

## **CORPORATE SOCIAL RESPONSIBILITY SOFT LAW DEVELOPMENTS IN THE EUROPEAN UNION**

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A research brief prepared for:

**PROFESSOR  
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# CORPORATE SOCIAL RESPONSIBILITY IN THE EUROPEAN UNION

— Nicolas Croquet,<sup>\*</sup> Asif Hameed and Tolga R Yalkin<sup>\*\*</sup> —

## Executive Summary

This brief is prepared by Oxford Pro Bono Publico ('OPBP') to inform the mandate of Professor John Ruggie, the Special Representative of the United Nations' Secretary-General on business and human rights ('SRSG').

The SRSG has been asked at various stages of his mandate to explore the regulations of corporations in relation to corporate human rights abuses. This has come in many forms, with a report being penned by OPBP in 2008 surveying obstacles faced by victims of corporate human rights abuses in obtaining redress.<sup>1</sup>

In a similar vein, this brief seeks to inform the SRSG about soft law developments in the European Community ('EC') in relation to corporate social responsibility ('CSR').

It is often said that the importance of CSR soft law developments lies in how they influence, rather than control, the behaviour of corporations. It is in this way that soft law is distinguished from more traditional domestic legislative instruments or hard law, such as acts and statutes, which are legally binding on corporations. Within this 'soft touch' approach lies the promise of a more tailored and efficient route to ensuring corporate respect for human rights.

Trends in soft law are a starting point for inquiring whether corporations are fulfilling their obligations under international human rights law to refrain from committing human rights abuses. Such an examination, particularly in jurisdictions such as the EC, is very helpful. It is especially important to the role of the SRSG, given that the compilation of a compendium of best practices of States and transnational corporations and other business enterprises is one of the six tasks put to him by the then United Nations Human Rights Commission in 2005.<sup>2</sup>

In the EC context, the relevance of CSR soft law developments is heightened for two reasons. First, although soft law does not bind corporations, it is not entirely without hard legal efficacy; a number of directives refer to soft law standards as informing their application. Second, a clear trend exists in the proliferation of soft law initiatives at all levels of European policymaking.

In principle, all EC measures or instruments, including soft law, must find a basis in the EC Treaty. CSR measures may find their legal basis directly in Article 13 EC, and more incidentally in 'complementary competences' through the theory of implied powers. However, they may also derive their legal basis from a binding norm of EC law that they are designed to interpret—as in the case of an interpretative communication, for example. Additionally, CSR measures may be relevant in the context of hard law instruments in cases where the latter allude to them as part of

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<sup>1</sup> Oxford Pro Bono Publico, 'Obstacles to Justice and Redress for Victims of Corporate Human Rights Abuses' <<http://www.reports-and-materials.org/Oxford-Pro-Bono-Publico-submission-to-Ruggie-3-Nov-08.pdf>> accessed on 14 March 2009.

<sup>2</sup> See Business & Human Rights Centre, 'Business & Human Rights: UN Special Representative on Business & Human Rights' <[http://www.business-humanrights.org/Categories/UNintorgs/UNIntergovernmentalorgs/UN/UNSpecialRepresentativeonbusinesshumanrights?&batch\\_start=81](http://www.business-humanrights.org/Categories/UNintorgs/UNIntergovernmentalorgs/UN/UNSpecialRepresentativeonbusinesshumanrights?&batch_start=81)> accessed on 19 March 2009.

their condition of applicability. This will be discussed more fully in the following pages.<sup>3</sup>

In pursuance of the SRSG's mandate, this brief considers these developments in CSR within the EC. The following analysis suggests that, although there have been considerable soft law developments in the EC, much remains unaddressed, and the system remains a patchwork. No comprehensive treatments or standards exist across industries, with the discipline best characterised as comprising concentrated efforts in particular areas.

Nevertheless, it should also be acknowledged that this experience is, to a certain extent, a natural incident of CSR, and characteristic of other jurisdictions. It seems that the biggest challenge, therefore, is not to ensure that soft law covers all areas, but rather that soft law developments are encouraged and promoted to the maximum extent possible in areas in which they might have the most impact. In this respect, it might be said that the EC is doing fairly well as compared to other developed jurisdictions.

This brief is structured to facilitate ease of reference. By way of introduction, it will outline the state of CSR soft law in the EC.<sup>4</sup> It will then provide a short definition of soft law, and identify the species of EC instruments that may be relevant.<sup>5</sup> The remainder of the report can then be broken down into two sections, the first dealing with soft law developments, *stricto sensu*,<sup>6</sup> and the second dealing with hard law developments that are relevant to a discussion of soft law measures.<sup>7</sup> As outlined above, the discussion of hard law is important because such instruments have the potential to affect the uptake of and compliance with soft law CSR. Both these sections of the report are chronologically ordered, allowing review to be limited to particular time frames and particular types of instruments. The scope of this report begins in 1999 and ends in 2008.

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<sup>3</sup> See pg 10.

<sup>4</sup> See 'Introduction' at pg 6, below.

<sup>5</sup> See 'European Community Law' at pg 7, below.

<sup>6</sup> See 'Specific Soft law Developments' at pg 13, below.

<sup>7</sup> See 'Legally Enforceable Rights influenced by Soft law Instruments' at pg 24, below.

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## (1) Introduction

The European Union ('EU') has been at the forefront of soft law developments in the field of CSR.<sup>8</sup> EU institutions have taken an active role in encouraging, by means of resolutions, communications, and recommendations, the voluntary adoption of codes of conduct by transnational corporations ('TNCs'). Under the banner of CSR, these institutions (mainly the European Parliament and the Commission)<sup>9</sup> have sought to raise public awareness about the necessity for TNCs to abide by certain health, environmental, and social standards. Such codes have drawn inspiration from International Labour Organization ('ILO') Conventions, EC Directives on equal treatment, and Organisation for Economic Co-operation and Development ('OECD') guidelines.

There has been disagreement over whether, and to what extent, a soft law approach to CSR is advisable. While industry figures (such as the Secretary-General of *Eurochambres* and Chief Executive Officers and Managing Directors<sup>10</sup>) have tended to emphasise that the flexibility inherent in a voluntary approach to CSR allows each company to tailor implementation and application to its particular circumstances, many NGOs and think tanks (such as Friends of the Earth Europe) oppose such an approach. They claim that social reporting and self auditing are not credible without standardised methods or independent monitoring.

Soft law developments have come in the form of opinions, interpretative communications, resolutions of the European Parliament, announcements, and the formation of expert groups. Many of these measures have encouraged the adoption of codes of conduct. There have also been a number of panels and working groups dedicated to improving CSR. Included within this group are the European Expert Group on CSR and small and medium-sized enterprises ('SMEs'), and the various projects on CSR and SMEs co-financed by the European Commission in response to the call for proposals 'Mainstreaming CSR among SMEs'.

The developments have not all been top down, however. The European Alliance, a business-led initiative, has set up twenty 'laboratories' involving hundreds of business and stakeholder representatives throughout Europe. These 'laboratories' are '... designed to explore innovative models of business-stakeholder cooperation and produce practical tools for tackling CSR challenges'.<sup>11</sup> The first results of the laboratories were presented in December 2008 in the form of CSR Europe's Toolbox for a Competitive and Responsible Europe.<sup>12</sup>

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<sup>8</sup> As recalled by Christopher McCrudden, '[t]he field of corporate social responsibility (CSR) grew considerably during the 1990's in the European context, first as part of domestic policy in several countries, then increasingly as part of EC policy'. See C McCrudden, *Buying Social Justice* (Oxford University Press, Oxford 2007) 371.

<sup>9</sup> A Voiculescu, 'The Other European Framework for Corporate Social Responsibility: from the Green Paper to New Uses of Human Rights Instruments' in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability* (Cambridge University Press, Cambridge 2007) 370–5.

<sup>10</sup> See comments by Paul Skinner (Chairman of Rio Tinto Group) and Richard Dion (Policy and External Relations Advisor of Royal Dutch Shell plc) at the British Institute of International and Comparative Law, 'Conference on International Law and Business' (Goodenough College, London 5 June 2009).

<sup>11</sup> See CSR Europe, 'CSR Laboratories—Activities—CSR Europe' <<http://www.csreurope.org/pages/en/csrlaboratories.html>> accessed on 15 February 2009.

<sup>12</sup> See Commission (EC), 'EUROPA—European Commission—Enterprise and Industry' <<http://ec.europa.eu/enterprise/csr/alliance.htm>> accessed on 15 February 2009.

