

PRIVATE INTERNATIONAL LAW FOR CORPORATE SOCIAL RESPONSIBILITY

Monika Feigerlová*, Monika Pauknerová**¹

Abstract: *The National Report provides a general overview of the concept of Corporate Social Responsibility in the Czech Republic and its reflection in rules pertaining to company law, contract law, tort law and private international law. The core issues cover the applicability of CSR's rules as part of a governing law and analysis of rules determining jurisdiction of a relevant forum for deciding disputes relating to CSR's values.*

Keywords: *CSR; Corporate Social Responsibility; Reasonable Business Conduct; RBC; Business and Human Rights; National Action Plan; Czech Republic; Private International Law*

1. DEFINITION AND SOURCES OF CORPORATE SOCIAL RESPONSIBILITY IN THE CZECH REPUBLIC

1.1 Definition of Corporate Social Responsibility

Under the National Action Plan for Corporate Social Responsibility in the Czech Republic² corporate social responsibility (“CSR”) is defined as *“an organisation’s commitment to ensure that its decisions and day-to-day activities take account of the needs of its clients, suppliers, customers, employees and citizens living in the place where it operates, as well as those of the environment and all other entities, to which its activities relate, either directly or indirectly.”*

In the foreword to the National Action Plan for CSR, the Minister of Industry and Trade makes an express reference to the European Commission’s definition of CSR which characterizes CSR as *“the responsibility of enterprises for the impact their activities have on society.”* The influence or inspiration by the European Commission’s definition is noticeable in the Czech detailed formulation of CSR.

The current concept of CSR represents a coherent set of activities and practices that, if applied, form an integral part of the control strategy of organisations and are implemented by organisations on a voluntary basis beyond the scope of their legal obligations, motivated by a desire to help to improve conditions in society.³

* JUDr. Monika Feigerlová, LL.M., Ph.D., Institute of State and Law of the Czech Academy of Sciences, Prague, Czech Republic

** Professor, JUDr. Monika Pauknerová, CSc., DSc., Institute of State and Law of the Czech Academy of Sciences, Prague, Czech Republic and Faculty of Law, Charles University, Prague, Czech Republic

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² See MINISTRY OF INDUSTRY AND TRADE OF THE CZECH REPUBLIC. Strategic Document entitled National Action Plan for Corporate Social Responsibility in the Czech Republic. In: *Ministry of Industry and Trade* [online]. 26. 2. 2014 [2017-09-11]. Available at: <<https://www.mpo.cz/en/business/corporate-social-responsibility/national-action-plan-for-corporate-social-responsibility-in-the-czech-republic—148817/>>, approved by the Government in resolution no. 199 of 2 April 2014 as updated by the resolution no. 49 of 25 January 2016.

³ Corporate social responsibility includes, for example, areas associated with human rights, employee care, job creation, diversity, equal access to employees, lifelong education, prevention of environmental pollution, the use of renewable sources, saving energy, water and other resources, the fight against corruption, transparency and the quality of products and services.

In the Czech environment, corporate social responsibility is perceived as a concept which should be applied primarily by commercial enterprises. However, this is something that should also be focused on by non-governmental non-profit organisations and State and local government authorities, as these are also responsible for the impact their activities have on society. Therefore, the National Action Plan covers the corporate social responsibility of organisations without distinguishing the private and public spheres, and includes all these subjects under this term. The State shall principally create appropriate conditions to assure the promotion and dissemination of the concept of CSR and to remove elements of bureaucracy while maintaining transparency and respect for CSR in state administration and local government authorities.⁴

The Government considers corporate social responsibility to be a strictly voluntary concept based on self-regulation. It encompasses activities of all organisations that are carried out beyond the scope of their legal duties towards their employees, society and the environment. In other words, CSR in the Czech Republic is not regulated through laws or directives, but kept on a voluntary basis.⁵ Some scholars active in this field even describe CSR as an activity of a charitable nature.⁶

On the other hand, despite the proclaimed voluntary nature of CSR Czech law regulates some of the commitments that can be perceived as a part of CSR in other countries. Such commitments are then part of the legal framework and, therefore, not considered CSR.⁷ The general awareness of the concept of CSR is relatively low in the Czech Republic.

1.2 Reasonable Business Conduct and OECD Guidelines for Multinational Enterprises

The Czech Republic is the OECD Member since 2005 and is one of the signatory States of the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). The concept of CSR embodied in the OECD Guidelines is a bit different from CSR referred to in the National Action Plan.

The OECD adopts the following definition: “*Responsible business conduct (RBC) means that businesses a) should make a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and b) should avoid and address adverse impacts through their own activities and prevent or mitigate adverse impacts directly linked to their operations, products or services by a business relationship. Risk-based due diligence is central to identifying, preventing and mitigating actual and potential adverse impacts, and thus is a key element of RBC. Enterprises must obey domestic laws and*

⁴ MINISTRY OF INDUSTRY AND TRADE OF THE CZECH REPUBLIC. Strategic Document entitled National Action Plan for Corporate Social Responsibility in the Czech Republic. In: *Ministry of Industry and Trade* [online]. 26. 2. 2014 [2017-09-11]. Available at: <<https://www.mpo.cz/en/business/corporate-social-responsibility/national-action-plan-for-corporate-social-responsibility-in-the-czech-republic-148817/>>, p. 15.

⁵ Background in the Czech Republic – Ibid., p. 5.

⁶ See ARCHALOUS, M. *Byznys a lidská práva* (Business and Human Rights, in Czech), doctoral student research activity paper. Faculty of Law, Charles University Prague, 2017, p. 10.

⁷ This applies in particular to consumer protection law, working conditions and safety at the workplace, prohibition of discrimination, pollution limits, etc.

*respect human rights wherever they operate even where such laws or obligations are poorly enforced. This is the first obligation of enterprises. The scope of RBC is broad and cross cutting as impacts to society, both positive and negative, cover a range of substantive areas (e.g. disclosure, human rights, employment and labour, environment, anti-corruption, consumer interests, science and technology, competition, and taxation). All enterprises should behave responsibly regardless of their legal nature, size, ownership structure, or the sector of the economy in which they operate. Thus expectations of RBC extend to enterprises that are private, state-owned or mixed; multinational or domestic; large or small and medium-sized enterprises.*⁸

The National Contact Point (*Národní kontaktní místo pro implementaci Směrnice OECD pro nadnárodní podniky*) (“NCP”) was set up in the Czech Republic in 2013.⁹ Its primary purpose is to raise public awareness of the OECD Guidelines, and to facilitate amicable settlement of cases involving an alleged violation of the OECD Guidelines.¹⁰ All submissions to the NCP must be filed in compliance with its Rules of Procedure.¹¹ Based on unofficial information NCP has been involved in five situations initiated by a non-governmental organization. According to the annual reports on the OECD Guidelines,¹² no case has been filed or closed by NCP within the last three years.

