

CSR LRN Newsletter

8 October 2013



Corporate Social Responsibility
Legal Research Network

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Contact us with your suggestions, comments and membership application at katpe@asb.dk

Dear members, dear colleagues,

After a longer summer break, we are back with another CSR LRN newsletter. As usual, you will find information on new publications and upcoming events.

Please, note that there are **two upcoming events co-organized by CSR LRN**. Firstly, the conference on **Corporate Social Responsibility - strengthening the implementation of CSR recommendations** organized at Aarhus University in Denmark on November 12-13, 2013. The conference includes a special session for PhD presentations. The second event is the CIB W099 **International Conference on Achieving Sustainable Construction Health and Safety in Lund, Sweden in June 2014**, with a special track on "Regulation and enforcement" in the organization of which CSR LRN is involved. See more information in the call on page 5. We hope to meet in a good number on these events.

Good autumn to all!

Enjoy reading.

Please, circulate this newsletter among your colleagues.

Board members:

Chairman: Karin Buhmann (buhmann@life.ku.dk), secretary, newsletter editor: Katerina Peterkova (katpe@asb.dk), webmaster: Dániel Gergely Szabó (dangs@asb.dk), Robert Agren (Robert.Agren@construction.lth.se), Gediminas Almantas (ga.jur@cbs.dk)

New publications

A Habermasian model of stakeholder (non)engagement and corporate (ir)responsibility reporting

Elisabetta Baronea, Nathan Ranamagarb and Jill F. Solomon

Accounting Forum, Volume 37, Issue 3, September 2013, Pages 163–181.

Available at <http://www.sciencedirect.com/science/article/pii/S015598212000646>.

Abstract:

Inspired by Habermas' works, we develop a prescriptive conceptual model of stakeholder engagement and corporate social responsibility (CSR) reporting against which empirical descriptions can be compared and contrasted. We compare the high profile case of Kraft's takeover of Cadbury with the conceptual model to illustrate the gap between an ideal speech situation and practice. The paper conducts a desk study of documents relating to the takeover and interviews with stakeholders from the local community to gauge their views of stakeholder engagement and CSR reporting by Cadbury/Kraft. The findings lead to policy recommendations for enhancing stakeholder accountability through improved steering mechanisms.

Sustainable Companies: Possibilities and Barriers in Norwegian Company Law

Beate Sjøfjell

Professor, University of Oslo, Department of Private Law

University of Oslo Faculty of Law Research Paper No. 2013-20.

Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2311433

Abstract:

Climate change is a case in point for the necessity of working towards a sustainable development; towards achieving economic development and social justice within the non-negotiable limits of our planet, as is the biodiversity crisis. Norway, home of Gro Harlem Brundtland, chair of the UN-appointed Commission that through its report "Our Common Future" put sustainable development on the global agenda, prides itself on being an environmentally-friendly nation. Although Norway does have a good international reputation, its oil-based economy makes the challenge of achieving a smooth transition to a sustainable economy (in the environmental and social sense as well as the economic) no less for Norway than for other countries. In such a transition, business will inevitably need to play an important role.

The vast impact that the operations of companies today, on an aggregated level, have on the global economy, on society in general and on the biosphere and the atmosphere, means that a critical analysis of the purpose of companies and the regulatory framework within which they operate is crucial to a deeper understanding of the correlation between society and sustainable development. The company is the most important private legal vehicle to gather capital, generate profits and redistribute income in the world. Companies are also the main contributors to anthropogenic greenhouse gas (GHG) emissions through their choices concerning research and development, their use of resources, their production and transportation, and their – and the end users' – use and recycling or discharge of products. In other words, companies are a major contributor to the problem. They can also become a key factor in finding the solution. The discussion of how to resolve this should rise above and go beyond the corporate social responsibility (CSR) debate.

As a part of the work in the Oslo-based research project Sustainable Companies, this paper therefore maps the possibilities and barriers in the Norwegian legal framework for companies for promoting sustainable companies in the environmental sense. The aim of the project is to find out how to better integrate environmental concerns into the decision-making in companies. The core focus of the papers, as of the project itself, is the hitherto to a great extent ignored area of company law.

This first section of the paper goes on to set out the backdrop: the Norwegian corporate scene and the legal sources and their inherent methodological challenges, for the guidance of the international reader. Section 2

analyses core company law issues relevant to the integration of environmental concerns in companies, including the purpose of the company and the company interest, and the competences of the various company organs. Section 3 analyses the important supportive area of reporting, accounting and auditing, which is the current compromise solution for those wishing companies to act more responsibly. Section 4 discusses liability and enforcement related to these rules and other means of promoting environmental sustainability in companies, while Section 5 briefly assesses other potential incentives and disincentives. Section 6 and 7 assesses the potential barriers and possibilities in the Norwegian regulation of groups of companies, while Section 8 concludes.