## (2) European Community Law

At the outset, it is important precisely to identify what is meant by 'soft law'. In this regard, Borchardt and Wellens provide a helpful definition of soft law within the EC legal order:

... rules of conduct which find themselves on the *legally non-binding* level (in the sense of enforceable and sanctionable) but which according to their *drafters have to be awarded a legal scope*, that has to be specified at every turn and therefore *do not show a uniform value of intensity* with regard to their legal scope, but do have in common that they are directed at (intention of the drafters) and have as effect (through the medium of the Community legal order) that they *influence the conduct of Member States, institutions, undertakings and individuals, however without containing Community rights and obligations*.<sup>13</sup> (emphasis added)

Other authors have defined soft law as referring to those '... rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects'.<sup>14</sup>

Article 249 of the EC Treaty is a useful starting point. It provides a non-exhaustive list of instruments that can be adopted by EC institutions acting individually or jointly. These consist of legally binding norms of secondary law, often referred to as hard law, and non-binding norms, which may be characterized as soft law instruments. The former covers such instruments as Regulations, Directives and Decisions, and the latter Opinions and Recommendations. In addition to the latter, the EC political institutions have developed a broader range of soft law instruments. In 2007 they were reported to account for 13% of the European Union's policy-making activity.<sup>15</sup> EC soft-law typically consists of guidelines, resolutions, declarations, action programmes and plans.

Briefly, by way of background, each species of soft law instrument contained in this brief will be examined.

- a) **Opinions and recommendations**, expressly listed under Article 249 EC, are non-binding acts of the EC and as such cannot produce any direct effect.<sup>16</sup> That said, the European Court of Justice ('ECJ') has held that recommendations can still have an indirect effect, by enjoining national courts to take them into account when interpreting (a) national rules designed to 'implement' them or (b) binding norms of the EC (eg treaty provisions, regulations, directives or decisions), if the recommendations are intended as supplementary.<sup>17</sup>

<sup>13</sup> GM Borchardt and KC Wellens, 'Soft law in European Community Law' [1989] EL Rev 285.

<sup>14</sup> F Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56 *Modern L Rev* 19, 32; D Chalmers and A Tomkins, *European Union Public Law* (Cambridge University Press, Cambridge 2007) 137.

<sup>15</sup> Chalmers and Tomkins (n 14) 137.

<sup>16</sup> P Craig and G de Burca, *EU Law* (Oxford University Press, Oxford 2008) 86; C-322/88 *Grimaldi* [1989] ECR 4407, [19]. The Lisbon Treaty does not bring any further clarification as to the status of recommendations and opinions. It contents itself with taking over the definition thereof found in Article 249 EC. See Article 288 of the Consolidated Version of the Treaty on the Functioning of the European Union, C115/47 (2008) ('EC Treaty') Please note also that the letters 'EC' directly following an article number indicate that it appertains to the EC Treaty.

<sup>17</sup> *Grimaldi* (n 16) [18]. In *Van Ameyde*, the ECJ implicitly recognised that recommendations could have as a function to confirm the meaning attached to the provision of a binding act of the EC, in this case a Decision and Directive: C-90/76 *Van Ameyde* [1977] ECR 1091, [15]. The ECJ has extended this indirect or interpretative effect to other soft law instruments. See C-310/90 *Nationale Raad van de Orde Architecten v Ulrich Egle* [1992] ECR I-177, [12] where the ECJ confirmed its interpretation of the provision of a Directive by reference to a joint Declaration by the European Commission and Council. In C-281/85 *Germany v Commission* [1987] ECR 3203, [17]–[18], the ECJ interpreted

- b) **Interpretative communications** reflect the Community institution's interpretation of a norm of EC law.<sup>18</sup>
- c) A **programme** prescribes a future policy that the EC institutions and the Member States are to promote.<sup>19</sup>
- d) **Communiqués** and **conclusions** of the institutions or of the Member States are documents wherein the outcome of a particular meeting is set out.<sup>20</sup>
- e) **Declarations** tend to relate to the minutes of a meeting and are not to be published.<sup>21</sup>
- f) A **code of conduct** is '... an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors'.<sup>22</sup> It may have been enacted by the EC institutions and submitted for voluntary adoption by businesses and corporations.<sup>23</sup>
- g) **Directives**, expressly listed under Article 249 EC, are binding acts of the EC and form part of European secondary law. They prescribe a particular result to be achieved by Member States within a specific time frame whilst conferring discretion as to the form and method of implementation.<sup>24</sup> As such, they are not soft law instruments. Nonetheless, they bear mentioning, as their application can be triggered on the basis of an express or implicit reference to a CSR soft law instrument.<sup>25</sup>

In principle, all EC measures or instruments, including soft law, must find a basis in the EC Treaty. Article 5(1) EC, which embodies the principle of conferral of power, prescribes that '[t]he Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein'. On the face of it, this provision does not distinguish on the basis of the nature of the norm of EC law at stake, whether soft or hard law. Any act issued by Community institutions, whether legally binding or not, has to find its legal basis in a power of action and an objective

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Article 137 EC (n 16) in light of the Council's previous resolutions and guidelines before concluding that 'migration policy' fell within the purview of 'social policy' under the Treaty. In C-44/79 *Hauer v Commission* [1987] ECR 3727, [15], the ECJ referred to the Joint Declaration by the European Parliament, Council and the Commission concerning the protection of fundamental rights and the ECHR (5 April 1977) as a way of reinforcing its holding on the existence of a specific subset of general principles of EC law, fundamental rights. Nevertheless, the ECJ suggested in C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-773, [18] that it would not allow for the interpretative effect of a Declaration unless reference to it was made in the text of the Community binding act itself.

<sup>18</sup> These soft law tools '... are adopted in areas where the Member States are in charge of the implementation of Community law, in order to help national administrations perform this task, but also in order to make natural and legal persons aware of their rights'. See S Lefevre, 'Interpretative Communications and the Implementation of Community Law at National Level' [2004] 29 EL Rev 808, 809. They are either intended to interpret secondary norms of EC law and the EC Courts' case law or are aimed at compiling several legal sources pertaining to one subject-matter. This second function, the most resorted to, contributes to their bringing '... greater coherence and clarity in the application of Community legislation'.

<sup>19</sup> Borchardt and Wellens (n 13) 301.

<sup>20</sup> Borchardt and Wellens (n 13) 301.

<sup>21</sup> Borchardt and Wellens (n 13) 302.

<sup>22</sup> Definition borrowed from Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council [2005] OJ L 149/22 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:01:EN:HTML>> accessed on 15 June 2009.

<sup>23</sup> Christopher McCrudden recalls that TNCs do resort to these codes of conduct in the context of 'private procurement'. See 'Corporate Social Responsibility and Public Procurement' in McBarnet, Voiculescu and Campbell (n 9) 96.

<sup>24</sup> Article 249 EC (n 16).

<sup>25</sup> On which, see pg 24, below.

set forth in the EC Treaty. This is supported by the formulation of Article 211 EC, which empowers the Commission to ‘... formulate recommendations or deliver opinions *on matters dealt with in this Treaty*, if it expressly so provides or if the Commission considers it necessary’. (emphasis added).

We must therefore consider EC competence under the Treaty to pass soft-law measures dealing specifically with CSR. In addition, we should distinguish between EC competence to pass soft-law measures (such as opinions and recommendations) in developing CSR, and EC competence to enact binding, hard-law measures that may overlap with those areas of corporate behaviour with which CSR is typically concerned. In light of our brief, the analysis will focus principally on EC competence to pass soft-law CSR measures. But mention will also be made of the EC’s hard law competences under the Treaty that overlap with those areas also addressed by soft law CSR.

It is worth mentioning at this point that soft-law measures adopted by the EC would not be subject to judicial challenge. This is because the annulment action under Article 230 EC for lack of competence is aimed only at hard law or binding acts of the Community’s legal order. As such, any soft-law measure adopted *ultra vires* would not be subject to a direct challenge before the Community Courts and will thus be presumed to be valid.<sup>26</sup>

We turn now to the question of EC competence to pass soft-law measures dealing with CSR. Given that CSR is heterogeneous, measures designed to implement it may be covered by Article 13 EC and by one of the legal bases relating to ‘complementary competences’ through the theory of implied powers. These implementation measures may be turned into hard law when referred to in a binding norm of EC law. In this way, the legal basis of CSR measures may be the same as the legal basis of the hard-law norm that the CSR measure is intended to interpret.

Article 13 EC may provide a legal basis in the field of CSR insofar that it empowers the Council to ‘take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. It requires a Commission’s proposal and unanimity in the Council’s decision-making process. The term ‘appropriate action’ is sufficiently broad as to encompass soft law instruments.

Additionally, there are three titles that may provide incidental legal bases for the adoption of soft-law CSR measures: Employment Policy; Social Policy, Education, Vocational Training and Youth; Public Health. These three titles are examined in greater detail below. They typically lay down ‘complementary competences’<sup>27</sup> such that ‘it can be difficult to determine precisely which measures fall legitimately within the EC’s competence’.<sup>28</sup> Within these competencies, the Community is usually entrusted with the power of issuing ‘broad guidelines or incentive measures’ or of strengthening ‘the exchange of information about best practice’.<sup>29</sup> The theory of implied powers, if applied to those complementary competences, may lay the foundations for CSR measures. The ECJ has interpreted the theory of implied powers ‘narrowly’, such that EC institutions can only invoke newly created powers of action that are ‘reasonably necessary for the exercise’ of a treaty-based power.<sup>30</sup> As

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<sup>26</sup> Article 230(1) EC (n 16) expressly excludes from the scope of an annulment action opinions and recommendations. See D Wyatt, A Dashwood, *European Union Law* (Sweet & Maxwell, London 2006) 90.

