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Towards Nature Sustainable Business with Corporate Social Responsibility Regulation

Study on the legalisation of corporate environmental responsibility

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Abstract

Biodiversity is globally degrading with an unprecedented speed. Biodiversity loss is not a threat only to ecosystems but also global economy since global business is inherently linked healthy ecosystem services. The practices of private companies, and especially of multinational corporations, can cause significant adverse impacts on the environment. The concept of corporate social responsibility (CSR) extends the idea value that the corporation is required to create from mere economic value for its shareholders to environmental and social value for the planet and the people affected by its activities. CSR can thus be used as a tool to bring forth the nature sustainable business change that our planet's biodiversity needs. CSR has traditionally been based on voluntary corporate management measures but in the past decade it has also been implemented through legally binding initiatives. There is a global movement calling for comprehensive international environmental protection rules on corporations but so far, the legalisation of CSR at international level has mainly been taking place through soft law initiatives. The range of voluntary CSR initiatives is very wide, but only recently have the environmental aspects of CSR been strengthened by new biodiversity-related standards. The EU is a world leader in legally binding CSR legislation. It is harmonising corporate sustainability reporting and environmental due diligence standards to ensure the functioning of its internal market. Additionally, the EU is helping to create a comparable international network of sustainable reporting initiatives and legislative acts.

1 Introduction

1.1 Background and Purpose of the Study

Humanity's future is dependent on healthy nature. Yet, nature and its vital functions for humanity are deteriorating worldwide at an alarming rate due to multiple human drivers. In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) published its landmark Global Assessment Report on Biodiversity and Ecosystem Services which found that globally human actions have changed three-quarters of the land surface and two-thirds of the ocean area out of their natural state and caused the loss over 85% of wetland area.[1] Biodiversity, which the IPBES defines as "the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part"[2], is globally degrading with such a speed that some scientists call it the human-induced sixth mass extinction of Earth's biota.[3] It has been calculated that humanity has caused the loss of 83% of all wild animals and around 50% of all plants.[4]

The global rate of species extinction is tens to hundreds of times higher than on average during the past 10 million years because of the extreme growth of the human population and global economy. Only in the past 50 years, the IPBES report found that "the human population has doubled, the global economy has grown nearly fourfold and global trade has grown tenfold, together driving up the demand for energy and materials"[5]. The IPBES report identified five main direct drivers that have caused the unprecedented global change in nature in the past 50 years compared to the rest of human history. These direct drivers are changes in land and sea use, direct exploitation of organisms, climate change, pollution, and invasion of alien species.[6] In order to impact these direct drivers, we need to take action on the indirect drivers of change which are their motivation. One of the biggest indirect drivers is globalized

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[1] IPBES 2019, p. 14 and 15.

[2] The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services website, "biodiversity" accessed 28 February 2023.

[3] For further reading see Gerardo et al. 2017, Gerardo et al. 2015, and Wake and Vredenburg 2008.

[4] World Economic Forum website, "Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy" accessed 9 May 2023.

[5] IPBES 2019, p. 16 and 17.

[6] IPBES 2019, p. 16 and 17.

trade. One study even estimates that international trade is linked to 30% of global species threats.[7]

Biodiversity and business are inherently linked, and this link is often described through the concept of ecosystem services. Simply put, ecosystem services mean the benefits and value people obtain from ecosystems. The Millennium Ecosystem Assessment on Ecosystems and Human Well-Being, called for by the United Nations (UN) Secretary-General Kofi Annan in 2000, categorized ecosystem services into four groups; provisioning services such as food, water, timber, and fuel; regulating services that control systems like climate, floods, disease, and water quality; cultural services that give recreational, aesthetic, and spiritual benefits; and finally supporting services such as soil formation, photosynthesis, and nutrient cycling.[8] Our economic and business activities depend on ecosystem services and natural resources directly or via supply chains. A World Economic Forum (WEF) study found that $44 trillion of economic value generation, meaning more than half of the world's total gross domestic product, has a high or moderate dependency on nature and its services.[9] The WEF also conducts a yearly Global Risks Perception Survey (GRPS) with which it gathers insight from over 1200 global risk experts across the Forum's network. For the period of the next 10 years, the GRPS 2022-2023 ranked biodiversity loss and ecosystem collapse as the fourth most severe global risk after natural disasters and extreme weather conditions, failure to adapt to climate change and failure to mitigate climate change. It is no coincidence that environmental risks dominate the global risks agenda, after all biodiversity loss and climate change are fundamentally interlinked and failures to act upon one of them will increase the harmful impacts of another.[10]

And yet, multiple aspects of how the private sector conducts global business nowadays keep eating away global biodiversity. For example, direct adverse effects of international trade include pollution and the introduction of invasive species and pathogens through transport and indirect adverse effects include habitat changes and over-exploitation.[11] Looking at the

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[7] See Lenzen, M. et al. 2012.

[8] Millennium Ecosystem Assessment, 2005, pages v and vi.

[9] World Economic Forum 2020, p.13.

[10] World Economic Forum website, "Global Risks Report 2023" accessed 15 April 2023.

[11] European Union 2020, p. 9.

statistics of lost land and sea area in a natural state and the rate of species extinction, it is reasonable to ask if only ceasing harmful practices is enough to bring back healthy ecosystems. Thus, we need to find a way to transform our business practices to be nature-friendly and even nature positive, meaning that it is not enough for business actors to commit to only doing less harm and reducing their impact on biodiversity but that they should also aim to enhance the resilience of our planet and societies to halt and reverse nature loss.[12] Advances in scientific research help us understand the harm that humanity causes to global environmental processes and also give measurable tools to transform our societies and global economy away from the path that currently is destroying nature. In 2009, a group of scientists coined the concept of planetary boundaries which are a set of nine nature processes regulating the stability and resilience of Earth system. If these boundaries are crossed, the planet may face irreversible, large-scale environmental changes. Currently, it has been assessed that six of these boundaries have been crossed and among them is the integrity of biosphere.[13] Very recent scientific research by the Earth Commission, which is an international team bringing together leading natural and social scientists, has quantified "safe and just Earth System Boundaries" which business entities and governments can use to ensure that humanity moves away from the danger zones of planetary boundaries and into a "long-term safe and just corridor for humanity at a global scale". Earth system boundaries set a science based, measurable framework for how to keep the planet stable.[14] Since the scientific community has shown us how our societies need to move forward, everyone must now act within these boundaries, either voluntarily or involuntarily.

If we want to make the private sector function more sustainably and ideally nature positively, we need to identify which actors we should focus on and with which tools we should try to correct their business behaviour. Sustainability is promoted through all different angles of the so-called governance triangle of State government, private sector (companies), and third sector (non-governmental organisations (NGOs) and civil society organisations (CSOs)). In the relationship between government and companies, the primary tool has been the command-

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[12] World Economic Forum website, "What Is "nature Positive" and Why Is It the Key to Our Future?" accessed 29 March 2023.

[13] Stockholm Resilience Center website, "Planetary Boundaries" accessed 27 May 2023.

[14] Earth Commission website, "Pioneering Science Reveals Set of "Earth System Boundaries" That Can Secure a Safe and Just Planet for All" accessed 28 May 2023.

and-control approach, by which the government sets norms for companies with legislation. On the side, the third sector has through discourse with State government tried to promote their interests in the substance of legislation.[15] Law is an instrument that aims to adjust the behaviour of its targets and in the question of increasing sustainability, law can help to internalize the social or environmental externalities of production and economic operations.[16] However, in the 1980's the rise of environmental awareness called into question the effectiveness of this command-and-control model and as a result environmental legislation caught criticism for being economically ineffective, incoherent and administratively cumbersome. Particularly in Europe and North America, the effectiveness of environmental legislation started to be supplemented with an array of soft law instruments such as voluntary agreements, certification systems and financial instruments.[17] Even so, the flow of influence is reciprocal and non-binding policy measures can inspire binding legislation that seeks to fortify the impact of voluntary sustainability initiatives.

During the past few decades, we have seen a paradigm shift in the governance triangle and now companies are expected to carry their own responsibility on the path towards sustainable societies. A significant tool to help make business more sustainable, is corporate social responsibility (CSR). It has been developing for at least the past 50 years and is now gaining significant momentum both in policy and law.[18] United Nations Industrial Development Organization defines CSR as "a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders".[19] Stakeholders refer to all people and groups affected by the company's activities, for example, employees, customers, and local communities[20]. CSR is thus an umbrella for multiple sustainability concerns in corporation activity but for the purpose of this study, it shows a significant potential for helping to make corporations and the global value

[15] Demirag 2005, p. 315.

[16] Teerikangas et al. 2021, p.325.

[17] Demirag 2005, p. 315.

[18] van Basten-Boddin et al. 2014, p. 6.

[19] United Nations Industrial Development Organization website, "What Is CSR?" accessed 3 March 2023.

[20] Ong 2001, p. 685, 688 and 689.

chains for production and transport of goods more nature positive. Being included in both soft law and hard law instruments, CSR's legal nature is an interesting topic to address.

Knowing the dire state of global biodiversity, the role global trade and the private sector play in its deterioration and the instrumental function of hard law and soft law as tools towards sustainability, the purpose of this study is to analyse current international and European regulations with regard to how it involves CSR and the potential of CSR as a regulatory concept in shaping companies' practices to be more biodiversity-friendly. This study's objective is to clarify, what CSR means, what are its legal dimensions, and does mandatory corporate environmental responsibility (CER), which is an element of CSR, help bring forth the nature-sustainable business change that our planet's biodiversity needs.

1.2 Research Questions and Limitations of the Study

This study seeks to systematise the legalisation of CSR in support of biodiversity protection and restoration. The regulatory field of CSR is highly fragmented, and this study aims to build a big picture of regulatory CSR by going through the relevant international and European Union (EU) law instruments. As a limitation, this study will not take a case study look at any national measures on CSR. The main research question is twofold: through which instruments and processes is CSR becoming legally binding and does CSR legislation enacted on international or regional level have the potential to have a meaningful impact in protecting biodiversity from harmful corporate activities? To aid my research, I have also identified sub-questions that will guide the research in each chapter.

The second chapter describes the nature of CSR as a concept and investigates the soft law nature of CSR in different voluntary initiatives. In this chapter the guiding sub-research question is, how is CSR in soft law pushing for nature-sustainable corporate practices? CSR encompasses many other issues than just environmental concerns, but this study will mainly focus on CER. The third chapter will map relevant international environmental law instruments and discuss the importance of certain international environmental law principles and practices for CSR. The chapter will be answering the sub-research questions, does CSR currently exist in international law and what kind of legal norms and practices support CSR in directing corporations to manage their role in causing biodiversity loss. Then, the fourth chapter will go through relevant EU instruments for CSR and map which legislative acts help to protect biodiversity from harmful corporate impacts. This chapter will also seek to answer the sub-research question, is a regional regulative response effective way to implement CSR?

Finally, the fifth chapter will tie conclusions on the whole of the study and the answers to the research questions posed therein.

When it comes to limitations, it is firstly important to state that CSR research should not be narrowed down to only the examination of its regulative nature since next to legal aspects, CSR carries many different aspects for example ethics, economic thinking, marketing, sociology, and culture.[21] However, the purpose of this study is to remain in the examination of the legal approach. Even when making arguments about the effectiveness of legal instruments as tools to steer corporations towards nature-positive practices, as compared to other control and management tools, this study will not delve into the question which approach would work better than the legal one. This study aims to solely understand the scope and impact of regulative CSR on corporate environmental responsibility and biodiversity protection.

CSR's purpose is to promote sustainability which in essence is the same thing as sustainable development. Sustainable development became an international topic at the 1972 UN Conference on the Human Environment in Stockholm and was then further discussed in the 1987 UN World Commission on Environment and Development, also known as the Brundtland Commission.[22] In its final report, called Our Common Future, paragraph 1 in chapter 2 defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[23] This definition captures two fundamental relationships that sustainable development encompasses. First is the relationship between humankind and the environment and the second one is the relationship between present and future generations. However, sustainable development tries to also find balance in a third relationship which is the one between different social classes in the present world. The ideal of sustainable development is reached when all of these three relationships are individually in balance.[24] This study focuses mainly on the first relationship of sustainable development and from here on, when the terms

[21] Lambooy 2010, p. 15.

[22] Adelman 2018, p. 21-22.

[23] United Nations General Assembly Secretary-General, 4 August 1987, 'Report of the World Commission on Environment and Development "Our Common Future", Chapter 2, paragraph 1.

[24] Boutilier 2009, p. 20-22.

"sustainability" or "sustainable" are being used, they refer to finding a balance between human activities, especially economic action and the environment, unless it is mentioned otherwise.

This study focuses on private multinational enterprises (MNEs) and large private national companies whose value chain spans across the borders of States. Such business organisations often are corporations which have a particular legal structure created under national laws. Company (or corporation) law differs greatly across jurisdictions and traditionally it is thought that company law does not exist in a uniform, international manner. Yet there are five basic legal characteristics that can be found in almost all large-scale business firms in market economies.[25] These characteristics are:

1. legal personality that allows the company to operate as a contracting party separate from the individuals who own or manage the firm,[26]
2. limited liability which shields the company's owners, meaning the shareholders, from the losses of the company by imposing a finite cap on downside losses to having them lose only the amount of capital they have invested,[27]
3. transferable shares which allow an uninterrupted conduct of business even if the identity of the company's owners changes[28],
4. delegated management under a board structure that is separate from the operational management and mainly elected by the shareholders,[29] and
5. investor ownership meaning the right to participate in the control of the company and the right to receive the company's net earnings proportionally to the invested capital.[30]

When this study uses terms like company, firm, or enterprise, they do not mean generally any type of business entity specifically but refers instead to corporations with these characteristics. Finally, it is good to mention that this study will focus on CSR in the

[25] Kraakman and Armour 2017, p. 1.
[26] Kraakman and Armour 2017, p. 5.
[27] Kraakman and Armour 2017, p. 9.
[28] Kraakman and Armour 2017, p. 10.
[29] Kraakman and Armour 2017, p. 12.
[30] Kraakman and Armour 2017, p. 13.

production and trading phase of corporate action, not the possible extension of corporate responsibility on the use and disposal of the corporation's products. When talking about the effects of global supply and value chains used by corporations, this means all the phases of the value chain until the selling of the product or service to the consumer.

1.3 Methodology

The methodology of this study reflects the interdisciplinary basis of environmental decision-making. The development of international environmental law is influenced by the scientific knowledge on environmental issues, the public interest in the topic, political opinions, economic consideration of different options and the experiences from preceding examples.[31] Although this is a study within legal scholarship, it is informed by natural science in its introduction and by economics and administrative sciences when reviewing CSR theory in Chapter 2. The main methodology of this research is legal doctrinal. Legal doctrine as a methodology describes, prescribes, and even justifies existing law.[32] This study systematises how the concept of CSR exists both in soft law and hard law, thus describing the *lex lata* pertinent to CSR. The motivation for this is to make the fragmented field of CSR legal initiatives more intelligible. In addition, this study reflects the normativity of CSR law and takes a prescriptive approach to establishing *lex ferenda* on CSR, keeping a special focus on CER.

The legal scope of this study is on international law and European Union law. This choice of scope is met due to the global, cross-border nature of biodiversity loss and the appetite to understand how the international legal response and regional legal response in the EU operationalise CER. This reflects also in the methodology of this study. Chapters 2 and 3 follow the international legal doctrine which researches the normative force, scope, and institutional management of international law and is closely linked to philosophical and political consideration.[33] And Chapter 4 conforms to European legal doctrine which follows the particularities of the EU law system, such as the hierarchy of its legal instruments.[34]

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[31] Sands et al. 2018, p. 6.

