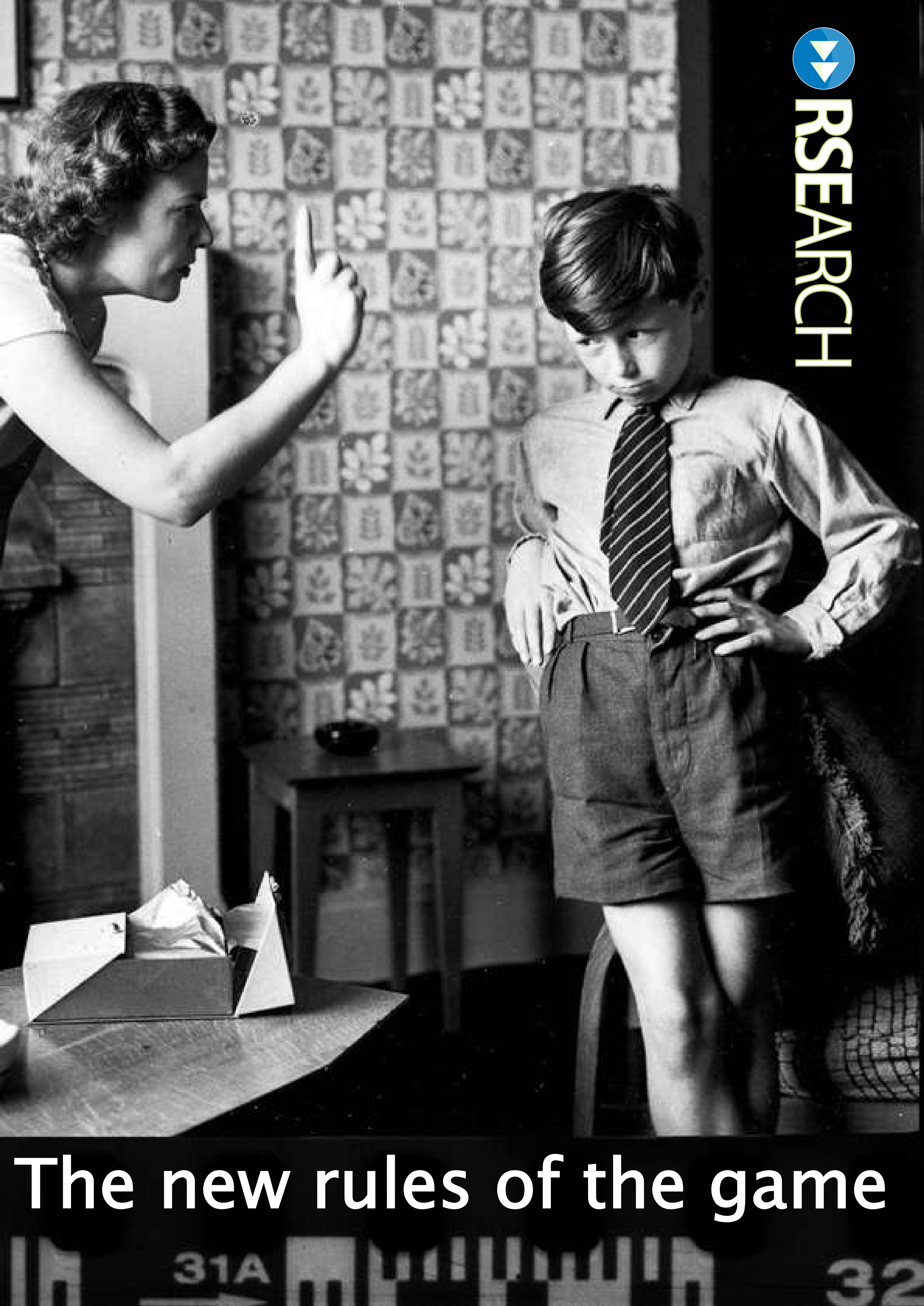

The new rules of the game

Government "rescue" and CSR

In this climate of great uncertainty and economic crisis, many social and political agents are suggesting that the debate be reopened on the government's role as guarantor of well-being and stability in developed countries.

