

RECENT EUROPEAN UNION INITIATIVES & THE DANISH EXPERIENCE

Peter Gjørtler*

Corporate Social Responsibility (CSR) is a concept that has developed over the last twenty years, with rapid and accelerating growth in public awareness and application during the last ten years.¹ Currently, it is a major concern for many companies and has become increasingly visible as front-page news in professional newsletters.² However, it remains a field that is to a large extent unregulated, or regulated only by soft law. The purpose of this paper is to examine the latest developments in European Union (EU) policy on CSR and to present the experience of Denmark in supporting soft law targets with hard law measures. This paper is based on a presentation made on March 26, 2010, to a symposium arranged by the Indiana International & Comparative Law Review³ held at Indiana University School of Law–Indianapolis. The symposium reflected on the application of CSR in different regions and cultures across the globe.

THE DEVELOPMENT OF POLICY GOALS IN THE EUROPEAN UNION

The EU rests upon a principle of delegated competences. The adoption of the Lisbon Treaty on December 1, 2009, clarified this principle. This treaty modified the existing EU treaties and clarified the distribution of competences between the EU and its Member States, including areas with shared competence.⁴ These provisions do not address CSR, directly or indirectly. Accordingly, a competence falling outside the scope of EU competence remains with the each Member State.⁵

However, the interpretation of whether an area is within EU competence has some flexibility, even with a reserve provision setting the legislative procedure for areas that are not covered by more specific

* Associate Professor, Riga Graduate School of Law, Riga, Latvia.

1. See *Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, at 6, COM (2002) 347 final (July 2, 2002).

2. See, e.g., Trine Beckett, *Madame CSR*, DJØFBLADET, THE MAGAZINE FOR MEMBERS OF THE LAWYERS & ECONOMISTS TRADE UNION IN DENMARK, Djøf Sheet No. 12, June 23, 2010, available at <http://www.djoef.dk/djoefbladet/Arkiv/DJOeFBladet2010/DJ-OE-F-Bladet-nr-12-2010/Madame-CSR.aspx>.

3. *Indiana International & Comparative Law Review*, INDIANA UNIVERSITY SCHOOL OF LAW, <http://indylaw.indiana.edu/iiclr/symposium.htm> (last visited Jan. 11, 2011).

4. Consolidated Version of the Treaty on the Functioning of the European Union art. 4, Sept. 5, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU]; see also *id.* arts. 2–6 (specifying the areas and competences in more detail).

5. *Id.* art. 2.

provisions.⁶ The European Court of Justice (ECJ) has rarely overruled the assessment of the EU legislator about whether an area fell within EU legislative competence.⁷ This flexibility is even wider in relation to non-legislative measures. The Lisbon Treaty codified competences to support Member State actions in broad fields of policy, including that of industry.⁸ Thus, it seems clear that the EU has the competence to adopt non-legislative or soft law supporting measures concerning CSR. Further, arguably, hard law regulation of CSR is possible under the powers delegated to the EU regarding regulation of the Internal Markets.⁹ Following the logic of one of the founding cases on gender discrimination,¹⁰ one could argue that if CSR is not regulated in a similar manner in all Member States, the competition between companies will be upset when these companies come from Member States with differing levels of CSR regulation.

While this argument has an immediately convincing appeal, it also has an inherent danger. This would negate the principle of delegated competences. Accordingly, it has not become a main argument for the ECJ, except in the more limited form, where any national legislation that may have an impact on the internal market will be subject to EU limitations.¹¹ Thus, this argument is used to expand judicial, as opposed to legislative, competence.

In relation to CSR, the European Council seems to have followed the same conservative approach as the ECJ. This is illustrated by the conclusions of the Lisbon Meeting in 2001. The European Council has no legislative powers but has the task of setting the political and legislative strategy of the EU, which is subsequently implemented in coordination between the Council of Ministers, European Parliament, and European Commission.¹² The conclusions include the following statement in relation to CSR: "The European Council *makes a special appeal to companies' corporate sense of social responsibility regarding best practices on lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development.*"¹³

Evidently, the EU treats CSR as an industry-driven initiative for self-regulation. The EU wishes to support and urge the industry to pursue CSR,

6. *See id.* art. 352.