Strengthening the Enforcement of CSR through Mediation and Conflict Resolution by National Contact Points: Finding a New Balance between Hard Law and Soft Law

Birgitte Egelund Olsen

Professor, Aarhus University, Department of Law
Nordic & European Company Law Working Paper No. 10-38.

Karsten Engsig Sørensen

Professor, Aarhus University, Department of Law

Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269555.

Abstract:

Since 2000, the OECD Guidelines for Multinational Enterprises (the Guidelines) have required OECD Members to establish national contact points (NCPs) to promote the effective implementation of the Guidelines. The aim of this article is to examine the role of the NCPs in implementing the Guidelines, including how the influence of the NCPs may change the nature of the Guidelines from being purely voluntary to become more in the nature of binding requirements. The examination focuses on the NCPs in Denmark, Norway and the United Kingdom. It is concluded that the way in which the NCPs operate, including the extensive right to refer complaints to them, the broad scope of the recommendations in the Guidelines and especially the use of naming and shaming in cases of breaches of the Guidelines, has changed the original character of the Guidelines as a purely soft law instrument. Furthermore, it is shown that the use of very broad and vague terminology in the Guidelines makes it very difficult for enterprises to comply with them. This is further complicated by the fact that many of the terms, which lay down when the NCPs have jurisdiction, are not clearly defined or explained. The three NCPs examined have implemented the Guidelines very differently. In particular the Danish NCP stands out. It has a jurisdiction which in many respects goes far beyond that envisioned in the Guidelines. This may put in question the legitimacy and effectiveness of the Danish NCP, but at the same time it can also be viewed as an interesting innovation which may provide useful lessons for other NCPs and their approaches to implementing the Guidelines.

Directors' Duties and Corporate Social Responsibility (CSR)

Beate Sjøfjell

Professor
University of Oslo, Department of Private Law

Linn Anker-Sørensen

Research Assistant

Forthcoming in Hanne Birkmose, Mette Neville & Karsten Engsig Sørensen (eds.), *Boards of directors in European companies – reshaping and harmonising their organisation and duties*, Kluwer Law International, 2013/2014 .

University of Oslo Faculty of Law, University of Oslo Faculty of Law Legal Studies Research Paper Series No. 2013-26, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322680.

Abstract:

While the exact impact of run-away climate change, continued biodiversity destruction and unchecked social impacts of the current financial challenges we see is unknown, we know one thing for certain: Business as usual is not an alternative. To shift over to a sustainable path, we need companies to contribute. Clearly, our governments, even if they were brave and progressive enough, cannot single-handedly adopt sustainability. The

contribution of business is needed. And if business shifts in the right direction, customers, employees and indeed whole societies may shift with them.

The pressing question then is whether CSR is an answer. Some interesting developments, including the paradigm shift in the EU Commission's definition of CSR, open up for a revisit of the potential of the CSR concept. We put forward that CSR can play an important part in facilitating such a necessary contribution from companies, if the following three conditions are met: Firstly, the promotion of CSR must encompass both the level of legal compliance and of action beyond compliance. The well-known business capture of CSR that we have seen as voluntary, as a case of 'don't regulate us and we can talk about how we behave' does not suffice. This tends to lead to delimitation against legal obligations and an unwarranted Corporate Governance/CSR dichotomy.

The implicit support of shareholder primacy entails that sustainable business, in the environmental and social sense, quickly will hit a ceiling. Secondly, CSR must be true or core CSR, dealing with the business of the company, how that is conducted and the impacts of that business. Thirdly, CSR must entail an integration of environmental and social concerns in the decision-making of the company in such a way as to lead to an internalisation of externalities.

In the second section of this chapter, we discuss the role of the board in a CSR context, while the third section investigates the recent developments at EU level, where we find that despite a paradigm shift in the definition of CSR, little is done to integrate CSR concerns into the duties of the board. The fourth section therefore poses the question what role the EU has in this context, concluding that the contribution of the EU most likely is a necessary prerequisite to achieving the shift away from business as usual and onto a sustainable path.

Human Rights Obligations of Business: Beyond the Responsibility to respect?

Surya Deva and David Bilchitz

November 2013, Cambridge University Press

More information available at <http://www.cambridge.org/us/academic/subjects/law/human-rights/human-rights-obligations-business-beyond-corporate-responsibility-respect>

In recent years, the UN Human Rights Council has approved the 'Respect, Protect and Remedy' Framework and endorsed the Guiding Principles on Business and Human Rights. These developments have been welcomed widely, but do they adequately address the challenges concerning the human rights obligations of business?