Measures such as financial rescue plans, state intervention in private enterprises, the hunt for those to blame for the current crisis and the resurgence of protectionism in international trade are gaining momentum by the day. All of this points to a scenario of greater regulatory pressure vis-à-vis the way that companies operate, influence and behave on the market.

Just how this trend will affect the phenomenon of social responsibility could provide subject matter for a wide range of publications. We have decided to dedicate this first edition of RSEarch to the creation of a benchmark for regulatory development in various neighboring countries.

The new rules of the game

In 2009, a maelstrom of state actions were ushered in, designed to stabilize the situation caused by the intense erosion of the financial, real estate and labor markets. The policies of the OECD states and some emerging countries (mainly China) are cushioning the real financial economy by increasing public spending, reinforcing financial institutions and even buying stock in some organizations (finance and motor vehicle industries).

Hence, the speed and intensity with which governments have intervened as regulators, supervisors, actors, guarantors and even white knights, coupled with weak resistance – and sometimes open support – from the more liberal sectors of economic policy appear to have extended the scope of state action.

This is on top of the resurgence of certain signs of economic protectionism as several countries attempt to give preference to their domestic economies. For example, the recently rejected Buy American measure – which would restrict application of the US economic stimulus fund (800 billion dollars) to services and products and materials made in the USA – or the relaxation of capital requirements to Swiss financial institutions for granting loans within the country instead of sending them abroad.

Against this backdrop, some opinion leaders have stressed that the roots of the crisis lie in a lack of ethics and social responsibility on the part of diverse economic agents. In accordance with this, some stakeholders consider that if we are to get to the root of the problem it will be necessary to regulate a number of aspects, such as executive remuneration, the toughening of the rules of the game (ethics, labor, social aspects, environment, among others), increase the transparency and scrutiny of the private and public sector, and to reinforce the state's role of supervision and control.

As a result of the above, the debate on the voluntary/compulsory nature of CSR looks set to reopen, coinciding with the start of operations of Spain's Council of Social Responsibility. The current setting recomends a cautious outlook regarding these phenomena and warns of the need for greater stability (clarity, absence of interferences) in the present economic climate before decisions are made that could substantially affect the business panorama. In order to offer a more wide-ranging perspective, we have dedicated this issue to a review of the diverse state measures for promoting CSR in our immediate environment.

Soft Legislation

"Most countries across Europe have adopted a regulatory framework that emphasizes a voluntary approach versus mandatory requirements"

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The EU, from flexibility to commitment

A "soft legislation" context

In the European context, the regulatory framework is generally flexible. The common denominator of all of the regulations analyzed can be summarized in three principles:

- *Soft legislation:* the regulatory content is scarcely demanding and prioritizes voluntary action over mandatory.
- *Comply or explain:* social responsibility is always presumed but the burden of testing falls on the company. As a result, companies must develop CSR policies and tools; if they do not, they need to explain why.
- *Supply market:* companies must develop social responsibility. Given that they form part of the market, government authorities must also integrate principles of social responsibility in their management.

Within the framework of action of several of our neighboring countries, we have selected the following eight cases for their advanced conceptual development.

Some data

☑ = A specific regulation is in force.
☒ = No specific regulation.

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CSR Reporting

Germany	☒	Establishes the recommendation of reporting, based on the relevance for the business.
Belgium	☒	There are no reporting obligations. Compulsory social balance sheet. An increase in this requirement is under study.
Denmark	☑	Big companies; public undertakings.
Spain	☒	There are no reporting obligations.
France	☑	Listed companies.
Holland	☑	Listed companies and public undertakings.
UK	☑	Listed companies.
Sweden	☑	Public undertakings.