As to the definitions and terminology, the NCP officials prefer to use with respect to the OECD Guidelines the term RBC (responsible business conduct) instead of CSR which better encapsulates the emphasis on conducting business in compliance both with laws and regulations (even where these are poorly enforced) and societal expectations from various stakeholders (such as investors, employees, customers, suppliers and wider community). Only the latter aspect covers private voluntarism labelled as CSR.

1.3 Business and Human Rights under the 2011 Guiding Principles on Business and Human Rights

The Czech Republic is also a Member State of the United Nations and as such has recently taken an action under the United Nations Guiding Principles on Business and Human Rights (“the 2011 Guiding Principles”). Since 2015 a working group established under the auspices of the Minister for Human Rights, Equal Opportunities and Legislation was preparing the National Action Plan on Business and Human Rights which was finally approved by the Government at the end of the last year.

⁸ OECD. Policy Framework for Investment 2015 Edition. In: *OECD* [online]. 2015 [2017-09-09]. Available at: <<https://www.oecd.org/daf/inv/investment-policy/Policy-Framework-for-Investment-2015-CMIN2015-5.pdf>>, p. 75.

⁹ The NCP was established by Government Resolution No 779 of 16 October 2013 as a permanent working group within the Ministry of Industry and Trade.

¹⁰ The official website of NCP is: <https://www.mpo.cz/en/foreign-trade/international-organizations-and-trade/oecd/national-contact-point-for-the-implementation-of-oecd-guidelines-for-multinational-enterprises-165673/>, accessed on 9.9.2017.

¹¹ For details see <<https://www.mpo.cz/en/foreign-trade/international-organizations-and-trade/oecd/national-contact-point-for-the-implementation-of-oecd-guidelines-for-multinational-enterprises-165673/>>, accessed on 9.9.2017.

¹² For details see <<http://mneguidelines.oecd.org/annualreportsontheguidelines.htm>>, accessed on 27.9.2017.

In line with the 2011 Guiding Principles the initiatives in the areas of business and human rights (“BHR”) are contextually and conceptually different from the concept of CSR in their aims and ambitions. The starting perspectives of each concept are distinct. Under the BHR concept, the duty to respect human rights is perceived as an obligation of the business enterprise without any possibility of discretion. The responsibility to observe human rights throughout the operation of the business enterprises exists within the realm of legal compliance and is not voluntary.

The supporters of BHR concept point out that the duty to respect human rights is undisputed. The issue is rather the non-availability or insufficiency of remedies against infringements of human rights. If a business enterprise is not performing or not meeting its commercial targets, it is morally acceptable that the enterprise reduces or drops altogether charity contributions during the critical period. By contrast, it is not acceptable at any point in time that an enterprise would ban trade unions or would not provide a minimum wage to its employees.¹³

Based on the above premises, the National Action Plan on Business and Human Rights for the period 2017-2022 („NAP on BHR“)¹⁴ was elaborated and was approved by the Government of the Czech Republic on 23 October 2017.¹⁵ The NAP on BHR was prepared on the basis of the 2011 Guiding Principles and also partly reflects the OECD Guidelines.

The NAP on BHR expressly states that it represents a measure implementing the 2011 Guiding Principles in the Czech Republic. At the same time it has been prepared in response to requests of the Council of Europe¹⁶ and the European Commission¹⁷ to its Member States to prepare a national action plan.

The NAP on BHR is based on the recognition of States’ obligations to respect, protect and fulfil human rights and fundamental freedoms. Majority of States ratified international treaties for protection of human rights by which they are bound. Some States, nonetheless, did not ratify all the treaties or fail to enforce their commitments that are aimed at requiring business enterprises to respect human rights in practice. This leads to a so-called legal gap in State practice. Even if human rights laws are not effectively enforced, the internationally recognized human rights do not cease to exist thereby. Each individual is morally obliged to respect human rights and States are bound to protect them because of their universal acceptance by the international community as a part of „*ius cogens*“.¹⁸

¹³ ARCHALOUS, M. *Byznys a lidská práva* (Business and Human Rights, in Czech), doctoral student research activity paper. Faculty of Law, Charles University Prague, 2017, p. 10.

¹⁴ The NPA on BHR was prepared with the support and approval of the Minister for Human Rights, Equal Opportunities and Legislation with the participation of public sector, private sector, NGOs and trade unions.

¹⁵ For details see Vláda přijala první národní akční plan pro byznys a lidská práva. In: *Vláda České republiky* [online]. 23. 10. 2017 [2017-12-18]. Available at: <<https://www.vlada.cz/cz/ppov/rlp/aktuality/vlada-prijala-prvni-narodni-akcni-plan-pro-byznys-a-lidska-prava-161702>>.

¹⁶ The NAP on BHR refers in this respect to the document of the Council of Europe named “Recommendation CM/Rec (2016)3 of the Committee of Ministers to member States on human rights and business” of 2 March 2016.

¹⁷ The NAP on BHR refers in this respect to the document of the European Commission named “A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final”. In: *EUR-Lex* [online]. 25. 10. 2011 [2017-12-18]. Available at:

<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>>.

¹⁸ The NAP on BHR, p. 3.

The NAP on BHR refers to the 2011 Guiding Principles as to a coherent set of 31 propositions divided into three pillars. Each pillar is elaborated in detail in the NAP on BHR.

The first pillar recognizes the obligation of a State to protect human rights. The addressee of the first pillar is the State as a representative of the public power that is empowered to use legal instruments such as legislation, regulations, policies and adjudication for achieving its goals. The second pillar focuses on business enterprises and their obligation to respect human rights. The addressees of the second pillar are, therefore, business enterprises that are obliged to avoid infringing on the human rights of others. They should actively seek to identify how they prevent and mitigate their impacts on human rights.

Whereas the first pillar focuses on the role of States in overseeing companies' respect for human rights, the second pillar encourages private sector to adhere to standards even in areas where public enforcement is insufficient. The activities of the business enterprises complement the public power and contribute to the prevention of human rights abuses which occur as a result of negligence or lack of information. The third pillar accentuates the mutual commitment of States and business enterprises to provide for remedies against infringements of human rights. The addressees of the third pillar are thus both the State and private sector which shall cooperate in creating a comprehensive effective remedial system for business-related human rights abuses.¹⁹

The aim of the NPA on BHR is to set goals and tasks in the area of business and human rights and to promote public awareness of this concept in the Czech Republic. As there has been no systematic approach to BHR concept in the Czech Republic so far the NPA on BHR also offers an opportunity to map the current processes in this area, evaluate their effectiveness and identify inadequacies.

Martin Archalous, one of the authors of the NPA on BHR, believes that CSR as defined by the Czech Republic in the National Action Plan overlaps in certain aspects with the activities of business enterprises envisaged in the second pillar. The NPA on BHR explicitly distinguishes the concept of human rights and business from CSR. Each concept is based on a different narrative. CSR focuses on corporate voluntarism undertaken by corporations in order to improve quality of life in local communities or strengthen their relationships with key stakeholders such as employees, customers, investors, etc. On the other hand, the concept of human rights and business puts emphasis on the accountability of corporations for harm caused by their operations. Respecting human rights is not of a voluntary nature; "modern slavery", child labour or devastation of environment cannot be dependent upon good will of entrepreneurs.²⁰

The NPA on BHR expressly stipulates that commitments contained in the NPA on BHR which are not reflected in legal rules are non-binding and do not create new law obligations. The NPA on BHR presumes that vast majority of business enterprises complies in their operations with human rights standards automatically. It is also noted that many enterprises adopt their own codes of conduct promoting human rights compliance and that in the Czech Republic we can already rely on voluntary commitments of entrepreneurs towards human rights standards.²¹

¹⁹ *Ibid.*, 4.

