

ESTER
THE INTERNATIONAL DIMENSION OF
CORPORATE SOCIAL RESPONSIBILITY



2004-2007

ESTER COORDINATOR



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DE LA RECHERCHE
SCIENTIFIQUE

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Sixth EU Framework Programme
(Contract n°. CIT2-CT-2004-506323)



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ABOUT PROJECT ESTER

This brochure presents core findings and highlights of the research project “Social regulation of European transnational companies” (ESTER). This is an empirical research into the social responsibility of European transnational companies (CSR). European Commission green paper has described CSR as follows: "companies integrate social and environmental concerns in their business operations on a voluntary basis". We were interested to analyse how CSR contribute to the achievement of the Lisbon strategic objective (March 2000-2010) and European strategy on sustainable development. The sociological and legal analyses, as well as the principle economic observations, focused solely on the social dimension of CSR, while the contextual analysis of Websites included both the environmental and social dimensions.

The project had three directions: the observation on the existence of a European model of CSR, the exportability of the European social model, and it examines the hypothesis of a "codification of ethics".

<http://ester.u-bordeaux4.fr>

This brochure includes a summary of the results obtained by sociological, legal and economic analyses. It gives a forward-looking, multidisciplinary analysis of a possible legal regulation of CSR. This examines the conditions for implementing legal regulation, its probable reception, as well as its intended and unintended (or even perverse) effects in a globalised economy. The proposals on the legal regulation of corporate social responsibility are based on empirical legal and sociological research, using a scenario methodology, as well as empirical and theoretical work in economics. There was a significant convergence in terms of results and guidelines, irrespective of the discipline or the methodology used. Finally, it is possible to present some brief practical recommendations.

PUBLICATIONS



- **Joaquin Aparicio** (dir.), *La responsabilidad social de las empresas transnacionales europeas. Una aproximación en seis países de la UE*, ed. Bomarzo, Albacete, 2008, forthcoming.
- **Joaquin Aparicio, Margarita Barañano y Berta Valdés** (dir.), “La responsabilidad social de las empresas transnacionales. Una aproximación multidimensional”, *Cuadernos Relaciones laborales*, 2008, forthcoming.
- **Isabelle Daugareilh** (dir.), *Responsabilités de l’entreprise transnationale et globalisation de l’économie*, ed. Bruylant/LGDJ, Bruxelles, 2008, forthcoming.
- **Teun Jaspers, Albertine Veldman** (dir.), *Auto regulations of social responsibility of transnational enterprises in Europe*, ed. Intersentia, Antwerpen-Oxford, 2008, forthcoming.
- **Stefania Scarponi** (dir.), *Globalizzazione, responsabilità sociale delle imprese e modelli partecipativi*, Quaderni DSG, Univesità di Trento, 2007.

ACKNOWLEDGEMENTS

We are grateful to all the interviewees, companies, trade unions, NGOs, stakeholder organisations, government representatives, as well as all those who contributed their time and thoughtful insights to this work.



METHODOLOGICAL APPROACH

Methodological tools used for the project

Firstly, a qualitative approach to analyse CSR practices and norms drafted and developed by companies: 350 semi-directive interviews in 30 European multinational companies, as well as with various social and institutional players;

Secondly, a quantitative analysis of economic effects: 1,537 questionnaires, 533 corporate websites, and a random panel of 214 companies;

Thirdly, a scenario approach, analysing the impact of legislation on CSR: 45 interviews using the scenario method with a range of players (NGOs, standards organisations, trade unions, companies, and civil servants in several ministries concerned with CSR or sustainable development). Five scenarios were proposed to the interviewees:

- Scenario n°1: Binding regional regulation (EU)
- Scenario n°2: Non-binding regional regulation (EU)
- Scenario n°3: International regulation (ILO/ONU)
- Scenario n°4: Transnational regulation (Company)
- Scenario n°5: National regulation (Head office country)

Criteria for selecting companies

All companies selected had:

- at least 1,000 employees and generally, but not necessarily, a European Works Council or similar institution,
- premises in at least two EU member states,
- operations outside the EU,
- corporate head offices in an EU Member State,
- Business sectors represented: metal, construction, petrochemicals, banking, telecommunications, energy, automobile, textile, pharmaceuticals, chemicals, electronics, and insurance.

Source for the companies that received the questionnaire: Database of the European Trade Union Institute, (updated on July 1st 2004).

SOCIOLOGICAL RESULTS



The ESTER project enabled us to go beyond theoretical considerations on the notion of corporate social responsibility (CSR) and observe how it was put into practice by European transnational companies. We noted an overlap between the concepts of CSR and sustainable development, or even substitution of one for the other. This led to a hybridisation of the original definitions.

Next, we noted that the forms of CSR mainly preferred by companies were codes of conduct and ethics charters, drafted and implemented unilaterally. In exceptional cases, corporate norms were negotiated with trade union organisations and issued as international framework agreements (IFAs).