CSR & Public Procurement

Germany	☑	There is no green government procurement law, but there are support initiatives (beschaffung, Blaue Engel).
Belgium	☒	There are no specific plans.
Denmark	☑	Responsible procurement specifications; CSR Compass (CSR control of suppliers).
Spain	☑	Public Sector Contracts Act 2007 incorporates CSR into government procurement.
France	☑	National Sustainable Procurement Plan 2007-2010.
Holland	☑	State program for green government procurement (2006). Aim 100% green government purchases by 2010.
UK	☑	UK Government Sustainable Procurement Action Plan 2007.
Sweden	☑	National Green Government Procurement Plan 2007-2009.

SRI Reporting

Germany	☑	Investment policy by pension plan managers (employment).
Belgium	☑	Investment policy by pension plan managers.
Denmark	☑	Investment policy by pension plan managers.
Spain	☒	There are no reporting obligations.
France	☑	Investment policy by pension plan managers.
Holland	☒	There is no specific plan.
UK	☑	Investment policy by pension plan managers.
Sweden	☒	There are no reporting obligations.

SRI Investment of Public Capital

Germany	☒	None.
Belgium	☑	*Fonds de l'Economie sociale et durable*. Loans & Capital in projects with social and environmental impact.
Denmark	☑	*Vækstfonden* (venture capital). PRI + social and environmental filters in the fund portfolio.
Spain	☒	There is a proposal in the Social Security Reserve Fund bill.
France	☑	Retirement reserve fund (FRR). Exercise of vote & social and environmental filters in the fund portfolio.
Holland	☒	None.
Sweden	☑	AP funds (government pension fund system) PRI.
UK	☒	None.

Climate Change

Germany	☑	German Strategy for Adaptation to Climate Change (2008).
Belgium	☒	There is no specific plan.
Denmark	☑	Aim of reducing energy consumption: 2% by 2011 and 4% by 2020 (Base year 2006).
Spain	☑	Spanish National Climate Change Adaptation Plan (2008).
France	☑	Presented in 2005 and enforceable from 2010. Target for 2050: reduce emissions by 4 (Base year 2000).
Holland	☑	Program for adaptation to climate change with an investment of €15 billion in 20 years.
Sweden	☑	Commitment to an investment of SEK 5 billion to combat climate change.
UK	☑	Target of reducing emissions by 20% by 2050 (Base year 1990).

Other Promotional Initiatives

Germany	☑	Interministerial climate change group.
Belgium	☒	CSR seal introduced by the government (ordonnance de la Région Bruxelles-Capitale, 4 September 2008).
Denmark	☑	CSR Compass, Energy efficiency seals for public and private buildings (>1000 m2), creation of a Climate Consortium with employers.
Spain	☑	Creation of a State Council for Social Responsibility.
France	☑	Creation of an equal opportunities seal.
Holland	☑	Creation of several environment agencies and international cooperation programs to promote CSR.
Sweden	☑	Swedish Council for Environmental Management (State, regions and employer associations), CEO Water Mandate (public-private alliance).
UK	☑	Local sustainability plans, Sustainable development indicators.

United Kingdom

Heading down the learning curve

The United Kingdom has been pioneering in its incorporation of CSR in the public domain. The content of regulations is based on the following points, listed in accordance with their target public:

1. CSR management:

1.1 Listed companies

- Responsibility of company management. The Companies Act 2006[1] (article 171) establishes that responsibility for the environment and social impact of business operations falls on the management team.
- Reporting: Under the Companies Act 2006 (article 417), listed companies must include information in their annual reports on the existence and efficacy of corporate policies on the environment, employees and impacts on society and stakeholders.

2. 2. SRI (socially responsible investing).

Fund managers (private sector)

- CSR in investment policies: since 1999, pension plan managers in the United Kingdom have been required to state in their investment policies the importance of ethical, social and environmental aspects in their investment decisions.
- Policies on the exercise of voting rights: pension plan and fund managers are required to detail their policy on the exercise of rights regarding their investments (voting in shareholders' meetings, delegations, transfer of these rights, etc).