<sup>27</sup> Craig and de Burca (n 16) 90.

<sup>28</sup> Craig and de Burca (n 16) 90.

<sup>29</sup> Wyatt and Dashwood (n 26) 95.

<sup>30</sup> TC Hartley, *The Foundations of European Community Law* (5<sup>th</sup> edn Oxford University Press, Oxford 2003) 106; Craig and de Burca (n 16) 90–2; *Germany v Commission* (n 17) [27]–[28]; Case C-176/03 *Commission v Council* [2005] ECR I-7879, [48].

such, the ECJ has not embraced a broad understanding of this theory, according to which any objective of EC law might pave the way for new powers of action 'necessary to attain it'.<sup>31</sup> Consequently, if a new power of action (ie a CSR soft-law measure) is found 'reasonably necessary' to the effective exercise of those powers embodied in one of these areas, the latter will provide an extended legal basis for the former.

Title VIII of Part III is dedicated to employment. Article 128(4) EC confers on the Council a limited power to enact recommendations addressed to Member States after reviewing the Member States' annual reports on the implementation of employment policy. This legal basis for the adoption of CSR soft-law measures is therefore rather loose.

Title XI of Part III, which is concerned with social policy (eg 'social security'; vocation training) and labour conditions (protection of the worker's 'health and safety'), amongst others, may provide a more flexible legal basis for certain matters relating to CSR. Articles 137(2)(a) and 140 EC confer upon the Council and the Commission, respectively, the power to encourage coordination between Member States in the abovementioned fields.

Title XIII of Part III, which is concerned with public health, may provide a specific legal basis for certain matters relating to CSR. Articles 152(4) EC empowers the Council to adopt incentive measures other than those relating to harmonisation 'designed to protect and improve human health'. It may also adopt 'measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives'. Measures adopted may take the form of recommendations and require the prior drafting of a proposal by the Commission.

Of course, when a soft-law instrument relating to CSR is merely an interpretative declaration of a binding or hard-law norm of EC law, the legal basis for the former instrument rests with the legal basis of the hard-law norm.

A soft-law CSR measure may also turn into a hard-law instrument in circumstances where the hard-law instrument alludes to it as part of its condition of applicability, with the soft-law measure deriving its legal basis from the hard-law norm. Examples of this will be discussed in section 4 of this brief.<sup>32</sup>

Finally, we turn to the question of EC competence under the Treaty to enact binding or hard-law measures that may overlap with those areas of corporate behaviour with which CSR is usually concerned. Although the possible increase in hard-law regulation of corporate behaviour is beyond the scope of this brief, its significance is worth noting. The EC could seek to make more stringent those existing hard law obligations placed on companies by virtue of EC company law, EC labour law, EC environmental law, EC equality law, EC public procurement law or EC consumer law. For example, as suggested in the European Parliament's Resolution of May 2002, the Fourth Company Directive could include a requirement for companies to report their enforcement of social and environmental standards together with their financial reports.<sup>33</sup> Another legislative initiative could consist in EC public procurement law requiring public authorities to condition the attribution of certain public contracts upon the satisfaction by corporations of standardised social and environmental clauses.

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<sup>31</sup> Craig and de Burca (n 16) 90–2.

<sup>32</sup> See 'Legally Enforceable Rights influenced by Soft law Instruments' pg 24.

<sup>33</sup> COM(2001) 366-C5-0161/2002-2002/2069(COS) art 6 ('Resolution on the Commission Green Paper').

There are limits, however, to the scope of EC hard law regulation overlapping with areas of corporate behaviour addressed by CSR. For example, the Treaty does contain specific enabling clauses that empower the EC institutions to adopt hard-law measures in the field of human rights, for example, in relation to discrimination law. Nevertheless the ECJ, in Opinion 2/94, has interpreted the EC Treaty as being incapable of conferring upon the Community and any of its institutions the *general* competence to regulate human rights whether internally or externally.<sup>34</sup>

Absent any specific enabling clause, a hard law human rights measure could be adopted on the basis of Article 308 EC. But there are limits here, too. Pursuant to Article 308 EC, the Council may adopt certain measures in order to achieve a Community objective (under Articles 2 to 4 EC), absent any express power of action to that effect.<sup>35</sup> Article 308 EC has been interpreted as applying only to binding acts.<sup>36</sup> Articles 2 to 4 EC list a series of Community objectives and activities, some of which are not accompanied by a power of action in a separate enabling provision.<sup>37</sup> The list of activities and objectives encompass social policy and protection, consumer protection, development cooperation, health protection, environmental protection, gender equality, and the improvement of living standards.

Article 308 EC furthermore is not as flexible a legal basis as it may appear at first glance. First, it applies to measures taken by the Council only after having received a proposal from the European Commission and consulted the European Parliament. Second, it requires unanimity in the Council's decision-making process. Third, the ECJ requires a connection between a measure adopted under Article 308 EC and an objective or activity enumerated in Articles 2 to 4 EC.<sup>38</sup> The ECJ, basing itself on Opinion 2/94, recalled in *Kadi* that:

Article 308 EC, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the EC Treaty as a whole and, in particular, by those defining the tasks and the activities of the Community ...<sup>39</sup>

It is unclear though to what extent the EC will increase hard-law regulation of areas of corporate behaviour that CSR presently addresses. For instance, in the 2004 final report of the European Multi-stakeholder Forum on CSR, the Forum (chaired by the European Commission) emphasised its baseline understanding of CSR as the '... voluntary integration of environmental and social considerations into business operations, over and above legal requirements and contractual obligations.'<sup>40</sup> This reaffirms the Commission's understanding of CSR.<sup>41</sup> The emphasis on voluntariness as a cornerstone of CSR raises doubts about whether and to what extent hard law regulation might be utilised to supplant soft law CSR norms.

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<sup>34</sup> The relevant paragraph of this opinion indeed refers to any 'Treaty provision' as being incapable of conferring this general power. *Opinion 2/94, Accession of the Community to the European Human Rights Convention* [1996] ECR I-1759, [27].

<sup>35</sup> Article 308 EC may be viewed as an instrumental form of 'implied powers doctrine'. J Weiler, 'The Transformation of Europe' (1991) 100 Yale LJ 2403, 2445-6.

<sup>36</sup> Craig and de Burca (n 16) 93-4.

<sup>37</sup> Wyatt and Dashwood (n 26) 90.

<sup>38</sup> For an instance of human right measure based on Article 308EC, see Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia [1997] OJ L151.

<sup>39</sup> Case C-402/05 P *Yassin Abdullah Kadi and Al Barakat International Foundation v Council* [2008] OJ C 285/2, [203].

<sup>40</sup> European Multistakeholder Forum on CSR, 'Final Results & Recommendations'

<[http://ec.europa.eu/enterprise/csr/documents/29062004/EMSF\\_final\\_report.pdf](http://ec.europa.eu/enterprise/csr/documents/29062004/EMSF_final_report.pdf)> accessed 11 May 2009, 3.

<sup>41</sup> Speech by Commissioner E Liikanen, 'Corporate Social Responsibility: the Way Forward' (EU Multistakeholder Forum on CSR, Brussels 2004).

<<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/04/339&format=HTML&aged=0&language=EN&guiLanguage=en>> accessed on 11 May 2009.



### (3) Specific Soft law Developments

The following section contains a chronological listing of developments in Europe regarding CSR.

#### (a) *European Parliament Resolution on EU Standards for European Enterprises Operating in Developing Countries: Towards a European Code of Conduct (1999)*<sup>42</sup>

**Results:** Recommendations to TNCs to adhere to voluntary codes of conduct encouraging TNCs to act consistently with EU-adopted animal, health, and environmental standards.

On 15 January 1999, the European Parliament adopted a Resolution on EU Standards for European Enterprises Operating in Developing Countries. The resolution recommends that TNCs adhere to 'voluntary codes of conduct' that call for the activities of TNCs to be consistent with animal, health, and environmental standards that have been adopted by the EU.<sup>43</sup> The standards provide that such codes ought to be monitored by an independent body<sup>44</sup> and should promote the role of indigenous people, and avoid immunising TNCs from the scrutiny of the local Government or judiciary.<sup>45</sup> However, the Resolution stressed that such codes should not be seen as a substitute for the applicable rules of domestic or international law.<sup>46</sup>

The European Parliament also invited the European Commission to consider the inclusion of essential environmental, labour and human rights norms in its examination of European company law, so as to make these codes of conduct compulsory.<sup>47</sup>

#### (b) *Interpretative Communication of the Commission on the Community Law applicable to Public Procurement and the Possibilities for integrating Social Considerations into Public Procurement (2001)*<sup>48</sup>

**Results:** Public purchasers free to pursue socially responsible objectives in areas of public procurement not yet covered by EC law so long as they abide by the general principles of EC law.

