

## THE COVID-19 AS INTERPRETATION INSTRUMENT FOR THE CONTENT OF CORPORATE SOCIAL RESPONSIBILITY AND ITS REPORTING IN THE EU?

Radka MacGregor Pelikánová,\* Robert K. MacGregor\*\*1

**Abstract:** For over five decades, the modern concept of sustainability has evolved along with its implication in almost all spheres, including the engagement of businesses via their Corporate Social Responsibility. The EU has joined international UN endeavors and attempts to progress towards the 17 Sustainable Development Goals (“SDGs”). The EU regime for CSR and CSR reporting is a mixture of hard-law, soft-law and policy measures and has predominantly facultative features. Nevertheless, its backbone is Directive 2013/34/EU, especially Art.19a with a rather general wording about which the case law of the Court of Justice of the EU (“CJ EU”) has not yet developed. The organic shaping of the understanding and application of the CSR reporting has been impacted by the COVID-19 pandemic and related crises translated in EU law measures. Arguably, the COVID-19 pandemic is an unprecedented stress test which has brought new light in the interpretation of the scope of CSR to be reported, perhaps it even takes it into a new dimension.

**Keywords:** Corporate Social Responsibility (CSR), COVID-19, Directive 2013/34/EU directives, Interpretation

### INTRODUCTION

After its update in 2014, the Directive 2013/34/EU of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as amended by Directive 2014/95/EU and also Council Directive 2014/102/EU (“Directive 2013/34”), imposes a legal duty upon certain European businesses pursuant to which they have to include in their management reports a non-financial statement aka CSR statement and publish it. This legal duty is set in a general and ambiguous manner – (i) the pool of businesses to which it applies is not clear and EU member states can provide certain particularities, exceptions and exemptions, (ii) the publication pathway is not stated in a clearly unified manner and (iii) the enforcement for a breach or violation of this legal duty remains obscure. Perhaps the biggest puzzle entails the exact content of this legal duty, i.e. (about) what information must be included in the CSR statement, as a part of the management report which must be published?

Nevertheless, these doubts do not represent criticism, instead there are statements of fact implied organically by this sphere. We need to consider foundations, roots and evolution. CSR is a junior sub-branch of the concept of sustainability, which emerged in a rather spontaneous and definitely not in a state legislative manner. Although the regime of the sustainability calls for the engagement of all, via a multi-stakeholder model and

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\* JUDr. Radka MacGregor Pelikánová, Ph.D., LL.M., MBA is an academic researcher and lecturer at Metropolitan University Prague, Prague, Czech Republic

\*\* Robert K. MacGregor, MBA is an academic researcher at Metropolitan University Prague, Prague, Czech Republic

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cross-sector partnership, its implied sub-branch CSR has been increasingly regulated by the law. Still, so far, its features remain rather facultative without universal legal standards.<sup>2</sup> After all, the concept of sustainability is, until now, more about an intimate conviction and free commitment and gets a rather warm welcome by many, including businesses wanting to be responsible not only to their shareholders, but as well all stakeholders and the entire society. The three pillars of sustainability – economic, environment and social have been projected in the strategic as well as the daily management of many European businesses and if properly selected, applied and reported, they could lead to a competitive advantage. Pursuant to the vision of the European Commission this is (even more) true during and after the COVID-19 pandemic.<sup>3</sup>

However, there are still many European businesses not genuinely committed to the concept of sustainability and suggesting that during the COVID-19 crisis there is no space for paying extra for the CSR. The majority of large European businesses, which clearly belong among the CSR reporting duty addressees, report about their CSR and this often even if they do not know or do not want to know what exactly they are supposed to do and report.

The Socratic critical exploration and a search with Meta-Analysis for the understanding of the scope of CSR to be reported needs to appreciate the conceptual foundations of CSR in the EU (1.) identify EU law provisions about the CSR, namely its content to be reported (2.) and holistically assess the EU interpretation methods par excellence – a teleological approach by the Court of Justice of the EU (“CJ EU”) as demonstrated in its case law (3.). Then this, so far, conventional image needs to be approached from the current perspective, namely from the point of view of the EU in 2020, i.e. the EU which is in the middle of the COVID-19 pandemic. Indeed, the COVID-19 pandemic is an unprecedented stress test which has changed almost all aspects of our life and dramatically modified the manner of business conduct. Regarding the duty about the CSR reporting, it is pivotal to search and identify EU (law) measures on COVID-19 and having a potential impact on CSR categories (4.). Then both theoretical (5.) as well as practical (6.) dimension of the interpretation of the scope of CSR to be reported in the COVID-19 EU need to be analyzed. The conclusions point out the fact that the organic shaping of the understanding and application of the CSR reporting has been impacted by the COVID-19 pandemic and related crises translated in EU law measures. Arguably, the COVID-19 pandemic is an unprecedented stress test<sup>4</sup> which has shed new light on the interpretation of the scope of the CSR to be reported, perhaps it even takes it into a new dimension.

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<sup>2</sup> PETERA, P. et al. Sustainability information in annual reports of companies domiciled in the Czech Republic and the Slovak Republic. *Inzinerine Ekonomika-Engineering Economics*. 2019, Vol. 30, No. 4, pp. 483–495.

<sup>3</sup> European Commission Press Release of 27 May 2020. Europe's moment: Repair and prepare for the next generation In: *European Commission* [online]. 27. 5. 2020 [2021-03-26]. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_940](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940)>.

<sup>4</sup> VigeoEiris. Sustainable Focus. Corporate Social Responsibility: The COVID-19 Stress Test. April 2020. In: *Vigeo Eiris* [online]. 2020 [2021-03-26]. Available at: <<http://vigeo-eiris.com/corporate-social-responsibility-the-covid-19-stress-test/>>.