²⁰ *Ibid.*, 5.

²¹ *Ibid.*, 6.

1.4 The ISO 26000 Definition and Other Relevant Sources

The ISO 26000 standard defines CSR as “*the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization and practised in its relationships*”.²²

The National Action Plan for CSR refers to the ISO 26000 voluntary standard – Social Responsibility Guidelines – as to one of the initiatives on CSR at the international level. At the same time it is noted that the awareness of the international CSR instruments is low in the Czech Republic, amongst both businesses and the general public.²³

Further, the NPA on BHR mentions ISO 26000 in the context of public procurement. A manual on how to include requirements of sustainable development, societal and environmental concerns into the processes of public procurement shall be prepared. The Ministry of Industry and Trade in cooperation with Quality Council of the Czech Republic set up and administers a portal on CSR called “National CSR Information Portal”.²⁴ The portal includes linkages to national and international documents on the topic of CSR and aims at gathering all relevant documents at one place for easy accessibility by the businesses and general public.

2. CHARACTERISATION

As stated in Chapter 1 the Government of the Czech Republic considers CSR to be a voluntary concept based on self-regulation representing a set of values focused on the economic, social and environmental impacts of an organisation’s main activities. From this perspective CSR is not regulated through legal rules and cannot be found in laws.

At the same time some matters covered by the 2011 Guiding Principles and the OECD Guidelines as reflected in the NPA on BHR may be regulated by national law or international commitments. Under this caveat Chapter 2 will briefly mention legal rules which might conceptually belong to the RCB or BHR concepts. They are, however, labelled in this way neither in legislation nor in judicial decisions. We cannot, thus, identify decision which would address breaches of CSR rules. In view of the Czech definition none of the below rules can be considered a CSR rule.

²² ISO 26000 – Social Responsibility. In: *International Organization for Standardization* [online]. [2017-09-27]. Available at: <<https://www.iso.org/iso-26000-social-responsibility.html>>.

²³ MINISTRY OF INDUSTRY AND TRADE OF THE CZECH REPUBLIC. Strategic Document entitled National Action Plan for Corporate Social Responsibility in the Czech Republic. In: *Ministry of Industry and Trade* [online]. 26. 2. 2014 [2017-09-11]. Available at: <<https://www.mpo.cz/en/business/corporate-social-responsibility/national-action-plan-for-corporate-social-responsibility-in-the-czech-republic—148817/>>, p. 31.

²⁴ The website is available in Czech language only and is gradually amended: <http://narodniportal.cz>.

2.1 Rules Pertaining to Company Law

Non-Financial Reporting

In 2016 the Czech Republic as a Member State of the EU transposed into its national law a directive on disclosure of non-financial and diversity-related information by large enterprises and company groups (the “Directive”).²⁵ In accordance with Article 4 of the Directive, the Member States are obliged to bring into force laws or regulations necessary to comply with the Directive by 6 December 2016. The Czech Republic amended its accounting laws²⁶ with the effect as of 1 January 2017 (the “Accounting Amendment”).

Starting with the financial statements for the financial year 2017 entities which meet criteria defined in the Accounting Amendment (e.g. number of employees exceeding 500 employees and an entity having the status of a subject of public interest) will need to disclose non-financial information regarding environmental, social and employee issues, respect for human rights and the fight against corruption and bribery. The required information must be provided in a defined structure in the annual report or annual consolidated report of the relevant entity or in a separate document prepared for this purpose. The documents must also be available on-line. The fact that an entity has prepared the non-financial information will have to be verified by an auditor.²⁷

It is estimated that non-financial reporting will apply to 30 entities in the Czech Republic. It has to be noted that even prior to the Accounting Amendment certain entities, in particular companies publicly listed, already had to disclose information of non-financial nature (e.g. activities of the entity in the field of research and development, on employment matters, protection of environment or whether the entity established a branch office abroad).

The explanatory report to the Accounting Amendment refers to the National Action Plan for CSR in the Czech Republic that envisages voluntary non-financial reporting as an instrument contributing to a greater transparency in operations of business enterprises.²⁸ The explanatory report states that a number of companies already provide information about environmental activities or human rights on a voluntary basis with the aim to increase their prestige and competitiveness on the market.²⁹

Rules of Conduct for Members of a Company Body

As regards the internal structure of companies it cannot be said that any specific feature would be directly inspired by the CSR concept (e.g. the existence of Supervisory Boards in joint-stock companies was enacted long before any discussions on CSR were held). Nonetheless, Czech legal corporate doctrine is not immune to CSR. Pursuant to corporate

²⁵ The European Parliament and Council Directive 2014/95/EU of 22 October 2014, amending Directive 2013/34/EU.

²⁶ Act no. 563/1991 Coll., on Accounting as amended by Act no. 462/2016 Coll.

²⁷ See Sections 32f – 32i of Act no. 563/1991 Coll., on Accounting, as amended.

²⁸ See Explanatory report to Act no. 462/2016 Coll. In: *Poslanecká sněmovna Parlamentu České republiky* [online]. 27. 4. 2016 [2017-09-24]. Available at: <<http://www.psp.cz/doc/00/12/66/00126641.pdf>>.

²⁹ *Ibid.*

rules of conduct, a member of the statutory body of a company has to act with due care and necessary loyalty.³⁰

The duty of loyalty is a broad provision perceived as a general corporate principle whose application will result in different outcomes depending on the facts of each case.³¹ The duty of loyalty is linked to the interests of the relevant corporation as a whole, including its shareholders. A leading legal commentary on company law points out that loyalty is measured against achieving benefits for the company and not necessarily against achieving profits of the company only.³²

According to Černá, based on the stakeholder value theory, persons managing companies cannot be driven by the goal of achieving permanently high stock prices. In managing company's operations they have to respect and match interests of all stakeholders which contribute to the success of the company, i.e. of employees who invest their own work force, intelligence and creativity, of suppliers and customers buying the final products.³³

Leading company law authorities recognize the duty of a member of the statutory body and, thus, of the company, to take into account in its decision-making also societal and environmental circumstances relating to the operations of the company. They explicitly state that the obligation does not derive from legally enforceable commitments but from the requirement of the sustainability of healthy development of our society. It is always necessary to reflect into the interests of the company the actual needs of the society as a whole, such as protection of health and environment. It is sensible for the management of every company to consider elements of *corporate social and environmental responsibility*.³⁴

Fulfilling and coordinating all interests at stake does not need to be an easy exercise in a particular case. It has to be yet seen how courts will interpret the duty of loyalty of the member of the statutory body of the company with respect to the CSR concept in general, and specifically in light of the definition of the CSR chosen in the National Action Plan.³⁵

³⁰ See Section 51 (1) of Act no. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act), of 25 January 2012, which states: "A person shall be deemed to act with due care and the necessary knowledge where, in business-related decisions, he or she could in good faith and reasonably assume to be acting on an informed basis and in justifiable interest of the business corporation. The foregoing shall not apply in cases where such decision-making was carried out without the necessary loyalty" in connection with Section 212 (1) of Act no. 89/2012 Coll., the Civil Code, which states: "By accepting membership in a corporation, a member undertakes to act, with respect to the corporation, with integrity and comply with its internal order. A corporation may not unreasonably discriminate in favour or against its member and must protect his membership rights as well as legitimate interests."