The contribution of the ESTER project includes a critical analysis of the concept of stakeholders, systematically linked to CSR, focusing on the reality of their links with the company. NGOs and rating agencies were exploited in some cases, and called upon to meet certain needs (lack of skills, enhancing visibility, etc.). The social partners had evolved from a refusal to become involved in social responsibility issues to a more active approach, while commercial partners (e.g. suppliers) were held hostage by these corporate commitments on CSR.

Finally, the ESTER project demonstrated that the implementation of CSR practices was primarily motivated by a series of organisational or economic windfall effects. For instance, CSR was not only useful for enhancing corporate "image" and legitimacy, but also for gaining an advantage over competitors and demonstrating the company's performance in a new area, at a relatively modest cost to the organisation, especially when implemented via the existing corporate structure.

ECONOMICS RESULTS



The first key finding was that corporate social responsibility was mainly motivated by image issues:

- Either, to obtain a competitive edge, i.e. a social responsibility policy may be assimilated to an enhancement of the social quality of the goods, which may result in increased market share. Firms may, therefore, initiate this type of strategy to compete with foreign firms located in low-cost countries to minimise the negative impact on their turnover. This strategy may equally reflect a reactive or proactive effort to increase market share, or a defensive tactic to minimise losses. However, can corporate social commitment be considered sincere in that case?
- Or, to offset the risk of damage to the corporate image. As corporate image is a very important intangible asset, firms often feel an acute need to protect themselves from this image risk. Social responsibility may act as a shock-absorber in case of negative impact on the company, particularly in terms of damage to their reputation. Social responsibility may thus be seen as insurance. This hypothesis, accounts for the empirical difficulty of identifying a direct link between profit and social responsibility, as well as the fact that major groups were more active in this field. It also opened up new avenues for empirical research, investigating the link between social responsibility and safeguarding long-term, rather than short-term profitability.

The second major learning point of the ESTER network's research was that little reference was made to the European Union's normative framework in defining the social responsibility policies of European enterprises. The economic reason for this was the advantage of referring to the most common norms. One basic principle of the network economy is that it is always more beneficial to join a strong network than a weak one. Indeed, this explains why, in case of competition between several norms (irrespective of the business sector) the one used by the most firms at a given time naturally took precedence. For multinationals with a global vision, it was preferable to use global, rather than European, references.

LEGAL RESULTS



Even though companies act ‘voluntarily’, they have created legal and para-legal CSR instruments. Our study revealed evidence that CSR was being ‘legalised’. However, legalisation is mainly confined to producing corporate standards which draw heavily on the international rules of the ILO or, where appropriate, on standards defined elsewhere. But such evidence of legalisation was not present in all the cases observed, and its content differed from one company or country to another and even from one corporate standard to another. In any event, the contractualisation of CSR standards (via the negotiation of international framework agreements, the insertion of CSR clauses into commercial contracts, or the introduction of CSR in managers' contractual obligations) provides strong evidence of a trend towards legalisation that does not necessarily go in the expected or intended direction for CSR.

Control and monitoring procedures associated with CSR norms are diverse and varied, but they have one aspect in common: they do not rely on legal and court mechanisms, but leave monitoring and implementation in the hands of the transnational standard-setters. Independent or external organisations are chosen as auditors only in those rare cases where transnational corporations are subject to political risks and/or market pressure. When it comes to the implementation and monitoring of corporate undertakings, transnational enterprises mostly rely on internal mechanisms. However, there are exceptions to the rule, where external bodies, such as certification agencies and/or auditors participate in monitoring the standards. When it comes to implementing and verifying measures at corporate level, transnational companies mainly rely on internal mechanisms, the legality of which is sometimes questionable in the eyes of local law (as in the case of whistleblowing systems).

Control is quite clearly the Achilles heel of companies developing social practices outside the European Union under the heading of CSR. In future, the legitimacy of actors involved in implementation as well as participative approaches to implementation and monitoring (especially trade union participation and, consequently, freedom of association/right to collective bargaining) will require further discussion. It will be interesting to see how social dialogue structures on a sector level in Europe can be mobilised or mobilise themselves on this aspect of control.

LEGAL MATTERS



The findings of the ESTER research project indicated that all players, including companies, had an interest in universal standards in all fields covered by CSR. In the social sphere, the rights covered by the ILO Declaration of 1998 are certainly used by companies as standards. In this sense, there is a noticeable degree of convergence between the state of affairs observed in European multinational companies and the content of existing international instruments referring – implicitly or explicitly – to the 1998 ILO Declaration.