## 1. CONCEPTUAL FOUNDATIONS OF CSR IN THE EU – SUSTAINABILITY RESPONSIBILITY OR LIABILITY BY ALL FOR ALL?

Currently the quasi-constitutional aka primary EU law framework includes a triad: the Treaty on EU (“TEU”), the Treaty on the Functioning of EU (“TFEU”) and the EU Charter of Fundamental Rights (“Charter”).<sup>5</sup> Each of these elements of the EU quasi-constitutional trio explicitly deals with sustainability.<sup>6</sup> Art. 3(3) of the TEU provides that “*The EU shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*” Art. 11 of the TFEU provides that “*Environment protection requirements must be integrated in the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development*”. The Preamble of the Charter indicates that the EU “seeks to promote balanced and sustainable development” and in Art. 37 mentions the principle of sustainable development in relation to environment protection. In sum, the EU primary law vigorously recognizes the importance of sustainable development. Nevertheless, the sustainability and concept of sustainability do not have EU (law) roots.

In 1945, the United Nations (“UN”) was founded as an international organization and already in 1948 the UN General Assembly proclaimed in Paris the Universal Declaration of Human Rights (“UDHR”).<sup>7</sup> Around 1970, this organically led to the emergence of the concept of sustainability based on economic (profit), environmental (planet), and social (people) pillars and focusing on the reconciliation of available resources as an increasing world population emerged (Meadows et al., 1972)<sup>8</sup> The first law document dealing with sustainability was the Report of the World Commission on Environment and Development Report: Our Common Future prepared by the Brundtland Commission, published as the UN Annex to document A/42/427 in 1987 (“Brundtland Report 1987”).<sup>9</sup> Currently the most relevant international law instrument in this sphere is the Resolution made during a historic UN Summit in September 2015 and entitled “Transforming our world: the 2030 Agenda for Sustainable development” (“UN Agenda 2030”), which brought with it 17 Sustainable Development Goals (“SDGs”) and 169 associated targets and was adopted by world leaders.<sup>10</sup> This international law commitment has been followed by national and other law measures, including the EU, EU policies and EU law.

<sup>5</sup> MacGREGOR PELIKÁNOVÁ, R. *Selected current aspects and issues of European integration*. Ostrava: Key Publishing, 2014.

<sup>6</sup> TUREČKOVÁ, K., NEVIMA, J. *Evropské fondy – management rizik v oblasti veřejného školství*. *Scientific Papers of the University of Pardubice, Series D*. 2017, Vol. 24, No. 41, pp. 206–216.

<sup>7</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská*. *Central European Business Review*. 2020, Vol. 9, No. 3, pp. 74–108.

<sup>8</sup> MEADOWS, D. H. et al. *The limits to growth*. New York: Universe Books, 1972.

<sup>9</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská*.

<sup>10</sup> MacGREGOR PELIKÁNOVÁ, R. *Corporate Social Responsibility Information in Annual Reports in the EU – Czech Case Study*. *Sustainability*. 2019, Vol. 11, p. 237.

Both the concept of sustainability and CSR have grown with globalization and the apparently unrestricted growth in the power of corporations leading to the proposition that global companies, as powerful economic, social and political actors, must increasingly be brought within the law's domain.<sup>11</sup> The CSR consists of many types of social responsibility: economic, legal, ethical, etc.<sup>12</sup> and deals with what is either morally or legally right or at least expected.<sup>13</sup> Responsibility as such has Latin roots, see “*respon-dere*”, and means that someone has to answer for effects caused by him to an authority and this authority evaluates it's damages.<sup>14</sup> If this regime is incorporated into the legal system and this authority is a judge, we deal with a special type of responsibility called liability.<sup>15</sup> Consequently, CSR evolves from ‘no’ regime over to a facultative regime, and ultimately to a mandatory regime.<sup>16</sup> In the EU and EU member states, such a regime consists of various soft and hard law incentives, i.e. regulatory efforts attempting to set minimum standards and the publication duty.<sup>17</sup> CSR, as championed by the EU and the EU law, means responsibility towards all stakeholders aka the entire society while matching constitutional values and principles with all three sustainability pillars<sup>18</sup> and so supporting modern European integration with an internal single market.<sup>19</sup> CSR is inherently linked to the EU's proclaimed “social market economy”, because CSR protects social interests to redistribute to the society, i.e. to share in the long term. The EU strategy for CSR stresses the importance of visibility of the CSR, the integration of the CSR in all fields and the improvement of self and co-regulation processes and business disclosure regarding their CSR,<sup>20</sup> so social, technological,<sup>21</sup> innovation<sup>22</sup> and

<sup>11</sup> BUNN, I. D. Global Advocacy or Corporate Accountability: Transatlantic Perspectives from the NGO Community. *American University International Law Review*. 2004, Vol. 19, No. 6, pp. 1265–1306.

<sup>12</sup> SROKA, W., SZÁNTÓ, R. Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results. *Journal of Entrepreneurship, Management and Innovation – JEMI*. 2018, Vol. 14, pp. 111–126.

<sup>13</sup> MacGREGOR PELIKÁNOVÁ, R. *Corporate Social Responsibility for Fair Commercial Practices and Intellectual Property: Real Potential?* Toruń: Institute of Economic Research and Polish Economic Society Branch, 2019.

<sup>14</sup> SCHÜZ, M. Sustainable Corporate Responsibility – The Foundation of successful Business in the New Millennium. *Central European Business Review*. 2012, Vol. 1, No. 2, pp. 7–15.

<sup>15</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská*.

<sup>16</sup> STROUHAL, J. et al. Finding the link between CSR reporting and corporate financial performance: evidence on Czech and Estonian listed companies. *Central European Business Review*. 2015, Vol. 4, No. 3, pp. 48–59.

<sup>17</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská*.

<sup>18</sup> OLŠANOVÁ, K. et al. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*. 2018, Vol. 7, No. 3, pp. 1–25.

<sup>19</sup> MacGREGOR PELIKÁNOVÁ, R. Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries. *Oeconomia Copernicana*. 2019, Vol. 10, No. 2, pp. 239–252.

<sup>20</sup> European Commission. Internal Market Industry, Entrepreneurship and SMEs: Corporate Social Responsibility & Responsible Business Conduct. In: *European Commission* [online]. [2021-03-26]. Available at: <[https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en)>.

<sup>21</sup> BALCERZAK, A. P. Technological Potential of European Economy. Proposition of Measurement with Application of Multiple Criteria Decision Analysis. *Montenegrin Journal of Economics*. 2016, Vol. 12, No. 3, pp. 7–17.