³¹ The principle will enable assessing and capturing various business circumstances that dynamically evolve in the society.

³² ŠTENGLOVÁ, I., HAVEL, B., CILEČEK, F., KUHN, P., ŠUK, P. *Zákon o obchodních korporacích. Komentář*. Praha: C. H. Beck, 2013, p. 135, para 7.

³³ ČERNÁ, S. *Obchodní právo*. Praha: ASPI, 2006, p. 243.

³⁴ ŠTENGLOVÁ, I., HAVEL, B., CILEČEK, F., KUHN, P., ŠUK, P. *Zákon o obchodních korporacích. Komentář*. Praha: C. H. Beck, 2013, p. 135, para 8.

³⁵ No case law on this issue is available yet.

Proposed Expulsion or Disqualification from Office of a Member of the Statutory Body of a Business Corporation for Human Rights Infringements

The NAP on BHR proposes to evaluate the possibility of expulsion from the office of a member of the statutory body of a company whose previous actions obviously contributed to the company's infringements of human rights.³⁶

A disqualification scenario is presumed by law with regard to company's bankruptcy where a court can decide that a member of the statutory body of the bankrupt corporation who was in office at the time of the ruling on bankruptcy or afterwards may not hold the office as a member of the statutory body of any corporation or act as a person in a similar position for a period of three years after the expulsion decision became legally effective.³⁷ The disqualification measure can be similarly applied to the influential or controlling entity where the influence of such entity significantly contributed to the bankruptcy of the corporation.³⁸

The NAP on BHR suggests elaborating on the possibility to expand the bankruptcy disqualification provision to human rights abuses to which the management obviously contributed. Before preparing a draft law the effectiveness of the measure (including the length of the disqualification period and the legal certainty on the part of the concerned persons as to what obligations apply to them) will have to be considered.³⁹

Recommendation for Implementing Due Diligence Mechanisms

The NPA on BHR further encourages enterprises to implement internal due diligence mechanisms for detecting and preventing human rights abuses within their operations.⁴⁰

2.2 Rules Pertaining to the Law of Contract

Contractual clauses on compliance with the OECD Guidelines or anti-corruption clauses are not common in purely domestic transactions.⁴¹ One of the priorities of the National Action Plan on CSR is the protection of consumers, customers, and service users. Following the European Union rules on consumer protection the Czech Republic has a robust legislation both on consumer contracting and on unfair trade practices.⁴² As regards

³⁶ The NAP on BHR, 11.

³⁷ Section 63 (1) of Act no. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act). English translation is available at: <http://obcanskyzakonik.justice.cz/images/pdf/Business-Corporations-Act.pdf>, accessed on 24.9.2017. The same applies to a person who, at the time of the ruling on bankruptcy, was no longer a member of the statutory body of the business corporation or no longer acted as a person in a similar position, but whose previous actions obviously contributed to the business corporation's bankruptcy (Section 63 (2)).

³⁸ Section 76 (2) of Act no. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act).

³⁹ The NAP on BHR, p. 12.

⁴⁰ The NAP on BHR, pp. 30-31.

⁴¹ Such clauses can be rather seen in contracts of a "foreign provenience" when dealing with foreign business partners or Czech daughter companies belonging to multinational group of companies.

⁴² See Sections 1810-1867 of Act no. 89/2012 Coll., Civil Code and Act no. 634/1992 Coll., on Consumer Protection.

the contractual rules, specific requirements are imposed on General Terms and Conditions, information clauses, expanded possibilities to terminate the contract, warranty claims, dispute resolution, etc. The CSR support is directed at self-regulation, mainly with respect to improving dialogue between businesses and consumers which is still underdeveloped in the Czech Republic pursuant to the National Action Plan.⁴³

Specific problems in consumer protection represent unfair (misleading and aggressive) trade practices. An example of such a practice is when an entrepreneur declares a commitment to follow certain rules of behaviour (e.g. codes of conduct which might also theoretically include CSR rules) without complying with the commitment.⁴⁴ Another example of unfair practice is the unauthorised use of a quality mark. Such practices are forbidden under the Consumer Protection Act⁴⁵ and are subject to sanctions and penalties from public authorities.⁴⁶

2.3 Rules pertaining to the Law of Torts

Czech tort law does not contain any specific provision that would require Czech-incorporated companies to respect human rights, protection of environment or other social values when conducting business abroad, directly or indirectly (by using their subsidiaries or supply chain partners). There is also no express legal duty obliging companies to actively prevent damage abroad. General provisions of tort law with their natural territorial limits would have to be applied. As under the Czech concept the CSR is deemed to be of a voluntary nature, breach of a CSR norm cannot lead to extra contractual liability *per se*.

Under Czech law there is a general duty of prevention which plays a fundamental role in the law of damages. The Czech regulation is based on the principle of *neminem laedere* and states that if required by the circumstances of the case or the usages of private life, everyone is obliged to behave so as to avoid unreasonable harm to freedom, harm to life, bodily harm or harm to the property of another.⁴⁷

Czech provisions on non-contractual liability differentiate among liability for an accident, liability for breach of good morals (*bonos mores*) and liability for breach of law.⁴⁸ The

⁴³ MINISTRY OF INDUSTRY AND TRADE OF THE CZECH REPUBLIC. Strategic Document entitled National Action Plan for Corporate Social Responsibility in the Czech Republic. In: *Ministry of Industry and Trade* [online]. 26. 2. 2014 [2017-09-11]. Available at: <<https://www.mpo.cz/en/business/corporate-social-responsibility/national-action-plan-for-corporate-social-responsibility-in-the-czech-republic—148817/>>, p. 64.

⁴⁴ See Section 5 (3) of Act no. 634/1992 Coll., on Consumer Protection which stipulates: “(3) A business practice is also considered to be unfair, if in the factual relations, taking into account all their attributes and circumstances leads or may lead to the consumer making a decision concerning a purchase that he would not have made otherwise and if it includes [...] (c) failing to abide with the unambiguous obligation included in a code of conduct to which observance the seller provably bound himself. Further pursuant to Annex 1 listing unfair trade practices: “Trade practices are always considered unfair if an entrepreneur a) declares its commitment to observe certain rules of conduct (Code of Conduct), or that this Code of Conduct has been approved by a certain entity, if this is not the case [...]”