[32] Smits 2017, p. 213.

[33] For more information, read Koskenniemi 2007.

[34] For more information read Jansen 2017.

2 Corporate Social Responsibility in a Voluntary Setting

2.1 Definition and Meaning of CSR

Corporate social responsibility has become the interest of many disciplines and depending on the field of science, the definition of CSR differs. Additionally, many different economic sectors stress different components of CSR which further complicates having a single definition.[35] The EU has been on the front line of global CSR policymakers and gave its first definition of CSR in its 2001 Green Paper Promoting a European Framework for Corporate Social Responsibility[36]. Since then, the EU has renewed its strategy for CSR and in the Commission communication that introduced the renewed strategy, given a definition of CSR as "the responsibility of enterprises for their impacts on society".[37] This definition is further elaborated by mentioning as the prerequisite of meeting CSR having the corporation comply with applicable legislation and respect collective agreements with its social partners. Furthermore, the CSR definition by the European Commission asks for companies to put in place processes which integrate "social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders". The processes that take notice of these interests should aim to help the enterprise to bring out the maximum amount of value for the company's shareholders, other stakeholders, and the society at large while at the same time identifying, preventing, and mitigating the possible adverse impacts caused by the company's operations.[38]

We can thus conclude that CSR strikes at the heart of the private sector by asking, what is the purpose of a company. Simply put, it is the creation of value. But what kind of value should it be and for whom? CSR expands the idea of value creation from merely having the company deliver financial profit to instead, having the corporation take responsibility for creating value also to the planet and people impacted by the corporate activities. The three dimensions of value creation in CSR are;

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[35] Lambooy 2010, p. 10.

[36] COM2001 (366) final.

[37] COM/2011/0681 final, p. 6.

[38] COM/2011/0681 final, p. 6.

1. social value for people, for example the employees across the organisation's value chain and local communities,
2. environmental value for the planet by having the company reduce its ecological and carbon footprint and possibly even improve the state of the environment,
3. economic value in the sense of creating profit for the company and its stakeholders.[39]

Approaching value from these three angles lines up with a famous sustainability theory of the triple bottom line (TBL). TBL was coined by John Elkington in 1994 and presents a sustainability framework for examining a company's social, environmental, and economic impact. By measuring the TBL of the company, it is possible to consider the full costs involved in their business activity and reach better corporate sustainability. TBL challenges the traditional single bottom-line thinking of capitalism, meaning the sole focus on corporation's financial performance.[40] Although TBL has been a great inspiration for many accounting and reporting frameworks, thus ushering the change to more sustainable business, Elkington meant for it to be a concept of deeper capitalist criticism and an evoker of a system change. Elkington explains that "many early adopters understood the concept as a balancing act, adopting a trade-off mentality" and consequently, the single bottom line paradigm continued to thrive with remarks of social and environmental impacts being painted on top of it in the most favourable way for the company.[41]

A Forbes article from 2019 proficiently elaborated on Elkington's idea to fine-tune TBL to its full potential. Firstly, the article honed down on the interpretation of the economic value in TBL. It should not be narrowly seen as just the financial profit that a company makes for itself but as the larger economic benefits, such as employment, tax payments and innovation, that the company generates also to the surrounding society.[42] It is evident, how this echoes also in the concept of CSR. Secondly, the article suggests for a better understanding of the economic value that its title shouldn't be "profit" but "prosperity". Profit should not be treated as a legitimate goal for corporate activity but rather as a means to improve the company's

[39] van Basten-Boddin Christine et al. 2014, p. 7.

[40] Elkington 2018, online article.

[41] Elkington 2018, online article.

[42] Kraaijenbrink 2019, online article.

impact on people, the planet and prosperity. This title change also maintains 3Ps as the other catchy name of Elkington's TBL, now referring to People, Planet, and Prosperity.[43]

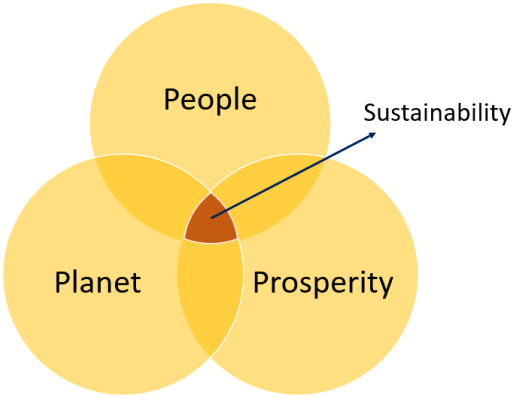

Figure 1. Corporate sustainability according to the triple bottom line

TBL is an important theoretical counterpart to CSR and both TBL and the triple Ps are often named when describing CSR. Some definitions of CSR stress that the concept aims to realise simultaneous value augmentation of all these three dimensions thus resulting in "the fusion of interests".[44] Both TBL and CSR help to concretise what is meant by corporate sustainability and what action needs to be taken to turn down the ecologically and socially degrading effects of economic globalisation. Also, they exemplify how the discussions and approaches to corporate sustainability are complex even when the core of the subject can remain the same.

CSR must be differentiated from corporate governance. When CSR is about adjusting the corporation's behaviour and the impacts of its practices regarding the 3Ps, corporate governance is concerned with the rules for corporate organisation and their implementation. Thus, corporate governance is mainly in the interest of the stakeholders when CSR has a broader audience of interested parties. Additionally, corporate governance is often linked to only listed companies, but CSR applies to companies of all sizes. CSR and corporate governance also have things in common and can complement each other. Transparency, accountability and involving stakeholders in the decision-making process are key premises of both concepts. The origin of both CSR and corporate governance is in voluntary initiatives centering on best practices regarding their respective interests and now they both are slowly

[43] Kraaijenbrink 2019, online article.

[44] Lambooy 2010, p. 12.

evolving into a more mandatory part of corporations' annual reporting.[45] CSR and corporate governance meet in the notion of ESG information (environmental, social and governance). ESG information is especially linked to sustainable investing and nowadays many investors base their investment decision on an ESG analysis of the company next to the traditional financial figures. Energy efficiency, harmful emissions and waste management are typical things considered among the environmental factors. Examples of social factors are impacts on human rights or labour rights. And as governance can be analysed factors like anti-corruption and anti-bribery action, having an independent and diversely selected board of directors or compliance with tax laws.[46] CSR, TBL and ESG are all concepts of corporate sustainability, but this study follows the notion of CSR.

Finally, we must address the role of law in creating the unsustainable ways of corporations and how CSR is now also a legal matter. The attractiveness of corporations as a business model is largely based on the freedom that private law has given to shareholders and directors. The basic concepts of private law that give corporations the autonomy to pursue profit without having to take into account the external costs to consumers, labour or the environment include bankruptcy protection, limited liability, freedom of contracts and property rights. While technological and organisational advances allowed for the outsourcing of goods and offshore production, leading to the emergence of global value chains and MNEs, the legal basis of this development was still the same private autonomy embedded in contract and corporation law. Some legal scholars argue that the way in which "the basic private law paradigms of corporation and contract have historically evolved to exclude sustainability considerations" has given corporations agency to act unsustainably.[47] To counter how corporations have been able to externalise the social and environmental costs of their practices, several legal instruments regulating global value chain governance have been adopted on national and regional level around the world since the 2010s.[48] CSR is thus not only a social and moral obligation that societies expect from corporations, but also a legal obligation. However, on international level legislators have so far been hesitant to adopt direct

[45] Lambooy, T. E. 2010, p. 30, 98 and 99.

[46] Silvola and Landau 2021, p. 3 and 4.

[47] Teerikangas, Satu et al. 2021, p. 326–330.

[48] Salminen and Rajavuori 2019, p. 604 and 605.

legal obligations on environmental or social impacts for companies.[49] Still the international society has grown to expected MNEs to commit to sustainable practices beyond compliance with national and regional sustainability laws, especially in the case that their global operations pose risks to human and the environment. Chapter 3 will discuss further what kind of international legislative response CSR has received.

2.2 Development of CSR

The concept of CSR is not static. The elements and scope of CSR fluctuate spatially and temporally. First, we will address the spatial changes which take place due to how different societies stress different elements in CSR and deploy the concept with a different scope. The elements and scope of CSR are greatly influenced by the type of society and culture it is used in. What elements CSR includes varies depending on the society's religious and sociocultural values, stage of economic and social development, risk of natural disasters and geopolitical status.[50] For example, CSR in societies which aim for equal treatment of genders more likely takes into consideration how the impact of corporate activities differs between genders. And societies which periodically suffer from extreme weather events probably pay closer attention to the environmental demands on companies' emission and pollution control.

The scope of CSR, meaning how intensely and focused on which issues it is used and implemented, is affected by how committed the society is to a free-market style economy. In more free-market style economies, private companies are typically demanded for greater CSR but as the companies are used to operating without outer pressures, they also tend to be more resistant towards CSR initiatives. On the other hand, corporations in more State driven or heavily regulated economies, in which infrastructures of social welfare and economic support already take care of some of the social and environmental costs of business, are paradoxically better receptive to CSR demands even if they are less needed.[51]

Having gone through the spatial changes of CSR, it is time to address the temporal, meaning historical evolution of CSR. Going through the history of CSR gives an important perspective on its meaning and goals in today's context. However, it is important to note that most of the

[49] Morgera 2020, p. 16 and 17.

[50] Weber and Wasieleski 2018, p. 5.

[51] Weber and Wasieleski 2018, p. 4–5.

early formal writings on the social responsibility of companies are from North America and Western Europe. The sources used in this study to depict the history of CSR are focusing on the evolution of CSR among the private economic actors in Western culture. The earliest form of CSR dates to the turn of the 20th century when major companies took the initiative to support different community and pastime organisations like art museums and ballet. This early form of CSR could carry the name of corporate philanthropy.[52] Corporate philanthropy posed very little change to the status quo of single bottom-line thinking which had ruled since 1494 when Luca Pacioli published the world's first description of double-entry bookkeeping which is the simple accounting theory behind the single bottom line.[53] His book is regarded by many as one of the most influential works in the history of capitalism.[54] Scholars have some differing opinions on the development of CSR during the Great Depression and world war decades. Some say, that in the war times companies had to prioritise production and leave charitable thinking to the side resulting in little to no development of CSR.[55] Others argue that in the 1940s companies began to be regarded as institutions similar to the government that need to meet certain social obligations.[56] However, there seems to be consensus on the idea that the formal growth of CSR started in the 1950s. The period from the 1950s to the mid-1960s could be classified as the awareness era of CSR when company managers began to be regarded as sort of public trustees and the idea of balancing the different interests and claims to companies' resources and wealth emerged.[57]

The 1960s and 1970s for CSR were characterised by corporate social responsiveness when specific social and environmental issues came into the corporations' focus like racial discrimination and pollution problems. New kinds of corporate actions appeared such as future forecasting, social employee training and social and environmental issues scanning and analysis. Still, it was understood that due to limitations posed by the risk of loss of revenue or profit, not all social demands could be met, and thus social impacts started to be addressed in

[52] Weber and Wasieleski 2018, p. 5 and Carroll 2008, p. 25.

[53] Elkington 2018, online article and Harford 2017, online article

[54] Harford 2017, online article.

[55] Weber and Wasieleski 2018, p. 5.

[56] Carroll 2008, p. 24.

[57] Weber and Wasieleski 2018, p. 6 and 9-10. and Carroll 2008, p. 24–25.

strategic policy plans. [58] Serious management and organisation action on CSR commenced a bit later in the 1970s and 1980s, for example actions like altering the board of directors, minority hirings, use of social performance disclosures and pollution control actions. This marked the change to the era of corporate ethics when discussions of corporate impacts on human rights and environmental protection truly began.[59] An important catalyst to this development was the ethical scandals of corporate wrongdoings, for example, companies conducting business in South Africa consequently supporting apartheid and the fatal 1984 Union Carbide Bhopal explosion in India.[60]

From philanthropy to social managerialism, in the 1980s and 1990s the idea of ethical corporate culture became part of the evolution of CSR. Companies were recognised and even judged based on the quality of their work culture and the normative principles that underlined the company's strategies and decisions.[61] Additionally in the 1980s, the doctrine of economic liberalisation started to spread globally and demand for the deregulation of the freeing-up market grew. Instead of State driven common-and-control legislation, the notion of corporate self-regulation became prevalent in the form of unilateral initiatives such as codes of conduct, environmental reporting, and social audits which also were suitable tools for corporations to show to the public their ethical corporate culture.[62] The image that the public had of a company became an even more important matter to companies that wished to expand their business globally. Especially since the 1990s, corporations acted on an increasingly global scale and the concerns of transnational corporations' (TNCs) operations and impact on society and environment became cross-national, cross-governmental, and even cross-continental. Globalisation, which means the emergence of market-driven corporations into societies across the world, brought about destructive environmental and ecological damages and as its counterforce, an international sense of ecological awareness rose and added importance to the CER part of CSR.[63]

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[58] Carroll 2008, p. 25 and Weber and Wasieleski 2018, p. 7 and 12-13.

[59] Carroll 2008, p. 25 and 33 and Weber and Wasieleski 2018, p. 7.

[60] Carroll 2008, p. 36.

[61] Weber and Wasieleski 2018, p.16.

[62] Utting 2002, p. 67 and 69.

[63] Weber and Wasieleski 2018, p. 21–22, 24.

In the 1990s, probably the most significant advancement to CSR was the rise of so-called multistakeholder initiatives when NGOs and other CSOs began to demand better transparency and public reporting of a company's CSR actions.[64] In 1992, an NGO called Business for Social Responsibility was one of the first NGOs to represent CSR initiatives and professionals bearing CSR responsibilities in their firms.[65] Multistakeholder initiatives aimed to correct some of the biggest weaknesses of corporate self-regulation such as lack of independent monitoring and TNCs' weak focus on labour rights along their supply chain and also even harmonise the piling amount of unilateral corporate self-regulation.[66] After the 1990s, the CSR landscape has experienced almost exponential growth to hundreds of private and multistakeholder initiatives on CSR. The CSR landscape is multi-faceted and the subject of interest of many disciplines.[67]

What we can see from the spatial and temporal development of CSR, is that CSR will likely not reach one fixed meaning. It will keep reflecting the interests and changes of the current society and culture but likely keep working as an umbrella that ties sustainable business practices as the responsibility of companies. What adds to the complexity of CSR, is the fact that many central ideas of CSR have spread into new alternative and supplementary theories and models such as corporate social performance, public policy, business ethics, stakeholder management and global corporate citizenship.[68] Looking at the development of CSR through the lenses of biodiversity protection, we can see that CER is quite a young and niche aspect of CSR compared to economic and social responsibility. In fact, it is just since the 2010s that different international standard-setting initiatives have started to develop substantive CER standards.[69] Nevertheless, CER most certainly has become an inseparable component of CSR and further on in this study we will see if the regulative side of CSR is currently able to further nature-friendly business practices.

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[64] Utting 2002, p. 61; Weber and Wasieleski 2018, p. 24.

[65] Carroll 2008, p. 38.

[66] Utting 2002, p. 61-62.

[67] OECD 2009, p. 236.

[68] Carroll 2008, p. 34.

[69] Morgera 2020, p. 18.

