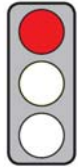


## MAIN ISSUES

**Objective of the Communication:** The Commission wishes to induce EU enterprises to reinforce significantly their social and ecological commitment (“Corporate Social Responsibility”, CSR).

**Parties affected:** All enterprises

**Pros:** –



**Cons:** (1) The Commission aims to establish a legal framework which, although it does not formally prescribe a commitment to CSR measures and aims, it does de facto force companies to commit.

(2) The inclusion of social and ecological considerations in public procurement is inefficient and puts enterprises which adhere to the statutory framework at a disadvantage.

(3) The application of CSR to the entire supply chain would be accompanied by disproportionate additional costs for the companies.

## CONTENT

### Title

**Communication COM(2011) 681** of 25 October 2011: A renewed EU strategy 2011-14 for **Corporate Social Responsibility (CSR)**

### Brief Summary

#### ► In General

- With a “renewed strategy” the Commission wishes to induce companies to realise their social responsibility (Corporate Social Responsibility, CSR).
- The Commission defines CSR as “the responsibility of enterprises for their impact on society” (p. 7 No. 3.1).
- The Commission calls upon “European Business leaders, including those from the financial sector, to issue, before mid 2012, an open and accountable commitment to promoting, in close cooperation with public authorities and their other stakeholders, the uptake of responsible business conduct by a much larger number of EU enterprises, with clear targets for 2015 and 2020” (p. 15).

#### ► The Commission’s basic idea

- The Commission criticises the fact that many enterprises take insufficient account of social and environmental concerns and that a small number of enterprises do not observe the principles of human rights (p. 5).
- The Commission considers a renewed CSR strategy to be important now because the current economic crisis has considerably damaged consumer confidence and trust in business (p. 4).
- Moreover, CSR can help contribute to “objectives of sustainable development and a highly competitive social market economy” (p. 3, No. 1.2).
- According to the Commission, approaches to CSR are also important for the competitiveness of enterprises. Sustainable business models can be better established if employers and consumers have a “long-term trust” in an enterprise. (P. 3, No. 1.1)
- Enterprises are to be “given the necessary flexibility to innovate and develop an approach to CSR that is appropriate to their circumstances” (p. 7 No. 3.4).
- As a matter of principle, approaches to CSR should be developed within one sector or across sectors and through enterprise initiatives or involving organizations. Enterprises should commit to observing these approaches on a voluntary basis.
- According to the Commission, a multi-stage procedure would be the most efficient (p. 10):
  - First: Together with enterprises and stakeholder, the Commission analyses the status quo.
  - Second: Enterprises enter into CSR commitments the compliance of which can be monitored with performance indicators.
  - Third: Compliance with the commitments is regularly reviewed, whereby the Commission deems enterprises and stakeholders responsible. To this end, enterprises should regularly give an account of their CSR measures.
  - Fourth: Where necessary, enterprises revise their commitments together with the stakeholders.
- “Certain regulatory measures” are to create an environment “more conducive to enterprises voluntarily meeting their social responsibility” (p. 3 No. 1).

- In particular, the Commission wishes to “encourage” large companies to:
  - include the supply-chain and
  - to disclose “non-financial information” (p. 7).
- The voluntary development of approaches to CSR should be led by enterprises themselves and “public authorities” should only play a “supporting role”, in particular by setting requirements for
  - promoting transparency,
  - creating market incentives in the field of consumption, public procurement and investments and
  - introducing an accountability mechanism.