The Commission's aim in this communication was '... to clarify the range of possibilities under the existing Community legal framework [primarily public

<sup>42</sup> [1999] OJ C104/182 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:104:0180:0184:EN:PDF>> accessed on 16 February 2009 ('Resolution on EU Standards').

<sup>43</sup> Resolution on EU Standards (n 42) art 1.

<sup>44</sup> Resolution on EU Standards (n 42) art 1.

<sup>45</sup> Resolution on EU Standards (n 42) arts 1 and 7.

<sup>46</sup> Resolution on EU Standards (n 42) art 1.

<sup>47</sup> Resolution on EU Standards (n 42) art 26. The resolution suggested that the appropriate international standards that should underpin these voluntary codes of conduct consist of: (a) ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; (b) the OECD Guidelines for Multinational Enterprises; (c) the ILO basic Conventions; (d) the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights; (e) ILO Convention 169, 1994 Draft United Nations Declaration on the Rights of Indigenous Peoples, UN Declaration on the Elimination of All Forms of Racial Discrimination; (f) UN Convention on Biological Diversity, the Rio Declaration and the European Commission proposal for the development of a code of conduct for European logging companies, UN Conventions on environment, animal welfare and public health protection; Common Article 3 of the Geneva Conventions and Protocol II, the UN Code of Conduct for Law Enforcement Officials; (g) the OECD anti-bribery convention and the European Commission communication on legislative measures against corruption. See Resolution on EU Standards (n 42) art 12.

<sup>48</sup> [2001] OJ C333/27 <[http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001\\_0566en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0566en01.pdf)> accessed on 15 February 2009 ('Interpretative Communication').

procurement directives] for integrating social considerations into public procurement'.<sup>49</sup>

The Communication reviews the various stages of a typical public procurement process, and determines whether and, if so, the extent to which social considerations may be accounted for in the course of each phase.<sup>50</sup> The expression 'social considerations' refers to human rights, the principle of non-discrimination, national labour law, EC directives on social matters, and 'preferential clauses' in view of permitting positive discrimination and reintegration of certain categories of disadvantaged people.<sup>51</sup>

**(c) *European Parliament Resolution on Commission Green Paper on promoting a European Framework for Corporate Social Responsibility (2002)***<sup>52</sup>

<p><b>Results:</b> Report calling upon the Commission to propose an amendment to the Fourth Company Directive requiring companies to report on compliance with social and environmental standards.</p>
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In May 2002, the European Parliament adopted a Resolution on the Commission Green Paper on promoting a European framework for corporate social responsibility. The Parliament recalled that international law clearly permitted an extension of companies' legal obligations so as to include respect for human rights standards.<sup>53</sup> Amongst other measures, the Parliament suggested that the concept of CSR be accounted for in every area falling under the competence of EC Law, including company law.<sup>54</sup> It also called upon the Commission to propose an amendment to the Fourth Company Directive so as to incorporate a requirement for companies to report their enforcement of social and environmental standards together with their financial reports.<sup>55</sup>

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<sup>49</sup> Interpretative Communication (n 48) 3.

<sup>50</sup> Interpretative Communication (n 48) 5.

<sup>51</sup> Interpretative Communication (n 48) 5.

<sup>52</sup> COM(2001) 366-C5-0161/2002-2002/2069(COS) ('Resolution on the Commission Green Paper').

<sup>53</sup> Resolution on the Commission Green Paper (n 52) 3.

<sup>54</sup> Resolution on the Commission Green Paper (n 52) art 25.

<sup>55</sup> Resolution on the Commission Green Paper (n 52) art 6.

**(d) European Multi-Stakeholder Forum on Corporate Social Responsibility (2002)**

Results: Publication of a 2004 report that identified the:

- Sources and characteristics of CSR obligations
- Factors determining the uptake of CSR initiatives

Recommended measures to be taken to:

- Improve awareness of CSR
- Assist in the mainstreaming of CSR
- Ensure an 'enabling environment' for CSR.

The European Multi-stakeholder Forum ('EMSF') on CSR was set up by the European Commission in October 2002.<sup>56</sup> In addition to its overall aim of fostering CSR, the specific objectives of the EMSF include improving knowledge about the relationship between CSR and sustainable development, and exploring the feasibility of establishing common guidelines for CSR practices and instruments.<sup>57</sup> The EMSF is chaired by the Commission, and aims to ensure that there is a balanced representation of the different stakeholders at the forum—including EU-level organisations that represent employers, employees and the wider civil society.<sup>58</sup> The EMSF is supported by the financial and administrative resources of the Commission.

Between 2002 and 2004, the EMSF held four theme-based Round Tables, each of which met three times. For example, one Round Table discussed the issue of improving knowledge about CSR, and another the issue of fostering CSR among SMEs. The EMSF prepared a final report in June 2004, which built on the learning of these Round Tables.<sup>59</sup> The reports of the Round Tables to the EMSF are included in this final report.

In the 2004 report, the EMSF began by explaining its baseline understanding of CSR.<sup>60</sup>

In Part One, the report reaffirmed a variety of international and European standards, principles and conventions which, in the EMSF's view, served as a 'starting point or guidance for companies and stakeholders' when developing their approaches to CSR.<sup>61</sup> These instruments included *inter alia* the ILO tripartite declaration of principles concerning Multinational Enterprises and social policy, the OECD guidelines for Multinational Enterprises, the EU Charter of Fundamental Rights, the UN guidelines on consumer protection, and the EU Sustainable Development Strategy (adopted by the European Council in 2001). The report noted that many companies explicitly took account of these instruments when developing their CSR approaches, and others—especially SMEs—did so implicitly.

<sup>56</sup> Commission (EC), 'Corporate Social Responsibility: European Multi-Stakeholder Forum on CSR' <<http://ec.europa.eu/enterprise/csr/multistakeholder.htm>> accessed on 11 May 2009.

<sup>57</sup> 'European Multi Stakeholder Forum on Corporate Social Responsibility (CSR EMS Forum): Objectives, Composition & Operational Aspects' <<http://ec.europa.eu/enterprise/csr/documents/forumstatute.pdf>> accessed on 11 May 2009, 1–2.

<sup>58</sup> (n 57) 2.

<sup>59</sup> European Multistakeholder Forum on CSR (n 57) 3.

<sup>60</sup> European Multistakeholder Forum on CSR (n 40) 3–4.

<sup>61</sup> European Multistakeholder Forum on CSR (n 40) 6.

In Part Two of the report, the internal and external drivers for the take-up and development of CSR were analysed.<sup>62</sup> The significance of these drivers, or factors, varied from business to business. Internal drivers included the values and commitment of the business' key decision-makers, and factors related to each individual case.<sup>63</sup> External drivers included investors who wished to invest in line with their own CSR-driven values, consumers who chose one business over another based on CSR credentials, and NGOs who monitored and campaigned for and monitored CSR development. The report further discussed possible obstacles, and those factors which it thought were important to achieving successful CSR policies.<sup>64</sup>

Finally, in Part Three of the report, three broad recommendations for the future were proposed.<sup>65</sup> The first concerned raising awareness and improving knowledge of CSR. The second focused on the question of developing capacity and competence to assist in the mainstreaming of CSR, and the third examined ways of ensuring an 'enabling environment' for CSR.

Following this report in June 2004, the EMSF held a meeting in December 2006 in which the implementation of the report's recommendations by the various participating stakeholders was collectively reviewed.<sup>66</sup> A further plenary meeting of the EMSF was held in February 2009, in which progress on CSR, both within Europe and globally, was reviewed.<sup>67</sup>

**(e) *Opinion of the European Economic and Social Committee on Information and Measurement Instruments for Corporate Social Responsibility (CSR) in a Globalised Economy (2005)***<sup>68</sup>

**Results:** Companies encouraged to hold a 'well-organised dialogue' with the stakeholders by considering their expectations and interests, and to improve the transparency and publicity of their actions in the context of CSR, and the urging for a higher level of certainty and transparency in the way CSR is measured.

The European Economic and Social Committee ('EESC') set out a list of legal instruments that provide the normative context for a proper functioning of CSR:

There is a recognition, at worldwide level, that human rights, the dignity of workers and the future of the planet represent the ethical basis of economic activity. International and European standards have been set in respect of these values.

The international conventions, standards and principles which provide a benchmark at international level comprise: the ILO Declaration on international enterprises; the ILO Declaration on fundamental rights; the

<sup>62</sup> European Multistakeholder Forum on CSR (n 57) 8–10.

<sup>63</sup> Among these factors was the desire to reduce costs through eco-efficiency, protecting resources on which the business depends, building the reputation of the business, and attracting and retaining skilled and motivated employees.