⁴⁵ Act no. 634/1992 Coll.) which transposed relevant EU Directives.

⁴⁶ Czech Trade Inspection Authority, Czech Agriculture and Food Inspection Authority, Czech National Bank, Czech Telecommunication Authority, Energy Regulatory Authority and other specialized public bodies.

⁴⁷ See Section 2900 of Act no 89/2012 Sb., Civil Code.

⁴⁸ See Sections 2904, 2909 and 2910 of Act no 89/2012 Sb., Civil Code.

most common type of extra contractual liability is liability for breach of a legal duty. The duty to provide compensation for breach of statutory obligations is associated with the culpable breach of that duty. The law distinguishes between situations where a violation of legal obligations affects absolute rights and situations where another law is subject to interference. If absolute rights are breached, the law requires a culpable breach of legal duties by the tortfeasor.⁴⁹ If a relative right of the injured party is breached, the injured party has a claim if this happened due to a culpable breach of a statutory duty enacted to protect such right.⁵⁰

Further, Czech law stipulates liability of a principal for its agent or helper. It is stated that a person who, in his activities, uses an agent, employee or another helper shall provide compensation for the damage caused by such a person as if he caused it himself. However, if, in the case of a performance provided by another person, someone has undertaken to carry out a particular activity independently, he is not considered to be a helper; however, if such other person has chosen him carelessly or exercised inadequate supervision over him, that other person is liable as a surety for the fulfilment of his duty to provide compensation for damage.⁵¹ Assuming the last sentence of the provision would be applicable to activities of a subsidiary performed in its own name and on its own behalf, the principal would be only liable for diligent choice of the sub-contractor (*cura in eligendo*) and adequate supervision over him (*cura in custodiendo*).⁵²

2.4 CSR Rules as a Part of Mandatory Rules or Public Policy

Mandatory Rules

Given the voluntary concept of CSR in the Czech Republic the CSR rules *per se* cannot be considered part of law. As a result, characterization of CSR rules as mandatory rules is per definition excluded.

Nevertheless, as described above there can be instances in which CSR considerations will be taken into account while resolving legal disputes (e.g. as a part of the considerations of the duty of loyalty of shareholders and members of statutory bodies of companies or of the unfair trade practices).

Overriding mandatory rules are provisions of Czech law that cannot be derogated from contractually or by any other means and which cannot be replaced or superseded by foreign law in the limits of the subject they regulate.⁵³ Rules aimed at consumer protection or protection of environment are generally considered as falling within the category of overriding mandatory rules. From this broad perspective certain rules on consumer protection which conceptually deal with issues covered by CSR could be characterized as mandatory rules under the Czech Act on Private International Law.

⁴⁹ See Section 2910, first sentence, of Act no 89/2012 Sb., Civil Code.

⁵⁰ See Section 2910, second sentence, of Act no 89/2012 Sb., Civil Code.

⁵¹ See Section 2914 of Act no 89/2012 Sb., Civil Code.

⁵² See HULMÁK, M. et al. *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014). Komentář*. Praha: C. H. Beck, 2014.

⁵³ See Article 9 of Rome I Regulation and Section 3 of Act no. 91/2012 Coll., on Private International Law.

With respect to consumer law the debate is, however, theoretical as under the Rome I Regulation a specific regime including ordinary imperative norms applies to consumer relations.

Public Policy Exception

As regards the public policy (*ordre public*) exception, it is an exceptional measure in the Czech Republic which can be applied only in extreme and specific cases. Under the public policy exception, a legal provision of another state is not applied in the Czech Republic if the effects of such application would contravene the public order of the Czech Republic.

The fundamental principles of the public order in the Czech Republic are those whose preservation is aimed at satisfying the basic interests of the State and society and the principles of the rule of law. Legal regulations whose content could result in the application of the public policy exception on a national scale are, in particular, the Constitution of the Czech Republic (Constitutional Act no. 1/1993 Coll.), including the Charter of Fundamental Rights and Freedoms (promulgated under number 2/1993).

The Czech Republic is also a signatory country to ILO Conventions dealing with child labour, including ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Forced labour or service in general, without explicitly emphasizing child forced labour, is prohibited by the Charter of Fundamental Rights and Freedoms. Therefore, a foreign judgment approving or admitting child labour should not be enforced in the Czech Republic for a public policy reason.⁵⁴

3. ALTERNATIVE METHODS OF DISPUTE RESOLUTION

The Czech Republic has established the OECD National Contact Point which can receive complaints in accordance with its Rules of Procedure. As described in more detail in Chapter 1 no case has been filed or closed by the Czech National Contact Point since 2011.

As CSR is not reflected in legal rules in the Czech Republic, legal disputes resulting in binding outcomes are *per se* excluded. Private sector implements activities of CSR on an entirely voluntary basis. From this point of view neither arbitration⁵⁵ nor mediation⁵⁶ is primarily designated for solving CSR matters.

The National Action Plan states with respect to the consumer protection priorities that the enforceability of the law is considered a crucial factor in protecting consumers' economic interests. Consumer disputes have been regularly decided by ordinary courts. As

⁵⁴ It can, however, be said that in typical examples given as a child labour (e.g. drugs, sexual exploitation of children) also other fundamental principles of public order would be concerned and recognition of foreign judgment could be refused on public policy ground for contravening other values. For example, trafficking of children for sexual purposes is a criminal offense in the Czech Republic.

⁵⁵ Act no. 216/1994 Coll., on Arbitration Proceedings and on Enforcement of Arbitral Awards.

⁵⁶ Act no. 202/2012 Coll., on Mediation and Change of Some Laws (Mediation Act)

this option is lengthy and costly, an out-of-court settlement has been recently introduced into Czech law⁵⁷ in line with the EU legal framework (“conciliation”). Since 2 February 2016, the Czech Trade Inspection Authority manages alternative dispute resolution for consumer disputes. In specific sectors specialized public authorities serve as the conciliation authority.⁵⁸

Conciliation is made available for disputes between consumers and vendors residing in any Member State of the European Union. If a consumer believes that it suffered a prejudice from a vendor or that a vendor failed to meet its obligations, the consumer has the right to carry out the conciliation procedure and try to seek an out-of-court solution. The Czech Trade Inspection Authority will review the submission and if the consumer’s requirements are assessed as justified, it will invite the relevant vendor to react in order to reach an amicable solution of the particular dispute. The proceedings should finish within 90 days.⁵⁹

Vendors are obliged to cooperate with the Czech Trade Inspection Authority and their cooperation may be enforced by administrative sanctions. The Czech Trade Inspection Authority will not have a power to resolve the disputes but will only be authorised to bring the parties to agreement. If a vendor is not willing to accept the proposed agreement, the Czech Trade Inspection Authority can issue a non-binding justified statement which the consumer can potentially use in future legal actions.⁶⁰

There is no fee for the proceedings and each party bears its own costs. The vendors have to inform consumers in a clear, comprehensive, and easily accessible manner about the possibility of the conciliation and the competent authority. The conciliation procedures are not deemed to substitute judicial proceedings. Consumers or vendors may at any time seek remedy at court. However, if the consumer applies for conciliation after the litigation is initiated in respect of the dispute, the application will be rejected.