► **Thirteen concrete projects by the Commission**

- By 2013, “multistakeholder CSR platforms” are to be created for a “number of relevant industrial sectors” to make public commitments to the CSR issues relevant to each sector and to jointly monitor progress. (p. 9)
- From 2012 onwards, the Commission wishes to launch an award scheme for CSR partnerships between enterprises and other stakeholders.
- In 2012, the Commission intends to publish a report on the application of the Unfair Commercial Practices Directive and to consider the need for measures against “green-washing”.
  - “Green-washing” refers to misleading marketing of allegedly green products in order to make the enterprises appear particularly environment friendly in public.
- Regular surveys of public trust in enterprises and their attitude towards CSR policies are to be carried out and an open debate on the role and potential of enterprises in the 21<sup>st</sup> century is to be initiated.
- In 2012, a code of conduct is to be drawn up together with enterprises and other stakeholders for self-regulation or co-regulation processes.
- In future, public procurement is to take account of social and ecological concerns. However, an additional administrative burden should not be incurred and the principle that procurement go to the most economically viable tenderer must be maintained.
- The Commission wishes to examine whether or not all investment funds and financial institutions are to be obliged to inform their clients as to “any ethical or responsible investment criteria they apply” or any standards and codes to which they adhere (p. 11).
- The EU programmes “Lifelong Learning” and “Youth in Action” are to further co-finance education and training projects carried out by enterprises as CSR measures (e.g. cross-border exchange of apprentices). From 2012 onwards, the Commission wishes to launch a campaign to raise the awareness of enterprises and education professionals as to the importance of CSR.
- Member States are to develop national CSR strategies, in particular to promote CSR in small and medium-sized enterprises (SMEs). Member States and the Commission are to develop in 2012 a “peer review mechanism”, in order to assess national CSR strategies.
- The Commission will examine whether large companies (more than 1,000 employees) adhere to the voluntarily observed, internationally recognized CSR principles and guidelines and take account of the ISO 26000 Guidance Standards in Social Responsibility in its own operations.
- Based on the United Nations (UN) guidelines, in 2012 enterprises and stakeholders are to develop human rights “guidance” for single sectors and for small and medium-sized enterprises (SME). The UN guiding principles are:
  - the state’s duty to respect human rights;
  - the corporate responsibility to respect human rights and
  - the effective combating of human rights violations.
- By the end of 2012, the Commission will publish a report on the EU’s priorities regarding the implementation of the UN guiding principles, followed by regular progress reports.
- In EU development policy – the promotion of sustainable upturn and growth in third countries – the Commission wishes to apply a responsible entrepreneurial approach.

► **Five concrete demands by the Commission**

- Member States should develop by 2012 their own plans to promote CSR with reference to the EU CSR strategy and in cooperation with enterprises and other stakeholders. All projects should be based on internationally recognized CSR principles and guidelines.
- All large European enterprises should commit by 2014 to compliance with at least one of three international CSR guidelines: the OECD Guidelines for Multinational Enterprises, the UN Global Compact or the ISO 26000 Guidance Standard on Social Responsibility.
- All European-based multinational enterprises should commit by 2013 to compliance with the “ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy”.
- All European enterprises should respect human rights.
- By the end of 2012, Member States should develop national plans for the implementation of the UN Guiding Principles.

## Changes to the Status quo

To date, CSR has been defined as a “concept whereby companies integrate social and environmental concern in their business operations and in their interaction with their stakeholders on a voluntary basis” [COM(2001) 366, No. 20]. The new definition – “the responsibility of enterprises for their impact on society” – no longer contains the voluntary aspect. The Commission expects that in future enterprises will undertake to adhere to CSR guidelines.

## Statement on Subsidiarity by the Commission

The Commission does not address the issue of subsidiarity.

## Policy Context

In the Single Market Act [COM(2010) 681; s. [CEP Policy Brief](#)] the Commission already announced a law on the transparency of social and ecological information. Currently, the Commission is working on a strategy to “encourage” (p. 12) the usage of a product lifecycle-based methodology serving as a measure for the ecological performance of an enterprise.

The Communication forms part of a package entitled “Responsible Businesses”. The package consists of:

- Communication COM(2011) 685: Package “Responsible Businesses”
- Communication COM(2011) 681: Corporate Social Responsibility (CSR)
- Communication COM(2011) 682: Social Business Initiative
- Directive Proposal COM(2011) 683: Amending the Transparency Directive
- Directive Proposal COM(2011) 684: Amending the Annual Financial Statement Directive.

## Options for Influencing the Political Process

Leading Directorate General:	DG Enterprises and Industry
Consultation procedure:	A consultation procedure is not planned.

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

In its renewed strategy for corporate social responsibility, the Commission turns away from the principle of voluntariness towards a mixture of concrete statutory requirements on the one hand and a general, incentive-setting, regulatory environment on the other hand. **Although an enterprise’s commitment to CSR is declared voluntary, changes to the regulatory environment create so much pressure that the development of and compliance with CSR measures becomes de facto obligatory.** Somewhat surprising is the fact that the Commission makes nearly all the right assumptions but comes to incomprehensible and contradicting conclusions. This serves to show that **with the renewed CSR strategy, the Commission is pursuing political ideology rather than respecting the enterprises’ freedom of choice.** Against this background, the renewed CSR strategy must be rejected.