2.3 The Soft Law Nature of CSR Initiatives

Soft law refers to legally nonbinding instruments which are worded normatively and can amount to some legal and behavioural effects.[70] Correspondingly, hard law refers to legally binding legislative acts. The use of soft law is ever-expanding, both in numbers and in functions. These non-binding instruments include for example declarations, guidelines and action plans and can be used to determine objective for inter-governmental cooperation, create international procedures with both the State and private actors in mind and often precede the adoption of binding treaties or customary law.[71] Even if soft law does not give legal rights and obligations to its parties, institutions and forums can deploy a variety of means to strengthen their implementation and compliance such as reporting requirements and publicly open notification and complaint procedures. This makes the notion of the "bindingness" of soft law a little more complex, especially when taking into consideration how some soft law instruments get recognised by hard law and international institutions.[72]

Especially in the case of international environmental matters, soft law is being increasingly adopted by international institutions and forums of State cooperation.[73] Legal scholars have identified three main reasons to soft law becoming such a significant part of environmental law-making. Firstly, soft law does not limit the freedom of action of States and thus it is easier to agree on. Often the understanding of environmental problems suffers from incomplete scientific evidence and with soft law States can agree to take action even when there is not enough consensus to reach legally binding agreements. Like this soft law helps to gradually develop the law on environmental matters. Secondly, soft law is more flexible than hard law to amend and replace. When scientific understanding of environmental issues grows, soft law is an easy tool for establishing technical rules and procedural standards that later can be changed if necessary. Furthermore, the flexibility of soft law is useful when taking into regard Article 31.3. (a) and (b) of the 1969 Vienna Convention on the Law of Treaties according to which soft law can be a subsequent agreement elaborating the interpretation or some practice of a treaty when parties to the treaty agree on the soft law. Thirdly, soft law is lighter to implement and doesn't require the States to go through the ratification process as

[70] Boyle 2021, p. 420 and Friedrich 2013, p. 2.

[71] Friedrich 2013, p. 2.

[72] Friedrich 2013, p. 443-445.

[73] Friedrich 2013, p. 2.

required by their domestic law.[74] One can argue that these benefits of soft law in international environmental law practice amplify the governments' willingness to favour soft law instruments for CER.

Traditionally the definition of CSR has been tied to the idea that it is the discretion of corporations to engage in CSR and States should only act in the role of a facilitator.[75] This is visible for example in the first CSR definition by the European Commission from 2001 which described 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".[76] However, in reality, CSR has always tiptoed a line between soft law and hard law because some CSR themes are regulated by law such as corporations' obligation to comply with tax and anti-bribery laws.[77] Actually, the regulative evolution of CSR could be caricatured as the 1960s and 1970s being the time of State led legislation, the 1980s and early 1990s period of corporate self-regulation and from the late 1990s onward the time which emphasises co-regulation.[78] As globalised trade has brought about economic growth, at the same time there is an increasing understanding that trade and financial liberalisation cannot continue at the cost of ecological and social values. Intergovernmental organisations, such as the World Trade Organisation and specialised agencies and communities of the UN, have tried to address the sustainability issues of corporate activity with bureaucratically heavy hard law solutions but sadly this response has failed to achieve effective results. Consequently, sustainable global governance has employed soft law solutions in growing numbers.[79] For the past couple of decades, the soft law side of CSR regulation has been the dominant form based on the sheer number of private and multistakeholder regulatory CSR initiatives.

The CSR soft law can be divided into two different categories; the unilateral form of corporate self-regulation and the later emerged multilateral civil regulation, also known as multistakeholder initiatives. Corporate self-regulation has been criticised for its unilateral and ad hoc design and that it only amounts to the greenwashing of the public image of the

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[74] Boyle 2021, p. 421-423.

[75] Weber and Wasieleski 2018, p. 135.

[76] COM2001 (366), p. 6.

[77] Lambooy, T. E. 2010, p. 14.

[78] Utting 2002, p. 65.

[79] Kirton and Trebilcock 2016, p. 3–4.

corporation instead of giving real substance to the company's CSR performance.[80] Multilateral civil regulation emerged as an alternative to corporate self-regulation. In this form of CSR soft law, the third sector – meaning NGOs and CSOs – plays an active role in the planning and implementation of the initiatives. Multilateral civil regulation has a strong element of co-regulation where different stakeholders work together on the regulatory instrument to improve the CSR of companies. This cooperation can include all sides of the governance triangle; government, the private sector and the third sector. What made this new wave of civil regulation different from the already existing ways of trade unions or other organisations influencing the private sector, was how NGOs and CSOs targeted specific products and companies and took their CSR "watchdog" approach all the way from advisory services to pursuing litigation against companies with bad CSR practices.[81]

As was already mentioned, there are nowadays hundreds of CSR soft law initiatives and instruments that propose their own version of standards and principles for managing corporate social and environmental issues.[82] Just to name a few of these initiatives; AA1000, the Alliance for Water Stewardship, the Carbon Disclosure Project, the Clean Clothes Campaign, the Ethical Trading Initiative, the Fair Labour Association, the Forest Stewardship Council, the Global Commons Alliance which includes the Science Based Targets Network, the Global Framework Agreement, the International Council on Mining and Metals Principles, the International Organisation for Standardisation Standards ISO 14001 and ISO 26000, the Marine Stewardship Council, the Natural Capital Protocol, SA8000 by Social Accountability International, UN Guiding Principles on Business and Human Rights, Worldwide Responsible Apparel Production and the Worker Rights Consortium.[83] CSR initiatives can be arranged into seven different categories:

1. corporate codes of conduct which direct the conduct of companies and potentially their suppliers,
2. multistakeholder initiatives which create cooperation on CSR issues between

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[80] Utting 2002, p. 69 and 70.

[81] Utting 2002, p. 65.

[82] OECD (2009), p. 236.

[83] Utting 2002, p. 75 and 76.; Convention on Biological Diversity. 21 April 2016. Subsidiary Body on Implementation. UNEP/CBD/SBI/1/INF/1. Annex II Reporting schemes; and Science Based Targets Network website, "The First Science-Based Targets for Nature" accessed 26 May 2023.

different actors on all sides of the governance triangle,

3. certification and labelling which provide information for the consumers on the product through social auditing,

4. model codes which give a minimum list of standards for companies developing their codes of conduct,

5. sectoral initiatives which deliver a common CSR approach for a certain sector nationally, regionally, or even internationally,

6. international framework agreements which are reached with negotiations between MNEs and trade unions or global union federations, and

7. socially responsible investment initiatives which expended from financial sectors' internal CSR use to concerning sustainable investment decisions.[84]

CSR initiatives can focus on one or on all three dimensions of CSR; social, environmental, and economic. The development of CSR initiatives can stem from almost any kind of actor, be it a private company or association, government, or even an intergovernmental body. Additionally, regardless of the origin of the initiative, it can be nationally, regionally, or internationally endorsed by governments.[85] From the perspective of regulation, it is difficult to define which CSR initiatives can be considered soft law and which do not even constitute that level of regulatory nature. Maybe the functional sorting of initiatives into frameworks, which consist of "principles-based guidance on how information is structured, how it is prepared, and what broad topics are covered", and standards which provide "specific, detailed, and replicable requirements for what should be reported for each topic, including metrics" can be used as an indicator of the instruments soft law nature. Frameworks and standards are supposed to be deployed together so that standards ensure the consistent and comparable actionability of frameworks.[86] Because framework initiatives are more high-level and can be usually signed into by parties, this indicates their possible identification as soft law.

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[84] OECD (2009), p. 238-239.

[85] OECD (2009), p. 240–241.

[86] The IFRS Foundation website, "SASB Standards & Other ESG Frameworks", accessed 9 May 2023.

When we look at the vast mass of CSR initiatives, there are three instruments that stand out: the Organisation for Economic Co-operation and Development Guidelines for Multinational Companies (OECD MNE Guidelines), the International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) and the UN Global Compact. What makes them special is that they have a high-level legitimacy at the international level due to being formally agreed upon or recognised by many governments.[87] Firstly, the OECD MNE Guidelines – first adopted in 1976 and since then five times revised[88] – provide a set of voluntary principles and standards, recommended by 40 States, including all 30 OECD members. They encourage corporations – be they MNEs or domestic companies – to act positively on all three CSR dimensions. The OECD MNE Guidelines were specifically designed with the existing normative framework in mind, and they reference, for example, the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development and Agenda 21, and the Copenhagen Declaration for Social Development.[89] To aid in the implementation of the OECD MNE Guidelines, the OECD ministerial council adopted in 2018 the OECD Due Diligence Guidance for Responsible Business Conduct. The MNE Guidelines have due diligence recommendations on how companies can "avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships" and the Due Diligence Guidance explains them in more practical terms. The Due Diligence Guidance also has an objective to build common understanding on due diligence for responsible business conduct between governments and stakeholders.[90]

Secondly, the 1919 founded ILO is the only tripartite UN agency which means that it brings together representation of governments, employers, and workers to cooperate. In 1977, organisations of the tripartite representation adopted the ILO MNE Declaration, one of the earliest international instruments addressing the social impacts of business. It focuses mainly

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[87] OECD (2009), p. 237.

[88] The Organisation for Economic Co-operation and Development website, "About the OECD Guidelines for Multinational Enterprises" accessed 5 May 2023.

[89] OECD (2009), p. 252–253.

[90] OECD 2018, p. 3.

only on the social dimension of CSR, covering all core labour standards. Even though the Declaration is a voluntary instrument, it is based on ILO conventions and recommendations and involves regular reviews and monitoring to support its implementation.[91] And finally, the UN Global Compact invites companies to enact its ten principles covering all dimensions of CSR and to embrace broader UN goals. The principles derive from the legal instruments; the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work; the Rio Declaration on Environment and Development, and the UN Convention Against Corruption. Since UN Global Compact launched in 2000, it has gained the title of the world's largest global corporate citizenship initiative and has as its participants over 3600 companies in 120 countries.[92]

The engagement by the private sector in CSR initiatives is palpable in the number of companies delivering sustainability reports and disclosures, otherwise called non-financial reports. Sustainability reports are the outcome of measuring the company's efforts in delivering better CSR and holding itself accountable by disclosing the findings to internal and external stakeholders.[93] In 2022, 96% of the world's 250 largest companies by revenue (G250) reported on sustainability. The Global Reporting Initiative (GRI) by the Global Sustainability Standards Board is the world's most-used standard against which sustainability reports are made, followed by the Sustainability Accounting Standards Board (SASB) Standards which is managed by the International Sustainability Standards Board (ISSB).[94] Even though sustainability reporting is record high, the number of G250 companies reporting on biodiversity in 2022 is only 46%. Among the 5800 leading companies around the world only 40% reported in 2022 on biodiversity.[95] Additionally, the quality and quantity of data on biodiversity-related issues reported by companies are often quite inconsistent. Reasons for this are complex, among them are the difficulty in quantifying the issues, the overriding focus

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[91] OECD (2009), p. 243, 248, 250 and 251.

[92] OECD (2009), p. 254-255.

[93] Convention on Biological Diversity. 21 April 2016. Subsidiary Body on Implementation. UNEP/CBD/SBI/1/INF/1., page 2.

[94] KPMG International 2022, p. 13, 23 and 29.; The IFRS Foundation website, "Materiality Finder", accessed 9 May 2023 and Global Reporting Initiative website, "Global Standard for Biodiversity Impacts One Step Closer", accessed 9 May 2023.

[95] Global Reporting Initiative website, "Global Standard for Biodiversity Impacts One Step Closer", accessed 9 May 2023 and KPMG International 2022, p. 51.

on climate change and other environmental issues, and the lack of regulation obliging companies to take better CER action.[96] The landscape of sustainability disclosures is also labyrinthine with many standards overlapping each other and even being used jointly.

Fortunately for CER, the concern for the state of global biodiversity has been moving up the international political agenda bringing a positive trend on adopting new initiatives which will help companies disclose their biodiversity impacts more transparently. As a comparison, the drastic decline of global biodiversity has gained awareness among policymakers and legislators much later than climate change. The Intergovernmental Panel on Climate Change (IPCC) was established already in 1988 and 1990 it published its first Assessment Report recounting comprehensive scientific data on climate change and its effects worldwide. Since then, the IPCC has regularly published new Assessment Reports and currently, it is in its sixth assessment cycle.[97] In contrast, the first international ecosystem assessment was the Millennium Ecosystem Assessment in 2005 after which there was a gap of more than 10 years until the next international high-level ecosystem assessment, this time by IPBES. IPBES was established just in 2012 and published in 2019 its first Global Assessment Report on Biodiversity and Ecosystem Services which was then the successor of the Millennium Ecosystem Assessment.[98] Although the risks of biodiversity loss have been known for a long time, after the publishing of the first IPBES Global Assessment Report biodiversity has been politicised more than before and truly treated as an equally big threat to humanity as climate change.[99] The importance of moving biodiversity near the top of global policy agenda is highlighted by the fact that climate change worsens biodiversity and vice versa. The UN calls

[96] Convention on Biological Diversity. 21 April 2016. Subsidiary Body on Implementation. UNEP/CBD/SBI/1/INF/1. page 3.

[97] The Intergovernmental Panel on Climate Change website, “About, History of the IPCC” accessed 23 May 2023 and “Climate Change: The IPCC 1990 and 1992 Assessments” accessed 23 May 2023.

[98] ‘The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services website, “About, History of the Establishment of IPBES”, accessed 23 May 2023 and “Media Release, IPBES Global Assessment Preview” accessed 23 May 2023.

[99] Anderson 2019, online article.

climate change, pollution, and biodiversity loss the triple planetary crisis and has UN agencies dedicated to tackling each of them.[100]

Among the new and improved CER initiatives is the ongoing review of the GRI Biodiversity Topic Standard is intended to replace the 2016 standard GRI 304: Biodiversity. It will further help organisations to manage and publicly disclose its most significant impacts on biodiversity under the GRI.[101] One of the most anticipated initiatives, the Science-Based Targets for Nature (SBTN) by the Science Based Targets Network, was released on 24 May 2023. The SBTN is the world's first science-based practical guidance and methodologies for companies on how to "take holistic action to address their impact in the face of mounting environmental and social crises". Compared to other sustainability frameworks, the SBTN is more detailed and prescriptive guidance on nature-friendly action thanks to its science-based approach. The targets complement the existing climate targets in the Science Based Targets initiative.[102] Another upcoming milestone for CER is the Taskforce for Nature-related Disclosures (TNFD), which follows the footsteps of the Task Force on Climate-related Financial Disclosures.[103] The TNFD is developing "a risk management and disclosure framework for organisations to report and act on evolving nature-related risks, with the ultimate aim of supporting a shift in global financial flows away from nature-negative outcomes and toward nature-positive outcomes". The first release of the full framework will be in September 2023.[104] The networks and organisations behind these initiatives have the purpose of having the initiatives complement each other. The draft of the revised GRI Biodiversity Topic Standard guides organisations to use TNFD and SBTN when assessing the significance and location of negative impacts.[105] Especially the SBTN and TNFD are engaging in intense collaboration as the Science Based Targets Network is one out of 16 Knowledge Partners for TNFD. The SBTN's objective is to give companies the tools to set

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[100] United Nations Climate Change website, "What Is the Triple Planetary Crisis?" accessed 24 May 2023.

[101] Global Reporting Initiative website, "Topic Standard Project for Biodiversity" accessed 9 May 2023.

[102] Science Based Targets Network website, "The First Science-Based Targets for Nature" accessed 26 May 2023.