This multi-author volume engages critically with these important developments. The chapters revolve around four key issues: the process and methodology adopted; the source and justification of corporate human rights obligations; the nature and extent of such obligations; and the implementation and enforcement thereof. In addition to highlighting several shortcomings of the Framework and the Guiding Principles, the contributing authors also outline a vision for the twenty-first century in which companies have obligations to society that go beyond the responsibility to respect human rights.

CSR LRN co-organized events

CSR LRN and ReSET joint conference and PhD course
Strengthening the implementation of CSR recommendations
12 –13 November 2013, Aarhus University, Denmark
<http://law.au.dk/forskning/konferencer/csr-conference/>

OVERVIEW:

The adoption of Corporate Social Responsibility (CSR) policies is no longer a matter of voluntary practice on the part of companies. In one sense it was never really voluntary, being in most cases their response to market pressures and the fear of damage to their corporate image. But increasingly CSR is also subject to legal pressure and legal enforcement, not necessarily in the form of conventional judicial systems but rather through government intervention and the establishment of platforms for mediation and conflict settlement.

In the light of such initiatives, the CSR Legal Research Network and the Research Group ReSET (Regulating Sustainable Energy Transitions) Aarhus University have organized the following two-day conference with two purposes in mind:

1. to introduce researchers and experts in specialized fields to the broad theme of CSR and law
2. to promote an active discussion of the issues of how and to what extent CSR measures should be encouraged through law

We have assembled an international and inter-disciplinary group of key-presenters and discussants that will focus on CSR responses from a legal and a broader social science perspective.

CIB W099 International Conference on
Achieving Sustainable Construction Health and Safety
2-3 June 2014, Lund, Sweden
<http://www.lth.se/healthsafety2014/>

OVERVIEW:

The CIB W099 International Conference on Construction Safety will be held at Lund University, Sweden on 2-3 June 2014. The main theme of the conference is "Achieving Sustainable Construction Health and Safety". The conference will be hosted by the Divisions of Construction Management and Ergonomics and Aerosol Technology, Lund University. The Co-Chairs of the Organising Committee of the conference are Radhlinah Aulin and Åsa Ek. The website of the conference is at www.lth.se/healthsafety2014 where you can find details about the conference themes, important dates, venue, and travel recommendations.

This conference will offer the opportunity for participants to gain inimitable insights into the most effective ways and means of improving the safety performance of the construction industries globally. Some of the world's top experts will discuss the pressing issues in the context of occupational safety and health at the conference.

The conference includes a track in co-operation with CSR LRN: CSR, Regulations and enforcement. The track has a special focus on how regulation of CSR is, or could be, employed in order to improve health and safety performance in construction health and safety and in the supply chain.

Events and calls for papers

International CSR, Sustainability, Ethics & Governance Conference

14-16 August 2014, London, U.K. (Surrey University, Guildford)

<http://gcg-csr.org/global-corporate-governance-institute-2014-conference.html>

OVERVIEW:

Submission of Abstracts: 31 January 2014

Submission of Full Papers: 1 March 2014

Registration: until 31 March 2014

In a global economy, no business or form of commerce is an island unto itself. Rapid and dynamic changes in technology, markets, political and legal institutions, and indeed cultures, have all created new challenges. In such a global context, no scholar, no discipline, no university, no think tank, no NGO, no form of media, can remain an island unto itself.

In order to overcome the myopia of limited perspectives, outworn doctrines, tired prior agendas, and vested interests, a new organization has been created: Global Corporate Governance/Corporate Social Responsibility. Our intention is to bring together scholars from many fields along with business/academic/cultural/religious and political leaders to form a global alliance dedicated to rethinking and integrating value issues into management practice, education and development.

Toward this end, we plan to sponsor conferences, seminars, and workshops worldwide. The products of these events will evolve into an online journal and website.

We expect to launch our organization by holding our first conference in London, the educational and financial capital of the world. There are three important aspects of this initial event:

It will combine Corporate Governance with Corporate Social Responsibility.

It will Endeavour to bring together scholars in business, the law, and the humanities.

It will convene, under the sponsorship of Springer, the contributors to the newly published Encyclopedia of Corporate Social Responsibility.

The three-day conference (14-16 August 2014) will consist of a keynote address, inter-disciplinary plenary sessions, multiple presentation streams, panels, poster sessions, Dissertation advice, and best paper award. We would like the first conference to be as inclusive as possible

Legal Aspects of Corporate Social Responsibility

Call for Papers Utrecht Journal of International and European Law

<http://ilg2.org/2013/10/08/write-on-call-for-papers-utrecht-journal-of-international-and-european-law/>

Submission deadline: 14 November 2013

It is a well-attested fact that there is a lack of legal accountability for multinational corporations both at an international and national level. Various different means have been utilised in an attempt to fill this gap in corporate governance. This topic has provoked increasing levels of discussion with varying perspectives as to the correct path with which to move forward.