It would nonetheless be desirable to have a precise, rigorous and comprehensive inventory of all the international human rights instruments covering the three pillars of CSR, so as to put an end to companies' self-service or 'pick and choose' practices. After all, the observance of certain rights cannot be left solely to the discretion of private individuals whose power often exceeds that of states. It is, therefore, necessary to establish a sort of universal hard core, wherever a company is established (in a free-trade zone or elsewhere), whatever law is applicable, on whichever state's territory a company is situated, and whatever agreements or conventions have been concluded with that state. This hard core should be agreed by all the international public institutions concerned.

Furthermore, joint agreement on the social content of CSR would ideally not be confined to reproducing existing measures or making do with minimal references; it should aspire to afford greater protection for employees in the workplace. Over and above the four rights covered by the 1998 ILO Declaration and the eight related international conventions, such protection would encompass the right to health and safety at work, the right to remuneration ensuring decent living conditions for workers and their families, and the right to decent working conditions, in particular working hours which allow for minimum rest periods.

A ROLE FOR THE EUROPEAN UNION



• A general role for the European Union

If the standard were to be drawn up by an international public body, the European Union could play a role in enforcing the international standard. This would probably entail procedural and verification measures and should be directed at transnational companies attached in some way to the EU. The forms and levels of verification should be comparable in effect to those associated with labelling and this process should be entrusted to a European Agency. Alternatively verification could take the form of an audit carried out jointly with other players, or be conducted on a joint basis by sector-based and international trade union/employer organisations.

• An original role for the European Union

By the end of 2007, 57 out of a total of 61 IFAs had been concluded by European multinationals. These agreements represent a practical implementation of a European approach to economic globalisation. They constitute the 'footprint' of a European social model based on common values (fundamental rights and intra-company social dialogue), recognised as such by the Treaties and the Fundamental Rights Charter of 12 December 2007. IFAs are the most ambitious corporate standards for implementing CSR commitments. The European Union can act as a driving force in CSR by emphasising one of its strengths and specific features on the global level, i.e. social dialogue and the principle of joint representation. To this end it must show the daring to move forward and act where companies do not fear to tread.

How is it then, if the international dimension of CSR represents a forward-looking strategy for the European Union, that it continues to turn a blind eye towards IFAs, leaving them with no legal status.

IFAs are currently the corporate standards best suited to meeting the challenge of implementation and monitoring compliance with CSR commitments. Unlike codes of conduct, it presupposes a common will on the part of the partners to go beyond a simple declaration. Furthermore, in establishing the principle of freedom of association, irrespective of the applicable local law, IFAs make it possible to set up and provide local support for worker representation bodies which, as a genuine countervailing power, are in a position to monitor their implementation. This is not the case of codes of conduct.

RECOMMENDATIONS



Any initiative on corporate social responsibility in transnational enterprises should:

- Be developed in the context of a global forum of international institutions
- Contribute to ensuring global recognition for the definition of CSR presented in the European Union Green paper.

Any instrument for regulating corporate social responsibility should:

- Be applicable to all companies that have any connection whatsoever with the European Union
- Be adopted on an international level, with possible amplification on a regional (European) level, and, in any case, implementation via transnational corporate norms. These norms should place the greatest emphasis on consensus and the involvement of the social partners and other stakeholders, in order to avoid, as far as possible, the pitfalls of a unilateral approach
- Entail a voluntary commitment to the entire contents of the norm
- Take the form of a framework norm harmonising corporate practices
- Have a reasonable substantive content that is easily accessible and verifiable
- Include both substantive and procedural content, drawing on the body of existing international legislation on universal standards for its substantive content. Further developments will be required concerning procedural content, as there are fewer established sources for this aspect.
- Define a scope of application capable of covering the specific activities of transnational companies, as well as all the enterprises within their sphere of influence (subsidiaries, suppliers, subcontractors, etc.), inside and outside the European Union.

RECOMMENDATIONS



Any implementation in response to an initiative on social responsibility or the adoption of a regulatory instrument requires a common monitoring and audit strategy, which should:

- Confirm the full competency of public administrations in monitoring all binding legal norms, on every level
- Promote all types of cooperation and mutual assistance among public monitoring organisations for this purpose
- Set up effective monitoring systems for non-binding instruments on CSR. A European monitoring agency on corporate social responsibility could be established for this purpose. A Community agency is a body governed by European public law; it is distinct from the Community Institutions (Council, Parliament, Commission, etc.) and has its own legal personality. It is set up by an act of secondary legislation in order to accomplish a very specific technical, scientific or managerial task, in the framework of the European Union's "first pillar".
- Monitoring could also be carried out by industry-specific bodies with employer-employee representation
- Define macroeconomic indicators to measure the impact of social norms on changes in European trade patterns to determine whether norms have an effect on the international competitiveness of European firms or impact imports from the South and could, therefore, be considered protectionist.



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PUBLISHED BY ESTER PARTNERS

ESTER Project, 2007
Dissemination of this document is encouraged