[103] OECD (2009), p. 51 and 52.

[104] Taskforce on Nature-related Financial Disclosures website, "About" accessed 6 May 2023.

[105] GRI Standards Division (2022), p. 10.

for their operations science-based targets and then the TNFD provides companies and financial institutions a framework on how to manage and report their environmental risks.[106]

[106] Science Based Targets Network website, “The First Science-Based Targets for Nature” accessed 26 May 2023.

3 Corporate Environmental Responsibility and International Law

3.1 Convention on Biological Diversity and the Private Sector

The impact of sustainable development on international policy and legislation has been ever-growing since the concept of sustainable development was formed in the Brundtland Report in 1987. It has been the subject of over 10 UN conferences[107], incorporated into many international agreements of both hard and soft law nature and utilized in international and national jurisprudence. Some scholars argue that sustainable development law is a new emerging substantive body of law which is characterised as the intersection and integration of international economic, environmental, and social law.[108] CSR regulation is most certainly part of this new body of law. However, traditionally, international law does not address private companies but leaves it as the State's responsibility to enact necessary legislation towards the economic actors under their jurisdiction.[109] Is thus CSR legislation, meaning the hard law of CSR, emerging as something new in international law or are just some new interpretations of existing international environmental law creating CSR-type obligations? If international CSR law already exists, how does it push for CER?

The main international agreement for the conservation of biodiversity is the Convention on Biological Diversity[110] (CBD) which came to force in 1993. Article 2 of CBD defines biological diversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". The three main objectives of the convention, named in Article 1, are "the conservation of biological diversity, the sustainable use of its component and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources". The form of CBD is widely viewed to be a framework convention which has its benefits and disadvantages. On one hand, the framework form with a flexible structure provides a platform

[107] United Nations website, "Conferences, Environment and Sustainable Development", accessed 25 April 2023.

[108] Bosselmann 2020, p. 30 and 33.

[109] Morgera 2020, p. 36.

[110] 1992 Convention on Biological Diversity (adopted 5 June 1992, in force 29 December 1993) (1992) 31 ILM 818.

for wide international cooperation and versatile national implementation. On the other hand, the convention has been criticized for its vague text and that although its implementation relies on the development of national biodiversity strategies and action plans, its process is considered to be ineffective in changing State practices due to lack of systemic assessment of agreed commitments.[111] However, the flexibility of the convention is also a big reason for its universal membership of 196 contracting parties with the famous absence of the United States.[112]

According to Article 10, subsection (e) CBD "each contracting party shall, as far as possible and as appropriate, encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources". And Article 16, paragraph 4 states that "each contracting party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology . . . for the benefit of both governmental institutions and the private sector of developing countries". These two articles are the only ones in CBD which mention the private sector. In them, the private sector is addressed in sort of a subsidiary manner of implementation in the State party's implementation. The effect of these two articles on private companies can follow through either with host State control or home State control. Host State control follows the principle of State sovereignty through which foreign investors are subject to the control of the State in which they operate in. Host State control is done for the national interest of the State both before the entry of a (foreign) investor and when the company has been established on the territory of the State. In the case of home State control, States can exercise control with extraterritorial application of national standards over those MNEs which are incorporated or headquartered on their territory. Home State control may also include the application of international standards for MNEs.[113]

As the CBD is a framework convention, its implementation is supplemented with a complex system of processes and instruments that include much more detailed rules than the convention text itself.[114] The CBD establishes with Article 23 the Conference of the Parties

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[111] Morgera and Tsioumani 2010, p. 3, 4 and 6.

[112] Convention on Biological Diversity website, "List of Parties" accessed 30 April 2023.

[113] Morgera 2020, p. 25 and 28.

[114] Morgera and Tsioumani 2010, p. 6.

(COP) as the governing body of the CBD and with Article 25 the Subsidiary Body on Scientific, Technical and Technological Advice which provides recommendations to the COP on technical and scientific aspects of the convention's implementation.[115] The role of business was addressed as early as in the third COP meeting in 1996 in decision III/6 but only as an additional financer for the conservation and sustainable use of biological diversity. The first time the involvement of the private sector for implementation was put in as an aim in a COP decision was in paragraph 12 of the fifth COP's decision V/11.[116] Following that it became almost a norm for one of the COP meeting decisions to have the topic of private sector engagement[117].

The turning point for engaging businesses for the convention's implementation was in 2010 when the tenth meeting of the COP adopted a revised and updated Strategic Plan for Biodiversity for the 2011-2020 period (SPB 2011-2020). [118] The SPB 2011-2020 consisted of five strategic goals under which 20 of the so-called Aichi Biodiversity Targets were organised. The COP decision X/2, that adopted these instruments, urged in paragraph 3(a) governments to further the implementation of the SPB 2011-2020 by enabling "participation at all levels to foster the full and effective contributions of women, indigenous and local communities, civil society organisations, the private sector and stakeholders from all other sectors in the full implementation of the objectives of the Convention and the Strategic Plan". Furthermore, the COP decision called in paragraph 3(d) for governments and the private sector at all levels to use the revised and updated national biodiversity strategies and action plans as a tool to integrate biodiversity targets, as appropriate, in economic sectors and spatial planning processes. Paragraph 12 also invited NGOs and business sector entities to "make available the necessary resources for the implementation of the Strategic Plan for Biodiversity 2011-2020".[119] Although the language of the decision was still quite soft towards the private

[115] Convention on Biological Diversity website, "Introduction" accessed 1 May 2023.

[116] Medium website, "If Conservationists Want Business to Be Part of the Solution, We Also Have to Change" accessed 1 May 2023.

[117] Look at CBD COP decisions V/11, VI/26, VIII/17, IX/26, X/21, IX/26, XI/7 and XII/10.

[118] Medium website, "If Conservationists Want Business to Be Part of the Solution, We Also Have to Change" accessed 1 May 2023.

[119] Convention on Biological Diversity, COP 10 Decision X/2.

sector, it definitely gave private companies a new seat at the table of global biodiversity protection under the CBD.

The SPB 2011-2020 and the Aichi Biodiversity Targets were in the Annex of the COP 10 Decision X/2. According to paragraph 1, the purpose of the SBP is to provide a strategic approach for the effective implementation of the CBD and "inspire broad-based action by all Parties and stakeholders". Paragraph 14 clarifies that the primary implementation of the SPB is through activities at the national or subnational level while regional and global action will be in a supporting role.[120] The SPB treats the private sector as something more than just a stakeholder which is visible for example in the Aichi Target 4 which mentions business and stakeholders as separate actors. The role of the private sector is according to paragraph 17 to work in partnership with "all levels" to help the effective implementation of the SPB and such partnerships are supposed to "garnet the ownership necessary to ensure mainstreaming of biodiversity across sectors of government, society and the economy". Furthermore, paragraph 17 notes that on the international level partnership between the CBD and other conventions, international organisations, and processes as well as civil society and the private sector is needed to support the implementation of the SPB.[121] The action that the SPB expects from companies is quite well pointed out in paragraph 10, subsection (b) which points out that engagement of the agricultural, forest, fisheries, tourism, energy and other sectors will be essential to succeed in decreasing the direct pressures on biodiversity. Interestingly, from the point of view of the 3Ps in CSR, subsection (b) also talks about the trade-off situations between biodiversity protection and social objectives and encourages finding a balance between the different interests with tools like spatial planning and efficiency measures.[122] The clearest nod to CER is in subsection (c) of paragraph 17 which calls for efforts to "promote biodiversity-friendly practice by business".[123]

The language of SPB keeps it voluntary for companies to participate in any implementation efforts and the responsibility to engage the private sector seems to strongly stay on the governments. This is noticeable for example in paragraph 10, subsection (e) which implores

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[120] Convention on Biological Diversity, COP 10 Decision X/2, p. 6 and 14.

[121] Convention on Biological Diversity, COP 10 Decision X/2, p. 10–11.

[122] Convention on Biological Diversity, COP 10 Decision X/2, p. 7.

[123] Convention on Biological Diversity, COP 10 Decision X/2, p. 11.

national planning processes to become "more effective in mainstreaming biodiversity and in highlighting its relevance for social and economic agendas".[124] Sadly, the implementation of the SPB was not very successful and none of the Aichi Biodiversity Targets were met by the set deadline of 2020. Only six of the Aichi Targets were even partially achieved. The clear intention of the SPB was that the private sector should be mindful of the whole range of the Aichi Biodiversity Targets but out of them all, Aichi Target 4 was the most directly addressed towards the private sector. It set the goal that "by 2020, at the latest, governments, businesses and stakeholders at all levels have taken steps to achieve or have implemented plans for sustainable production and consumption and have kept the impacts of the use of natural resources well within safe ecological limits". The national reports of the Parties to the CBD listed many different actions that the Parties had taken towards Target 4 and among them were CSR practices and reporting, sector-specific sustainability plans and regulatory measures, and promotion of certification measures. Unfortunately, there was only some progress made in reaching Aichi Target 4 putting it also in the group of not achieved Targets.[125]

The greatest achievement of the SPB from the point of view of CER is that it brought the role of private companies to the agenda of CBD implementation. The conversation on nature-friendly business action under the auspice of CBD was further enhanced in the tenth COP with the establishment of the Global Partnership for Business and Biodiversity (GPBB). The GPBB brings together national and regional initiatives on business and biodiversity – in essence CER initiatives – so that governments, businesses, and other stakeholders can share knowledge and facilitate an increase in the number of companies with a significantly smaller negative biodiversity impact. Currently, the GPBB includes 21 initiatives out of which 19 are national and 3 regional initiatives.[126] Since 2010 the GPBB has held annual meetings which during COP meeting years are organised as special Business and Biodiversity Forums.[127] Even though the engagement of business is growing with different special panels and events, the CBD still has no formal process to directly involve the private sector in the negotiations

[124] Convention on Biological Diversity, COP 10 Decision X/2, p. 7.

[125] Secretariat of the Convention on Biological Diversity 2020, p.12–17 and 48.

[126] Convention on Biological Diversity 2022.

[127] Convention on Biological Diversity website, "CBD Meetings for Business and Biodiversity" accessed 4 May 2023.

on the international level. MNEs have almost only room in engaging with national policy and then individual governments must present these points of view of MNEs in formal CBD meetings.[128] Making the CBD framework develop a real international CER regulation would require making attendance to COP easier for private sector representation and giving businesses more authority in the negotiations.

3.2 International Legal Principles, Practices and Frameworks assisting CER

Convention on Biological Diversity is the only international instrument comprehensively addressing biodiversity. When we look at the text of other international biodiversity-related conventions, we can see the role of business in meeting their targets is quite rarely recognised in the convention text. No variation of the words "private sector" or "company" are found in the following conventions: the Convention on Wetlands of International Importance especially as Waterfowl Habitat (also known as the Ramsar Convention, entry into force in 1971), the Convention on International Trade of Endangered Species of Fauna and Flora (also known as CITES, entry into force in 1975), the Convention on the Conservation of Migratory Species of Wild Animals (entry into force in 1983), the International Treaty on Plant Genetic Resources for Food and Agriculture (entry into force in 2004), and the 1997 revised International Plant Protection Convention (entry into force in 2005).[129] Next to the CBD, among the biodiversity-related international conventions, only the International Convention for the Regulation of Whaling (entry into force in 1948) and the World Heritage Convention (entry into force in 1972) mention private actors in some capacity. Article IV of the International Convention for the Regulation of Whaling opens the possibility for "private agencies, establishments, or organizations" to collaborate with the International Whaling Commission in some matters. In the World Heritage Convention, mentions of private projects, private bodies and individuals and private foundations or associations can be found in five different articles. Arguably, these provisions have a limited reach in engaging private business in any CER type of action, but this research will not further look into their true

[128] Convention on Biological Diversity website, "Introduction" accessed 1 May 2023.

[129] Convention on Biological Diversity website, "Biodiversity-Related Conventions" accessed 1 May 2023.

business implications as other legal frameworks and principles are more relevant in enforcing companies' CER practices.

According to Article 38, paragraph 1, subsection c of the Statute of the International Court of Justice "the general principles of law recognized by civilized nations" are a source of international law. International environmental law has many different principles that, when applied with some legal instrument to private companies, help to establish companies' responsibility for the impact they have on the environment. The question of what type of legal nature legal principles possess is a standard topic of jurisprudence. One definition is to consider that legal principles embody general legal standards which do not specify particular actions.[130] Therefore it can be said that the objective of legal principles is to help guide the use and interpretation of positive rules of law. While there is no definitive list of principles of international environmental law, customary international law, especially the *Iron Rhine*[131] case, confirms their existence and applicability.[132] Seven general principles of international environmental law potentially apply to all types of activities in relation to the environment and all members of the international community:

1. the principle of State sovereignty and transboundary responsibility,
2. the principle of common but differentiated responsibilities
3. the principle of sustainable development,
4. the principle of prevention,
5. the precautionary principle,
6. the principle of cooperation, and
7. the polluter pays principle.[133]

The legal effect of these principles manifests itself in a variety of treaties and agreements, judicial practice and decisions, and even soft law commitments. The use of environmental law principles even in soft law instruments directed to business entities increases the influence of

[130] Bodansky 1993, p. 501.

[131] Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway, Belgium v Netherlands, Award of the Permanent Court of Arbitration, Case number 2003-02, Issue of Final Award on 24.5.2005.

[132] Sands et al. 2018, p. 197 and 200.

[133] Sands et al. 2018, p. 197.

international environmental law on corporate governance.[134] The general principles of international environmental law are either explicitly or in some variation represented in the 1972 Stockholm Declaration[135] and the following 1992 Rio Declaration on Environment and Development[136]. These declarations are international soft law instruments that the majority of States have signed and enforced with domestic law. Thus, when the States that adhere to the Stockholm Declaration and the Rio Declaration enact sustainable corporate governance regulation, it is usual that the general principles of international environmental law are part of the legal basis of such regulation.[137]

The principle of State sovereignty and transboundary responsibility means that States enjoy sovereign rights over the natural resources on their territory and that they have a responsibility not to cause transboundary environmental damage. The principle is probably best enshrined in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration. The two elements of this principle – the right to exploit natural resources and the responsibility to protect the environment – found the basis of international environmental law.[138] The principle of common but differentiated responsibility can be found in Principle 7 of the Rio Declaration. It means that all States bear responsibility for protecting the global environment but in relation to how big contributor they have been to a particular environmental issue and to their ability to contribute to the prevention and management of threats to the environment.[139] In certain situations, how States are required to uphold these two principles can influence their private sector but corporations themselves will not need to act according to these principles. In contrast, corporations can be expected to comply with the remaining five of the general principles of international environmental law, especially if the technique of extensive interpretations is used on the principles in legal argumentation.

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[134] Ong 2001, p 687.

[135] The Declaration of the United Nation Conference on the Human Environment, Stockholm 16.6.1972.

[136] A/CONF.151/26 (Vol. I) REPORT OF THE UNITED NATIONAS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT. Rio Declaration on Environment and Development, Rio de Janeiro 12.8.1992.

[137] Ong 2001, p 692–694.

[138] Sands et al. 2018, p. 198 and 201.

[139] Sands et al. 2018, p. 244.