The Board of Editors invites you to submit papers addressing any legal issues relating to corporate social responsibility from an international or European law perspective.

This edition is primarily concerned with corporate social responsibility but relevant issues may also have broader implications, including: the growing overlap of different spheres of international law; the right to development; the conflict between universalism and particularism; the relationship between developing and developed countries; long-standing principles of international law such as non-intervention in internal affairs and the state centric nature of international law as a whole and the rejection of human rights law norms for multinationals in favour of voluntary initiatives.

All types of manuscripts, from socio-legal to legal-technical to comparative will be considered.

Submission via email: utrechtjournal@urios.org

Sustainable Companies: We Make it Happen

The final conference of the Sustainable Companies Project (2010-2013)

5-6 December 2013, University of Oslo, Norway

<http://www.jus.uio.no/ifp/english/research/projects/sustainable-companies/events/conferences/final-sustainable-companies-conference-2013.html>

Submission of Abstracts (max. 250 words): 21 October 2013

Submission of Full Working Papers: 11 November 2013

OVERVIEW:

The results of the Sustainable Companies project will be presented at this international conference by our team of researchers from around the world. We will here present practical, innovative and research-based reform proposals.

The conference will be open for all and we welcome participants from all areas and disciplines who are interested in joining us in the discussion of how we can realise the enormous potential of business to contribute to sustainable development.

CALL FOR PAPERS:

The topic of the conference is reform proposals. The paper should cover:

- a) which part of the problem of unsustainable business you are addressing,
- b) your reform proposal: why and what is the expected result,
- c) the concrete proposal, for example amendment of statutory act or other regulatory instrument. Abstracts to be sent in using the online form only.

Accepted papers may also be offered publication in a special issue of the journal *European Company Law* (Kluwers Law International), edited by Beate Sjøfjell and Tineke Lambooy. Papers presented at the conference, whether published in the journal *European Company Law* or elsewhere, may be included in the University of Oslo Faculty of Law Legal Studies Research Paper Series on SSRN, edited by Beate Sjøfjell and Mads Andenas.

Law and Inequalities: Global and Local
Law and Society Association 2014 Annual Meeting
May 29 - June 1, 2014, Minneapolis, Minnesota

<http://www.lawandsociety.org/minneapolis2014/Minneapolis2014.html>

Submission of Papers and Abstract (400-500 words): 15 October 2013

Early registration (reduced fee): until 5 May 2013 (opens early 2014)

OVERVIEW

Recent decades have seen the persistence and growth of powerful inequalities within and between groups and within and among nations. The 2014 program theme returns to a question central to the Association's founding: the role of law and legal institutions in sustaining, creating, interrogating, and ameliorating inequalities. The 2014 Program invites participants to explore and consider three questions:

How can Law and Society scholarship contribute to unearthing and understanding inequalities?

How can Law and Society scholarship contribute to the critical interrogation of discourses of equality and inequality and help to reveal what is at stake in these concepts?

What impact can we expect these scholarly contributions to have on the persistence of these inequalities and on public discourse about them?

- See more on the theme at <http://www.lawandsociety.org/minneapolis2014/2014theme.html>

Upcoming Events

- Nov. 4-6 **The Implementation of the UN Guiding Principles on Business and Human Rights in Spain**, University of Seville, Spain

- Nov. 12-13 **Corporate Social Responsibility - strengthening the implementation of CSR recommendations**, Aarhus University, Denmark

- December 5-6 **Sustainable Companies: We Make it Happen**, The final conference of the Sustainable Companies Project, University of Oslo, Norway
<http://www.jus.uio.no/ifp/english/research/projects/sustainable-companies/events/conferences/final-sustainable-companies-conference-2013.html>

- May 29-June 1 **Law and Inequalities: Global and Local**, Law and Society Association 2014 Annual Meeting, Minneapolis, Minnesota
<http://www.lawandsociety.org/minneapolis2014/Minneapolis2014.html>

Upcoming Deadlines

- October 15 **Law and Inequalities: Global and Local** (info above)
Abstracts

- October 21 **Sustainable Companies: We Make it Happen** (info above)
Abstracts

- November 14 **Legal Aspects of Corporate Social Responsibility**, Utrecht Journal of International and European Law (info above)
Papers

- January 31 **International CSR, Sustainability, Ethics & Governance Conference** (info above)
Abstracts

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