encourage standardization of SRI analysis
		Promote inclusion of international CR agreements in codes of conduct
	Evaluation and accountability	Accountability and auditing mechanisms
		Triple bottom line reporting initiatives
		Social and environmental labeling
	Tax and funding systems	Tax incentives for CR (employment creation, gender balance, work-personal life balance, environmental initiatives etc.)
		Funding streams for CR (volunteering, social projects etc
		Promotion of SRI through fiscal mechanisms
	Legislation	Transparency regarding socially responsible investment (pension and investment funds)
		Obliging companies to produce sustainability reports
		Regulation regarding public contracts and selection processes
		Environmental legislation
Hard		Adaptation of international agreements to national standards

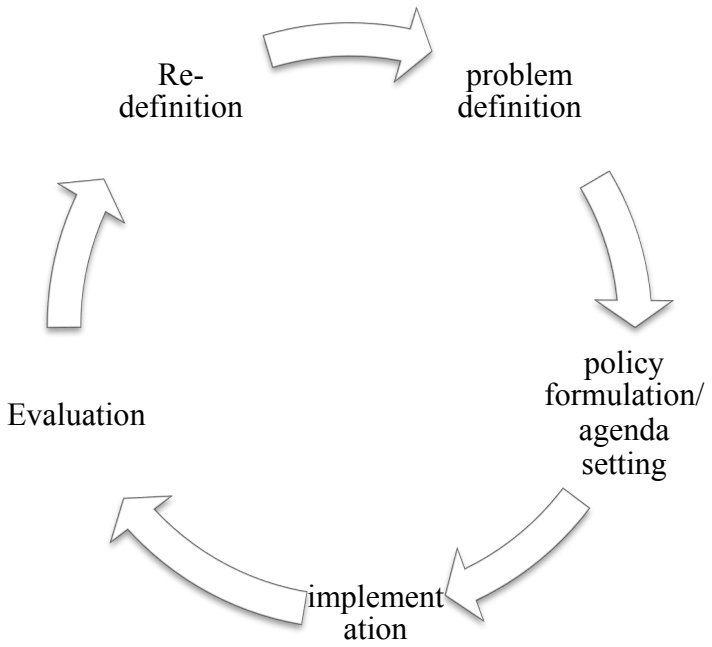
(Albareda et al. 2007, p. 398).

A.c: The European corporate social responsibility strategy

Year	Activity
1993	Appeal to business to adopt a European Declaration against Social Exclusion by the President of the European Commission, Jacques Delors
1995	Publication: European Business Declaration against Social Exclusion
1996	Formation of the European Business Network for Social Cohesion (today. CSR Europe)
2000	Lisbon Council: appeal to companies' social responsibility
2001	Publication: Green Paper
2002	Publication: Communication of the Commission concerning CSR: "A Business Contribution to Sustainable Development"
2002	Launch of European Multi-Stakeholder Forum
2003	Two Reviews of Multi-Stakeholder Forum
2004	Report of Multi-Stakeholder Forum
2006	Publication: Communication from the Commission concerning CSR: Implementing Partnership for Growth and Jobs
2003-2008	Reports: Annual Reports of Sustainable Business Assistance Program
2006/2008	Forum Review Meeting

(Mühle 2010, p. 198).

A.d: The policy cycle



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