The concept of sustainable development is discussed above in Chapter 1.2. The legal notion of sustainable development has been invoked in many international judicial decisions and is the core of both the Stockholm Declaration and the Rio Declaration. The principle of sustainable development carries within it four other legal principles; the principle of intergenerational equity which considers future generations' needs for natural resources, the principle of intragenerational equity which calls for the fair use of natural resources between States, the principle of sustainable use which guards that exploitation of natural resources is 'rational' and 'appropriate' and the principle of integration which ensures that development of any plans or projects takes due regard to environmental considerations and that development needs are integrated into environmental protection.[140] All CER legislative measures reflect the principle of integration calling for the inclusion of environmental considerations into corporate decision-making.[141]

The principle of prevention sets an obligation to reduce, control and limit activities that run the risk of causing damage to the environment at an early stage or preferably before any damage has occurred. In paragraph 101 of the *Pulp Mills*[142] case, the International Court of Justice (ICJ) phrased that "the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory". A large body of domestic environmental protection legislation supports the preventive principle in many different forms including setting authorisation procedures for certain activities, the use of penalties and the adoption of liability rules.[143] Prevention is a fundamental component of international CER standards and has the potential to drastically alter the company's business plans. If a corporate activity is certainly or potentially going to damage internationally protected environmental resources, employing the principle of prevention can mean that the company needs to altogether shut down such an activity.[144] The precautionary principle, or precautionary approach as preferred by the United States, deals with the balance of action and inaction in the face of scientific uncertainty. It appears with variable formulations in different legal instruments but one that gathers wide approval is how it is set in Principle 15 of the Rio

[140] Sands et al. 2018, p. 217 and 219.

[141] Morgera 2020, p. 147.

[142] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.

[143] Sands et al. 2018, p. 211 and 212.

[144] Morgera 2020, p. 159.

Declaration. Principle 15 states that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".[145] Some legal scholars think that the precautionary principle is a more progressive form of the principle of prevention.[146] Many CER initiatives include the precautionary principle – it can be found for example in the OECD MNE Guidelines chapter VI, paragraph 4.

The principle of cooperation is at the heart of Stockholm and Rio Declaration and encompasses the general obligation of States to cooperate in environmental matters in the spirit of good faith and good neighbourliness. Different international acts give varying contents to the extent of cooperation but generally, it involves exchange of information, sufficiently early notification, and consultation between States whenever some projects or processes have transboundary environmental impacts.[147] The way in which many CER initiatives require transparent and public reporting of the company's environmental effects is one manifestation of the principle of cooperation – just now the cooperation is between the company and its shareholders and stakeholders. Finally, there is the polluter pays principle which can be found in Principle 16 of the Rio Declaration. The theory of the principle is very simple but its applicability to different situations is debated. The basis of it is that the person or the operator causing the pollution should bear its cost. Case-by-case interpretation is then carried out for example in the question of which costs are included on the axel of internalising environmental costs during the operation to cleaning and restoration costs of the damaged environment.[148]

Because multilateral environmental conventions bind just their State parties and do not mention business entities, international environmental law struggles to impose comprehensive environmental protection rules on corporations.[149] Even if the general principles of international environmental law are not legally binding in themselves, they arguably have, through national enforcement, the greatest influence on corporations any international legal

[145] Sands et al. 2018, p. (n 31) 230.

[146] Ong 2001, p 693.

[147] Sands et al. 2018, p. 215 and 216.

[148] Sands et al. 2018, p. 240 and 243.

[149] Ong 2001, p 694.

tools. They guide the rational of many internationally used legal practices that support CER. One of the most prevalent ones is the environmental impact assessment (EIA). EIA is a process for identifying and considering the environmental – sometimes also societal and other – impacts of a planned action. It is a tool which is typically applied to large-scale development projects to help their planning process and ultimate decision-making. The operator, which often is a private company, bears the responsibility to conduct an EIA process. Nowadays most nations have established EIA processes, often with binding legislation.[150] In an EIA, the operator usually must follow the principle of prevention, the principle of coordination, the precautionary principle, the principle of sustainable development and the polluter pays principle when considering the potential impacts of the planned activity for ecological indicators versus the need for development and options to how the operator can mitigate these environmental impacts. Depending on the jurisdiction, the EIA process has some variety in its stages but usually, there are seven of them. Firstly a description of the proposed activity or project and then a screening in which it is determined if an EIA is needed and with what level of detail.[151] Thirdly a scoping of what needs to be assessed is conducted with consideration of the possible impacts of the project and the consequences of these impacts on ecological indicators, alternatives to the project, mitigation options, and how to provide potential public participation which requires the operator to share more information on the project as would be expected by the principle of cooperation.[152] Next up the proper EIA assessment is conducted and all the information is compiled in the EIA report. Often the EIA report includes a plan for monitoring the activity or a follow-up program for future upkeeping and upgrades. Then, the EIA report is reviewed by the appointed EIA agency who will usually give recommendations for the benefit of the decision-making stage.[153] The final sixth and seventh stages of EIA are decision-making on the proposed activity by an authority and follow-ups with monitoring and compliance.[154]

Some might argue that the EIA process ends with the reviewing of the report and the decision-making and follow-ups are rather part of the practice of environmental permitting.

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[150] Hanna and Arnold 2022, p. 3 and 4.

[151] Hanna and Arnold 2022, p. 9.

[152] Hanna and Arnold 2022, p. 7–10.

[153] Hanna and Arnold 2022, p. 10–13.

[154] Hanna and Arnold 2022, p. 9.

When set in legally binding procedures and preferably used in close interaction, both EIA and environmental permitting are effective instruments to help corporations identify the environmental impacts of their installations and then with permit conditions make the companies internalise the costs of these impacts. Environmental permitting is nowadays in many States a key regulative instrument for reducing the environmental impacts of industrial activities and facilitating industry operators' technological innovation. The OECD defines the protection of human health and the environment from individual sources of significant environmental impact as the overall goal of environmental permitting.[155] Both EIA and environmental permitting contribute to CER by obliging private companies to prevent their harmful environmental impacts but only regarding one single physical source, usually the construction or emissions of installations. Thus, EIA and environmental permitting do not help promote CER on a wider operational level in the corporations' value chains. Also, the processes of EIA and permitting take a lot of resources from the operator and the authority. The long process times and high administrative costs might make EIA and environmental permitting an inconvenience to companies which would like to develop innovative infrastructure and restoration projects for the benefit of biodiversity.[156]

One of the main legal issues of legislating CER is how corporations could be held liable for the environmental harm they have caused. According to the principle of State sovereignty States have the legal competence over corporate activities which disables the use of the polluter pays principle on holding the individual corporate actors responsible and liable for the environmental damage they have caused.[157] A further difficulty is the concept of the corporate veil, which means that the limited liability of a company's shareholders and directors protects them from personal legal liability for damage caused by the company.[158] Public international law does not have rules that would allow for piecing the corporate veil but some States have adopted both civil and criminal corporate environmental liability laws that sometimes even hold individual company directors liable.[159] Fortunately, the difficulty for inter-State corporate liability for environmental damage is somewhat mitigated with the

[155] OECD 2007, p. 3 and 12.

[156] Ulibarri et al., p. 1.

[157] Ong 2001, p 696 and 697.

[158] Cornell Law School website, "Piercing the Corporate Veil" accessed 27 May 2023.

[159] Ong. 2001, p 698, 701 and 702.

specific international civil liability regimes on ultra-hazardous activities.[160] Their objective is to prevent and remedy environmental damage by internationally harmonising minimum standards of liability in domestic law for a specific economic sector in which corporations need to especially bear environmental responsibility.[161] Such regimes are for example created by the International Convention on Civil Liability for Oil Pollution Damage (entry into force in 1975)[162], the Vienna Convention on Civil Liability for Nuclear Damage (entry into force in 1977)[163], the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and Their Disposal (adopted in 1999 but not yet entered to force)[164], the Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (adopted in 2003 but not yet entered to force)[165], and the International Convention on Civil Liability for Bunker Oil Pollution Damage (entry into force in 2008)[166]. Civil liability legislation is part of private international law and is implemented through domestic law towards private companies. They usually operate with strict limited liability of the operator and leave the State's responsibility to a secondary place, delivered for example with implementation of provisions on additional funding. For CER, these regimes are not very effective instruments to incentive preventative measures to environmental damage or even fulfil the polluter pays principle, mostly because States are disinclined to commit themselves and their private sector to the responsibility and liability of the regimes. Therefore, civil liability conventions often lack ratification and entry to force.[167] Also, the civil liability regimes motivate companies

[160] Ong 2001, p 698.

[161] Morgera 2020, p. 44.

[162] International Maritime Organization website, "International Convention on Civil Liability for Oil Pollution Damage (CLC)" accessed 7 May 2023.

[163] International Atomic Energy Agency website, "Vienna Convention on Civil Liability for Nuclear Damage" accessed 7 May 2023.

[164] Secretariat of the Basel Convention website, "Basel Protocol on Liability and Compensation" accessed 7 May 2023; and "Status of Ratification, the Protocol" accessed 7 May 2023.

[165] United Nations Economic Commission for Europe website, "Protocol on Civil Liability" accessed 7 May 2023.

[166] International Maritime Organization website, "International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER)" accessed 7 May 2023.

[167] Morgera 2020, p. 44-46.

only to avoid liability under applicable environmental laws, not to extend CER beyond the compliance-oriented interest.

Lastly, the role of sustainable development goals (SDGs) for CER needs to be addressed. In 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development which included 17 SDGs with 169 associated targets which constituted a universal call to action to ensure peace and prosperity for people and the planet. The purpose of the SDGs is to work as a sort of blueprint so that the aimed environmental, social, and economic goals are met by 2030 and further kept up with in the future.[168] The 2030 Agenda and SGDs are not legally binding which makes them a significant international soft law instrument as they are adopted by all the 193 UN Member States.[169] They are the most explicit instrumental manifestation of the principle of sustainable development and next to guiding the States' response to improve global environmental and social issues, the SDGs are also meant to be a sustainability tool for companies, In paragraph 39, it is recognised that the success of the Agenda 2030 depends on the working Global Partnership of governments, the private sector, civil society, the United Nations system and other actor and in paragraph 41, the 2030 Agenda acknowledges "the role of the diverse private sector . . . in the implementation of the new Agenda". Companies worldwide use the SDGs as a tool to align their sustainability initiatives. In 2022, already 74% of the G250 companies were reporting against the SDGs. However, the selective use of SDGs in reporting is common, with SDG 8: Decent Work and Economic Growth; SDG 12: Responsible Consumption and Production; and SDG 13: Climate Action being the most popular SDGs in companies' sustainability reporting. An additional transparency problem is that, in 2022, only a third of G250 companies assessed both their positive and negative impacts on SDGs.[170]

[168] United Nations website, "The Sustainable Development Agenda" accessed 12 May 2023 and, "The 17 Goals" accessed 12 May 2023.

[169] United Nations website, "The Sustainable Development Agenda" accessed 12 May 2023 and 'Sustainable Development Report website, "Sustainable Development Report 2022" accessed 12 May 2023.

[170] KPMG International 2022, p. 57–60.

3.3 Towards an International CER Framework

Traditionally it has been thought that international law does not apply to MNEs and that only States and international organisations have personality under international law while MNEs remain under the sovereignty of the State in which the company operates. Yet, home State control over MNEs is problematic in respect of the principle of national sovereignty. Even if international law allows for justified extraterritorial jurisdiction and host States can be willing to let home States control the MNEs on the host State's territory, there can be a conflict between the laws and standards of the home State and host State. There might arise so-called normative competency conflicts between the host and home State and in the case of environmental regulations, applying extraterritorial jurisdiction on MNEs can lead to different companies in the same sector and country operating with different sets of rules. Consequently, MNEs may start to locate their headquarters in those States that have lower environmental standards. Also, the logistical, financial and technical issues of monitoring how the MNEs comply with the home State norms in the host State need to be solved in order to have effective results with State control over MNEs.[171] Furthermore, any type of national control over private companies, especially MNEs, is difficult to pursue because the presence of corporate activities can be simultaneous in many different locations and these locations can easily also change.[172]

Given the relevance of public international law to the private sector, it is clear that business groups and companies want to lobby their interest in international legal negotiations. In international environmental negotiations the business community representation, for example, sector-specific trade associations and private sector associations like the International Chamber of Commerce and the World Business Council for Sustainable Development, seek to participate as observers and potentially even influence the development of international environmental law. To help their voices to be heard, the business community has even made their own proposals for international environmental law, for instance the Business Charter on Sustainable Development and the Declaration of the World Industry Conference on Environmental Management.[173] Even though the private sector does not officially participate

[171] Morgera 2020, p. 29 and 30.

[172] Morgera 2020, p. 24 and 25.

[173] Sands et al. 2018, p. 92.

in international law-making, its lobbying is often highly effective because States want to protect the interest of their own economy and attract foreign investments to their territory. The unofficial presence of corporations in international negotiations is not always positive for biodiversity protection, especially in the case of fossil fuel companies. Many legal scholars argue for the need to develop a type of limited legal recognition of MNEs in international affairs so that the companies can take better responsibility and be held accountable for their actions and influence in the international law-making process.[174]

For all these reasons, and because of the need to make corporations reduce their ecologically harmful impacts, there is a clear need for an international regulative framework for corporate behaviour. Luckily, there is now a political momentum on international biodiversity protection which is showing encouraging results for common international CSR-related regulation. In March 2023, the delegates of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction reached a draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Treaty). After almost two decades-long negotiations the agreement on a new legally binding treaty marks a great victory for multilateralism.[175] Currently, the text of the draft treaty is under final technical editing and translations and is set to be adopted in June 2023. Even though the BBNJ Treaty will be binding only on State parties, it will likely result in new national or regional binding obligations for companies. This is because the objective of the treaty is to regulate all activities taking place in areas beyond national jurisdiction (ABNJ) and at present companies are the main actors in ABNJ.[176] The outcome of the BBNJ Treaty concerning CER is to be seen after its adoption but the signs are promising.

The most important development towards a binding international CER framework is the Kunming-Montreal Global Biodiversity Framework (GBF).[177]The fifteenth COP of the CBD adopted it in December 2022, and it builds on the SPB 2011-2020 and the Aichi Biodiversity

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[174] Morgera 2020, p. 60 and 61.

[175] United Nations website, “UN Delegates Reach Historic Agreement on Protecting Marine Biodiversity in International Waters“ accessed 13 May 2023.

[176] Colarossi, 2023, online article.

[177] CBD/COP/DEC/15/4.

Targets. Paragraph 4 of the GBF sets as its purpose the full implementation of the three objectives of the CBD by enabling and inciting "urgent and transformative action by Governments, and subnational and local authorities, with the involvement of all of society". It has a close relationship with the 2030 Agenda for Sustainable Development and the SDGs and in its preamble, it even invited the General Assembly of the UN to take the GBF into account when monitoring the progress towards the SDGs. Section F of the GBF sets its 2050 vision and 2030 mission. The former, according to paragraph 10, is a world living in harmony with nature where "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people". And the latter, pursuant to paragraph 11, is to halt and reverse biodiversity loss with urgent action taken in the period up to the year 2030 so that nature is put on the path to recovery. Section G introduces four long-term goals for the support of the 2050 vision and section H 23 action-oriented global targets which need to be initiated immediately in order to reach the 2030 mission. The catchiest target of the GBF is the so-called 30-by-30 target in Target 3 which pledges to conserve 30% of the planet's terrestrial, aquatic. and marine habitat by the year 2030.