Theoretically, we can imagine that a dispute over the alleged non-compliance of a vendor with its proclaimed code of conduct (potentially containing CSR commitments) could be subject to the above out-of-court settlement procedure.⁶¹

Further, a new platform at the EU level for dealing with consumer disputes online was put in place since 9 January 2016.⁶² The platform enables consumers and vendors domiciled in the EU to resolve their disputes regarding contractual obligations arising from domestic and cross-border online purchases. Support for widespread use of systems for

⁵⁷ Sections 20d – 20m of Act no. 634/1992 Coll., on Consumer Protection having transposed Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes.

⁵⁸ E.g. consumer disputes in the area of financial services can be brought before the Financial Arbitrator, in the field of electronic communication and postal services before the Czech Telecommunication Office, in the field of electricity, gas and heat industry before the Energy Regulatory Office, and in the area of legal services before the Czech Bar Association.

⁵⁹ The time limit may be extended in complex cases. See Section 20t of Act no. 634/1992 Coll., on Consumer Protection.

⁶⁰ See Section 20u of Act no. 634/1992 Coll., on Consumer Protection.

⁶¹ We are not aware of any decided cases.

⁶² On the basis of Regulation (EU) No. 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes.

resolving consumer disputes out of court is one of the priorities defined in the National Action Plan.⁶³

4. JURISDICTION

4.1 Determination of Jurisdiction

The determination of jurisdiction for potential CSR breaches or breaches of a foreign subsidiary of a Czech mother company is in our opinion the most difficult issue. The Czech Republic, as the EU Member State, applies in particular Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (“Brussels I Recast”).⁶⁴

Unless the directly applicable provisions of the EU law or the provisions of promulgated international treaties by which the Czech Republic is bound provide otherwise, the autonomous Czech law (the Private International Law Act (the “PIL Act”))⁶⁵ will be applicable.

The PIL Act lays down a general rule on the jurisdiction of Czech courts, under which Czech courts have jurisdiction if they are locally competent under the procedural provisions, unless it is otherwise provided.⁶⁶ As regards the reference concerning the competence of Czech courts, the Czech Code of Civil Procedure (“CCP”)⁶⁷ shall be applied.

The Forum of the Defendant

In civil and commercial matters, in general, persons domiciled in an EU Member State shall, whatever their nationality, be sued in the courts of that Member State. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.⁶⁸

The Forum of One of the Defendants, with All the Potential Defendants Being Added, the Contractual Forum, the Forum of the Act of Causation, the Forum of the Damage

The Brussels I Recast stipulates in Article 7 special jurisdiction of courts of the Member States in matters relating to, *inter alia*,

⁶³ MINISTRY OF INDUSTRY AND TRADE OF THE CZECH REPUBLIC. Strategic Document entitled National Action Plan for Corporate Social Responsibility in the Czech Republic. In: *Ministry of Industry and Trade* [online]. 26. 2. 2014 [2017-09-11]. Available at: <<https://www.mpo.cz/en/business/corporate-social-responsibility/national-action-plan-for-corporate-social-responsibility-in-the-czech-republic—148817/>>, p. 69.

⁶⁴ Moreover, the Czech Republic is a contracting State to many international conventions concerning international procedure law, relevant are here in particular bilateral agreements on legal assistance with third States (non-EU) which take precedence over the Brussels I Recast. With respect to Switzerland, Norway and Island, the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters applies.

⁶⁵ Act No. 91/2012 Coll., on Private International Law (Private International Law Act). English translation of the PIL Act is available at: <http://obcanskyzakonik.justice.cz/home/zakony-a-stanoviska/preklady/english>. See also translation by Bříza & Trubač at www.brizatrubac.cz.

⁶⁶ See Section 6 of PIL Act.

⁶⁷ Act No 99/1963 Coll., Code of Civil Procedure.

⁶⁸ See Article 4 Brussels I Recast. Under Section 85 CCP, the general court of a legal entity shall include a district (or regional) court in the district of which the legal entity has its registered office.

- obligations (courts of the place of performance of such obligation);
- torts or delicts (courts for the place where the harmful event occurred or may occur);
and
- disputes arising out of the operations of branch, agency or other establishment (courts for the place in which such establishment is situated).

A person domiciled in an EU Member State may also be sued where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.⁶⁹

It is important to note that these rules of Brussels I Recast on special jurisdiction are linked to the condition that the claim is lodged against a person domiciled in another EU Member State only. Under the autonomous Czech law, which would in principle⁷⁰ be applicable if such condition is not met, the provisions of the CCP will be relevant.⁷¹

In addition to the general court of the defendant, a court applicable for proceedings shall also include a court in the district of which a fact establishing the right to indemnity has occurred (Section 87/1 b) CCP), a branch of the company of the natural person or legal entity that is the defendant is located if the dispute concerns that branch (Section 87/1 c) CCP), or there is registered office of the entity which organizes a regulated market or runs a multilateral trading system, provided the dispute arises from a trade (1) on the regulated market organized by such entity, or from settlement of such trade, or (2) in the multilateral trading system run by such entity, or from settlement of such trade (Section 87/1 d) CCP).

'Indemnity' is defined in Section 2894 of the Civil Code.⁷² Under this provision, the duty to provide compensation to another for harm shall always involve the duty to provide compensation for harm to assets and liabilities (compensation for damage). If the duty to provide compensation to another for non-pecuniary harm has not been expressly stipulated, it affects the tortfeasor only where specifically provided by a statute. In such cases, the duty to provide compensation for non-pecuniary harm by providing satisfaction is assessed by analogy under the provisions on the duty to provide compensation for damage. Pursuant to this formulation, indemnity shall include also satisfaction with respect to other than proprietary loss or harm.⁷³ The 'relevant fact' is interpreted in the Czech case law in conformity with the CJEU judgment *Bier v. Mines de potasse*;⁷⁴ as such, it should be a legally relevant fact.⁷⁵

⁶⁹ For details see Article 8 Brussels I Recast.

⁷⁰ Bilateral agreements on legal assistance with third States may have special rules in this respect.

⁷¹ In these cases, the jurisdiction may be based on special rules included in Sections 86-88 CCP. Under Section 86/2 CCP, proprietary rights may be exercised upon the one with no other applicable court in the Czech Republic at a court in the district of which such person has his property. The property is understood broadly, including not only movables and immovables but also e.g. an internet domain registered in the Czech Republic, or shares. See e.g. Decisions of the Upper Court in Prague No. 3 Cmo 316/2013 and No. 5 Cmo 141/2013.

⁷² Act no 89/2012 Sb., Civil Code (hereinafter 'Civil Code'). English translation of the Civil Code available at: <http://obcanskyzakonik.justice.cz/home/zakony-a-stanoviska/preklady/english>.

⁷³ ASPI Commentary, Sec 87 CCP.

⁷⁴ ECJ, Case No 21/76.

⁷⁵ Decision of the Upper Court in Prague No. 6 Cmo 66/2010.