3. Environmental context: Climate change:

3.1 Government and private sector:

Kingdom has committed to reducing its greenhouse gas emissions by 2050 to less than 80% of its emissions in 1990. To achieve this, it has established a series of requirements, which include:

I. Five-year emissions budgets.
II. Creation of an Emissions Registry and its corresponding governing body.
III. Creation of an Advisory Committee on Climate Change.
IV. Publication of regular reports on potential risks and adaptation to climate change in the United Kingdom.
V. Guidelines for reporting emissions for April 2012, expanding on the contents of the Companies Act 2006.

4.Responsible regions:

Local governments:

The Sustainable Communities Act 2007 sets up a CSR deployment plan through its system for drafting proposals for local sustainability plans.

With the support and coordination of the Secretary of State, regional governments must put forward their respective plans after successive phases of local consultation.

These local plans must cover aspects such as the promotion of local purchases, organic food production, local employment and social integration, among others.

1 Companies Act 2006. This law regulates aspects concerning companies. It is the equivalent of Spain's Limited Companies Act.

Denmark
The orthodox model

Denmark is among the best-positioned countries as developers of integral CSR policies.

The recently published white paper and a series of development regulations lay the foundations for a balanced and orthodox model of social responsibility. This model is based on four pillars: 1. Social responsibility led by companies. 2. Promotion of CSR through public activity. 3. Responsible actions with the environment. 4. The brand: Denmark for responsible growth. The Danish initiative can be classified according to target public as follows:

1. CSR management

1.1 Private companies.

The Danish government is backing a business-led CSR model. Nonetheless, it has introduced a series of supporting initiatives, which include:

- Reporting: it establishes the requirement of CSR reporting for Denmark's largest 1,000 companies. Nonetheless, the regulation does not establish a minimum set of reporting indicators. Moreover, compliance with this requirement is met by publication of the United Nations Global Compact Progress Report.

- Responsible procurement (B2B): with the creation of CSR Compass, the Danish government has set up a free platform to register companies that work with ethical, social and environmental standards.

- Diversity: "Jobs for New Danes" program, the aim of which is to facilitate access to best practices in the management of diversity in Danish companies.

- Other programs:
I. Risk prevention certification for SMEs.
II. Support of the Danish Chamber of Commerce for companies operating in countries with high corruption risks.
III. "People and Profit" training program and guide published in 2007 especially for CSR integration in SMEs.

1.2 Government undertakings:

Danish public undertakings have incorporated CSR criteria into certain areas of their business, such as responsible procurement, the drafting of codes of conduct and other best practices.

The new regulatory framework extends the obligation of CSR reporting and membership of the United Nations Global Compact to these companies.

1.3 General government:

The Danish government has focused mainly on reinforcing CSR criteria in government procurement.

- Responsible government procurement (G2B): The Danish government is incorporating environmental and eco-efficiency criteria in public procurement specifications. The most notable initiatives include:
I. Promotion of eco-efficient official cars.
II. Incorporation of ILO treaties and the Universal Declaration of Human Rights in procurement specifications.
III. Creation of a mixed (public/private) panel to evaluate 'green' procurement.

Denmark
The orthodox model

2. SRI (socially responsible investing):
2.1 Public capital and funds:

- Active management of government funds in SRI

i. *Vækstfonden* (state-owned venture capital company) has established a series of ethical, social and environmental filters for its investments and plans to become a signatory of the PRI[2].

ii. *Export credit Fonden* (export credit institute) has introduced environmental, social and anti-corruption criteria and is committed to the Equator Principles.

2.2 Private capital. Fund managers

- CSR in investment policies:

Danish pension plan managers are required to state in their investment policies the importance of ethical, social and environmental aspects in their investment decisions.

3. Environmental context:

The most relevant environmental programs are:

- Establishment of targets for the reduction of energy consumption: 2% by 2011 and 4% by 2020 (base year 2006).
- Target of 20% of energy generation from renewables.
- Compulsory inclusion of information on climate change in business reports.
- Creation of sector alliances (retail, construction and maritime) on climate responsibility and investors.
- Compulsory requirement for buildings over 1,000 square meters to pass the energy-labeled test every five years.