7. *See, e.g.,* Opinion 2/94, Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1996 E.C.R. I-1763.

8. TFEU, *supra* note 4, art. 6(b).

9. *Id.* art. 4(2)(a).

10. Case 43/75, Defrenne v. SA Belge de Navigation Aeriennne (SABENA), 1976 E.C.R. 455.

11. Case 299/86, Comm'n v. Drexl, 1988 E.C.R. 1213.

12. *See* TFEU, *supra* note 4, art. 15.

13. Presidency Conclusions, Lisbon European Council (Mar. 23–24, 2000), *available at* http://www.europarl.europa.eu/summits/lis1_en.htm (last visited Jan. 11, 2011) (emphasis added).

but it does not intend to submit the industry to EU legislation. This supporting approach is further pursued in the 2001 Green Paper on CSR from the European Commission.¹⁴ Green papers are normally used for presenting new legislative initiatives, so as to form the basis for a public hearing prior to the formal presentation of the legislative draft. However, it is clear that the intention of the European Commission is not to develop CSR legislation, but instead, to provide a framework to promote an industry consensus on the application of CSR. The Green Paper mentions the following goals of the Commission: “*Developing an overall European framework, in partnership with the main corporate social responsibility actors, aiming at promoting transparency, coherence and best practice in corporate social responsibility practices[]*”¹⁵ and “[p]romoting consensus on, and supporting, best practice approaches to *evaluation and verification of corporate social responsibility practices[]*”¹⁶

These targets are further developed in the 2006 Communication on CSR from the European Commission.¹⁷ The European Commission often uses communications to inform the public about its interpretation of the state of law. But, in this case, the communication is clearly aimed at the EU legislator to set the strategy of the European Commission. The main position taken by the Commission is that CSR is “*not a substitute for public policy, but [] can contribute to a number of public policy objectives.*”¹⁸

However, the European Commission has also intended to address the industry, whose active participation in achieving the targets is clearly intended. The targets include:

- More *integrated labour markets* and higher levels of social inclusion, as enterprises actively seek to recruit more people from disadvantaged groups;
- Investment in *skills development, life-long learning and employability*, which are needed to remain competitive in the global knowledge economy and to cope with the ageing of the working population in Europe;
- Improvements in *public health*, as a result of voluntary initiatives by enterprises in areas such as the marketing and labelling of food and non-toxic chemicals;

14. *Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility*, at 7, COM (2001) 366 final (July 18, 2001).

15. *Id.* at 25 (emphasis added).

16. *Id.* (emphasis added).

17. *See generally Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM (2006) 136 final (Mar. 22, 2006).

18. *Id.* at 4 (emphasis added).

- Better *innovation performance*, especially with regard to innovations that address societal problems, as a result of more intensive interaction with external stakeholders and the creation of working environments more conducive to innovation;
- A more rational use of *natural resources* and reduced levels of pollution, notably thanks to investments in eco-innovation and to the voluntary adoption of environmental management systems and labelling;
- A more *positive image of business* and entrepreneurs in society, potentially helping to cultivate more favourable attitudes towards entrepreneurship;
- Greater respect for *human rights*, environmental protection and core labour standards, especially in developing countries; and
- *Poverty reduction* and progress towards the Millennium Development Goals.¹⁹

The ultimate goal is active participation of industry. This becomes clear when looking at the description of instruments that the European Commission intends to employ to reach the aforementioned targets. These instruments are described as actions; they are supporting measures, not legislative regulations. They include:

- Awareness-raising and best practice exchange with *an emphasis on Small and Medium-sized Enterprises (SMEs)*²⁰ and on Member States where CSR is a less well-known concept;
- Support to *multi-stakeholder initiatives*, including social partners and Non-Governmental Organizations (NGOs);
- Consumer information and transparency including clear *information on the social and environmental performance of goods and services* and information on the supply chain; and
- Research and education;²¹

With the Maastricht Treaty in 1992, the EU introduced the principle of subsidiarity, which requires that in areas outside of exclusive EU

19. *Id.* (emphasis added).