The GBF addresses the private sector both as a financial contributor in implementing the national biodiversity strategies and action plans and as an actor that should take action to reduce its biodiversity-related risks and promote sustainable production and consumption. Target 19 calls for the mobilisation of at least $200 billion per year by 2030 and private finance and other private sector investments in biodiversity are part of reaching this target. Target 15 is a full-on CER target which requires States to adopt legal, administrative and policy measures on biodiversity protection towards business. It even names large and transnational companies and financial institutions as actors of special interest for such measures. Target 15 identifies three functions that the measures need to "encourage and enable business" to do:

> "(a) Regularly monitor, assess, and transparently disclose their risks, dependencies and impacts on biodiversity, including with requirements for all large as well as transnational companies and financial institutions along their operations, supply and value chains, and portfolios;
> (b) Provide information needed to consumers to promote sustainable consumption patterns;

(c) Report on compliance with access and benefit-sharing regulations and measures, as applicable;"

Essentially Target 15 wants companies to establish an internal corporate environmental management system. Although the GBF is not a legally binding instrument, this type of language regarding the role of the private sector is historical in an international instrument to implement a legally binding convention. This is even more significant when one remembers that CBD has nearly universal participation and despite the United States not having ratified the conventions, it still participates at the COPs and followingly, U.S. entities face implications from COP 15.[178] The Kunming-Montreal GBF has been called the nature agreement equivalent to the Paris Agreement[179] on climate.[180]

Target 15 could have also been worded as "mandatory" for companies if the will of the business representatives would have prevailed in the negotiations. During the Finance and Biodiversity Day – a full-day event dedicated to giving the global financial community platform to share their perspectives and achievements on biodiversity[181] – in COP 15, a global coalition of business and conservation organisations called Business for Nature presented a petition with signatures of more than 330 enterprises and investors urging the Target 15 to be made mandatory for all companies.[182] There were four main reasons why business entities wanted Target 15 to be made mandatory. Firstly, mandatory requirements and a uniform framework for monitoring business' environmental impacts ensure fair competition in the private market, especially globally. Secondly, making CER reporting mandatory would increase investors' and financial institutions' understanding of nature-based financial risks and bring more investments in nature-positive projects. Thirdly, it would give consumers the

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[178] Gibson Dunn website, "Adoption of a New Global Biodiversity Framework – Key Takeaways for Global Organizations and Financial Firms" accessed 13 May 2023.

[179] The Paris Agreement (2016) 55 ILM 4. The Paris Agreement was adopted at the the 21st Conference of the Parties to the UN Framework Convention on Climate Change in Paris on 12 December 2015. It came into force on 4 November 2016.

[180] Science Based Targets Network website, "The First Science-Based Targets for Nature" accessed 26 May 2023.

[181] Convention on Biological Diversity website, "Finance and Biodiversity Day - 14 December 2022 - COP15" accessed 13 May 2023.

[182] Hillsdon 2022, online article.

possibility to make better-informed decisions and make comparing the environmental performance of companies easier. Finally, the "Make It Mandatory" campaign paper highlighted the importance of mandatory disclosure on biodiversity for local communities and indigenous people. Transparent information on the impacts of corporate activities would empower local communities to demand compensation for any negative impacts and even help put a financial value on their efforts of protecting ecosystem services.[183]

The negotiations on the wording and contents of Target 15 show a big paradigm shift in international environmental law and policy making which for a long time showed great resistance against treaty negotiations on putting CSR-type obligations on business. There is now a call to make international law matter to corporations as separate entities, not just through State implementation following the international law on State responsibility.[184] This is shown in other dimensions of CSR than just CER. For example in 2014, the UN Human Rights Council decided "to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."[185] While there is not yet legally binding international law on CSR, it can be argued that also customary international law is adding to the interest to reach an international agreement on sustainable corporate practices. Examples of notable CSR-related cases are Chevron vs. Ecuador and Kiobel v. Royal Dutch Petroleum Co.[186] Chevron vs. Ecuador[187] dealt with environmental damages caused by the company's oil operations in the Ecuadorian Amazon and received wide attention by going to international arbitration.[188] And the Kiobel v. Royal Dutch Petroleum Co.[189] case was about using the Alien Tort Statute in the United

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[183] Business for Nature website, "Make It Mandatory" accessed 13 May 2023.

[184] Morgera 2020, p. 17.

[185] A/HRC/RES/26/9.

[186] Cases identified through with ChatGPT with order "Name case law in corporate sustainability law". 'ChatGPT' <https://chat.openai.com> accessed 14 May 2023.

[187] Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (II) (PCA Case No. 2009-23)

[188] International Institute for Sustainable Development website, "Chevron v. Ecuador" accessed 14 May 2023.

[189] Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013)

States as an instrument for transnational human rights litigation to process the allegations that the company had aided and abetted the Nigerian military in committing human rights violations against protestors and community leaders that had protested the environmental effects of oil extraction.[190]

Right now, customary international law does what it can to hold companies accountable with the varying national and regional CER related legislation, but MNEs are taking advantage of the absence of international CER regulation and often base their headquarters in countries with limited business regulation and enforcement.[191] Ideally, international law would create common environmental and social rules and standards for companies worldwide and the GBF provides great groundwork for such international law development. However, the ability of international law to set an environmental protection objective for corporations is further hampered by the absence of an international corporate environmental liability regime that can be applied irrespective of the business sector. Although some States have developed legislation to subject corporations and even corporate directors to strict liability rather than just negligence and thus piercing the corporate veil[192], it seems highly unlikely that the principle of State sovereignty would be circumvented in international law and policy negotiations to the extent that an international corporate environmental liability regime would be introduced. More likely is that the proliferation of soft law and hard law legislation requiring companies to integrate environmental management systems into their business practices will also lead to the inclusion of nature as a stakeholder in the corporate decision-making process. A step further would be to appoint nature as a shareholder in the corporation. There is a growing global movement to assign nature legal rights and in the sphere of CER, a cosmetics company Faith in Nature has pioneered giving the environment a legal say in its business strategy by appointing nature on its board of directors.[193]

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[190] Stewart and Wuerth 2013, p. 601–604.

[191] Morgera 2020, p. 2 and 3.

[192] Ong, David M. 2001, p 701, 702 and 724.

[193] Kaminski 2022, online article.

4 Corporate Environmental Responsibility in European Union Law

4.1 The Role of the Private Sector in EU's Biodiversity Policies

The Global Biodiversity Framework is according to paragraph 9 build around a concept called the theory of change which "recognizes that urgent policy action is required globally, regionally and nationally to achieve sustainable development so that the drivers of undesirable change that have exacerbated biodiversity loss will be reduced and/or reversed to allow for the recovery of all ecosystems and to achieve the Convention's Vision of living in harmony with nature by 2050". Having previously addressed the international hard and soft law instruments and initiatives on CSR and CER, this chapter will now look at the regional CER legislative development from the point of view of the EU. EU is an interesting region to analyse since it has positioned itself as a global leader on climate and environmental measures.[194] As a reminder as stated in Chapter 1.3, this study will not take a case study look on any national measures on CER.

The EU been at the forefront of developing public policy on CSR since the beginning of the 2000s. The renewed EU strategy 2011-14 for Corporate Social Responsibility[195] (EU CSR Strategy) by the European Commission is the latest EU strategy tool for CSR. It recognises the multidimensional nature of CSR which "at least covers human rights, labour and employment practices (such as training, diversity, gender equality and employee health and well-being), environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment and pollution prevention), and combating bribery and corruption".[196] The EU CSR Strategy places the main responsibility for CSR development on companies themselves and states that public authorities have a supporting role to play. Public authorities are advised to use a variety of voluntary policy measures and regulation in a complementary manner when necessary. However, the Strategy recognises that many companies prefer to use CSR tools supported by public authorities in order to make CSR expectations more equitable between different business entities and to provide companies with a benchmark for their

[194] COM/2019/640 final, p. 2.

[195] COM (2011)681 final

[196] COM/2011/0681 final, p. 7.

policies and performance.[197] In line with this legislative approach, the EU CSR Strategy promotes CER mainly with voluntary initiatives. Only one legislative initiative with a clear link to CER is discussed in the strategy: the review of the Unfair Commercial Practices Directive[198]. The directive tackles misleading or false information provided by companies about the environmental and social merits of their products.[199] The Unfair Commercial Practices Directive will soon serve the purpose of being *lex generalis* on the subject of greenwashing as in March 2023 the Commission adopted a proposal for a Directive on Green Claims which will complement the former directive as *lex specialis*.[200]

In 2019, the Commission published a document overviewing the progress in implementing CSR. Section 7.3. summarised how the EU has promoted CER practices. Most of the actions were thematic or sectoral initiatives, like the EU Plastics Strategy, support for sustainable agriculture with the Common Agricultural Policy or the EU Forest Law Enforcement, Governance and Trade Action Plan. Initiatives worth mentioning due to broader applicability are the EU Ecolabel which is the official EU voluntary label for products with high environmental standards, and the EU Eco-Management and Audit Scheme that is a voluntary management instrument for business entities and organisations to evaluate, disclose and enhance their environmental performance.[201]

From a legislative perspective to CER, the EU policies focusing on biodiversity offer more interesting initiatives. The cornerstone of the EU's answer to the triple threat of climate change, biodiversity loss and pollution is a growth strategy called the European Green Deal[202]. It leads the EU's work in transforming its economy and society to be more sustainable and is an integral part of the European Commission's implementation strategy for

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[197] COM/2011/0681 final, p. 7.

[198] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair businessto-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 (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, p. 22–39, as amended.

[199] COM/2011/0681 final, p. 9.

[200] COM/2023/166 final, p. 1.

[201] SWD(2019) 143 final, p. 35-41.

[202] COM/2019/640 final.

the 2030 Agenda and SDGs. EU aligns all its actions and policies with the European Green Deal objectives.[203] In the European Green Deal the Commission committed itself to present a renewed sustainable finance strategy that presents actions to engage the private sector to help finance the green transition. The foundation of sustainable investment lies in the adoption of the Taxonomy Regulation[204] that classifies environmentally sustainable business activities. The meaning of the EU Sustainable Finance Strategy[205] and Taxonomy for CER will be further examined later in the subchapter 4.3. Furthermore, the Green Deal talks about bringing sustainability and long-term development instead of short-term financial profit as a stronger fundamental in corporate governance framework. To aid this, the Commission set to review the Non-Financial Reporting Directive (NFRD)[206] and to support companies in developing standardised natural capital accounting practices within the EU and internationally so that companies could better manage environmental risks and mitigation and reduce transaction costs related to them.[207] Natural capital accounting is a measuring tool for changes in the stock and condition of natural capital – meaning ecosystems – and it is used for valuing ecosystem services in accounting and reporting systems.[208] The EU is currently developing the first natural capital accounting methodology under a project called Transparent which receives its funding from the Programme for the Environment Climate Action (also known as LIFE programme)[209]. Primarily natural capital accounting methods are used in companies' internal management. However, when mapping the environmental impacts of corporate activities natural capital accounting may also assign monetary value on them and then these

[203] COM/2019/640 final, p. 2 and 3.

[204] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088. OJ L 198, 22.6.2020, p. 13–43.

[205] COM/2021/390 final.

[206] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. OJ L 330, 15.11.2014, p. 1–9.

[207] COM/2019/640 final, p. 17.

[208] European Commission website, "Natural Capital Accounting" accessed 18 May 2023.

[209] The LIFE programme is established with the Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE), and repealing Regulation (EU) No 1293/2013. OJ L 172, 17.5.2021, p. 53–78.

monetised sustainability indicators can be taken into regard when setting sustainability reporting standards.[210]

To prepare for COP 15 of the CBD, the European Green Deal outlined that the Commission would present the EU Biodiversity Strategy for 2030 to specify the EU's measures to meet its objectives for preserving and restoring ecosystems and biodiversity.[211] The EU Biodiversity Strategy was presented in May 2020 and like its name tells, its objective is to "ensure that Europe's biodiversity will be on the path to recovery by 2030 for the benefit of people, the planet, the climate and our economy, in line with the 2030 Agenda for Sustainable Development and with the objectives of the Paris Agreement on Climate Change".[212] The Biodiversity Strategy has four main areas under which its strategic targets and commitments can be categorised into. The Strategy wants to reach a coherent network of protected areas, deliver an EU nature restoration plan, enable a transformative change according to the integrated and whole-of-society approach in which all parts of the economy and society have a role in reaching EU's biodiversity objectives, and contribute to the Kunming-Montreal GBF.[213]

One of the main objectives of the Biodiversity Strategy is the new European biodiversity governance framework which will map and steer biodiversity commitments and obligations. The new governance framework involves all relevant actors in reaching the EU's biodiversity commitments which expectedly includes private companies.[214] The two main tools for the biodiversity governance framework are the EU Biodiversity Strategy Actions Tracker and the EU Biodiversity Strategy Dashboard which track the implementation progress of the four main areas of the EU Biodiversity Strategy for 2030. The Actions Tracker gives information on the state of implementation of the over 100 actions introduced under the four main areas of the Strategy while the Dashboard shows the EU's and Member States quantified progress on those Strategy targets that have quantified indicators. Both tools are hosted by the EU

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[210] European Commission website, "Natural Capital Accounting" accessed 18 May 2023 and paragraph 44 of the Directive (EU) 2022/2464 of the European Parliament and of the Council.

[211] COM/2019/640 final, p. 13.

[212] COM/2020/380 final, p. 3.

[213] EUR- Lex website, "Summaries of EU Legislation, EU biodiversity strategy for 2030" accessed 16 May 2023.

[214] COM/2020/380 final, p. 15.

Knowledge Centre for Biodiversity.[215] The Dashboard tells that under the area "Enabling transformative change" there are no specific targets but action towards its implementation includes a section called "Business for biodiversity" – just like the subchapter 3.3.1. in the Biodiversity Strategy. The Action Tracker shows three actions under this section. The action 67 is to continuously support the EU Business and Biodiversity movement. It entails the Commission supporting a network of corporations and investors "working to integrate biodiversity and natural capital consideration into their decision making". The main forum for this is the EU Business and Biodiversity Platform (EU B&B Platform). The EU B&B Platform was established already in 2008 because of the EU Biodiversity Strategy 2020 and is now living in Phase 5 with renewed focus in line with the GBF and EU's biodiversity goals.[216] The action 67 is in progress on its 2030 timeframe. The action 66, a new sustainable corporate governance initiative addressing human rights, the environmental duty of care and mandatory due diligence across value chains, and the action 68, a review of the reporting obligations of businesses under the NFRD, have been completed in time with their 2021 deadline.[217] Actions 66 and 68 were achieved with the Corporate Sustainability Reporting Directive (CSRD)[218] and the proposal for the Corporate Sustainability Due Diligence Directive (CSDDD)[219] which will be discussed further in the following subchapter.

Many other policy instruments that work in tandem with the European Green Deal and the EU Biodiversity Strategy also have CER dimensions. One of them is the new Farm to Fork Strategy[220] which fosters the transition to sustainable food systems which protect food

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[215] European Commission website, "Commission Launches New Mechanisms for Strengthened EU Biodiversity Governance" accessed 18 May 2023.

[216] European Commission website, "Business & Biodiversity, About" accessed 18 May 2023.

[217] European Commission website, "'EU Biodiversity Strategy Actions Tracker" accessed 18 May 2023.

[218] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. OJ L 322, 16.12.2022, p. 15–80.

[219] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. COM/2022/71 final.