<sup>64</sup> European Multistakeholder Forum on CSR (n 57) 9–10.

<sup>65</sup> European Multistakeholder Forum on CSR (n 40) 12–16.

<sup>66</sup> Commission (EC), 'Corporate Social Responsibility: European Multi-Stakeholder Forum on CSR: Forum Review Meeting, December 2006' <[http://ec.europa.eu/enterprise/csr/forum\\_2006\\_index.htm](http://ec.europa.eu/enterprise/csr/forum_2006_index.htm)> accessed on 11 May 2009.

<sup>67</sup> Commission (EC), 'Corporate Social Responsibility: European Multi-Stakeholder Forum on CSR: CSR Forum Meeting, December 2009' <[http://ec.europa.eu/enterprise/csr/forum\\_2009\\_index.htm](http://ec.europa.eu/enterprise/csr/forum_2009_index.htm)> accessed on 11 May 2009.

<sup>68</sup> [2005] OJ C286/12 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:286:0012:0019:EN:PDF>> accessed on 16 February 2009 ('CSR Information and Measurement Instruments Opinion').

guidelines for multinationals set out by the OECD; and the UN's Universal Declaration of Human Rights.<sup>69</sup>

The EESC also urged Member States to become parties to conventions adopted under the auspices of the International Labor Organisation and to implement them in their respective domestic legal order.<sup>70</sup>

The EESC encouraged enterprises which entered into voluntary commitments to engage into a 'well-organised dialogue' with their internal and external stakeholders by considering their expectations and interests.<sup>71</sup> The EESC admitted that 'not all stakeholders have the same level of legitimacy': internal stakeholders may have a greater weight in this dialogue than external ones.<sup>72</sup> It also encouraged companies to make their CSR initiatives more visible by publicly announcing their commitments.<sup>73</sup> The Opinion also recommended a higher level of certainty and transparency in the way of measuring CSR: '[i]nstruments for measuring CSR have to comply with requirements in respect of coherence, relevance and reliability'.<sup>74</sup>

**(f) Various Projects on CSR and SMEs Co-Financed by the European Commission in Response to the Call for Proposals 'Mainstreaming CSR among SMEs' (2005)<sup>75</sup>**

**Results:** Training modules, survey results and five CSR guides for SMEs.

During the period 2006–8, the Commission co-financed 14 projects across the EU which sought to promote the uptake of CSR among SMEs. The total EU budget was €3 million. Roughly 3000 SMEs were direct participants in these projects. Among the various achievements of the exercise, hundreds of seminars were organised, training modules were developed for business advisors, a variety of surveys were conducted (including 370 case studies of CSR in SMEs), and five CSR guides for SMEs were produced (in 12 languages).<sup>76</sup>

<sup>69</sup> CSR Information and Measurement Instruments Opinion (n 68) arts 2.1.1–2.1.2.

<sup>70</sup> CSR Information and Measurement Instruments Opinion (n 68) 2.

<sup>71</sup> CSR Information and Measurement Instruments Opinion (n 68) art 5.4.1.

<sup>72</sup> CSR Information and Measurement Instruments Opinion (n 68) art 5.4.3.

<sup>73</sup> CSR Information and Measurement Instruments Opinion (n 68) art 5.4.3.

<sup>74</sup> CSR Information and Measurement Instruments Opinion (n 68) art 3.

<sup>75</sup> 'Results of the European Funding Programme: "Mainstreaming CSR among SMEs" <[http://ec.europa.eu/enterprise/csr/documents/mainstreaming\\_csrsmes\\_summary.pdf](http://ec.europa.eu/enterprise/csr/documents/mainstreaming_csrsmes_summary.pdf)> and Commission (EC), 'Corporate Social Responsibility: CSR and Small- and Medium-Sized Enterprises' <[http://ec.europa.eu/enterprise/csr/ms\\_sme\\_projects.htm](http://ec.europa.eu/enterprise/csr/ms_sme_projects.htm)> accessed on 15 February 2009.

<sup>76</sup> One illustrative example is the project conducted in Slovenia during the period May 2006–October 2007. The lead organisation was the Maribor Chamber of Commerce and Industry. The project had a number of activities, including:

- Setting up of a supporting environment to promote CSR, including the establishment of 13 workshops in Slovenia to promote CSR, and designing a Code of Conduct for the recognition of CSR achievement by SMEs in Slovenia;
- Establishment of a sustainable CSR Resource Centre;
- Development and implementation of a CSR training module for small business advisors, involving e-learning, face-to-face sessions and 'learning by doing' methods; and
- Dissemination of the results of the project according to a prepared media plan.

**(g) Commission Communication to the European Parliament, the Council and the European Economic and Social Committee implementing the Partnership for Growth and Jobs: making Europe a Pole of Excellence on Corporate Social Responsibility (2006)<sup>77</sup>**

**Results:** Corporations encouraged the adoption of voluntary codes of conduct and support for the creation of a European Alliance on CSR.

On 22 March 2006, the European Commission drafted this Communication, encouraging corporations to adopt voluntary codes of conduct.

The Communication defined CSR as ‘... a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis’.<sup>78</sup> It also committed to provide CSR with ‘greater political visibility’ and to ‘acknowledge what European enterprises already do in this field and to encourage them to do more.’<sup>79</sup>

Thus, the Communication conceives of CSR as a tool designed to urge TNCs to ‘... go beyond minimum legal requirements and obligations stemming from collective agreements in order to address societal needs’.<sup>80</sup> The Communication envisions that, by entering into such voluntary commitments, TNCs will be more likely to respect human rights, and to act consistent with environmental and labour law standards, particularly in developing states. By doing so, TNCs will also be in a position to contribute to the public interest objective of developing ‘more integrated labour markets’ and ensuring greater ‘social inclusion’ through the recruitment of ‘more people from disadvantaged groups’.<sup>81</sup>

The Communication recognised that the Commission had opted for closer collaboration with enterprises in view of pursuing its goals. Based on the premise that ‘enterprises are the primary actors in CSR’, the Commission has supported the creation of a ‘European Alliance on CSR’. The latter consists in a political forum wherein any European enterprise and its stakeholders are encouraged to participate and in the course of which initiatives on CSR are being discussed.<sup>82</sup> This development is discussed on page 8 of this brief.<sup>83</sup>

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<sup>77</sup> COM/2006/0136 final (22 March 2006) (‘Communication Implementing the Partnership for Growth and Jobs’).

<sup>78</sup> Communication Implementing the Partnership for Growth and Jobs (n 77) 2.

<sup>79</sup> Communication Implementing the Partnership for Growth and Jobs (n 77) 2.

<sup>80</sup> Communication Implementing the Partnership for Growth and Jobs (n 77) 2.

<sup>81</sup> Communication Implementing the Partnership for Growth and Jobs (n 77) 2, 4.

<sup>82</sup> Communication Implementing the Partnership for Growth and Jobs (n 77) 2, 3.

<sup>83</sup> See ‘The European Alliance on CSR’ pg 28.

**(h) Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee—Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility (2006)<sup>84</sup>**

**Results:** The opinion:

- Reiterated that CSR implies a 'voluntary approach' that exceeds the *acquis communautaire*
- Emphasised the impact of CSR upon an enterprise's long-term performance
- Endorsed the Commission's promotion of CSR at the global level
- Emphasised that trade unions should be more involved in implementing CSR policies.

The opinion recalled that CSR is a '... voluntary approach which goes beyond the Community *acquis*'.<sup>85</sup>

It recognised the link between the enforcement of CSR and the improvement of the company's long-term profitability through better governance and decision-making.<sup>86</sup> It urged Member State and EC institutions to promote the adoption by enterprises of '... a responsible attitude with regard to public procurement (social and environmental best bid policy)'.<sup>87</sup> It also called upon enterprises and vocational institutions to make education on sustainable development and CSR part of their training programmes.<sup>88</sup>

The EESC also reaffirmed its position put forward in its prior opinion<sup>89</sup> that trade unions and employees' representatives ought to have a more important role in developing and putting into practice CSR policies.<sup>90</sup>

The EESC endorsed the Commission's strategy of encouraging CSR 'at global level' by using, amongst others, the following norms as yardsticks 'for responsible business conduct': (i) ILO declaration of tripartite principles on multinational enterprises and social policy; (ii) OECD's guiding principles for multinational enterprises; (iii) United Nations Global Compact for enterprises and principles of Socially Responsible Investment.<sup>91</sup>

**(i) European Parliament Resolution on Corporate Social Responsibility: A New Partnership (2007)<sup>92</sup>**

**Results:** Recommended expansion of mandate of bodies supervising corporate behaviour to TNCs operating overseas and encourage TNCs to practice CSR.

<sup>84</sup> [2006] OJ C 325/53) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:325:0053:0060:EN:PDF>> accessed on 16 February 2009 ('ECSC Opinion on Commission Communication to European Parliament').

<sup>85</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 2.

<sup>86</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 7.

<sup>87</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 7.