20. See Report from the European Expert Group on Corporate Social Responsibility & Small and Medium-sized Enterprises, *Opportunity and Responsibility - How to Help More Small Businesses to Integrate Social and Environmental Issues into What They Do*, (May 2007), available at http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/sme/european-expert-group/index_en.htm (last visited Jan. 11, 2011).

21. *Id.* at para. 6–10 & 15.

competence, the EU shall act only where it is not more relevant for Member States to act.²² Although this principle has remained more of a political guide than a hard law provision subject to jurisdiction, it seems clear that the European Commission had this in mind when drafting the proposed actions. The communication clearly demonstrates the cross-border implications and perspectives of CSR. These implications include the following:

- International dimension of CSR – United Nations (UN) Millennium Development Goals, International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises (MNEs) and Social Policy, the Organisation for Economic Co-operation and Development Guidelines for MNEs, and the UN Global Compact;
- Cooperation with Member States – a group of high-level national representatives on CSR; and
- European Alliance for CSR – a political umbrella for new or existing CSR initiatives by large companies, SMEs, and their stakeholders.²³

The European Alliance (Alliance) is an example of the implicit reach of the 2006 communication to the industry. The Alliance was formed as an industry initiative in the same year with strong backing from the European Commission. The Alliance aims to harness the resources of industry and its stakeholders thereby promoting the multi-stakeholder philosophy. The more specific target of the Alliance is to support sustainable development, economic growth, and job creation. The Alliance includes three business organizations, which are already active in promoting CSR in Europe: CSR Europe; *BUSINESSEUROPE*, an association of business federations; and the European Association of Craft, Small and Medium-sized Enterprises (*UEAPME*).²⁴

At the request of the European Commission, various members of industry founded CSR Europe in 1995.²⁵ It was established as a network with a membership that includes seventy-five multinational corporations

22. See TFEU, *supra* note 4, art. 4.

23. See generally Commission Decision Setting up a High Level Group on Competitiveness, Energy and the Environment, 2006 O.J. (L 36) 43 (EC). Find subsequent reports of the High Level Group on Competitiveness, Energy and the Environment at http://ec.europa.eu/enterprise/policies/sustainable-business/documents/high-level-group/index_en.htm.

24. See *What is the Alliance?*, CSR EUROPE, <http://www.csreurope.org/pages/en/aboutalliance.html> (last visited Jan. 19, 2011).

25. About CSR Europe, CSR EUROPE, http://www.csreurope.org/pages/en/about_us.html (last visited Jan. 12, 2011).

and twenty-seven national partner organizations.²⁶ Thus, an umbrella perspective of the Alliance continues throughout its membership. CSR Europe, in turn, has many national organizations as members and reaches the SMEs that form the core target for the European Commission. CSR Europe's objective is to facilitate a sharing of best practices on CSR. One of the chosen methods for sharing best practices includes running projects for the industry and its stakeholders, where focus is kept on the twin objects of maintaining competitiveness and sustainability.²⁷

In summary, the EU agenda on CSR, as outlined by the European Council in 2001 and filled out by the European Commission in 2006, has one main objective: to support the implementation of CSR by the European industry. Because SMEs constitute the predominant form of industry in Europe, CSR in SMEs is a core priority for the European Commission. At the same time, there are ongoing efforts aimed at eliminating the apparent dilemma between CSR and competitiveness by underlining the advantages for competitiveness that may result from a correct implementation of CSR. According to the Directorate General for Enterprise and Industry of the European Commission, the advent of the current economic crisis has only made CSR more important in countering the implications of the crisis.²⁸ In order to make the initiative more efficient, its implementation has been focused on three industry sectors: chemicals, textiles, and construction.