<sup>22</sup> ŽIŽKA, M. et al. *Performance Evaluation of Czech Innovative Companies: Data Envelopment Analysis Approach* *International Journal of Strategic Property Management*. 1st Ed. Vilnius: Vilnius Gediminas Technical University (VGTU) Press. 2016, Vol. 20, No. 4, pp. 427–438.

other potentials can be developed and a competitive advantage achieved.<sup>23</sup> The EU clearly wants European businesses to embrace CSR and report about it, but European businesses differ dramatically in their eagerness and sincerity vis-à-vis CSR and CSR reporting. For some, their commitment to sustainability via CSR is a mere imposed duty and negative burden (to be avoided if possible), while for other businesses CSR is a vehicle for improvement in all three spheres of sustainability (economic, environmental and social) and an instrument to improve their own financial performance.<sup>24</sup> There are several conflicting theories about the CSR perception by European businesses. The stakeholder theory proposes that the engagement with CSR implies (at least indirectly) the value creation,<sup>25</sup> improvement of the business reputation<sup>26</sup> and an increase in market share.<sup>27</sup> In contrast, traditional theories underline the agency conflicts between managers, shareholders, environmental activists<sup>28</sup> and emphasized the negative impact of CSR activities and spending by indicating that CSR practices can generate unnecessary costs, cripple financial results<sup>29</sup> and destroy the competitive advantage.<sup>30</sup> Regardless of all these discourses, all European businesses need to reconcile the profitability, growth and social relationships and to follow the EU law, including the EU law on CSR reporting<sup>31</sup> while maintain the sustainability.<sup>32</sup>

## 2. CONTENT OF THE CSR AND CSR REPORTING DUTY BY THE DIRECTIVE – WHAT MUST BE DONE AND BE REPORTED ABOUT?

The EU declares its commitment to sustainability and assumes a pivotal role in both supporting and encouraging businesses to behave responsibly, i.e. to stimulate their CSR and Responsible Business Conduct (“RBC”). Therefore, the EU has introduced a “*smart mix of voluntary and mandatory actions to promote CSR/RBC, and implement the UN guid-*

<sup>23</sup> KOCOUREK, A. Structural Changes in Comparative Advantages of the BRICS. *Procedia – Social and Behavioral Sciences 1st Ed.* Amsterdam: Elsevier BV, 2015, Vol. 172, No. 1, pp. 10–17.

<sup>24</sup> RODRIGUEZ-FERNANDEZ, M. Social responsibility and financial performance. The role of good corporate governance. *BRQ Business Research Quarterly*. 2016, Vol. 19, pp. 137–151.

<sup>25</sup> UJWARY-GIL, A. The business model and intellectual capital in the value creation of firms: A literature review. *Baltic Journal of Management*. 2017, Vol. 12, No. 3, pp. 368–386.

<sup>26</sup> GALLARDO-VÁZQUEZ, D. et al. Corporate Social Responsibility as an Antecedent of innovation, Reputation, and Competitiveness Success: A Multiple Mediation Analysis. 2019. *Sustainability*. Vol. 11, No. 20, p. 5614.

<sup>27</sup> TING, I. W. K. et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*. 2019, Vol. 12, p. 26.

<sup>28</sup> STROUHAL, J. et al. Finding the link between CSR reporting and corporate financial performance: evidence on Czech and Estonian listed companies. *Central European Business Review*. 2015, Vol. 4, No. 3, pp. 48–59.

<sup>29</sup> BARNETT, M. L. Stakeholder influence capacity and the variability of financial return to corporate social responsibility. *Academy of Management Review*. 2007, Vol. 32, No. 3, pp. 794–816.

<sup>30</sup> SCHERER, G., PALAZZO, G. The new political role of business in a globalized world: A review of a new perspective on CSR and its implications for the firm, governance, and democracy. *Journal of Management Studies*. 2011, Vol. 48, pp. 899–931.

<sup>31</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská.*

<sup>32</sup> PAKSIOVA, R. The Critical Analysis of Profit for its Allocation Decision-Making. *Scientific Annals of Economics and Business*. 2017, Vol. 64, Special Issue, pp. 41–56.

ing principles ... and the UN 2030 agenda for sustainable development.”<sup>33</sup> A mandatory pillar of this “smart mix” is Directive 2013/34, and this especially after its modification in 2014.

Directive 2013/34 deals with undertakings (Art.1), which are private limited companies, aka limited liability companies, and public limited companies, aka shareholder companies (Annex I), but imposes the duty to include non-financial statements in the management report upon only some of them, while providing rather vague information about what must be included, i.e. indicated only the minimal threshold CSR categories: environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (Art.19a). As a matter of fact, even the manner of their compulsory publication is unclear (Art.30). A systematic approach to such a constellation leading to a legal duty to be interpreted demands to first consider an overview of the entire Directive 2013/34, see Table 1, followed by a citation of pertinent provisions and their preliminary interpretative analysis.

Table 1: Directive 2013/34 – overview and selected provisions

Preamble	<i>(4) Annual financial statements pursue various objectives and do not merely provide information for investors in capital markets but also give an account of past transactions and enhance corporate governance</i>
Chap. 1 Scope, Definition and Categories of Undertakings and Groups	Art. 2 ‘public-interest entities’ means undertakings which are: (a) governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market ... (b) credit institutions ... (c) insurance undertakings; or (d) designated by Member States as public-interest entities.. Art. 3 .. Large undertakings shall be undertakings which on their balance sheet dates exceed at least two of the three following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) average number of employees during the financial year: 250.
Chap. 2 General Provision and Principles	
Chap. 3 Balance Sheet and Profit and Loss Account	
Chap. 4 Notes to the Financial Statements	

<sup>33</sup> European Commission. Internal Market Industry, Entrepreneurship and SMEs: Corporate Social Responsibility & Responsible Business Conduct. In: *European Commission* [online]. [2021-03-26]. Available at: <[https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en)>.

Chap. 5 Management Report	Art. 19 <i>The management report shall include a fair review of the development and performance of the undertaking's business and of its position, together with a description of the principal risks and uncertainties that it faces ...</i> Art. 19a <i>Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including ....</i>
Chap. 6 Consolidated Financial Statements and Reports	
Chap. 7 Publi- cation	Art. 30 <i>Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report, ...</i>
Chap. 8 Auditing	
Chap. 9 Provisions Concerning Exemptions ...	
Chap. 10 Reports on Payments to Government	
Chap. 11 Final Provisions Source: Prepared by the Authors based on the Directive 2013/34 (EurLex).	