4. Responsible regions:

The last pillar in the Danish strategy is to build a “Denmark for responsible growth” brand. This line of action incorporates a variety of tools designed to position the country as a socially responsible region. These activities include:

- Setting up a support fund for activities linked to CSR with an international projection.
- Open commitment to the United Nations Global Pact and OECD guidelines.
- Hosting of international conferences and activities in Denmark on specific CSR topics.

2 *UN PRI*: Principles for Responsible Investment. United Nations.

France
A focus on equality

1. CSR management. Focus on financial markets

1.1 Listed companies.

The French government establishes greater transparency for companies floated on the French stock exchange than unlisted companies.

- Reporting: In 2001, article 116 of the NRE (New Economic Regulation Act) established the mandatory inclusion of social and environmental information in annual reports. A decree from 2002 establishes minimum mandatory contents, the main points of which include:
i. Workforce statistics: number, gender, contract type, dismissals, extra hours, etc.
ii. Information on responsible restructuring plans and dismissal measures.
iii. Information on environmental management, including consumption, energy efficiency programs, etc.

1.2 Companies and organizations (all).

- Equal opportunities: One of the initiatives adopted by the French Ministry of Equality was to introduce a seal of equal opportunities. This seal, currently awarded to nineteen certified companies, was created through the Ministry's coordination with social agents and deals with the following issues:
i. Measures adopted by the organization to promote equal opportunities.
ii. HR policies guaranteeing fair access, promotion and training, and working conditions.
iii. Practices and requirements for balancing work with domestic and personal life.

2. SRI

2.1 Public capital and funds:

- Active management of government funds in SRI. Pension Reserve Fund: Since 2001, the French Social Security Reserve Fund (FRR) has been required to state in its investment policy the importance of ethical, social and environmental aspects in its investment decisions. This fund is a signatory of the PRI (Principles of Responsible Investment), a UN initiative.

2.2 Private capital. Fund managers

- CSR in investment policies: Since 2001, pension plan managers in France have been required to state in their investment policies the importance of ethical, social and environmental aspects in their investment decisions and to include this information in their annual report.

Germany

1. CSR management

1.1 Large limited liability companies.

- Reporting: The German government establishes the compulsory requirement of reporting non-financial indicators in the annual reports of large companies. The BilReG (2004) leaves a wide discretional margin for companies as these indicators are only mandatory where relevant to the business. Moreover, it does not detail the type of CSR information expected from companies.

1.2 General government

- Equal opportunities: Well within its constitutional mandate on equal rights for men and women, Germany has reinforced its equality programs in general government. In 2001, it introduced a federal law on sexual equality in the German government and judicial system.

2. SRI

2.1 Fund managers:

- CSR in investment policies:
Since 2001, pension plan managers in Germany have been required to state in their investment policies the importance of ethical, social and environmental aspects in their investment decisions.

3. Responsible regions:

In 2002, the German government launched its sustainable development strategy. The purpose of this document is to steer the action of the government and private agents towards compliance with certain aims:

- Energy efficiency.
- Sustainable transport and mobility.
- Public health, healthy nutrition and sensible consumption.
- Adaptation to demographic change.
- Renewal of institutions: basic education and universities.
- Business innovation.
- Rationalizing of land occupation and use.

Belgium

The Belgian model attempts to reflect the territorial complexity of administrating three regions. The Coordinating Sustainable Development Policy Act was passed in 1997. To implement the latter, plans are developed every four years and reports published every two. In 2006, Belgium developed its Social Responsibility Plan. This plan establishes a framework of soft legislation, prioritizing recommendation over obligation.

The most significant areas include:
- Promoting CSR integration in business, particularly SMEs.
- Promoting socially responsible investments.
- Increasing transparency.
- Providing financial backing to social economy companies.

Conclusions

The current scenario appears to be inviting a tightening of regulations on transparency, risk control systems and the social and environmental impact of business operations. This would undoubtedly intensify the development of social responsibility policies in business. We will now take a look at the guidelines for action in this area over the coming years:

1. Sustainability reports. Mandatory CSR reporting?

As we have observed in most of the countries covered here, it would appear that it is only a matter of time before listed companies in Spain are required to publish sustainability reports.