One of the aspects of CSR that has recently come into focus is human rights in business. The change is not intended to create new sets of rights but to facilitate the correct application and respect for human rights in business operations. The underlying intention is to achieve legal certainty and access to justice for both individuals and industry. As a reflection of the importance of this aspect of CSR, the UN in 2005 appointed Professor John G. Ruggie as Special Representative to the Secretary General on issues concerning business and human rights. In 2008, Professor Ruggie submitted a report on the issue.²⁹ In 2009, the European Commission

26. *The European Network on CSR - Driving Change*, CSR EUROPE, (2006), http://www.csreurope.org/data/files/csr_europe_npo_brochure_2006.pdf; see also *CSR Europe - Working with You (2009 - 2010)*, CSR EUROPE, (Jan. 2009), http://www.csreurope.org/data/files/csr_europe_working_with_you_20092010.pdf; *A Guide to CSR in Europe - Country Insights by CSR Europe's National Partner Organisations*, CSR EUROPE, (Oct. 2009), http://www.csreurope.org/data/files/20091012_a_guide_to_csr_in_europe_final.pdf (last visited Jan. 12, 2011).

27. *European Competitiveness Report*, at 106, COM (2008) 774 final (Nov. 28, 2008).

28. See Günter Verheugen, Vice-President, European Comm'n Responsible for Enter. & Indus., *Corporate Social Responsibility Essential for Public Trust in Business* (Feb. 10, 2009), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/53&format=PDF&aged=0&language=EN&guiLanguage=en> (last visited Jan. 12, 2011); see also Lene Espersen, *CSR in a Time of Crisis*, CSRGOV.DK (Mar. 31, 2009), <http://blog.csrgov.dk/?p=3> (last visited Jan. 12, 2011).

29. See Report of the Special Representative of the Secretary General on the Issue of

initiated a follow-up study of the legal framework on human rights and the environment applicable to European enterprises operating outside the EU.³⁰ Concurrently, the UN Global Compact, Global Reporting Initiative, and Realizing Rights published a new guide on CSR and human rights in 2009.³¹

IMPLEMENTATION IN DENMARK

In Denmark, the Danish Ministry of Economic and Business Affairs acting through the Danish Commerce and Companies Agency (DCCA) undertakes the public administration of CSR.³² In 2007, the DCCA established the Danish Government Centre for CSR (Centre).³³ This was a follow-up to the establishment of the Copenhagen Centre in 1998.³⁴ The Centre functions also as the secretariat for the National Network of Business Leaders, and, in this connection, it is a member of the European Academy of Business in Society (EABis).

These developments may be seen as following the European Commission policies of supporting industry initiatives and facilitating networks, while involving all stakeholders. However, a new initiative evolved in 2008 to underpin the voluntary implementation of CSR with certain legislative measures. This was based on a government Action Plan for Corporate Social Responsibility adopted earlier in 2008.³⁵ The legislative initiative was in the form of an amendment to the existing law on Annual Reports.³⁶ The amendment has since been incorporated into the law

Human Rights and Transnational Corps. and Other Bus. Enters., U.N. Human Rights Council, 8th Sess., U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (by John Ruggie).

30. See European Comm'n, *Enter. & Indus. Directorate-Gen., Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the EU*, ENTR/09/45, 2009 O.J. (S 131).

31. See U.N. GLOBAL COMPACT ET AL., *A RESOURCE GUIDE TO CORPORATE HUMAN RIGHTS REPORTING* (2009), available at http://www.globalreporting.org/NR/rdonlyres/4C5DB4C6-5084-4A84-BE51-0D134B3B5A2E/3583/HR_ReportFINAL_Resource_Guide.pdf.

32. *Corporate Social Responsibility*, DANISH COMMERCE AND COMPANIES AGENCY, <http://www.dcca.dk/sw63091.asp> (last visited Jan. 12, 2011).

33. *The Danish Commerce and Companies Agency for Corporate Social Responsibility*, CSRGOV.DK, <http://www.csrgov.dk/sw49166.asp> (last visited Jan. 12, 2011).

