

## **Preliminary abstract paper for the conference: Towards Sustainable Companies: Identifying New Avenues**

**Title:** Sustainable development and the need for sustainable oriented corporate law and regulation

**Authors:** Prof. S. C. de Hoo  
Dr. M. Olaerts

**Hypothesis:** A more substantial role for sustainable oriented corporate law and regulation is needed to create the transition towards sustainable development in the business community.

### **Abstract:**

In our paper we will use the outcome of empirical research with regard to the implementation of CSR policies in corporate practice to see how company law should develop in order to support the implementation of CSR policies in a broad set of companies. By making use of data from interviews with CSR managers in which they reflect on success and failures in their CSR programs we will discuss why the introduction of CSR policies in the business community progresses so slowly. From thereon we will define what the role of corporate law can be in order to make CSR part of a company's core business. In that respect we argue that CSR deserves a place within the corporate goal definition and should form part of a company's corporate governance.

Sustainability literature shows that over the last 25 years the world has been - metaphorically speaking - paved with Corporate Social Responsibility (CSR) programs and projects. During this period of time the design, development and realization of CSR programs and projects certainly improved in content as well as in professional levels. In front running companies CSR did move from the corporate periphery to the core business and in some it even became an essential part of corporate strategy. CSR became more mature, measurable and last but not least CSR itself became a more coherent concept in its social, environmental and economic dimensions. CSR developed into various protocols and guidelines – like OECD, GRI, Global Compact, etc. - in which even the rudiments of soft law are apparent. CSR performance is increasingly documented in corporate sustainability reports and at the same time it is externally evaluated, ranked and rated. Especially the more long lasting CSR programs and projects in companies have proven to create a corporate competitive edge, incremental and radical innovations, corporate renewal and a positive effect on the financial bottom-line. All this made CSR promoting executives and CSR managers more respected professionals in their front running companies compared to earlier days in this development. From a government perspective, from a non-governmental organization perspective as well as from a business perspective CSR - as the pursuit of sustainable development - became the right thing to do and the corporate contribution to a more sustainable development of society. Recently Porter and Kramer even proclaim that a new phase in CSR occurs in which the new CSR business paradigm will be “creating shared value” and the purpose of the corporation must be redefined around (HBR, 2011).

This may be the view of those in the frontline of CSR developments but the peloton of the vast majority of companies, where the major contribution towards a more sustainable future will be made, does not move. In this perspective the success rates in CSR programs and projects still do not match expectations and the CSR induced changes occur to be too slow and too small in magnitude to bring sustainable development in due time. The CSR and sustainable development induced corporate performance does stop at the borderline of front running companies and the spin-off to the business

community as a whole remains limited. Even within the front running companies the embedding of CSR in the existing corporate structures proves to be vulnerable as well and does show high levels of fall-out. The various factors that have an impact on the success and failure of CSR programs and projects are extensively described and analyzed in literature but there is a strong need for more insight into the relative importance of these factors and into the relevant interconnections.

The first question we will address in our paper is why the development from the front running companies to a broader set of companies in the business community so slow. In order to answer this question we will provide data from interviews with CSR managers in which they reflect on success and failures in their CSR programs and projects. This information will be analyzed in the perspective of current CSR related decision making processes as well as in the perspective of those components of CSR programs and projects that prove to be of major importance according to the CSR managers, like approaches towards: the business case, the program design, innovation, stakeholder involvement, societal and business support and the final embedding of results. Our hypothesis that proper enforcement of CSR requires support from sustainable oriented corporate law and regulation in order for it to become mainstream is supported by these interview results. In the second part of our paper we will discuss the role of corporate law and regulation in this respect.

The implementation of CSR standards and policies generally take place on a voluntary basis and differ significantly in scope and profundity amongst corporations. We believe that a further developed level of CSR should form part of the corporate policy. This CSR policy should be adjusted to the specific activities of the company and should form part of a company`s corporate governance. The group of stakeholders involved in and affected by a company`s business is not restricted to shareholders and should be defined more broadly. The goal of the company should therefore also not be restricted to shareholder wealth maximization (See in this respect). A company should accrue fair profits to shareholders. However, this should not be done at the expense of legitimate interests of other stakeholders. We therefore argue that CSR should be part of a company`s corporate governance. As with corporate governance, there is not a one size fits all solution for the CSR challenges a company can be faced with. After all, often these challenges depend on the type of business the company is involved in. As with corporate governance, transparency and accountability are key. CSR should become part of the duty of care imposed on the board of directors and those in charge (see with regard to the role of the board B. Sjäfjell, 2009). They should be left a certain margin of appreciation leaving the development of the right CSR policy to their business judgment. However, an infringement of their duty of care in this respect should be a reason for accountability.

#### **Biographical statement of the presenters:**

##### **Prof. S.C. de Hoo:**

Prof. S. C. de Hoo (62) is a part time professor in corporate social responsibility and innovation at the University of Maastricht (since 2010) and at the Vrije Universiteit in Amsterdam (since 2004). He has over 30 years of experience in various positions within governmental and non governmental organisations as well as the business community in bringing about sustainable development.

##### **Dr. M. Olaerts:**

Mieke Olaerts works as Assistant Professor at the Private Law Department of the Law Faculty of Maastricht University. She is also a research fellow and program leader at the Maastricht Institute for Corporate Law, Governance and Innovation Policies (ICGI). She is specialized in comparative (European) company law.