In our opinion, the special jurisdiction over individual contracts of employment may also be relevant. Under Brussels I Recast, as an employer who is not domiciled in an EU Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of operations of the branch, agency or establishment, be deemed to be domiciled in that Member State and in such a case the jurisdiction of Czech courts would be established.⁷⁶

In general, the rules permitting to establish the jurisdiction of Czech courts exist and are relatively broadly conceived; however, the most difficult condition would be to establish a sufficient linkage with the forum in the Czech Republic.⁷⁷ To our knowledge, so far, no judicial rulings on breaches of CSR as defined *supra* (or which would take into account the CSR concept when considering breaches of binding legal obligations) have been given in the Czech Republic. The cases, if any, concerned breaches of human rights in the territory of the Czech Republic.

5. APPLICABLE LAW

5.1 The *Lex Societatis*

Conflict rules applicable to companies are codified in the PIL Act. Many related questions, such as the definition of the seat or the transfer of the seat of a company, are included in the Civil Code and in the Business Corporations Act,⁷⁸ as well as in the Transformations Act of 2008, as substantially amended in 2011.⁷⁹ An important role is also played by the Act on Public Registers of Legal and Natural Persons of 2013.⁸⁰

Under Section 30/1 PIL Act “the legal personality and legal capacity of an entity other than a natural person shall be governed by the law of the state under which it was established (incorporated). This law shall also govern a trading name or a name and internal relations of such an entity, the relations between such an entity and its partners or members, mutual relations of its partners or members, a responsibility of its partners or members for liabilities of such an entity, a person responsible for acting on behalf of such an entity, as well as its winding up.” It follows that the *lex societatis* is very broad and the definition of the scope is precise. The primary connecting factor is evidently and clearly the incorporation of the company. The company is defined as “an entity other than a natural person”.

⁷⁶ See Articles 20/1 and 21/2 Brussels I Recast.

⁷⁷ Theoretically, the jurisdiction of Czech courts can also be based on a choice of court agreement. See the Hague Convention on choice of court agreements of 2005, Article 25 Brussels I Recast, and Section 85 PIL Act.

⁷⁸ Act no 90/2012 Sb., Business Corporations Act (hereinafter ‘Business Corporations Act’), English translation of the Business Corporations Act available at: <http://obcanskyzakonik.justice.cz/home/zakony-a-stanoviska/preklady/english>

⁷⁹ Act no 125/2008 Sb., on the Transformation of Business Corporations and Cooperatives (hereinafter ‘Transformations Act’). An English translation is not available.

⁸⁰ Act no 304/2013 Sb., on Public Registers of Legal and Natural Persons (hereinafter ‘Public Registers Act’). An English translation is not available.

5.2 The Law of Contract

In general, the main conflict rule is “autonomy of will”. As the EU Member State, Czech Republic in the first place applies the Rome I Regulation on the law applicable to contractual obligations (“Rome I”).⁸¹ The PIL Act is confined to issues not included in the scope of legislation of the European Union and international conventions, unless these instruments expressly allow for the regulation contained in the PIL Act.⁸² The relevant cases on the responsible business conduct will mostly be covered by the scope of the Rome I Regulation.

The types of contract that may be relevant here are the sales contract or the contract for the provisions of services (with suppliers that are resident in the countries where the business conduct standards may have been infringed), and the individual employment contract. Under the Rome I, in the absence of choice, the governing law shall be the law of the country where the seller or the service provider has his habitual residence, with the escape clause, stipulating that where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.⁸³

In employment contracts, to the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work. Where the law applicable cannot be determined pursuant to such rule, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated. Where it appears from the circumstances as a whole that the contract is more closely connected with another country, the law of that other country shall apply.

5.3 Extra Contractual Obligations

We may also take into consideration a non-contractual responsibility and the Rome II Regulation on the law applicable to non-contractual obligations (the “Rome II”). Under Article 4, unless otherwise provided, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur. However, where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

As for environmental damage, the law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result

⁸¹ See Article 3 Rome I.

⁸² Under Section 87 of the PIL Act, contracts shall be governed by the law of the State with which the contract is the most closely connected, unless the parties have chosen the applicable law.

⁸³ See Article 4 Rome I.

of such damage shall be the law determined pursuant to Article 4 Rome II, unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

In general, both in contractual and in non-contractual relations, in certain circumstances it might be problematic that a foreign law that does not provide sufficient standards of protection applies. The above-mentioned escape clauses do not guarantee the application of Czech law in many instances. A reference to overriding mandatory rules of the Czech law might be a solution in cases of human rights abuses, but inadequate in situations involving less serious breaches, see *supra*.

5.4 Priority of the Rules of International Human Rights Law, the ILO Conventions, and Other Mandatory Rules of International Law

The Czech Republic participates in a number of international treaties and conventions, both multilateral and bilateral. Under Article 10 of the Czech Constitution,⁸⁴ published international treaties, whose ratification was consented to by the Parliament and which are binding on the Czech Republic, form part of the Czech legal order; if an international treaty provides otherwise than an act (statute), the international treaty shall be applied.

With respect to private international law, this principle is confirmed in Section 2 of the PIL Act, under which provisions of international treaties binding on the Czech Republic shall take precedence over the PIL Act, or, more precisely, provisions of the PIL Act shall be applied only if such a treaty or convention does not provide otherwise.

Moreover, fundamental principles are provided by the Constitution and by the Charter of Fundamental Rights and Freedoms.⁸⁵ These principles, such as the equality of sex, race, and religion, political or other convictions, national or social origin, membership in a national or ethnic minority, property, birth, or other status. etc. shall apply especially through the assessment of public policy, as they concern the social and governmental system whose observance must be required, pursuant to Section 4 of the PIL Act, or Article 21 of the Rome I, or Article 26 of the Rome II.

Under Czech autonomous private international law, the court may give an effect to those overriding mandatory rules that form a part of a law of foreign country when deciding about applicability of certain rules of applicable law. Pursuant to Section 25 of the PIL Act, upon the request of a participant, provisions may be applied of laws of another State which should not be applied under the provisions of the PIL Act, however under the law they form a part of they shall be applied irrespective of which law governs the rights and obligations concerned. The condition for their application shall be that the rights and obligations concerned shall have a sufficiently significant connection to the other State and it shall be fair with respect to the nature of these provisions, their purpose or the consequences which would, in particular for the participants, result from their application or non-application. The participant invoking such provisions shall prove the validity and content of these provisions.

⁸⁴ Constitutional Act No. 1/1993 Coll.

⁸⁵ Constitutional Act No. 23/1991 Coll.

Legal literature is silent as regards the assessment of such norms of a third State with human rights international laws. Nevertheless, in deciding over the application or non-application of overriding mandatory rules of the third State, the judge will logically make its own assessment of the nature of the rules and the conditions for their application. The judge has a wide discretion to decide whether to apply overriding mandatory rules in the light of all legal and factual circumstances of the case and upon the prerogative of fairness. The application is not possible if it would lead to a conflict with a Czech overriding mandatory rule. As a final step the exercise will certainly involve, under the principle of public policy exception, the evaluation of the effects of the application of such norms from the perspective of their conformity with the fundamental principles of the Czech legal order.