The most burning and relevant is Art. 19a, which indicates the minimal threshold for the content of the CSR statement to be published, i.e. the minimal threshold for the content of the CSR to be reported.

*Article 19a Non-financial statement*

*... shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:*

- (a) a brief description of the undertaking's business model;*
- (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;*
- (c) the outcome of those policies;*
- (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;*

(e) non-financial key performance indicators relevant to the particular business.

Only a few academic articles have attempted to reconcile these 5 categories directly mentioned by Art. 19a with the entire Directive 2013/34, and their ultimate proposition (which is still subject of an academic discussion)<sup>34</sup> identified the following 6 CSR categories to be reported:<sup>35</sup>

- environment protection,<sup>36, 37</sup>
- social matters and community concerns,<sup>38</sup>
- employee matters,<sup>39</sup>
- respect for human rights,<sup>40</sup>
- anti-corruption and bribery matters<sup>41</sup> and
- R&D activities.<sup>42</sup>

Well, the above is a mere academic proposition regarding categorization, which in addition does not tell us how deep and far it is necessary to go with such CSR reporting. Indeed, the wording of Art. 19a provides more questions than answers and the largest issues are: who and how much? Since the former is intentionally left by a large part to EU member states which have a rather large discretion to identify the pool of the carriers of this duty, see the open definition of large undertakings and the state options to enact exemptions and exceptions, the EU-wide issue is the latter – the scope of this duty. What exactly are these businesses liable to include in their management report, which is to be published? What do they have to include in their CSR aka non-financial statement?

Relying on the literate approach regarding legislative acts and delegated acts,<sup>43</sup> such as the Directive 2013/34 would be superficial and dramatically misleading,<sup>44</sup> and in addition Art. 19a tells us very little and merely offers a representative (non-exhaustive) general list. However, even the golden and mischief rules provide but very little assistance concerning

<sup>34</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská.*

<sup>35</sup> MacGREGOR PELIKÁNOVÁ, R. *Corporate Social Responsibility Information in Annual Reports in the EU – Czech Case Study.*

<sup>36</sup> KRAUSE, J. The Potential of Environmentally Friendly Business Strategy – Research from the Czech Republic. *International Journal of Engineering Business Management.* 2015, Vol. 7, No. 6, pp. 1–6.

<sup>37</sup> JINDŘICHOVSKÁ, I. et al. Case Study Analysis of Sustainability Reporting of an Agri-Food Giant. *Sustainability.* 2020, Vol. 12, No. 11, p. 4491.

<sup>38</sup> MALLIN, C. *Corporate Governance. 6th Edition.* Oxford: Oxford University Press, 2018.

<sup>39</sup> DVOULETÝ, O. What is the Relationship between Entrepreneurship and Unemployment in Visegrad Countries? *Central European Business Review.* 2017, Vol. 6, No. 2, pp. 42–53.

<sup>40</sup> MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. *The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská.*

<sup>41</sup> SROKA, W., SZÁNTÓ, R. Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results. *Journal of Entrepreneurship, Management and Innovation – JEMI.* 2018, Vol. 14, pp. 111–126.

<sup>42</sup> MacGREGOR PELIKÁNOVÁ, R. R&D expenditure and innovation in the EU and selected member states. *Journal of Entrepreneurship, Management and Innovation – JEMI.* 2019, Vol. 15, No. 1, pp. 13–33.

<sup>43</sup> SVOBODOVÁ, M. On the Concept of Legislative Acts in the European Union Law. *The Lawyer Quarterly.* 2016, Vol. 6, No. 4, pp. 256–267.

<sup>44</sup> MacGREGOR PELIKÁNOVÁ, R., ČÍSAŘOVÁ, J., BENEŠ, M. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly.* 2017, Vol. 7, No. 3, pp. 145–161.

the interpretation of Art. 19a on non-financial statements. Here, we do not face the issue of ambiguity, instead we deal rather with a vagueness which could only partially be overcome by a history search for the evil which was to be overcome by Directive 2013/34. Similarly, the purposive rule fails here due to the absence of a clear consent about the exact dimension of the underlying purpose. So, as is typical for EU law, we are induced to embrace the teleological rule. Indeed, all these interpretation rules are rather interpretation approaches to be embraced by the ultimate interpreter of Art. 19a – the CJ EU.

The CJ of the EU is well aware that the spirit of the EU law is ephemerally reflected in the written outcome of EU law primary and secondary sources, such as the Directive 2013/34 and has enthusiastically accepted the challenge to interpret it in a rather autonomous pro-integration manner.<sup>45</sup> If EU member states are *masters of the treaties*,<sup>46</sup> the CJ EU is the master of the interpretation of these primary sources of EU law as well as secondary sources of EU law such as the Directive 2013/34. And what is the CJ EU with its teleological approach telling us about the CSR reporting? How the scope of Art. 19a should and shall be interpreted in the EU?

### 3. CJ EU CASE LAW ON THE CONTENT OF CSR AND ITS REPORTING

The list of final decisions of the CJ EU in matters dealing with the Directive 2013/34 is short and includes only 8 cases, see Table 2. Nevertheless, the CJ EU has already many times proven that even with a few cases, it can make a solid case law with the constitutionally revolutionary features, see “old classics” such as C-26/62 Van Gend en Loos and C-6/64 Costa v. E.N.E.L. Therefore, the search for the interpretation guidance, if not authority, for the content of the legal duty regarding non-financial aka CSR reporting set by Art. 19a must include the study of these 8 cases.

The Italian cases C-414/18 and C-255/18 addressed the issue of a framework for the recovery between credit institutions and investment firms, touched the Directive 2013/34 only marginally and provided no advice regarding the interpretation of Art. 19a.

The Slovenian case C-215/17 addressed the issue of the re-use of public sector information and requirement for credit institutions and investment firms, touched the Directive 2013/34 only marginally and provided an indirect advice regarding the issue of confidentiality and business secrets while interpreting Art. 19a.