This will not have a dramatic effect on the current panorama, however, as virtually all IBEX 35 companies have anticipated this and now draw up annual sustainability reports. A soft legislation approach would close the gap between Spanish legislation and the European framework. Nonetheless, investors may push for stricter regulations in Europe as a whole.

Recently, EUROSIF (European Sustainable Investment Forum) made an appeal to European institutions to increase the transparency requirements of all listed companies.

2. Impetus of SRI. Nothing is impossible.

Although the climate of the stock exchange is not optimistic, socially responsible investing should gain momentum in the years to come. In 2008, we saw how Spain's leading private financial institutions invested vast sums of money in the application of CSR filters. The debate on the 10% injection from the SRI equity social security reserve fund[3] could, in our opinion, be reopened when confidence returns to the markets. The risk, however, is that this measure could come too late and we could miss out on the strong potential for long-term market recovery.

3. CSR in government procurement. Heading down the learning curve.

The commitment to applying ethical, social and environmental aspects to government procurement is set down in the Public Sector Contracts Act, in force since 2007.

The Dutch government recently stated its commitment to including social and environmental aspects in 100% of its purchases by 2015. This type of commitment can stimulate further development and mandatory compliance with European regulations.

4. European context. Less business friendly.

One of the conclusions of the last meeting of the European Multistakeholder Forum was the prediction of a less favorable European business context.

The elections for the European Parliament and the new European Commission may mark a turning point in Community business policies. For the time being, one of the initiatives announced recently by the DG-Enterprise involves greater monitoring of the environmental and human rights activity of European companies outside Europe. This type of action, in a context of increased economic protectionism, could be a tentative step towards the creation of trade barriers based on social responsibility.

3 Bill Regulating the Social Security Reserve Fund.

Excerpt from the description of the grounds for Act 30/2007

Incorporating in its own terms and without reservation the guidelines of Directive 2004/18/EC, the Public Sector Contracts Act includes substantial innovations in the preparation and awarding of business subject to the latter.

To summarize, the chief innovations affecting the establishment of mechanisms for the introduction of social and environmental considerations in public contracting, framing them as special conditions for contract performance or as criteria for tender assessments, foreshadowing a structure that will allow the adoption of guidelines for adapting contracts to new ethical and social requirements.

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Slowly but surely

As this article has shown, the political and economic climate of the coming years appears to be shrouded in uncertainty. Hence, policy-makers will have to make bold decisions but must remain cautious in establishing the intensity of the mechanisms for regulating and promoting responsible policies. It will therefore be important to keep two empirical statements in mind.

The first is from the lessons learned after the corporate scandals at the start of the millennium, where we saw that tighter control does not necessarily reduce fraud if the mechanisms used are unsuitable or they are not assigned sufficient resources. The second concerns world economic trend. To overcome this crisis, companies must have greater freedom of movement and compatible frameworks of action both in Spain and other parts of the world.

In short, markets and society in general will require greater transparency and tighter controls over business activity. New CSR promotion policies will appear, but they will be more effective if they are gradual. Obtaining market feedback and continuing to search for formulas for social consensus will allow us to combine credibility with effectiveness.

ENRON CASE

The backlash of a shipwreck

Following the collapse of Enron and a spate of major financial scandals (TYCO, Worldcom, Adelphia, among others), the US government enacted the Sarbanes-Oxley Act in 2002. As punishment to an ambitious business management class and with the aim of preventing similar cases in the future, this Act introduced mechanisms to encourage tighter controls and a reduction in the risk of shareholder fraud.

From an operating point of view, the excessive bureaucracy led to enormous transaction costs for listed US companies. As a result, several multinationals left the New York stock exchange to be listed on those of other international cities. The Act has not been successful from the point of view of effectiveness either.

In November 2006, over 130 companies were involved in a new scandal of gargantuan proportions – though with less of a media echo – in the Options Backdating Scandal. This time, more than fifty top executives snuck out through the back door to the indignation of millions of shareholders.

Forética

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