In certain cases the Commission may be right to assume that approaches to CSR are positive for the competitiveness of enterprises, since sustainable business models can be better established if the employees and consumers have a long-lasting trust in enterprises. However, the reverse is equally true: where an enterprise chooses not to apply CSR, this is often due to the fact that they do not expect to derive any added value from it, for example because their customers have not signalled a need for it. The Commission is right in stating that the consumption and investment decisions made by consumers and investors are key to enterprises being rewarded by the market. If the market position can be improved by particularly social and responsible actions, the enterprises will certainly develop and apply approaches to CSR voluntarily. Nonetheless, the Commission requires that enterprises commit to CSR. The fact that more CSR is not being demanded must not lead to an implicit political pressure or even regulatory interventions forcing enterprises to apply CSR “voluntarily”.

The Commission’s intention to address the issue of misleading marketing of allegedly green products (“green-washing”) is not comprehensible. Where misleading marketing of single products is concerned, consumers, authorities and competitors already have access to legal recourse. Prohibiting the marketing of single products in order to make the overall enterprise appear more environmentally friendly can only be achieved by restricting the freedom of marketing green products. However, this would reduce the incentives for enterprises to also produce products which are particularly green. For an enterprise that is not allowed to advertise with the fact that it exceeds environmental standards will no longer do so. Hence, there is a risk that conditions are established which undermine entrepreneurial innovation.

**The inclusion of social and ecological considerations in public procurement is to be rejected** for two reasons. Firstly, it is impossible to demand social and ecological standards which go beyond the statutory framework and at the same time choose the most economically viable tenderer. For compliance with such standards is always accompanied by higher costs. Secondly, those enterprises which adhere “solely” to the existing statutory requirements are put at a disadvantage; yet obeying the law must not lead to discrimination.

#### Impact on Efficiency and Individual Freedom of Choice

The introduction of a reporting obligation for approaches to CSR and the provision of information on responsible investment activities lead to reduced efficiency and higher costs, as it costs enterprises an additional effort to demonstrate their compliance with all requirements.

**The Commission’s idea to transfer the commitment to CSR to the entire supply chain would be accompanied by disproportionate additional effort and costs** for enterprises, as the suppliers would also have to invest in compliance with CSR. This leads to higher prices and makes it more difficult for European enterprises to access wholesale markets.

#### Impact on Europe as a Business Location

As the political pressure to comply “voluntarily” with CSR increases production costs, the quality of the EU’s position as a business location deteriorates.

## Legal Assessment

### Competency

European Treaties do not provide for any special competency on which a Directive or Regulation regarding CSR could be based. However, the Commission might feel tempted to justify such a proposal by the completion of the single market (Art. 114 TFEU). Single measures can be based on special competencies, such as the rules regarding public procurement (Art. 114 TFEU), labour conditions (Art. 153 TFEU) and environmental protection (Art. 192 TFEU).

### Subsidiarity

The measures propagated by the Commission affect enterprises in all Member States equally. EU action is appropriate in order to prevent any distortion of competition.

### Proportionality

Legally binding CSR rules must be in line with the fundamental right to entrepreneurial freedom (Art. 16 CFREU).

### Compatibility with EU Law

If the effort to prevent “green-washing” were to result in a prohibition of advertising with an environmental impact, this would be in conflict with the existing voluntary certification scheme EMAS (Community eco-management and audit scheme; Regulation (EC) No. 1221/2009), for there would no longer be any incentive to participate in said scheme if it were not possible to advertise the fact.

### Compatibility with German Law

Currently not foreseeable.

## Alternative Action

If the Commission believes that existing social and environmental standards do not suffice, it should revise and amend the existing legislation.

## Possible Follow-up Action

In the context of the current Communication, it can be expected that CSR reporting obligations will be introduced.

## Conclusion

Rather than respect the entrepreneurial freedom of choice, the Commission is pursuing political ideology with its renewed CSR strategy. The changes to the legal framework serve to put enterprises under pressure to commit “voluntarily” to CSR measures and targets. Including social and ecological criteria in public procurement prevents choosing the most economically viable tenderer and puts companies which adhere to the existing legal framework at a disadvantage. The forced application of CSR measures to the entire supply chain is accompanied by disproportionate additional effort and financial burdens for enterprises and thereby impedes access to wholesale markets.