The English case C-643/16 addressed the issue of payment services in the internal market, touched the Directive 2013/34 only marginally with respect to the definition of the group of undertakings and provided no advice regarding the interpretation of Art. 19a.

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<sup>45</sup> LENAERTS, K., GUTIÉRREZ-FONS, J. A. To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice. *EUI Working Papers, AEL*. 2013, No. 9. In: *European University Institute Academy of European Law* [online]. [2021-03-26]. Available at:

<[http://cadmus.eui.eu/bitstream/handle/1814/28339/AEL\\_2013\\_09\\_DL.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/28339/AEL_2013_09_DL.pdf?sequence=1)>.

<sup>46</sup> BÖRZEL, T. A., DUDZIAK, M., HOFMANN, T., PANKE, D., SPRUNG, C. Recalcitrance, Inefficiency and Support for European Integration: Why Member States Do (not) Comply with European Law. CES Working Paper, Harvard University. In: *The University of North Carolina at Chapel Hill* [online]. [2021-03-26]. Available at: <<http://www.unc.edu/euce/eusa2007/papers/borzelt-t-02a.pdf>>.

The English case C-275/15 addressed the issue of the system of greenhouse emission allowance trading and basically did not touch the Directive 2013/34 at all.

The Estonian case C-508/13 is completely different from the prior cases. It is a revolutionary case attempting to annul Art. 4(6) and (8), Art. 6(3) and Art. 16(3) of Directive 2013/34, or alternatively to annul the entire Directive 2013/34. The Republic of Estonia raised “*three pleas in law alleging infringement of, respectively, the principle of proportionality, the principle of subsidiarity and the obligation to state reasons.*” The idea behind was that “*the Republic of Estonia has already implemented a national policy on reducing the administrative burden on undertakings by means of an electronic reporting system known as ‘one-stop-shop’ ...*” observing the accounting principle of ‘substance over form’ and the principle of ‘a true and fair view.’ The Republic of Estonia did not appreciate that Directive 2013/34 goes for a much lower common denominator and offers, even pushes to offer, a number of exemptions with respect to such a system. In sum, the Republic of Estonia established an advanced electronic reporting system with a large reach and did not appreciate that the Directive 2013/34 would erode it and degrade it. This rather sympathetic effort for a more representative and comparable e-reporting failed for a number of law and political reasons. Namely, the CJEU (unsurprisingly) endorsed the balancing test performed by the European Commission and the choice of the Directive 2013/34 to go for lower standards and to offer exceptions, exemptions and limitations. From this it can be implied that Art. 19a would highly likely survive any law challenge before the CJEU and that the CJEU will interpret it in a highly pro-integration manner with a silent approval of the Commission. Consequently, this is a suggestion for a teleological interpretation considering not only the EU law in the narrow sense, but as well softer instruments, such as policies issued by the Commission and general policy and law trends endorsed by current EU top institutions. Undoubtedly, law instruments, policies and other documents addressing both directly COVID-19 and (in)directly CSR belong to this category.

The French case T-540/13 addressed administrative, definition and procedural issues related to the European Chemical Agency and basically has no bearing on the interpretation of Art. 19a.

The German case T-429/13 was joined with case T-451/13 and unsurprisingly their attempt to achieve (i) annulment of Commission Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (OJ 2013 L 139, p. 12), and (ii) a compensation for the damage which the applicants claim to have suffered, failed. Well this does not provide any direct advice regarding Art. 19a and its interpretation. However, it fully matches with the Estonian case C-508/13 and its implication for the understanding of CSR reporting as stated above.

Well, after all, this rather small case law group, which directly does not mention Art. 19a, tells a lot about the interpretation of Art. 19a, i.e. about the mandatory content of the non-financial aka CSR reporting in the EU. Namely, this law provision is the subject of a teleological interpretation which must consider not only EU law primary and secondary sources but as well current law related measures with (in)direct CSR impact. COVID-19 measures are a topical candidate for that, providing they touch CSR. And do they touch it?

Table 2 – CJ EU case law involving Directive 2013/34

Case	Document	Name of the parties	Subject-Matter
C-414/18	Judgement	Iccrea Banca	Freedom of Establishment
C-255/18	Judgement	State Street Bank International	Approximation of Laws
C-215/17	Judgement	NKBM	Freedom of Establishment
C-643/16	Judgement	American Express	Freedom of Establishment
C-272/15	Judgement	Swiss International Air Lines	Environment - Pollution
C-508/13	Judgement	Estonia v Parliament and Council	Freedom of Establishment
T-540/13	Order	Société européenne des chaux and liants v ECHA	Approximation of Laws
T-429/13	Judgement	Bayer CropScience v Commission	Agriculture and Fisheries

*Prepared by the Authors based on InfoCuria Case-law [online]. [2021-03-26]. Available at: <<http://curia.europa.eu/juris/recherche.jsf?language=en>>.*

#### 4. COVID-19 PANDEMIC AND EU (LAW) RELATED MEASURES – STRESS TEST AND A MAGNIFIED TURNING POINT

The modern European integration and Europeans have been facing a number of crises and basically each decade of the modern European integration was marked by at least one significant and foundation challenging crises. Since 2000, we have witnessed the EU constitutional crisis,<sup>47</sup> the global financial crisis aka the great recession,<sup>48</sup> EURO crises,<sup>49</sup> the immigration (policy) crisis, the integration crisis aka Brexit,<sup>50</sup> etc. Manifestly these recent crises differ in their nature, impact and the manner in how they were addressed by the EU and EU member states. The COVID-19 pandemic fully fits in this trend, it is again a crisis (i) challenging the very foundations of the EU, (ii) having completely different roots – an infectious disease caused by a severe acute respiratory syndrome coronavirus (iii) impacting basically each and every sphere of the life of Europeans and (iv) inducing the

<sup>47</sup> MacGREGOR PELIKÁNOVÁ, R., ČÍSAŘOVÁ, J., BENEŠ, M. *The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic.*

<sup>48</sup> SZYMAŃSKA, A. National fiscal frameworks in the post-crisis European Union. *Equilibrium. Quarterly Journal of Economics and Economic Policy.* 2018, Vol. 13, No. 4, pp. 623–642.