<sup>88</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 5.

<sup>89</sup> See pg 16.

<sup>90</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 5.

<sup>91</sup> ECSC Opinion on Commission Communication to European Parliament (n 84) 7–8.

<sup>92</sup> <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0062+0+DOC+XML+V0//EN>> accessed on 15 June 2009 (INI/2006/2133) P6\_TA(2007)0062 ('CSR Resolution').

The Parliament, in this Resolution of 13 March 2007, recommended that bodies responsible in the EC for appraising and supervising TNCs have their mandate expanded so as to include activities taking place outside the EC—especially in developing countries. The Resolution envisions the establishment of a monitoring authority that could ascertain whether TNCs comply with conventions concluded under the aegis of the ILO regarding such social rights as the prohibition of child labour and of forced labour, the right to form a trade union, and those rights specific to protected minorities (women, indigenous, migrants).<sup>93</sup>

By integrating the concept of corporate social responsibility, TNCs are encouraged to implement, amongst other things, the rights of workers, ‘a fair wages policy’, the principle of non-discrimination, and environmental principles designed to promote sustainable development.<sup>94</sup>

The Resolution encourages TNCs to organise their recruitment practices consistently with Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.<sup>95</sup>

**(j) *European Expert Group on CSR and SMEs Report entitled ‘Opportunity and Responsibility—how to help more Small Businesses to integrate Social and Environmental Issues into what they do’ (2007)***<sup>96</sup>

**Results:** Reports penned on best practices in six topic areas.

This Expert Group, which met during the period 2005–7, served as a forum for collecting and exchanging views concerning the promotion of CSR among SMEs. The Group comprised nominees from every EU Member State and from some non-EU States. Some European organisations also received observer status. Important lessons and good practices were identified on six key topics. The six key topic areas, and summaries of the main findings, are included in the appendix to this brief.<sup>97</sup>

In addition to its Report, the Expert Group also published a series of one-page ‘good practice descriptions’, which explain how organisations have successfully assisted small and medium-sized enterprises to engage in responsible business, measured against any of the six key areas mentioned above.<sup>98</sup>

One such example of a ‘good practice description’ centres on the experience of a project undertaken in the Tuscany region of Italy. Ethica Laboratorial Filiera is an organisation whose aim is to strengthen ‘Made in Italy’ branded leather goods in Tuscany. As noted in the practice description, this project has assisted in the uptake of CSR in 900 Tuscan SMEs by way of a number of methods, including awareness-raising, the training of SMEs, and the development of innovative management systems. The practice description also notes that the regional authority in Tuscany took a valuable strategic approach, including the provision of tax incentives and public grants for certain SMEs involved in the leather industry. Among other things,

<sup>93</sup> CSR Resolution (n 92) art 23.

<sup>94</sup> CSR Resolution (n 92) art 24.

<sup>95</sup> CSR Resolution (n 92) art 25.

<sup>96</sup> Commission (EC), ‘Corporate Social Responsibility: European Expert Group on CSR and SMEs’ <[http://ec.europa.eu/enterprise/csr/sme\\_expert\\_group.htm](http://ec.europa.eu/enterprise/csr/sme_expert_group.htm)> accessed on 15 February 2009.

<sup>97</sup> See pg 28.

<sup>98</sup> See Commission (EC), ‘Corporate Social Responsibility: How to Support CSR amongst SMEs: some Case Studies’ <[http://ec.europa.eu/enterprise/csr/sme\\_expert\\_group\\_gpractices.htm](http://ec.europa.eu/enterprise/csr/sme_expert_group_gpractices.htm)> accessed on 15 February 2009.

this has had the advantage of shaping CSR to be directly relevant to SMEs in the local leather industry.<sup>99</sup>

**(k) Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Opportunities, Access and Solidarity in 21st Century Europe (2007)**<sup>100</sup>

**Results:** Report outlining challenges facing the EU in the realm of skills, health, poverty, social exclusion, and discrimination.

This Communication concerns the Renewed Social Agenda, a framework for social and economic development in the EU. It lays out a series of challenges facing the EU, including those relating to employment and skills, health, poverty, social exclusion and discrimination. A variety of strategies for meeting these challenges are discussed, ranging from legislation to social dialogue and partnership and funding opportunities.

**(l) European Competitiveness Report (2008)**<sup>101</sup>

**Results:** Commission Report concluding CSR can have a positive effect on a firm's competitiveness.

The Report by the European Commission analyses different factors that may affect competitiveness, including CSR. Examining the impact of CSR on six different elements of competitiveness at firm level (cost structure, human resources, customer perspective, innovation, risk and reputation management, and financial performance), the Commission concludes that CSR can have a positive effect on competitiveness. However, the Commission also concludes that this effect can be uneven, contending that the strongest positive effects may be felt in areas such as innovation, human resources, and risk and reputation management. By way of illustration, it is suggested that a firm's CSR reputation is increasingly important as regards its ability to recruit staff in a competitive labour market. The Commission also draws attention to the current financial crisis, noting that socially responsible business people are 'of utmost importance for the wellbeing of our societies'.

In its section on the policy implications of these findings, the Commission argues that the positive link between CSR and competitiveness means that it is committed to 'continue to provide political impetus and the practical support to all stakeholders engaged in CSR'.

**(m) Announcement of the European Commission on Co-Financing for Initiatives to support CSR in Various Industrial Sectors (2008)**

**Results:** Co-financing initiative supporting CSR in various industries.

<sup>99</sup> See Regione Toscana (Italy), 'Fabbrica Ethica: Promoting CSR in the Leather Goods Cluster in Tuscany' <[http://ec.europa.eu/enterprise/csr/documents/smes\\_good\\_practices/gd\\_fabricaethica.pdf](http://ec.europa.eu/enterprise/csr/documents/smes_good_practices/gd_fabricaethica.pdf)> accessed on 27 March 2009.

<sup>100</sup> <[http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007\\_0726en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0726en01.pdf)> accessed on 8 July 2009.

<sup>101</sup> Commission (EC), 'European Competitiveness Report 2008'

<[http://ec.europa.eu/enterprise/enterprise\\_policy/competitiveness/doc/compet\\_rep\\_2008/cr-2008-final.pdf](http://ec.europa.eu/enterprise/enterprise_policy/competitiveness/doc/compet_rep_2008/cr-2008-final.pdf)> accessed 9 July 2009, 106; Commission (EC), 'On the European Competitiveness Report 2008' (Communication) Com (2008) 774 final, 28 November 2008

<[http://ec.europa.eu/enterprise/enterprise\\_policy/competitiveness/doc/compet\\_rep\\_2008/com\\_2008\\_0774.pdf](http://ec.europa.eu/enterprise/enterprise_policy/competitiveness/doc/compet_rep_2008/com_2008_0774.pdf)> accessed on 15 June 2009.

In November 2008, the European Commission announced a co-financing initiative to support CSR in the chemicals, textile and construction industries. This is an ongoing exercise. In describing its initiative, the Commission stated the following:

All the initiatives are multistakeholder, involving actors such as industry associations, trade unions, NGOs and public authorities. Small and medium-sized enterprises are the main target group. Based on the experience of these projects, we aim to draw conclusions about whether and how CSR can be a driver for the competitiveness of different industrial sectors.

#### **(n) *The European Alliance on CSR***

**Results:** CSR Toolbox for businesses.

The Alliance is a business-led initiative to promote CSR, launched in 2006 with strong backing from the European Commission. In its Communication to the European Parliament, the Commission wrote that it ‘... expects the Alliance to have a significant impact on the attitude of European enterprises to CSR ... It should create new partnerships with and new opportunities for stakeholders in their efforts to promote CSR’.

The Alliance on CSR has, since 2007, set up twenty ‘laboratories’ involving hundreds of business and stakeholder representatives throughout Europe. Laboratories are ‘business-driven and action-oriented projects’, which are ‘... designed to explore innovative models of business-stakeholder cooperation and produce practical tools for tackling CSR challenges’.<sup>102</sup>

The first results of the laboratories were presented in December 2008 in the form of CSR Europe's Toolbox for a Competitive and Responsible Europe.<sup>103</sup> The toolbox includes information and advice for companies and stakeholders on addressing social and environmental challenges, and integrating CSR into their business practices. The toolbox's information and advice is divided into 5 sections:

- a) **Integrated workplace:** Information is provided on mainstreaming diversity and fighting discrimination, increasing equality between men and women in the workplace (and related questions of work/life balance), ethically recruiting and supporting foreign workers, and promoting wellbeing in the workplace.
- b) **Human capital:** Information is provided on measuring and assessing demographic change, improving skills for employability in order to enhance access and productivity, enhancing employability through employee community engagement, enhancing science education in schools, and stimulating an entrepreneurial mindset and promoting education on entrepreneurship.
- c) **Sustainable production and consumption:** Information is provided on eco-efficiency (including guides on best practices from large multinationals which are transferable to SMEs), understanding of the direct and indirect impacts of the financial sector on the environment, and integrating CSR and sustainability agendas into marketing departments.