[220] COM/2020/381 final

security, people and the environment.[221] The measures of this strategy, for example the EU Code of Conduct on Responsible Food Business and Marketing Practices and the proposal for a sustainability labelling framework as part of the Sustainable Food System Framework initiative, push companies in agriculture, food processing and retail to take CSR action. The Farm to Fork Strategy acknowledges that tightening the sustainability requirement in the EU food system may result in negative environmental and social impacts outside of the EU due to the global trade of agri-food products. That's why the EU supports policies that raise sustainability standards in food systems globally so that environmental costs are not externalised outside of the EU. The EU has good leverage to push for such global policies as it is the number one importer and exporter of agri-food products worldwide.[222]

4.2 Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive

The EU CSR Strategy names two concepts as important cross-cutting issues in CSR: disclosing of non-financial information and promoting social and environmental responsibility through the supply-chain.[223] While on the global level, sustainability reporting is still anchored on voluntary frameworks like the GRI or SASB, on the regional and domestic levels non-financial reporting is fast becoming mandatory for companies.[224] In the EU, mandatory sustainability reporting has been a reality for large public-interest companies with 500 employees on average already since 2018 pursuant to the NFRD. The NFRD requires companies to follow so-called 'double materiality' which meant that they must "report both on how sustainability issues affect their performance, position and development (the 'outside-in' perspective), and on their impact on people and the environment (the 'inside-out' perspective)". To facilitate the companies' sustainability reporting, in Article 2 the NFRD requires the Commission to prepare guidelines on methodology for reporting non-financial information. However, after couple rounds of guidelines publications the Commission deemed the overall quality of the disclosed information as insufficient and

[221] European Parliament website, "Creating a Sustainable Food System: The EU's Strategy | News | European Parliament" accessed 18 May 2023.

[222] COM/2020/381 final, p. 11 and 12.

[223] COM/2011/0681 final, p. 7.

[224] KPMG International 2022, p. 23.

decided in the European Green Deal to revise the entire Directive.[225] The information reported was not sufficiently comparable, reliable, or relevant to meet the needs of those who use the non-financial information of companies, for example investors and civil society. It was also concluded that the information was difficult to access. Some companies, whose sustainability information was in high demand, did not even report any kind of non-financial information. The NFRD's flexibility resulted in a lack of specificity that caused additional costs to reporting companies when they tried to navigate the uncertainty of the reporting requirements.[226]

The CSRD amended the NFRD and entered into force on the 5th of January 2023. It broadened the number of companies which are obliged to disclose their non-financial data and over all strengthened the rules on social and environmental reporting. The CSRD, and before that the NFRD, is the most comprehensive regional law on transnational corporate sustainability.[227] The CSRD becomes applicable for all large companies and listed companies, apart from listed micro-enterprises[228], in four phases. First are the companies currently obligated by the NFRD, meaning large public interest entities on EU regulated market with over 500 employees. They will have to publish reports according to the CSRD in 2025 regarding their financial year 2024.[229] Until then, the rules of NFRD remain in force.[230] Next up, reporting in 2026 on their financial year 2025, are large EU listed and unlisted companies which meet at least two of these three requirements; their balance sheet total is minimum 20 million euros, their net turnover in one financial year is over 40 million euros, or they have in average 250 employees. The third phase makes sustainability reporting mandatory to EU-listed small and medium-sized enterprises (SMEs) and small and certain medium-sized credit institutions and captive reinsurance companies by 2027 and the rule is again to report on the previous financial year. Finally, by 2029 also non-EU companies with an EU subsidiary or EU permanent branch and with an annual net revenue of over 150 million euros in the EU

[225] COM/2021/189 final, p. 1.

[226] SWD/2021/151 final, p. 2.

[227] Salminen and Rajavuori 2019, p. 606.

[228] European Commission website, "Corporate Sustainability Reporting" accessed 19 May 2023.

[229] Pinnalla juridiikassa: Kestävyysraportointidirektiivi (CSRD) ja yritysvastuudirektiivi (CSDDD). Webinar by the Finnish Business & Society (FIBS) and Dittmar & Indrenius, 25.4.2023.

[230] European Commission website, "Corporate Sustainability Reporting" accessed 19 May 2023.

must publish sustainability reports on their financial year 2028.[231] The CSRD more than quadrupled the number of companies under the obligation to disclose their sustainability data from around 11 700 companies under the NFRD to approximately 50 000 companies.[232]

The proposal for the CSRD indicated that the EU has a shared competence in regulating the disclosure of sustainability information by companies with the Member States, which is emphasised by the fact that the legal basis of the CSRD are Articles 50 and 114 of the Treaty on the Functioning of the European Union (TFEU)[233].[234] Article 50 TFEU allows for the European Parliament and the Council to adopt directives for the harmonisation of certain aspects of company law to safeguard the freedom of establishment. And Article 114 TFEU gives the EU the competence to enact measures for the establishment and functioning of the internal market.[235] The Court of Justice of the European Union has in the Tobacco Advertising case[236] established that Article 114 TFEU can be used as the basis of adopting EU legislation only if the difference between national private laws on the matter cause adverse effects upon the EU's internal market.[237] This tells that the EU has deemed that the variability of different sustainability standards used in the EU and even the lack of sustainability reporting by some companies causes disruptions in the internal market. The CSRD aims to link up also with other CSR initiatives internationally. Paragraph 45 in the CSRD's preamble stated that "sustainability reporting standards should also take account of internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, including the SDGs, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the Global Compact, the International Labour Organization's

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[231] Pinnalla juridiikassa: Kestävyysraportointidirektiivi (CSRD) ja yritysvastuudirektiivi (CSDDD). Webinar by the Finnish Business & Society (FIBS) and Dittmar & Indrenius, 25.4.2023

[232] European Commission website, "Corporate Sustainability Reporting" accessed 19 May 2023.

[233] Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, p. 47–390.

[234] COM/2021/189 final, p. 6.

[235] European Parliament Think Tank website, "EU Competence in Private Law" accessed 19 May 2023.

[236] Case C-376/98 Germany v Parliament and Council (known as the Tobacco Advertising case)

[237] 'EU Competence in Private Law | Think Tank | European Parliament' (n 231) 6.

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment".

The Directive 2013/34/EU (Accounting Directive)[238] is the act in force that the CSRD, the NFRD and a couple of other acts have amended. From here on the legal text references are to the 5.1.2023 consolidated version of the Accounting Directive. Chapter 6a of the Accounting Directive sets the provisions specifying the information that companies are required to report, meaning the sustainability reporting standards. The Commission shall adopt the sustainability standards as delegated acts pursuant to Articles 29b and 29c after having heard the technical advice from the European Financial Reporting Advisory Group (EFRAG). Article 29b(1) of the Accounting Directive refers to the mandate EFRAG has been given to develop the sustainability reporting standards which practically means that after the Commission has received the draft sustainability standards as technical advice from the EFRAG it will adopt them as delegated acts once they have gone through the due review process.[239] EFRAG submitted in November 2022 to the Commission its advice package which included the 12 draft European Sustainability Reporting Standards (ESRS) which the European Commission is set to adopt as delegated acts in June 2023 in accordance with Article 29b, paragraph 1 of the Accounting Directive. The ESRS can be categorised into two groups. First are the cross-cutting standards ESRS 1 *General requirement* and ESRS 2 *General disclosures* that give context to all sustainability matters and are always applied. The rest of the standards fall into the second group of topical standards. Five of the topical standards focus on the environment, four on social questions and one on governance. The focus of one topical standard is solely on biodiversity: the draft ESRS E4 *Biodiversity and ecosystems.*[240]

The principle of double materiality is the basis of the sustainability disclosures in ESRS. With a materiality assessment the company identifies what material impacts, risks, and

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[238] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. OJ L 182, 29.6.2013, p. 19–76.

[239] KPMG International website, "Introducing the European Sustainability Reporting Standards - KPMG Global" accessed 21 May 2023.

[240] EFRAG website, "'First Set of Draft ESRS" accessed 21 May 2023.

opportunities its business operations and business relations in its upstream and downstream value chain have in reference to the ESRS topical standards and other metrics in disclosure requirements and data points. The company needs to disclose the information on the standards and metrics that are assessed to be material in accordance with the ESRS framework.[241] The two dimensions of double materiality in ESRS are called impact materiality and financial materiality. Impact materiality corresponds to what was earlier described as the inside-out perspective and is defined in paragraph 46 of draft ESRS 1 as "the undertaking's material actual or potential, positive or negative impacts on people or the environment over the short-, medium- and long-term time horizons". Correspondingly, the financial materiality is the same as the outside-in perspective, defined in paragraph 52 of draft ESRS 1 as "a material influence . . . on the undertaking's cash flows, development, performance, position, cost of capital or access to finance in the short-, medium- and long-term time horizons".[242] Few standards and ESRS data points do not follow the materiality assessment and are always mandatory for companies which are required to publish reports according to the Accounting Directive. They are ESRS 2, ESRS E1 *Climate Change*, topical standards' data points listed in ESRS 2 Appendix C on EU legislation and disclosure requirements 1 to 9 in ESRS S1 *Own workforce* for companies with at least 250 employees.[243]

The ambition of the CSRD and ESRS is not only to harmonise the sustainability reporting methods and standards within the EU but also help to create a comparable international network of sustainable reporting initiatives and legislative acts. Article 29b, paragraph 5, subparagraph (a) of the Accounting Directive states that when adopting delegated acts, the Commission shall take to the greatest extent possible account "the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting and greenhouse gas accounting, responsible business conduct, corporate social responsibility, and sustainable development". Among these initiatives and frameworks are the GRI standards, SDGs, UN Guiding Principle on Business and Human Rights, OECD MNE Guidelines, UN Global Compact, ILO MNE Declaration and ISO 26000 standard on social responsibility. This provision has also reflected on the structure of ESRS

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[241] Video: Educational Session on Draft ESRS 1 General Requirements. Directed by EFRAG, 2023 accessed 21 May 2023.

[242] EFRAG (2022)a, p. 11 and 12.

[243] EFRAG (2022)a., p. 9 and 10.

E1 *Climate change* and ESRS E4 *Biodiversity and ecosystems* which are arranged in the same way as TNCFD and the draft of TNFD which respectively have the same structure.[244] The draft ESRS E4 has further linkages to global CER efforts. In the draft, the objective of disclosure requirement E4-2 *Policies related to biodiversity and ecosystems* is to increase companies understanding of how their business model and policies are connected and aligned with the GBF and the EU Biodiversity Strategy for 2030. And in the materiality assessment under ESRS E4, the company must assess its business practices' contribution to the five main direct impact drivers on biodiversity loss as defined by IPBES, which are mentioned in chapter 1.1 of this study.[245]

Sustainability reporting is an important part of the company's CER as it allows shareholders, stakeholders, and consumers to make informed decisions on how they interact with the company. However, more important is whether mandatory sustainability reporting can change corporate practices for the better environmentally. The European Commission has found this effect to be true as by 2021 the NFRD requirements had made 45% of companies under their scope adopt some new due diligence processes on environmental and human rights matters.[246] Still, the EU has not left correcting environmentally harmful corporate behaviour just to the CSRD. If the main objective of the CSRD is to place rules on how companies must report on their governance over and impacts on environmental and social matters, the CSDDD would regulate how companies should manage their environmental and social impacts.[247] On 23 February 2022 the European Commission gave its proposal for the CSDDD and it is still going through the EU's ordinary legislative procedure – next it is awaited to be processed in May or June 2023 by the plenary of the European Parliament.[248] The main element of the CSDDD is how it establishes the corporate due diligence duty which encompasses identifying, desisting, preventing, mitigating, and reporting on harmful human rights and environmental impacts caused by the corporate operations, the subsidiaries, and other parties

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[244] EFRAF (2022)b., p. 8–22.

[245] Video: Educational Session on Draft ESRS E4 Biodiversity and Ecosystems. Directed by EFRAG, 2023, accessed 21 May 2023.

[246] SWD/2021/151 final, p. 3.

[247] Pinnalla juridiikassa: Kestävyysraportointidirektiivi (CSRD) ja yritysvastuudirektiivi (CSDDD). Webinar by the Finnish Business & Society (FIBS) and Dittmar & Indrenius, 25.4.2023.

[248] European Parliament Legislative Observatory website, "Procedure File: 2022/0051(COD) Corporate Sustainability Due Diligence" accessed 22 May 2023.

in the company's value chain.[249] Article 4(1) CSDDD defines the parts of due diligence and tells how Articles 5 to 11 specify the different due diligence actions. In addition to regulating the sustainability due diligence obligations of companies, the directive also places rules on corporate directors' duties and how due diligence is implemented with corporate management systems.[250] Article 2 CSDDD defines to which large companies in the EU and third-country companies that operate in the EU the directive applies to. The scope of companies that the CSDDD applies to is narrower than the CSRDs.

Like in CSRD, the legal basis of CSDDD are Articles 50 and 114 TFEU. Many EU Member States have in recent years adopted or proposed national legislation on corporate human rights and environmental due diligence and therefore, the directive aims to harmonise the fragmenting requirements.[251] The CSRD and the CSDDD complement each other and work in synergy together. When a company needs to comply with both directives, the processes set by the due diligence duty will help in collecting information for the sustainability disclosure and reporting according to the CSRD will fill the reporting stage of the due diligence duty.[252] Although the organisation of enforcement mechanisms is left to the Member States in both the CSRD and the CSDDD, the tools for enforcement are arguably strongest in the CSDDD. The enforcement of the Accounting Directive's obligations is based on penalties. Article 51 of the Accounting Directive instructs Member States to apply penalties in the event of infringement of the national provisions adopted under the directive. However, as the types of penalties are not specified, the sanctioning regime of the Accounting Directive can vary widely between Member States, which in turn undermines the EU private market.[253] The proposal for CSRD sought to specify the rules on infringement penalties in the Accounting Directive but these amendments were not adopted, making the enforcement of the Directive lack in effectiveness. What also constitutes as a type of enforcement mechanism in the Accounting Directive, is the obligation for all large and most listed companies to seek third party assurance and external audit for their sustainability reports in accordance with the rules

[249] European Commission website, "Corporate Sustainability Due Diligence" accessed 22 May 2023.

[250] COM/2022/71 final, p. 10.

[251] COM/2022/71 final, p. 10 and 11.

[252] COM/2022/71 final, p. 4.

[253] SWD/2021/151 final, p. 40 and 41.

set out in Chapter 8 of the Accounting Directive.[254] Assurance and verification of sustainability reports by an independent auditor is supposed to increase the reliability and credibility of corporate sustainability disclosures. However, the legitimacy of sustainability assurance can be questioned, as it is a relatively new activity in which many practitioners are still in the process of acquiring professional competency. Furthermore, studies have found that often assurance does not follow the quality of sustainability standards or guidelines. For instance, a study from 2015 found that over 90% of climate performance information in assured reports based on the GRI guidelines were not compliant with the guidelines.[255]

In contrast, the proposal for CSDDD recognises that "effective enforcement of the due diligence duty is key to achieving the objectives of the initiative". The enforcement of the CSDDD is proposed to have two pillars, administrative enforcement through sanctions pursuant to Article 20 and civil liability pursuant to Article 22.[256] According to Article 20, the sanctions applicable to infringements of the national provisions adopted to implement the CSDDD shall be effective, proportionate and dissuasive. Article 20(3) states that "when financial sanctions are imposed, they shall be based on the company's turnover". Under Article 22, a company's civil liability arises when its failure to prevent and adequately mitigate adequately potential adverse impacts on human rights and the environment or to stop actual adverse impacts causes damages. If implemented in the Member States as planned by the proposal for CSDDD, the rules on sanctions and civil liability would offer a pioneering opportunity to hold large companies accountable for their harmful environmental impacts. The risk of both financial sanctions and litigation is a powerful deterrent against human rights and environmental violations. Paragraph 60 in the preamble of the CSDDD even specifies that in the case of adverse environmental impacts, the civil liability means that "persons who suffer damage can claim compensation under this Directive even where they overlap with human rights claims".