<sup>49</sup> PAŽICKÝ, M. The consequences of unconventional monetary policy in euro area in times of monetary easing. *Oeconomia Copernicana.* 2018, Vol. 9, No. 4, pp. 581–615.

<sup>50</sup> CZECH, S., KRAKOWIAK-DRZEWIECKA, M. The rationale of Brexit and the theories of European integration. *Oeconomia Copernicana.* 2019, Vol. 10, No. 4, pp. 589–602.

EU and EU member states to take both generally approved as well as highly controversial measures, including legislative, to address it.

Table 3 – EU law on COVID-19 (selection made based on a potential CSR relevancy)

<b>Sector/Field/ Industry</b>	<b>EU law measures</b>	<b>Potential CSR categories</b>
Public Health	Regulation (EU) 2020/1043 of the European Parliament and of the Council of 15 July 2020 on the conduct of clinical trials...	Environ. HRsR&D
	Communication from the Commission ... .EU Strategy For COVID-19 Vaccines	Social&Com HRsR&D
Agriculture	Regulation (EU) 2020/872 ... as regards a specific measure to provide exceptional temporary support under the European Agricultural Fund for Rural Development (EAFRD) in response to the COVID-19 outbreak	Environ Social&Com
	Commission Implementing Regulation (EU) 2020/601 ...as regards the validity of vine planting authorizations and the grubbing up in case of anticipated replanting	Employee Social&ComR&D
Budget	Definitive adoption (EU, Euratom) 2020/537 of Amending budget No 2 of the European Union for the financial year 2020	All 6
	Decision (EU) 2020/546 of the European Parliament and of the Council of 17 April 2020 on the mobilization of the Flexibility Instrument to finance immediate budgetary measures in the context of the COVID-19 outbreak	All 6
Competition	Communication from the Commission Third amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 218/03	All 6
Consumer	Commission Implementing Regulation (EU) 2020/977 ... as regards controls on the production of organic products due to the COVID-19 pandemic	Environ. Social&ComR&D

Consumers	Commission Recommendation (EU) 2020/648 ... on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic	Social&ComHRs
Customs	Covid-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services 2020/C 86 I/01	Social&Com
Digital Single Market	Commission Recommendation (EU) 2020/518 ... on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymized mobility data	Social&ComHRsR &D
Employment and social policy	Council Regulation (EU) 2020/672 ... for temporary support to mitigate unemployment risks ... the COVID-19	Social&ComEmployee
Human Rights	Joint Communication ... EU Action Plan on Human Rights and Democracy 2020–2024	HRs
Research and Innovation	Communication ... A New Industrial Strategy for Europe	ALL 6
	Communication ... A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system	Envir.Social&Com Employee
Transport	Commission Implementing Regulation (EU) 2020/910 as regards the re-designation of airlines, operators and entities providing security controls ... area of cybersecurity, background check, explosive detection s	EmployeeHRsR&D

*Prepared by the Authors based on COVID-19. In: EUR-Lex [online]. [2021-03-26]. Available at: <<https://eurlex.europa.eu/content/news/Covid19.html>>.*

Since March 2020, the EU and EU member states have been responding to COVID-19 and its consequences via a large spectrum of measures,<sup>51</sup> from the hard law as well as soft

<sup>51</sup> KUFEL, T. ARIMA-based forecasting of the dynamics of confirmed Covid-19 cases for selected European countries. *Equilibrium. Quarterly Journal of Economics and Economic Policy*. 2020, Vol. 15, No. 2, pp. 181–204.

law and other spheres. At their end, businesses were reacting both to COVID-19 and these measures.<sup>52</sup> There is not any exhaustive list of these COVID-19 measures. Nevertheless, a search and study of the EUR-Lex study and Commission Internet site allows one to prepare a representative list of them and to identify relevant COVID-19 measures with which CSR category they might overlap or they can at least indirectly impact, see Table 3.

Well, the potential is obvious and so it is highly relevant to discuss both the theoretical and practical dimension of the interpretation of CSR and CSR reporting duty in the EU via COVID-19. Indeed, in every crisis there are risks and opportunities and during our current COVID-19 pandemic an increasing number of businesses have faced exposure to stakeholder criticism over their social practices. Simultaneously, businesses across all sectors have taken the opportunity to further embed themselves into the social fabric of the communities where they operate.<sup>53</sup>

## 5. THEORETICAL DIMENSION OF INTERPRETATION OF THE SCOPE OF CSR TO BE REPORTED IN THE COVID-19 EU – UP TO OR BEYOND THE TELEOLOGICAL APPROACH?

The EU is a subject sui generis which is formed and shaped by social democratic, liberal and conservative welfare states which share both continental (civil code) and common law traditions. The EU law is a compromise solution trying to reconcile these often-irreconcilable differences. The teleological method of interpretation is pivotal for the interpretation and application of such EU law for many reasons, including the fact that Treaties, such as TEU and TFEU, are imbued with teleology.<sup>54</sup> Consequently, strict textualism and narrow literal rules do not and should not paralyze the understanding of the EU law. In addition, the perception of each and every piece of the EU law needs to be done in a multitude of contexts, while paying special attention to the purpose of the legal measure as well as of the entire system. Its appreciation and understanding cannot be examined in isolation<sup>55</sup> and the ultimate targets and beneficiaries need to be considered. Another challenge is the transposition mechanism, such as the gold-plating, i.e. a transposition exceeding the minimal requirements of this EU Directive (possibly increasing regulatory burdens in a not justifiable manner).<sup>56</sup>

The Commission has defined the CSR as “*the responsibility of enterprises for their impact on society and, therefore, it should be company led. Companies can become socially*

<sup>52</sup> KORZEB, Z., NIEDZIÓŁKA, P. Resistance of commercial banks to the crisis caused by the COVID-19 pandemic: the case of Poland. *Equilibrium. Quarterly Journal of Economics and Economic Policy*. 2020, Vol. 15, No. 2, pp. 205–234.

<sup>53</sup> VigeoEiris. Sustainable Focus. Corporate Social Responsibility: The COVID-19 Stress Test. In: *Vigeo Eiris* [online]. 28. 4. 2020 [2021-03-26]. Available at <<http://vigeo-eiris.com/corporate-social-responsibility-the-covid-19-stress-test/>>.

