



Response to the public consultation “The European Commission’s strategy on Corporate Social Responsibility (CSR) 2011-2014: achievements, shortcomings and future challenges”

August 2014

Introduction

The European Commission has presented a public consultation “The European Commission’s strategy on Corporate Social Responsibility (CSR) 2011-2014: achievements, shortcomings and future challenges”. Corporate Social Responsibility has for many years been an important concern for Germany’s four leading business organisations – Confederation of German Employer’s Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände* – BDA), Federation of German Industries (*Bundesverband der Deutschen Industrie* – BDI), Association of German Chambers of Commerce and Industry (*Deutscher Industrie- und Handelskammertag* – DIHK) and German Confederation of Skilled Crafts (*Zentralverband des Deutschen Handwerks* – ZDH). They support their members and companies with up-to-date information on developments and trends in CSR, with guidelines, with working groups and conferences, with the CSR Internet portal CSR Germany as well as with individual counselling. At international, European and national level, the organisations have contributed constructively to the further development of CSR in the various processes and dialogue forums in order to give companies the necessary support for their voluntary and autonomous corporate commitment. Against this background, the federations set out their position on the public consultation.

On process

European Commission’s questionnaire an unsatisfactory basis for the consultation

The European Commission has published a questionnaire as the basis for the consultation. However, the questions are formulated in such a way that it is not possible for respondents to explain clearly their own positions and ideas on CSR just by answering the questions. BDA, BDI, DIHK and ZDH therefore find it necessary to set out the most important considerations and requests concerning CSR in a separate position.

The federations welcome the hearing of relevant stakeholders in the framework of the EU Stakeholder Forum announced by the European Commission for November 2014. In this regard, it is important that the circle

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BDI - Bundesverband der
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EU-Transparency register number:
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of participants in this event is not limited and that all relevant stakeholders have the opportunity to take part.

On content

1. German companies are committed

German companies actively assume their corporate responsibility and engage far beyond what is required by law. This has a long tradition. The numerous activities and initiatives of German companies at global, European and national level in the fields of environment, social commitment and economy are a concrete expression of this responsibility awareness. Companies in Germany commit 11.2 billion Euros a year in the social sphere alone (First Commitment Report 2012 by the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth).

The engagement is very high among companies of all sizes: almost all companies (98% of businesses with at least 20 employees) are committed to society beyond what is required by law. The bigger the company, the greater capacities it has and the more it can engage: 97% of companies with 20-249 employees have a commitment, rising to 100% for companies with more than 1,000 employees. Among the smallest companies with up to nine employees, the figure is still 87% (Chambers of Commerce and Industry Business Barometer 2012, "Society gains from corporate responsibility"). To a certain extent – especially among family-run and small enterprises – this is so self-evident that they do not even report it. Customers, business partners, employees and above all the regional community know about these corporate activities anyway. In addition, the number of companies which integrate CSR and sustainability strategies in their core business is growing constantly, as is the number of those developing their own sustainability strategies. Thus, ever more employees are working directly in the field of CSR – especially in large companies. The German business community regards CSR as a priority theme and sees in CSR a contribution by companies to realising the concept of sustainable development.

2. Respect the voluntary character as a central feature of CSR

The European Commission disregards the heart of CSR in its 2011 definition by no longer including the central elements of voluntary participation and engagement beyond what is required by law. The definition that applied until 2011 and was endorsed by BDA, BDI, DIHK and ZDH was drawn up on a consensual basis and was the outcome of long and intensive discussions between all relevant stakeholders, inter alia in the European and German Multi-stakeholder Forum on CSR. It rightly defines CSR as the voluntary engagement of companies in the field of environment, social matters and economy, over and above legal requirements, within

their community for a future-oriented society. Accordingly, no new regulation should be created by the state.

It is not obvious from the European Commission's CSR definition what "impacts on society" means in practical terms. Similarly, the role of the players in transposing social and environmental standards is not specified unambiguously; rather, the responsibilities are blurred. Moreover, it is still unclear what constitute the "adverse impacts" that CSR is supposed to identify, prevent and mitigate. Insufficient account is taken of the fact that companies and society are mutually beneficial. Companies create jobs and prosperity is created by the production of goods and services. Without companies, there would be no growth and no employment with all the associated positive effects for society. Conversely, the voluntary, pro-active CSR commitment by companies whose purpose is to counter deficiencies in society caused beyond the sphere of corporate responsibility is not covered by this definition. It is essential to prevent CSR being devalued in the future and being treated merely as a corrective used to label supposed bad conduct by companies.