<sup>102</sup> See CSR Europe, ‘CSR Laboratories’ <<http://www.csreurope.org/pages/en/csrlaboratories.html>> accessed on 15 February 2009.

<sup>103</sup> See Commission (EC), ‘Corporate Social Responsibility: European Alliance for CSR’ <<http://ec.europa.eu/enterprise/csr/alliance.htm>> accessed on 15 February 2009.

- d) Communication and transparency: Information is provided on securing proactive stakeholder engagement in CSR, developing methods for the market valuation of non-financial performance in a manner which is useful to investors, and developing a system of standardised sectoral CSR reporting.
- e) (R)Evolutionary business models: Information is provided on CSR and sustainable business at the 'base of the pyramid' ('BoP' initiatives concern the provision of essential services, products and economic opportunities for the least well off), socially and environmentally responsible supply chain management, sustainable financial services for under-served potential customers (including migrant and temporary workers, low-income families and micro and social enterprises), business involvement to enhance social inclusion at the local level, and R&D innovation networks in order to improve long-term sustainable growth.

In a speech to the European Alliance on CSR (4 December 2008) at the presentation of these results, Vice-President of the Commission Verheugen noted that the Commission has allocated resources to disseminate and promote the results of the initiative beyond the European Alliance businesses and other participants who have been directly involved in these exercises.

#### **(4) Legally Enforceable Rights influenced by Soft law Instruments**

As discussed before, directives are binding, and therefore, by definition, not soft-law instruments. That said, soft and hard law do not exist in hermetically sealed vacuums; they interact and impact each others' interpretation and application. In this regard, it is important to consider four particular hard-law developments.

Directive 2004/17/EC and Directive 2004/18/EC consolidate the previous EC public procurement directives. They regulate the 'utilities sector' and the general 'public sector', respectively.<sup>104</sup> Social and environmental considerations play a role both at the stage of the tendering (ie the 'conclusion of the contracting process')<sup>105</sup> and performance.

The Unfair Commercial Practices Directive could be applied to situations wherein a TNC makes a misleading claim regarding the use of a particular code of conduct.

Directive 2006/46/EC invites—but does not bind—companies to elaborate upon social and environmental considerations as part of their annual report disclosure requirement.

##### **(a) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the Procurement Procedures of Entities operating in the Water, Energy, Transport and Postal Services Sectors (2004)<sup>106</sup>**

Directive 2004/17/EC, complementing Directive 2004/18/EC, coordinates the procurement procedures of entities operating in the water, energy, transport and postal services sectors. The Community reached the view that these utilities required a legislative solution and framework that was distinct from the framework adopted under Directive 2004/18/EC.

Article 20.1 of the Directive, after defining the respective sectors it applies to, explicitly excludes from its scope contracts having as their object 'the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Community'.

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<sup>104</sup> P Trepte, *Public Procurement in the EU* (Oxford University Press, Oxford 2006) 38. The latter Directive has a general scope *ratione materiae*. Nevertheless, it does not cover public contracts falling within the ambit of the former Directive or public contracts in the field telecommunications. See Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2004] OJ L134/114, arts 12 and 13  
<<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>> accessed on 16 February 2009.

<sup>105</sup> S E Hjelmborg, P S Jakobsen and S T Poulsen, *Public Procurement Law* (DJOF Publishing, Copenhagen 2006) 210.

<sup>106</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the Procurement Procedures of Entities operating in the Water, Energy, Transport and Postal Services Sectors [2004] OJ L 134/1 < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>> accessed on 16 February 2009.

## 1. Awarding of the Public Work Contract

The 55<sup>th</sup> recital preamble expressly provides for socially responsible objectives to play a role in the tendering of a contract:

In order to guarantee equal treatment, the criteria for the award of the contract should enable tenders to be compared and assessed objectively. If these conditions are fulfilled, economic and qualitative criteria for the award of the contract, such as meeting environmental requirements, may enable the contracting authority to meet the needs of the public concerned, as expressed in the specifications of the contract. Under the same conditions, a contracting authority may use criteria aiming to meet social requirements, in response in particular to the needs—defined in the specifications of the contract—of particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

This preamble reflects the European legislator's incorporation of the European Court of Justice ('ECJ's') ruling that those criteria for the attribution of public contracts could encompass social and environmental clauses.<sup>107</sup> Application of this criterion dates back to the Council Directive 71/305/EEC of 26 July 1971 Concerning the Coordination of Procedures for the Award of Public Works Contracts. In the context of this directive, the ECJ held in the *Beenjes* case that

... the condition relating to the employment of long-term unemployed persons is compatible with the directive if it has no direct or indirect discriminatory effect on tenderers from other Member States of the Community. An additional specific condition of this kind must be mentioned in the contract notice.<sup>108</sup>

The ECJ later used the *Beentjes* pronouncement—this time in the context of Council Directive 93/37/EEC of 14 June 1993 Concerning the Coordination of Procedures for the Award of Public Works Contracts—that a criterion for the awarding of a public works contract designed to promote a campaign against unemployment was valid subject to the following requirements:

- Compliance with the general principles of EC law (eg non-discrimination principle);
- Consistency with both the substantive and procedural rules enshrined in Directive 93/37/EEC; and
- Express indication of this 'social' award criterion in the 'contract notice' so as to make it accessible to contractors.<sup>109</sup>

The ECJ extended this three-prong test to award criteria based on environmental considerations.<sup>110</sup>

On a similar line of thought, in respect of Council Directive 93/38/EEC of 14 June 1993 Coordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors more specifically, the ECJ acknowledged environmental parameters (ie the noise level associated with

<sup>107</sup> O De Schutter, 'Corporate Social Responsibility European Style' [2008] 14/2 ELJ 203, 229.

<sup>108</sup> Case C-31/87 *Beentjes v Netherlands* [1988] ECR 04635, [37].

<sup>109</sup> Case C-225/98 *Commission v France* [2000] ECR I-7445, [49]–[51].

<sup>110</sup> See respectively Case C-448/01 *EVN AG, Wienstrom GmbH* [2003] ECR I-14527, [37]–[38]; Case C-513/99 *Concordia Bus Finland* [2002] ECR I-7213, [82]–[86].

particular buses; the contribution by buses to the diminution of nitrogen oxide emissions) as valid award criteria, subject to their compliance with the equal treatment principle. The ECJ indeed held that ‘the award criteria must observe the principle of non-discrimination as it follows from the Treaty provisions on freedom of establishment and freedom to provide services’.<sup>111</sup>

## 2. Performance of the Public Work Contract

Article 38 of Directive 2004/17/EC allows for social and environmental parameters to be integrated into the performance requirements of a public contract:

Contracting entities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the notice used as a means of calling for competition or in the specifications. The conditions governing the performance of a contract may, in particular, *concern social and environmental considerations*. (emphasis added)

### (b) **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts (2004)**<sup>112</sup>

#### 1. Awarding of the public work contract:

As commented by Hjelmberg, Jakobsen and Poulsen, ‘[n]either the EC Treaty nor the Procurement Directive requires that public contracts be awarded exclusively on the basis of economic criteria’.<sup>113</sup> This is all the more so as the EC Treaty attaches great importance to such matters as environmental and social policy, which have become shared competences of the Community.<sup>114</sup> These criteria need not even provide ‘an *economic value*’ to public authorities so long as they are ‘of *value*’ to the authority.<sup>115</sup>

#### 2. Performance of the public work contract:

Article 26 of Directive 2004/18/EC allows for social and environmental parameters to be integrated into the performance requirements of a public contract:

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, *concern social and environmental considerations*. (emphasis added)

At this stage, any Member State authority is relatively unfettered in selecting CSR objectives as relevant even though they are not ‘directly linked to the object of the contract’. Nevertheless, the public policy objectives need to be compatible with EC law, non-discriminatory on the basis of nationality and cannot give way to ‘indirect barriers to trade between the EU Member States’.<sup>116</sup>

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<sup>111</sup> Case C-513/99 *Concordia Bus Finland* [2002] ECR I-7213, [82]–[86].

<sup>112</sup> Directive 2004/18/EC (n 104).

<sup>113</sup> Hjelmberg, Jakobsen and Poulsen (n 105) 211.

<sup>114</sup> Hjelmberg, Jakobsen and Poulsen (n 105) 213–14.

<sup>115</sup> Hjelmberg, Jakobsen and Poulsen (n 105) 215–16.

<sup>116</sup> Hjelmberg, Jakobsen and Poulsen (n 105) 211.

In this passage, the Directive permits public authorities to make use of an 'ethical clause' at the performance stage whereby an economic operator is bound to respect human rights standards beyond those found under the applicable ILO Conventions that are already implemented under national law and to subject itself to a human rights monitoring procedure.