<sup>54</sup> MacGREGOR PELIKÁNOVÁ, R., ČÍSAŘOVÁ, J., BENEŠ, M. *The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic*.

<sup>55</sup> LENAERTS, K., GUTIÉRREZ-FONS, J. A. To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice. EUI Working Papers, AEL. 2013, No. 9. In: *European University Institute Academy of European Law* [online]. [2021-03-26]. Available at: <[http://cadmus.eui.eu/bitstream/handle/1814/28339/AEL\\_2013\\_09\\_DL.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/28339/AEL_2013_09_DL.pdf?sequence=1)>.

<sup>56</sup> KRÁL, R. On the Gold-Plating in the Czech Transposition Context. *The Lawyer Quarterly*. 2015, Vol. 5, No. 4, pp. 300–307.

responsible by (i) integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations and (ii) following the law.”<sup>57</sup> In addition, the top EU law interpretation method, the special purposive approaches<sup>58</sup> taking the shape of a *sui generis* contextual and teleological approach,<sup>59</sup> strictly requires both the awareness and appreciation of the purpose and spirit, as many times confirmed by the CJ EU.<sup>60</sup> Consequently, the questions are whether, and if yes how, COVID-19 shapes the original purpose and spirit of the Directive 2013/34. Namely, whether we can at least partially confirm the, so far, rather speculative hypothesis that the COVID-19 pandemic is an unprecedented stress test<sup>61</sup> which has shed new light upon the interpretation of the CSR and CSR reporting, perhaps it even takes them into a new dimension. Is the current framework involving the multi-level governance and dealing with the CSR reporting sustainable?<sup>62</sup>

Well, the holistic appreciation of this issue should firstly understand the systematic constellation of the COVID-19 EU (law) measures, see Table 3. At least three messages can be implied from it. Firstly, the COVID-19 EU (law) has often an indirect, and sometimes even a direct, overlap in the CSR sphere. Secondly, this overlap almost always includes two or more CSR categories and occasionally all six of them. Thirdly, the most popular is not the CSR category “employee matters”, instead it is “Social&Com” (“social matters and community concerns”) followed by the CSR category “R&D activities”. This generates a promising image of the EU trying to reconcile various priorities and interests and to be pro-active and not reducing itself to a mere re-active distributor of bonuses to random groups without any deeper fiscal considerations. Further, it can be proposed, following the mirror principle, that similar expectations should impact the understanding, interpretation and especially application of the CSR reporting duty by businesses. Well, and what is the reality?

## 6. PRACTICAL DIMENSION OF INTERPRETATION OF THE SCOPE OF CSR TO BE REPORTED IN THE COVID-19 EU – LEGAL DUTY IN ACTION

Since COVID-19 hit the EU in 2020, the first CSR reporting via official annual reports with management reports can be expected after March 2021. Nevertheless, large public interest entities as addressees of such a legal duty are known to parallel their reporting, i.e. to place their CSR statements in official reports as well as in an ongoing manner on their Internet sides placed on their domains. This justifies an indicative case study of the

<sup>57</sup> EUROPEAN COMMISSION. Internal Market Industry, Entrepreneurship and SMEs: Corporate Social Responsibility & Responsible Business Conduct. In: *European Commission* [online]. [2021-03-26]. Available at: <[https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en)>.

<sup>58</sup> HOLLAND, J., WEBB, J. *Learning Legal Rules. 9<sup>th</sup> Edition*. Oxford: Oxford University Press, 2016, 423 p.

<sup>59</sup> LENAERTS, K., GUTTIÉREZ-FONS, J. A. To Say What the Law of the EU Is? Methods of Interpretation and the European Court of Justice. *Academy of European Law*. 2013, No. 9, pp. 1–55.

<sup>60</sup> MacGREGOR PELIKÁNOVÁ, R., ČISAŘOVÁ, J., BENEŠ, M. *The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic*.

<sup>61</sup> VIGEO EIRIS. Sustainable Focus. Corporate Social Responsibility: The COVID-19 Stress Test. April 2020. In: *Vigeo Eiris* [online]. 28. 4. 2020 [2021-03-26]. Available at: <<http://vigeo-eiris.com/corporate-social-responsibility-the-covid-19-stress-test/>>.

<sup>62</sup> POMAHAČ, R. Framework Regulations and Tailor-Made laws as a Problem of Public Administration. *The Lawyer Quarterly*. 2020, Vol. 10, No. 1, pp. 4–10.

Table 4 – Case study – CSR and COVID-19 reporting overlap by top Czech businesses

Name	ID	Industry	Domain	Overlap CSR category with COVID-19
Škoda Auto a.s.	00177041	automobiles	skoda-auto.cz	No
ČEZ, a.s.,	45274649	electricity	cez.cz	repeated Social&Com
Agrofert, a.s.	26185610	conglomerate, agriculture	agrofert.cz	once Social&Com
RWE Supply & Trading CZ a.s., (Innogy)	26460815	oil and gas	innogy.cz	once Social&Com
Foxconn Technology CZ, s.r.o.,	27516032	consumer electronics	foxconn.cz	repeated Employee
aUNIPETROL, a.s.,	61672190	chemicals	unipetrol.cz	repeated Social&Com, Employee
Hyundai Motor Manufacturing Czech s.r.o.,	27773035	automobiles	hyundai.cz	No
ČEPRO, a.s.,	60193531	oil and gas	ceproas.cz	repeated Social&Com, Employee
Continental Automotive Czech Republic s.r.o.,	62024922	automobiles	continental.com	No
Finitrading a.s., (Moravia Steel, TŽ)	61974692	iron, steel, finance.	trz.cz/	repeated Social&Com, Employee

Source: Prepared by the Authors through their search of the indicated domains.

ten largest Czech companies, i.e. with the highest total of annual revenues in the last reported years – 2017, 2018 and 2019. Interestingly enough, all of these top companies have annual revenues exceeding CZK 50 billion, but their assets ranged from CZK 10 billion to CZK 600 billion, their net income from “red numbers” to a very black number of CZK 20 billion and, for this analysis even more importantly, they all satisfy (at least formalistically)

their official legal CSR reporting duty.<sup>63</sup> Namely, they all file once per year, along with their annual report and financial statement, as well a CSR statement, but it needs to be underlined that sometimes such officially filed CSR statements are very short, general, superficial and with a marginal information and trustworthiness value. Well, before the deadline for the next official filing, how do they report about their CSR in the time of COVID-19 unofficially, i.e. via their Internet sites placed on their Internet domains? Table 4, below, indicates their names, ID number, industry, domain name and the absence/presence of information about any overlap between CRS and COVID-19 as of 15<sup>th</sup> August 2020.