4.3 Legislative Acts on Sustainable Finance Disclosures

Finally, we need to briefly address the relevant finances related acts and initiatives for CER. As the saying goes, money makes the world go around, and therefore it investments must

[254] SWD/2021/151 final, p. 3.

[255] Boiral 2019, p. 309–311.

[256] COM/2022/71 final, p. 16 and 23.

support sustainable business transformation. The notion of sustainable investing means that the investment is not made only on the premise of good returns but also based on the ethics of making the world better socially and environmentally. There is already a lot of scientific evidence that sustainable investing can be just as profitable as traditional investing which is increasingly picked up on by policymakers.[257] To succeed in its sustainability goals, the European Green Deal needs large investments towards sustainable business and innovations and that makes the European financial sector one of the main interest policy areas to undergo a sustainability transformation.

To reach all the targets of the European Green Deal, the EU needs to according to the EU Sustainable Finance Strategy align public, private, national, and multilateral finance sources to reach the required scale of investments. The Sustainable Finance Strategy, published in July 2021, builds from the earlier Sustainable Finance Action Plan from 2018 and the three building block the Action Plan defined as the basis of EU's sustainable finance framework. First building block is the classification system of sustainable activities established in the Taxonomy Regulation. Second block is the EU sustainability disclosure regime for financial and non-financial companies based on the CSRD, the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation (SFDR)[258]. And the third building block is a set of benchmarks, standards and labels aimed to financial market participants so they can check that their investment strategies support the EU climate and environmental goals. In addition to continuing efforts on the three building blocks, the Sustainable Finance Strategy identifies four additional action areas to be worked on.[259] Next we still quickly look at the legislative acts that build the EU sustainability disclosure regime.

The SFDR was adopted in spring 2019 and poses sustainability disclosure obligations for financial advisers and entities in the finance market who offer investment products toward end-investors.[260] Article 4 SFDR sets rules on how financial market participants shall publish

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[257] Silvola and Landau 2021, p. 5.

[258] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability‐related disclosures in the financial services sector. OJ L 317, 9.12.2019, p. 1–16.

[259] COM/2021/390 final, p. 2–4.

[260] European Commission website, "Sustainability-Related Disclosure in the Financial Services Sector" accessed 22 May 2023.

and maintain on their websites information on how they make entity-level assessment of principal adverse sustainability impacts. Articles 7, 8 and 9 SFDR include the product-level rules on transparency of adverse sustainability impacts, transparency of the promotion of environmental and social characteristics of the product and transparency of the information disclosed in relation to financial product with sustainable investment as its objective. If the economic activities align with the Taxonomy Regulation, the activities can directly be part of investment products with sustainable investment objective.[261] In the definition of sustainable investment, Article 2(17) SFDR deploys the principle of do no significant harm which is derived from the precautionary principle according to paragraph 17 in the preamble of SFDR. The principle of do no significant harm, according to Article 2(17), means that when contributing to an environmental or a social objective, the investment does not on the other hand do significant harm on any other environmental of social objective.

The Taxonomy Regulation was adopted in summer 2020 and creates a classification system called the EU taxonomy that defines based on science-based criteria which economic activities are environmentally sustainable.[262] Having a common definition for environmentally sustainable economic activities helps investors and policymakers to promote sustainable investment for the benefit of the European Green Deal.[263] When an economic activity meets all the four criteria set in Article 3 Taxonomy Regulation, it qualifies as environmentally sustainable. One of the criteria, as laid down in Article 3(b), is the same principle of do no significant harm as in the SFDR, just no as a qualification requirement to economic activities. The criterion in Article 3(a) Taxonomy Regulation is that the economic activity needs to substantially contribute to one or more of the six environmental objectives set out in Article 9. Article 9(f) states that the protection and restoration of biodiversity and ecosystem is one of these objectives. Article 15 sets further rules on when an economic activity provides a substantial contribution to the protection and restoration of biodiversity and ecosystems. Like in the CSRD, the Commission adopts as delegated acts the technical screening criteria that specify the conditions that the economic activity needs to meet to

[261] European Commission website, “Factsheet: How Does the EU Taxonomy Fit within the Sustainable Finance Framework?” accessed 22 May 2023.

[262] European Commission website, “Factsheet: How Does the EU Taxonomy Fit within the Sustainable Finance Framework?” accessed 22 May 2023.

[263] European Commission website, “EU Taxonomy for Sustainable Activities” accessed 22 May 2023.

qualify as a substantial contribution. The so-called Taxonomy Environmental Delegated Act empowered by Article 15(2) and a few other Taxonomy Regulation articles is still in draft form after being published by the European Commission on 5 April 2023.[264] Article 8 of the Taxonomy Regulation links the act to the CSRD by setting an obligation for companies which publish non-financial information in accordance with Article 19a or 29a of Accounting Directive to "include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of this Regulation". That means that next to financial market participants, all companies subject to CSRD are also in the scope of the Taxonomy Regulation.

In the EU sustainability disclosure regime, first Taxonomy Regulation and the CSRD oblige large companies and listed companies in the EU market to publish reports on their sustainability risks and impacts and economic activities significantly contributing to environmental objectives. Then the reported information goes to the financial market participants and other stakeholders. The financial market participants and financial advisers use the CSRD information to fulfil their SFDR disclosure obligations when selling sustainable financial products.[265] For example Article 29b(1) Accounting Directive demonstrates this chains of action by stating that the delegated acts adopted under the directive shall include "the information that financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088 need in order to comply with those obligations".

The CSR legislation in the EU is already very comprehensive and addresses all aspects of how to encourage, assist and oblige corporations to adopt nature-sustainable practices throughout their value chain. However, the more there are overlapping strategies, policy tools and legislative acts on corporate sustainability, the bigger is the amount of work required from companies to keep up with the relevant sustainability requirements posed to them. What can be said about the regional response to improve CSR and CER is that the EU has clearly

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[264] European Commission website, "Have Your Say, Sustainable Investment – EU environmental taxonomy" accessed 22 May 2023.

[265] European Commission website, "Factsheet: How Does the EU Taxonomy Fit within the Sustainable Finance Framework?" accessed 22 May 2023.

chosen to rather harmonise CSR legislation in its internal market than let its Member States have different national initiatives on the subject. Even if the rules and objectives of the EU internal market are unique compared to other regional economies, the results of biodiversity protection and restoration are likely to be better with a regional response than just an array of different national responses because environmental impacts do not stop at the borders of States. Also, companies can move nowadays very easily. Even if one State would have very successful CER initiatives imposed on the companies under its jurisdiction, such good results can be undermined by looser CER obligations in the neighbouring State.

5 Conclusions

The meaning of CSR is to transform the goal of corporate conduct from seeking to fulfil the classic fiduciary obligation of delivering the shareholders the biggest possible economic profit to also pursuing value by bringing positive impacts on the environment and people. This is the idealistic version of CSR and to make it more concrete, the purpose of CSR can be encapsulated in two concrete objectives. First is to have businesses incorporate environmental and human issues into their decision-making processes and second is to improve the transparency of corporate activities.[266] This research has focused on the CER side of CSR and thus mainly echoed the natural scientists' point of view on CSR. The scientists' point of view simply is that if the business-as-usual attitude in the corporate world does not change our planet and global society is heading towards a socioecological collapse. However, as it has been pointed out, CSR is the interest of multiple disciplines. Compared to the natural scientists, the economists' perspective has more pros and cons. The benefits of implementing CSR initiatives include better reputation and brand image when the CSR practices are disclosed transparently, improved financial success from reducing operational costs thanks to sustainable solutions, attracting investment, fostering customer loyalty and increased employee satisfaction, engagement, and loyalty. The risks associated with CSR include loss of credibility from poorly implemented sustainability initiatives that result in greenwashing, conflict of interest between shareholders and stakeholders when deciding how to use the company's resources and difficulties in implementing and measuring the impacts of CSR practices.[267]

When the economists and natural scientists do their own research on CSR and create theories about how to make our future sustainable, what remains the role of the policymakers and legislators? The CSR initiative and legislation mapping of this study shows that the policymakers' and legislators' role is to adopt CSR instruments that level the playing field between companies, preferably internationally, and help the sustainable economic transformation be just and fair. The CSR initiatives and legislation enacted internationally and regionally in the EU are meaningful instruments for mainstreaming CER in corporate behaviour. CSR has always existed both in hard law and soft law but now the legislative

[266] Lambooy 2010, p. 77 and 78.

[267] Tamplin 2023, online article.

momentum is clearly on the side of hard law. Soft law initiatives have been prevalent since the 1990s but now there are so many CSR soft law instruments that it is becoming difficult to navigate them. There is a risk that companies choose from the sea of voluntary CSR initiatives the ones that make their business look the best and hold back on the non-financial information that is not favourable to them, thus contributing to greenwashing. Of course, some CSR soft law instruments have very high recognition and universal reach, but it remains entirely voluntary for companies to join global CSR soft law initiatives. Thus, to ensure fair competition between companies and a true nature-sustainable transformation of corporate practices, many private sector actors, like in the “Make It Mandatory” campaign, are now calling for common binding regulation on CSR. States are beginning to heed and accept this call, as evidenced by the negotiations and implementation of the Target 15 GBF and the EU’s extensive CSR legislation rollout.

Still, international environmental law struggles to impose comprehensive environmental protection rules on corporations. The two main impediments to the development of international CSR regulation are the principle of State sovereignty and the corporate veil. The principle of State sovereignty is a fundamental in the international community and places corporations under the legal competence of States. Since companies have no formal voice of their own in international law and policy-making processes and are not treated as direct subjects of international law, they can only influence international law by lobbying their interests to state representatives. The widespread engagement of many MNEs in voluntary CSR initiatives and the "Make It Mandatory" campaign show that many companies worldwide would be willing to adopt an international CSR legal framework, but governments are still reluctant to do so, perhaps because they do not want to raise the legal competence of MNEs beyond State sovereignty. Even if international law would succeed in imposing environmental and social obligations on companies, public international law cannot pierce the corporate veil and hold company shareholders and directors personally legally responsible for the damage caused by the company. Therefore, CER must be integrated into business practices through mandatory environmental management systems so that corporate shareholders and managers cannot avoid changing their business practices to be more sustainable. A more abstract solution to ensure sustainable business change would be to oblige MNEs to appoint nature as a shareholder or board member, thus giving the environment a legal say in the business decision-making process.

There might not yet be a legally binding international instrument that imposes clear CER obligations on companies, but CER can find support at the international level, for example through civil liability regimes and through courts and permitting authorities that apply international environmental principles to companies, as discussed in Chapter 3.2. Also, international soft law initiatives, like the SDGs, ILO MNE Declaration, OECD MNE Declaration and the UN Global Compact, contribute to the making of international law even if they are not binding. Soft law also fills the normative gaps international law has concerning MNEs.[268] In the field of voluntary CSR initiatives, the focus on CER has very recently been gaining more substance and for example the review of GRI 304: Biodiversity 2016, the Science-Based Targets for Nature and the draft of TNFD are highly anticipated. One reason why so many CER initiatives are only now being adopted might be because the severity of biodiversity loss has significantly gained global awareness in the past few years. The politicisation of biodiversity and the legalisation of CER seem to advance in tandem.

In the EU, the CSR legislation is a fast-growing field of law. The basis of EU CSR legislation is in the Corporate Sustainability Reporting Directive and the Corporate Due Diligence Directive with additional efforts coming from sustainable finance regulations, particularly the Taxonomy Regulation. Mandatory CSR basically always includes CER, and the EU CSR legislation does indeed aim to protect biodiversity from harmful business activities. Although the focal point of European CER legal instruments is in sustainability reporting, the goal of the European Green Deal and the EU Biodiversity Strategy for 2030 is to make corporations adjust their behaviour and internal regulation to align with nature-sustainable business. For biodiversity, regionally harmonised CER initiatives produce better results than the fragmented use of national CER initiatives, and the EU sees the harmonisation of CSR legislation also as a question of ensuring a functioning internal market. However, the EU does not stop its CSR efforts at regional harmonisation alone, but seeks to help create a comparable international network of CSR initiatives and regulations.

It has been said that for corporations' sustainability starts where legislation ends. However, the notion that true sustainability towards the environment means voluntary action is being challenged and States are increasingly letting legislators define what sustainability means for business entities. The idea of CSR is changing what is considered to be the responsibilities of

[268] Morgera 2020, p. 15.

corporations, particularly in relation to their environmental responsibilities, as the understanding of the extent of harm caused by corporate activities grows. The time of business-as-usual is ending and the time of nature-sustainable business is at hand.

Glossary

ABNJ	areas beyond national jurisdiction
Accounting Directive	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. OJ L 182, 29.6.2013, p. 19–76.
BBNJ Treaty	a draft agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
CBD	the Convention on Biological Diversity
CER	corporate environmental responsibility
CSDDD	“the Corporate Sustainability Due Diligence Directive”, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. COM/2022/71 final.
CSO	civil society organization
CSR	corporate social responsibility
CSRD	“the Corporate Sustainability Reporting Directive”, Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. OJ L 322, 16.12.2022, p. 15–80.
EFRAG	the European Financial Reporting Advisory Group

EIA	environmental impact assessment
ESG	environmental, social and governance
ESRS	the European Sustainability Reporting Standards
EU	the European Union
EU B&B Platform	the EU Business and Biodiversity Platform
EU CSR Strategy	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM (2011)681 final
European Green Deal	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: The European Green Deal. COM/2019/640 final.
EU Sustainable Finance Strategy	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Strategy for Financing the Transition to a Sustainable Economy. COM/2021/390 final.
G250	the world's 250 largest companies by revenue
GBF	the Kunming-Montreal Global Biodiversity Framework
GRI	the Global Reporting Initiative
GRPS	the Global Risks Perception Survey (by the World Economic Forum)
ILO	the International Labour Organisation

ILO MNE Declaration	the International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
IPBES	the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	the Intergovernmental Panel on Climate Change
ISSB	the International Sustainability Standards Board
MNEs	multinational enterprises
NFRD	the Non-Financial Reporting Directive
NGO	non-governmental organisation
OECD	the Organisation for Economic Co-operation and Development
OECD MNE Guidelines	the Organisation for Economic Co-operation and Development Guidelines for Multinational Companies
SASB	the Standards of the Sustainability Accounting Standards Board
SBTN	the Science-Based Targets for Nature
SDGs	the sustainable development goals
SFDR	"the Sustainable Finance Disclosure Regulation", Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability‐related disclosures in the financial services sector. OJ L 317, 9.12.2019, p. 1‐16.
SPB 2011-2020	the Strategic Plan for Biodiversity for the 2011-2020 period (under the Convention on Biological Diversity)
Taxonomy Regulation	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a

	framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088. OJ L 198, 22.6.2020, p. 13–43.
TBL	triple bottom line
TFEU	the Treaty on the Functioning of the European Union, Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012, p. 47–390
TNCs	transnational corporations
TNFS	the Taskforce for Nature-related Disclosures
UN	the United Nations
WEF	the World Economic Forum

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