34. *The Copenhagen Centre*, CSR-DIRECTORY.NET, <http://csr-news.net/directory/the-copenhagen-centre> (last visited Jan. 12, 2011).

35. *Action Plan for Corporate Social Responsibility*, CSRGOV.DK, <http://www.csrgov.dk/sw49167.asp> (last visited Jan. 12, 2011).

36. *Amendments and Supplements to the Law on Annual Accounts and the Law on Consolidated Accounts*, INFOLEX.LT (June 26, 2008), <http://www.infolex.lt/portal/ml/start.asp?act=legupd&lang=eng??&biulid=160&srld=71&strid=991> (discussing amendment 1403/2008 on statements of social responsibility in larger companies).

by means of a consolidated law.³⁷ This is a normal procedure in Denmark, so as to make the consolidated law the official legal reference. Since the Treaty of Amsterdam in 1997, it is also slowly becoming a custom within the EU.

It is clear from the preparatory work that the purpose of this latest Danish initiative was to encourage industry to take an active position on the issue of CSR.³⁸ As such, it would seem to focus on different targets than the EU because of its concentration on larger companies rather than SMEs. However, this would appear to be a distinction creating little difference because, by EU standards, most Danish companies may be considered SMEs. In designing tools for promoting CSR, it is also clear that the aim of the Danish government is SMEs.³⁹

The core obligation of the law relates to the management report, which is part of the annual accounts. This law stipulates that any management report must specify whether the company applies a code of corporate governance, and in such case, where that code is publicly available.⁴⁰ However, this only applies to companies that have securities admitted to trading on a regulated market in an EU or European Economic Area (EEA) country⁴¹ and who are required to submit such a report under Danish law. For companies that do not have securities admitted to trading, the obligation only applies to state-owned companies.⁴² For all companies covered that do not apply a codex, the companies are obliged to make a statement on how they otherwise administer corporate governance. However, corporate governance is a broader concept than CSR, which is dealt with specifically in another provision of the law that applies only to large companies.⁴³ But, as set out below, this applies to companies that either have securities traded or are state-owned.⁴⁴ The concept of CSR is defined in the law as follows: “[C]orporate social responsibility means that companies voluntarily *integrate areas such as human rights, social*

37. ANNUAL ACCOUNTS ACT - CONSOLIDATED ACT No. 395 (2009) (Den.), available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=125071> [hereinafter CONSOLIDATED ACT].

38. See DRAFT LAW AMENDING THE FINANCIAL STATEMENTS ACT 1 LF 5 (2008) (Den.) (amendment law adopted in 2008 after consideration in a parliamentary committee as part of the normal legislative procedure); see also DANISH COMMERCE AND COMPANIES AGENCY, REPORTING ON CORPORATE SOCIAL RESPONSIBILITY - AN INTRODUCTION FOR SUPERVISORY & EXECUTIVE BOARDS (2009).

39. *New CSR Tool Launched*, CSRGOV.DK, <http://www.csrgov.dk/sw58189.asp> (last visited Jan. 19, 2011).

40. CONSOLIDATED ACT, *supra* note 37, § 107(b).

41. Iceland, Lichtenstein, and Norway are included as part of the EEA.

42. *Id.* § 107(c).

43. *See Id.* § 99.

44. *Id.* § 102.

conditions, environmental and climatic conditions as well as fighting corruption in their business strategy and business activities.⁴⁵

As for corporate governance, the law also imposes an obligation on companies that do not have a CSR policy because it requires a lack of CSR policy to be disclosed in its management report. This creates an element of pressure because a company's lack of a CSR policy can only be seen as bad for public relations.⁴⁶ The qualification as a large company, to which the CSR statement obligations apply, is a general concept used for other purposes in the law. It is generally defined in the opening articles of the Consolidated Law.⁴⁷ The definition is quite simple: large companies are those that are not small or medium.⁴⁸ In turn, small and medium companies have more specific definitions. The definition is based on three thresholds. A company is considered small or medium if it does not exceed any two of the three thresholds for two consecutive years.⁴⁹ It may, however, exceed any one of the three thresholds.⁵⁰ The three thresholds for medium size companies are (small size thresholds added in parentheses): 1) balance sheet total of 143 million DKK (36 million DKK); 2) net turnover of 286 million DKK (72 million DKK); and 3) average number of full-time employees during the financial year of 250 (50 employees).⁵¹