Well, this rather small case study is illustrative and demonstrates differences in the perception and commitment with respect to CSR reporting. Some businesses do not see at all an overlap between CSR and COVID-19 (Škoda Auto, Hyundai), other businesses go for a one-shot overlap via a donation or platform building for a CSR category “Social&Com” purposes (Agrofert, Innogy), while there are as well businesses embracing an ongoing and continuous overlap between CSR an COVID-19 and interpreting their, if not legal, then moral, duties, extensively and truly bringing CSR reporting to a new dimension and this not only regarding the CSR category “Social&Com” (Unipetrol, Čepro, Finitrading). Of these ten, the most devoted and committed to go for CSR and to see its overlap with COVID-19 challenges are chemicals/oil and gas/iron businesses, while representatives of the automobile industry perceive their CSR statically and in a very narrow sense. Regarding the winners, this is pretty consistent with their general attitude as well www presentation, see its special page “responsible firm” with its List of values, Codes of Ethics/Line of Ethics and a detailed description of its endeavors regarding all six CSR categories, including R&D. Regarding the losers, it is not consistent with their group (holding) attitude. At least Volkswagen Germany vehemently advocates the understanding and interpretation of their CSR duty in the light of COVID-19, see endeavors of the Volkswagen foundation (trust) “Corona crisis and beyond – Perspectives for Science, Scholarship and Society” at volkswagenstiftung.de. Indeed, the top management in the automotive industry (finally) understands that their current problems, such as the diesel gate scandal or autonomous cars issues,<sup>64</sup> are not merely economic problems, but in addition they overlap with CSR.

## CONCLUSION

The yielded data and its Socratic critical processing provides valuable indices about the understanding, interpretation and perhaps even the application regarding the content of the CSR aka non-financial reporting which is compulsory for a part of European businesses. Rather unsurprisingly, the starting point is Art.19a of the Directive 2013/34 and its teleological interpretation, which brings more questions than answers and clearly identifies neither the subject of the CSR (reporting) duty nor the scope of such a duty. Rather surprisingly, the next step is not only to consider the EU legal system in a narrow and static

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<sup>63</sup> MacGREGOR PELIKÁNOVÁ, R. *Corporate Social Responsibility Information in Annual Reports in the EU – Czech Case Study*.

<sup>64</sup> KRAUSOVÁ, A., MATEJKA, J. *Autonomous Vehicles and In-Vehicle Data in the Context of Motor Insurance. The Lawyer Quarterly*. 2020, Vol. 10, No. 2, pp. 153–169.

manner, but as well less typical EU (law) measures and recent “hot” trends and issues. Against the expectations of many, perhaps even the authors and issuers of these measures, these measures are championed by the CJ EU and do have at least an indirect impact for the perception of Art. 19a of the Directive 2013/34. Indeed, the small but still vital and important case law of the CJ EU indicates a priority – the interpretation in the most pro-integration matter regardless the wording of the Directive 2013/34 and the CSR demands and commitments, see especially the pivotal precedent C-508/13. Further, this explains the futility of attempts regarding the literal or golden rule interpretation approaches.

Both the theoretic and practical dimensions of the interpretation are heavily impacted by the COVID-19 and implied events and occurrences. Namely, the COVID-19 is an unprecedented stress test with the potential to accelerate the already commenced move for the broadening of the CSR and for its voluntary embracement. Indeed, COVID-19 has shed new light on the interpretation of the scope of CSR to be reported, perhaps it even takes it to a new dimension. The theoretic dimension reveals that the EU law addressing COVID-19 has often an overlap in the sphere of the CSR, and this even several categories of CSR, while preferring “social matters and community concerns” followed by “R&D” over “employee concerns” (!). The practical dimension via case study of the CSR and COVID-19 reporting overlap by top Czech businesses underlines the fragmentation and difference in the perception and commitment with respect to CSR reporting. However, at the same time, the CSR and CSR reporting framework has been progressively moving from the facultative to mandatory regime. Manifestly, the regulation of the content of mandatory CSR statements to be published and the identification of subjects of this duty is underdeveloped, but this lack of a specificity of the legal duty does imply the need for dramatic changes *de lege ferenda*. Indeed, the European legislative and interpretation methods along with EU highly pro-integration politics aims more towards a motivation for voluntary self-regulation by a large pool of subjects and indirectly provides a potential for that via very much needed measures addressing the current COVID-19 pandemics. Less atrophy, overregulation and micromanagement of CSR reported statements, more awareness and self-induced commitment to go for CSR in a large sense and proudly report about it – well this sounds as a lean and transparent approach which should be welcome by all stakeholders. The very near future will let us know whether this attractive and modern approach to the interpretation of the content of CSR and its reporting is feasible, whether the CSR should keep being “*company led*,”<sup>65</sup> and whether the President of the Commission will see the fulfillment of her words “*The (COVID-19) recovery plan turns the immense challenge we face into an opportunity, not only by supporting the recovery but also by investing in our future: the European Green Deal and digitalization will boost jobs and growth, the resilience of our societies and the health of our environment. This is Europe’s moment. Our willingness to act must live up to the challenges we are all facing. With Next Generation EU we are providing an ambitious answer.*”<sup>66</sup>

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<sup>65</sup> EUROPEAN COMMISSION. Internal Market Industry, Entrepreneurship and SMEs: Corporate Social Responsibility & Responsible Business Conduct. In: *European Commission* [online]. [2021-03-26]. Available at: <[https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility\\_en](https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en)>.

<sup>66</sup> European Commission Press Release of 27 May 2020. Europe’s moment: Repair and prepare for the next generation. In: *European Commission* [online]. 27. 5. 2020 [2021-03-26]. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_940](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_940)>.