**(c) Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-To-Consumer Commercial Practices in the Internal Market (2005) ('Unfair Commercial Practices Directive')<sup>117</sup>**

The Unfair Commercial Practices Directive has the potential to be expanded to the misleading use of codes of conduct should the TNC inaccurately advertise that its products are manufactured in a way that respected environmental, social, or health standards. Annex 1 to the Directive enumerates commercial practices always considered to be unfair and thus to be prohibited under national law: 'Claiming to be a signatory to a code of conduct when the trader is not'.

Indeed, article 6.1 of the Directive deems 'misleading' any commercial practice that '... contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer'. The source of the misleading practice can lie in the 'nature' of the product sold product, in its inherent features 'the extent of the trader's commitments' and/or in '... the nature, attributes and rights of the trader'.

**(d) Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the Annual Accounts of Certain Types of Companies, 83/349/EEC on Consolidated Accounts, 86/635/EEC on the Annual Accounts and Consolidated Accounts of Banks and Other Financial Institutions and 91/674/EEC on the Annual Accounts and Consolidated Accounts of Insurance Undertakings (2006)<sup>118</sup>**

This Directive requires from companies whose shares are traded on a stock exchange and with a registered office in the EC to deliver an 'annual corporate governance statement' as part of their annual report. The Preamble of the Directive invites (as opposed to requires) companies to elaborate upon environmental and social considerations that are inherent to the enterprise's development and position.<sup>119</sup> Here, a legally binding instrument places a soft-law obligation upon private parties (ie companies), which cannot be formally enforced against them.

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<sup>117</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council [2005] OJ L 149/22 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:01:EN:HTML>> accessed on 16 February 2009.

<sup>118</sup> Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the Annual Accounts of Certain Types of Companies, 83/349/EEC on Consolidated Accounts, 86/635/EEC on the Annual Accounts and Consolidated Accounts of Banks and Other Financial Institutions and 91/674/EEC on the Annual Accounts and Consolidated Accounts of Insurance Undertakings [2006] OJ L224/1

<sup>119</sup> Directive 2006/46 (n 118) 10<sup>th</sup> Recital of the Preamble; De Schutter (n 107) 232.

## (5) Appendix

### European Expert Group on CSR and SMEs Report entitled ‘Opportunity and Responsibility—how to help more Small Businesses to integrate Social and Environmental Issues into what they do’ (2007)<sup>120</sup>

The findings of the Expert Group consisted of six areas:

- a) Raising awareness and communicating with SMEs about CSR: which techniques are most effective when communicating with SMEs about CSR, and which should be avoided.

#### Findings:

- SMEs can usually best be reached by regional and local levels—ie organisations which are as close to the recipient as possible.
- Integrating the CSR message in the work of existing, trusted SME intermediary organisations (eg chambers of commerce, SME associations, business advisors, banks, accountants and lawyers) is likely to prove more successful than creating new organisations whose sole purpose is to inform SMEs about CSR.
- Appropriate language and terminology should be used, examples should be provided of the experience of other SMEs, recognition should be given to the achievements of SMEs in the field of CSR (eg awards and prizes, media coverage), and SMEs should be encouraged to start with small steps.

- b) Capacity building for SME intermediaries and business support organisations: what competences do SME intermediaries and business support organisations (eg chambers of commerce, SME associations, trade unions, business advisors) need to advise SMEs on CSR, and how might such competences be acquired?

#### Findings:

- Skills and competences that an intermediary organisation might need to acquire include:
  - An understanding of what CSR is and what it looks like when practised by SMEs;
  - An ability to communicate about CSR in a manner that makes sense to SMEs;
  - Awareness of the potential business advantages of CSR;
  - Sensitivity towards the different motivations for CSR among SMEs;
  - A knowledge of the relevant social and environmental legislation, and an ability to direct SMEs to other sources of support.

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<sup>120</sup> (n 96).

- Such skills and competences can be acquired and developed by:
  - Encouraging the commitment of intermediary organisations themselves towards CSR;
  - By integrating CSR into relevant professional qualifications;
  - By encouraging the exchange of information and experiences between intermediary organisations;
  - By securing political and financial support from public authorities (including the European Commission); and
  - By the use of CSR training modules for intermediary organisations.

c) CSR tools for SMEs: what kinds of toolkits, guides, management systems, certification systems, and reporting communication techniques are most appropriate for SMEs?

**Findings:**

- CSR in SMEs is usually informal and intuitive, and simple introductory guides are likely to be used by the largest number of SMEs.
- Not many SMEs use formal CSR tools, but those who wish to formalise their CSR commitment need improved access to tools such as management systems (which should be cheap, simple to operate, and capable of being integrated into other management systems such as quality or environmental management) and certification schemes.
- CSR reporting (ie producing a publicly available CSR or sustainability report) is unlikely to become general practice among SMEs as a whole, but there may be scope for such reporting by SMEs if it can be done collectively at cluster or sector level.

d) CSR in the supply chain: what is the influence of the CSR requirements that companies increasingly make on their SME suppliers, and how should the ideal buyer behave from the perspective of promoting CSR uptake among SMEs?

**Findings:**

- For many SME suppliers, CSR-related buyer requirements are an added burden, and SMEs most frequently cite lack of resources as the main barrier to a more thorough implementation of these requirements.
- Further, many SME suppliers claim that more stringent CSR requirements from buyers are often at odds with their other requirements regarding price and delivery times.
- Nevertheless, a study of Danish SMEs also found that the influence of buyer requirements on CSR uptake among SMEs should not be overestimated for two reasons:

- Firstly, it is often not the main motivating factor for such uptake; and
- Secondly, CSR buyer requirements only directly affect SMEs supplying large companies or public authorities (which is not the majority of SMEs).
- Buyers need to work constructively with SMEs about CSR such that their own CSR obligations are not simply being outsourced to SMEs. The ideal buyer should among other things:
  - Explain to the SME supplier how CSR buyer requirements can represent a long term opportunity for both parties;
  - Establish a real dialogue with SME suppliers about all aspects of CSR buyer requirements;
  - Help to provide sufficient awareness-raising and training on CSR among SME suppliers; and
  - Give more recognition to CSR practices among SME suppliers, and give SME suppliers the opportunity to improve over time.

e) The business case of CSR for SMEs: what business advantages (focusing on increased competitiveness) can CSR bring for SMEs, and how important are such advantages as a motivation for SMEs to engage in CSR?

**Findings:**

- The business case for CSR uptake among SMEs is vital but difficult to generalise for every SME given the peculiarities of each business.
- Further, the business case will evolve as markets evolve.
- Most surveys tend to conclude that moral/ethical considerations are the main driver of CSR among SMEs. The general rule is that the smaller the enterprise, the greater the relative role of such considerations.
- Nonetheless, the report of the ‘SME Roundtable’ of the EU Multi-Stakeholder forum on CSR contains a list of possible business advantages of CSR for SMEs, which are as follows:
  - Commitment to CSR may be increasingly important for attracting, and retaining, motivated and highly skilled employees;
  - CSR may be important in winning and retaining consumers and business customers;
  - CSR may be important in improving reputation (including corporate image) both generally and among stakeholders;
  - CSR community may assist in acquiring and maintaining licenses to operate from the local community;

- CSR can improve product/market innovation, differentiation, and competitive edge; and
- CSR can lead to cost and efficiency savings, such as reduced insurance and waste/landfill costs.
- Recent research from Denmark suggests that, taking into account the financial costs of CSR, innovation (deriving business from socially beneficial innovations) and environmental savings (reducing costs for energy or waste disposal) are more likely than other factors to bring measurable competitive gains in the short term for SMEs. By contrast, benefits of CSR relating to workforce development were partially measurable and would emerge in the longer term.

f) CSR, SMEs and regional competitiveness: can CSR be part of a regional development strategy and contribute to socio-economic development at a regional level?

**Findings:**

- There does appear to be a correlation between a region's competitiveness and the 'responsible' nature of its economy and businesses. Whether there is a direct causal link remains unexplored, the two are arguably mutually beneficial.
- Factors vital to regional competitiveness, and capable of being enhanced by CSR, include: innovation, training and human resource development, and social capital (broadly equivalent to 'trust' and to the quality and quantity of social relationships between society's different actors).
- If CSR can contribute to regional competitiveness, this implies a need to focus (though not exclusively) on CSR practices of SMEs, SMEs being the businesses most closely associated with the regions where they operate. But it must also be recognised that there needs to be a critical mass of companies engaged in CSR in a region for them to exert real influence on regional competitiveness.
- Given their close regional associations, the regional level is a particularly appropriate level at which to involve SMEs in CSR initiatives. A cluster-based approach (focusing on enterprises from one sector or value chain in a particular region) shows promise as regards CSR uptake among SMEs, and public authorities can serve as major catalysts for initiatives to encourage CSR, as seen in Tuscany (Italy), the Basque Country (Spain), and the Northwest of England (UK).
- Involving large businesses in CSR promotion among their local suppliers and facilitating the exchange of experience between regions as regards CSR are also useful techniques for these purposes.