In addition to large companies, the obligation to make CSR statements also applies to companies included in accounting class D.⁵² This concept is defined in the opening articles as a state-owned company or one that has securities traded on an EU or EEA market.⁵³ However, the obligation to make CSR statements in the management report is not absolute but is subject to exemptions and legal conditions. Thus, a company that has submitted a progress report in connection with the UN Global Compact or UN Principles for Responsible Investment does not need to make a CSR statement but will have to state in its management report that it has availed itself of this exemption.⁵⁴ For companies in a group with consolidated accounts, it is sufficient that a CSR statement is made for the group as a whole.⁵⁵ A subsidiary within a group may choose not to make a CSR statement if the parent company has either made such

45. *Id.* § 99(a) (emphasis added).

46. *Statutory Requirements on Reporting CSR*, CSRGOV.DK, <http://www.csrgov.dk/sw51190.asp> (last visited Jan. 19, 2011).

47. CONSOLIDATED ACT, *supra* note 37, § 7, ¶ 2(3).

48. *Id.* § 7, ¶ 2.

49. *Id.* § 4.

50. *Id.* § 7.

51. *Id.*

52. *Id.* § 102.

53. *Id.* § 7, ¶ 4.

54. *Id.* § 99(a), ¶ 7.

55. *Id.* § 99(a), ¶ 5.

statement or availed itself of the UN progress report exemption.⁵⁶ A subsidiary company is not obligated to make any statement if it uses of this option.

While no listing of companies exists, an estimated total of 1,100 companies are covered by the obligation to make CSR statements.⁵⁷ The law provides that a CSR statement must indicate the following: 1) the *company's policies on social responsibility*, including any standards, guidelines or principles for community responsibility, which it uses; 2) *how the company translates its policies of social responsibility into action*, including any systems or procedures evidence; and 3) *the company's assessment of what has been achieved* as a result of its work with community responsibility in the financial year, and the company's expectations for any future work.⁵⁸

Furthermore, the Danish legislative system applies a system of delegation of powers similar to the EU, where the Council of Ministers and the European Parliament may delegate to the European Commission the power to adopt implementing measures.⁵⁹ In Denmark, such powers are normally granted to the ministers concerned, who may then adopt executive orders.

In 2009, the Minister for Economic and Business Affairs issued an executive order under the amended law, which regulates the publication of CSR statements on websites as an alternative to including them in the management report.⁶⁰ One advantage to companies choosing this option is easier website updating, as opposed to the yearly management reports. The CSR statement may also be made in a separate document, to which reference is made in the management report.⁶¹ This option applies, in relation to CSR, to companies covered by accounting class C, as well as companies covered by accounting class D of the consolidated law. The opening provisions state that medium and large companies are at least subject to accounting class C.⁶² The scope of class D is explained above.⁶³ In this circuitous manner, apparently all companies with a CSR statement obligation may avail themselves of the web publication option. However, those using this alternative must expressly mention within the management

56. *Id.* § 99(a), ¶ 6.

57. *FAQ*, CSRGOV.DK, <http://www.csrgov.dk/sw51582.asp> (last visited Jan. 12, 2011).

58. CONSOLIDATED ACT, *supra* note 37, § 99(a), ¶ 2.

59. TFEU, *supra* note 4, art. 290.

60. NOTICE FOR DISCLOSURE OF CORPORATE GOVERNANCE STATEMENT AND EXPLANATION OF CORPORATE SOCIAL RESPONSIBILITY ON THE COMPANY WEBSITE, ETC., EXEC. ORDER NO. 761 (2009) (Den.), *available at* <https://www.retsinformation.dk/Forms/R0710.aspx?id=126096> [hereinafter EXECUTIVE ORDER].