We therefore urgently call on the European Commission to review its 2011 definition and in particular to take into consideration the characteristic of voluntary participation. Only if this voluntary character is restored will the diversity of CSR be preserved.

3. Avoid new CSR regulation

The European Commission should not present any new regulatory proposals for CSR. Corporate Social Responsibility is complex and differentiated. Thus, a multinational enterprise in South-East Asia has to come to grips with completely different challenges from an artisan in Europe. The challenges which an IT firm faces in the area of CSR differ from those of a company in the oil sector. The nature and scope of a company's commitment to society are dependent on its size as well as the sectors and markets in which it operates. The priorities set by a company for ecological and social activities are geared to the needs of the stakeholders in question. Harmonised standards or a binding framework of requirements are therefore not a good idea for CSR. Companies must have the freedom to develop and put into practice the CSR approaches that are best for them. By contrast, rigid reference frameworks, certification and regulatory interventions lead to unnecessary bureaucratic efforts, and threaten to hold back innovation and dynamism in the field of CSR. Against this background, further CSR reporting obligations in particular should be rejected. In addition, an extension of regulation in this area can constitute an overstepping of legislative competence and infringe the principle of subsidiarity. Further, not only would the voluntary approach be undermined, the goal of dismantling red tape for more competitiveness would be turned on its head – and this at a time when Europe is struggling to move out of its worst economic crisis.

New regulation would even jeopardise the voluntary engagement of companies and hence run counter to efforts to enhance Corporate Social Responsibility. New regulation would be a step towards degrading CSR into a tick-box exercise, instead of promoting and rewarding responsible business conduct. CSR would be perceived as regulation and a burden rather than as a worthwhile task for day-to-day business practice. New regulation acts like a straitjacket and would ultimately fail to do justice to all companies. Instead, the freedom of companies of all sizes and in all sectors to structure their activities would be restricted, thereby impeding creative competition to find better solutions. New regulation would disregard the fact that companies have a range of possibilities, approaches and models for the diversity and complexity of CSR practices which cannot be squeezed into such a legislative framework. Companies need leeway to determine for themselves how they want to integrate the issue of CSR.

4. Expectations of the European Commission: exchange of experience and incentives better than legislative coercion

a. Promote exchange of experience

In the view of German business, practice-oriented encouragement of exchange of experience in particular is better than regulation. This is demonstrated by the increase over recent years in the number of companies which already implement CSR. The numerous international standards which are currently evolving to target greater ambition show that the market has developed its own dynamic within a short period and without legislative intervention. This should be acknowledged. Practice-oriented initiatives for the exchange of best practice are a sensible way forward for CSR. The European Commission should therefore promote a practical and constructive approach to Corporate Social Responsibility which preserves the principle of voluntary participation.

b. Projects to support companies, in particular for small and medium-sized enterprises (SMEs)

- **Support for the project “Corporate Social Responsibility in SMEs” (“Gesellschaftliche Verantwortung im Mittelstand”)**

It would be helpful if the European Commission could support companies in their CSR efforts. Against this background, the project “Corporate Social Responsibilities in SMEs” (“Gesellschaftliche Verantwortung im Mittelstand”) which runs in Germany until the end of 2014 and is financed using resources from the European Social Fund (ESF) should be continued. In the framework of this successful project, more than 2,000 SMEs have had the possibility of CSR qualification and advice.

- **Establish dialogue and exchange possibilities for SMEs with the European Commission**

To take account of the interests and challenges of SMEs in particular, it would be useful to create targeted dialogue and exchange possibilities for SMEs with the European Commission. In this way, SMEs would have the opportunity to pass on their concerns and assessments directly to the European Commission. This would also benefit the European Commission.

- **Support for SMEs with due diligence**

SMEs in particular need assistance as to how they meet the requirements of carrying out due diligence in accordance with the UN Guiding Principles on Business and Human Rights as well as the OECD guidelines for multinational enterprises. The European Commission is invited to take concrete measures to support SMEs.