In the EU context, Section 9/3 of the Rome I Regulation takes precedence and it stipulates stricter conditions than the PIL Act. It is also important to note that the Rome II Regulation does not provide for the application of overriding mandatory rules of a third State.⁸⁶

5.5 The Application of Ethical Rules Instead of or as a Complement to the Applicable Law

Under the prevailing Czech legal doctrine, in private international law relations parties can choose any State law to govern their contractual or non-contractual relationships. It is not possible to choose non-state norms, religious rules or other set of rules such as UNIDROIT Principles. From this perspective, such chosen rules would be only incorporated into the otherwise applicable (State) law whose imperative norms would prevail.

In purely domestic relations if a party undertakes to comply with certain ethical rules or codes of conduct *vis-à-vis* its business partner, such an undertaking can represent a binding contractual obligation enforceable by law. It will depend on the wording of the relevant clause.⁸⁷ With respect to consumer protection law, a false declaration by an entrepreneur about its commitment to follow certain ethical rules or a code of conduct represents an unfair trade practice forbidden and sanctioned by law.

6. RECOGNITION AND ENFORCEMENT OF JUDGMENTS

6.1 Rules Applicable in the Czech Republic to the Recognition and Enforcement of Foreign Judgments

As for the recognition of judgments given in an EU Member State, it shall be recognized in the Czech Republic without any special procedure being required.⁸⁸ The recognition of a judgment shall be refused, on the application of any interested party, only for rather limited reasons, in particular, if such recognition is manifestly contrary to public policy (*ordre*

⁸⁶ See Section 16 of the Rome II Regulation.

⁸⁷ Regulated professions such as advocates, architects, journalists, etc. are subject to ethical rules of their professional associations. Breaches of these rules are sanctioned by the associations through their internal disciplinary mechanisms.

⁸⁸ For details see Article 36 Brussels I Recast.

public) in the Member State addressed; or where the judgment was given in default of appearance, or the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed; or if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties.⁸⁹

Specific procedural rules are contained in the PIL Act and in bilateral agreements on legal assistance. Under Section 14 of the PIL Act, judgments of foreign courts and judgments of foreign authorities on rights and obligations which would be, based upon their private-law nature, decided by courts in the Czech Republic, as well as foreign court settlements and foreign notarial acts or other public documents on these matters („foreign judgments“), shall be effective in the Czech Republic provided a certificate of the foreign authority confirms the judgment has become final and provided it has been recognized by the Czech public authorities.

Foreign judgments shall not be recognized for reasons stated explicitly in Section 15 of the PIL Act, such as the exclusive jurisdiction of Czech courts, *lis pendens*, *res iudicata*, procedural incorrectness, manifest contradiction with public policy, and/or no guaranty of reciprocity. Reciprocity shall not be required provided the foreign judgment is not aimed against a national of the Czech Republic or a Czech legal entity. On the basis of a foreign judgment on property matters which meets the conditions for recognition, an enforcement of such judgment may be ordered by a reasoned decision of a Czech court.⁹⁰

To our knowledge Czech courts have not answered the question of whether a judgment given abroad holding a company liable for breach of the rules of CSR or applying soft law or ethics would be recognised in the Czech Republic yet. Based on the principle enacted in Article 52 Brussels I Recast, a judgment given in a Member State may not be reviewed as to its substance in the Member State addressed. The Czech legal doctrine also recognizes the principle of exclusion of an *au fond* review within the process of recognition. Nevertheless, given the fact that CSR is perceived in the Czech Republic as a voluntary set of values, it is difficult to predict and it will depend on the circumstances of each individual case. The control by the public policy exception which is, however, rather restrictive in the Czech legal environment, remains.

The question of whether a foreign judgment that would have used the doctrine of piercing the corporate veil very loosely or too easily would be held contrary to the Czech public policy has not been tested to our knowledge yet. Czech law does not recognize the concept of piercing the corporate veil in the sense that the legal personality of the company is disputed and has to be lifted and therefore the action should be directed to its owners who stand behind the corporate veil. Czech law, however, works with the concept of influential persons who, under certain circumstances, can be made responsible for a conduct of a separate legal entity if it is proved that such an influential person used its influence in a decisive and significant manner, to influence the behaviour of the influenced legal entity

⁸⁹ Similar reasons for the recognition and/or refusal of a recognition are included in the Lugano Convention, applicable with respect to Iceland, Norway and Switzerland.

⁹⁰ See Section 16 of the PIL Act.

to the damage of the latter.⁹¹ Under this concept, the influential entity shall be then liable (derivative liability) towards the creditors of the influenced entity for the payment of the debts, which cannot be, partially or fully, paid to them by the influenced entity as a result of the influence.⁹² The law does not work with other similar concepts (e.g. alter ego, façade) but according to leading authorities on corporate law, these concepts are not expressly prohibited⁹³ and their potential development will depend on the approach of the judiciary and the doctrine.

There is no case law available on this point but given the narrowly perceived concept of public policy in the context of recognition of foreign judgments in the Czech Republic it appears to be unlikely that a Czech court would refuse to recognize a foreign judgment finding on a liability of a person using the concept of group of companies/or similar concept, unless procedural rights of such person were violated. It is a question of the applicable law and since the Czech doctrine is based on the exclusion of *au fond* review, the Czech enforcement judge would not be able to review the correctness of the application of governing law. The governing law regarding the group of companies' relationships appears to be the law of the controlled/influenced person (e.g. ECJ *Impacto Azul*⁹⁴). For the sake of completeness, it has to be, however, noted that Czech courts do not take lightly extension of arbitration clauses to third parties⁹⁵ that give rise to similar concerns.

CONCLUSION

The concept of corporate social responsibility has attracted attention of many fora in the last decade. The awareness of the international CSR instruments is rather low in the Czech Republic amongst both businesses and the general public. The recent initiatives, including the National Action Plan and the National Action Plan on Business and Human Rights, seem essential for further development and achieving a more systematic and coordinated approach to these issues at the domestic level. Companies play an essential role in economic development and their activities shall be respectful of human rights, irrespective of where their operations take place. Norms of private international law are broad as regards their scope of application but have inherent limits to enable disputes regarding breaches committed by overseas operations to be litigated in the Czech courts or the courts of the EU Member States.

⁹¹ See Section 71 (1) of Act no. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act).

⁹² See Section 71 (3) of Act no. 90/2012 Coll., on Commercial Companies and Cooperatives (Business Corporations Act).

⁹³ ŠTENGLOVÁ, I., HAVEL, B., CILEČEK, F., KUHN, P., ŠUK, P. *Zákon o obchodních korporacích. Komentář*. Praha: C. H. Beck, 2013, p. 174, para 33.

⁹⁴ ECJ, Case C 186/12.

⁹⁵ See e.g. Judgment of the Supreme Court ref. no. 23 Cdo 111/2009 dated 23. 2. 2011.