61. *Id.* art. 18.

62. CONSOLIDATED ACT, *supra* note 37, § 7, ¶ 1.3.

63. *Id.* § 102.

report that they have chosen this option and they must include the Internet address where the CSR statement can be found.⁶⁴

Finally, the consolidated law specifies the audit obligations in relation to the corporate governance and CSR statements. As a point of departure, the management report is not subject to audit on its own, but the auditor must confirm that the report is in accordance with its annual accounts.⁶⁵ More explicitly, the executive order stipulates that the corporate government statement, on application of any code, is not subject to audit, unless it has been agreed between the company and the auditor that it should be included.⁶⁶ Again, this provision must be viewed as an effort to promote transparency by pointing towards such audit agreements.

In relation to CSR, however, the executive order does stipulate a general obligation for the auditor to actually verify that the required statement has been made in the management report or that the website has been correctly identified and labelled.⁶⁷ In relation to updating the website, the executive order makes clear that while such updates are acceptable, they must be clearly separated from the original information posted to qualify as an alternative to inclusion in the management report.⁶⁸

CONCLUSIONS

Currently, there is no basis for the EU to regulate CSR by legislative measures; it does not form a clear part of the powers delegated to the EU in the treaties on the EU. While it would be possible in principle to construct an interpretation of the delegated powers that would allow for such legislative measures, both the European Council and the European Commission have instead opted for a strategy based on supportive measures. These measures constitute support for the industry to develop and apply CSR norms.

The Danish government has also followed this strategy by setting up public institutions with the specific purpose of supporting the development of CSR. Separately, the Danish government has mandated an element of transparency by requiring companies to publicize their position on CSR in their management reports that form part of the annual accounts. As annual accounting is to a large extent harmonized at the EU level, it would seem feasible for such transparency obligations to be adopted as part of EU law. However, the system is still very new in Denmark. An EU initiative in this field should only be expected to be considered after additional experience has been gathered from the Danish initiative.

64. EXECUTIVE ORDER, *supra* note 60, art. 10.1–2.

65. CONSOLIDATED ACT, *supra* note 37, § 135, ¶ 5.

66. EXECUTIVE ORDER, *supra* note 60, art. 3.4.

67. *Id.* arts. 16–17.

68. *Id.* art. 15.

FURTHER READING

Grethe Krogh Jensen: Offentliggørelse af redegørelse for virksomhedsledelse og redegørelse for samfundsansvar på virksomhedens hjemmeside mv., *Revision & Regnskabsvæsen* nr. 9, 2009.

John L. Campbell, *Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility*, 32 *Acad. Mgmt. Rev.* 946 (946-67) (2007), available at <http://www.dartmouth.edu/~socy/pdfs/Corp%20Social%20Responsibility%20in%20AMR.pdf.pdf>.

Abigail McWilliams, et. al, *Corporate Social Responsibility: International Perspectives*, 23 *J. Bus. Strategies* 1 (1-7) (2006), available at https://web.cba.uic.edu/mscv/cv/Abigail_McWilliams.pdf.

Mette Morsing & Majken Schultz, *Corporate Social Responsibility Communication: Stakeholder Information, Response and Involvement Strategies*, 15 *Bus. Ethics: A European Rev.* 323 (323-38) (2006), available at <http://uk.cbs.dk/content/download/8504/370615/file>.

Thomas Bredgaard, *Corporate Social Responsibility Between Public Policy & Enterprise Policy*, 10 *European Rev. Labour & Research* 372 (372-92) (Autumn 2004), available at <http://trs.sagepub.com/content/10/3/372.full.pdf+html>.

Cathie J. Martin, *Corporatism From the Firm Perspective*, 35 *British J. Pol. Sci.* 127 (127-48) (January 2005), available at <http://people.bu.edu/cjmartin/bjpsmart.pdf>.

Peter Pruzan, *Corporate Reputation: Image & Identity*, 4 *Corp. Reputation Rev.* 47 (47-60) (2001).