- **Preparation of information on the situation in host countries**

European companies are increasingly often economically active also in non-European countries. In this regard, they are conscious of their responsibility to comply with national laws and to conform with environmental and social standards. However, it is often difficult for companies to acquire valid information on the concrete situation, e.g. on the human rights situation. The European Commission should ensure that companies can acquire such information, for instance via the European Union's diplomatic service. It should exert its influence to encourage Member States to pass on the corresponding information to companies.

c. CSR prize

Prizes and competitions which reward companies' social engagement help to make CSR visible and to strengthen companies in competition. In addition, they constitute a further incentive for companies to engage. The European Commission should therefore continue to award a CSR prize to committed companies also in the future. It would also be a good idea to award an EU prize to reward CSR partnerships between companies and other stakeholders.

d. Creation of a global level playing field for disseminating the OECD Guidelines for Multinational Enterprises

The European Commission should endeavour to win over further, non-OECD countries for the OECD Guidelines for Multinational Enterprises. In a globalised world, the OECD Guidelines on the social responsibility of multinational enterprises assume tremendous significance for the shaping of fair competition. The practical approach strengthens responsible conduct

by companies. The task now is to disseminate the guidelines worldwide beyond OECD Member States as recognised principles for responsible business conduct with respect to foreign investments. In particular, emerging countries such as China and India should now be persuaded to endorse the guidelines in order to establish responsible framework conditions for international trade. Clearly, the OECD guidelines on their own are not capable of ensuring a global level playing field. Fundamental environmental and social standards must be enacted and implemented by the States themselves. But the guidelines have the potential to underpin these efforts. This potential should be better used.

In so doing the European Commission would also be submitting to a demand from the European Parliament. In the European Parliament's 6 February 2013 resolution on Corporate Social Responsibility (2012/2097(INI)), the EU is invited to make comprehensive diplomatic efforts to persuade further countries at international level to sign and implement the OECD guidelines.

e. Clarify the different roles of governments and companies

The European Commission should help to clarify the different roles of governments and companies. Many companies engage actively in the framework of solving serious social problems, especially in emerging and developing countries. However, the role that companies can play in solving these problems must be clearly demarcated from the tasks of governments. Through their engagement, companies can supplement policy-makers' efforts in the area of societal development and social progress. It is governments which must enact and implement fundamental environmental and social standards. This task cannot be delegated to companies. The UN Guiding Principles on Business and Human Rights adopted in 2011 crystallise the right division of roles through the three-pillar "Protect – Respect – Remedy" approach. Under this approach, it is the task of the State to protect people on its territory against human rights infringements and it is the duty of companies to respect human rights.

f. Free CSR from exaggerated expectations

The European Commission should help to free CSR from exaggerated expectations. Companies are conscious of their responsibility but CSR is not a panacea. This is made clear, for example, in the discussion on responsibility in the supply chain. Companies increasingly require their suppliers to respect human rights or help them to meet environmental and social standards. There are numerous initiatives, alliances and measures which companies use to meet their responsibility in the supply chain. Yet the real possibilities for companies to influence the supply chain are highly divergent and depend to a great degree on the number of suppliers, the structure and complexity of the supply chain as well as the market position

of the company. Furthermore, large companies have very many suppliers – often several thousands. What is important is to provide support and training to businesses in the supply chain so that they are capable of implementing environmental, social and human rights standards adequately. The European Commission can play a supportive role in this regard.

In this respect, it is important to clarify that the responsibility for a negative effect must not be transferred to the company from its instigator which has a business relationship in the framework of the global supply chain. Under the OECD Guidelines for Multinational Enterprises, companies should endeavour vis-à-vis their business partners to prevent a negative effect and, where practicable, to encourage subcontractors in the supply chain to apply the principles of responsible business conduct. The European Commission should point this out.

Lastly, the European Commission's efforts in the area of CSR should consistently take account of the balance between economic, environmental and social interests, which have to be considered from a comprehensive viewpoint, when making its overall assessment. Only with economic success can jobs be secured over the long term and only when they are competitive with their goods and services can companies contribute to prosperity, consequently being in demand among customers and consumers.

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