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NEW OPTIONS FOR STRENGTHENING STANDARDS ON SOCIAL AND ENVIRONMENTAL RESPONSIBILITIES OF CORPORATIONS AND THEIR IMPLEMENTATION

DEVE

STUDY

NEW OPTIONS FOR STRENGTHENING STANDARDS ON SOCIAL AND ENVIRONMENTAL RESPONSIBILITIES OF CORPORATIONS AND THEIR IMPLEMENTATION

Abstract

The negative external effects of profit orientated businesses on the environment and society are most visible and destructive in developing countries, where compensation measures for adversely affected groups rarely exist and where high corruption rates often impede meaningful enforcement of existing legislation. But what role can Corporate Social Responsibility (CSR) play in developing countries? How can CSR be generally strengthened by EU policies to contribute to the achievement of sustainability goals in a meaningful manner? This study is an attempt to get a solid overview of the current situation of CSR at the international level. Strengths and weaknesses of the implementation of CSR are analysed both in general terms and more specifically in a case study on the mining sector in the Democratic Republic of Congo (DRC). The study ends with a suggestion for future policy action to enhance CSR as a complementing tool to legislation for a range of economic, social and environmental challenges. Different actions are outlined and discussed.

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EXECUTIVE SUMMARY

An increasing awareness about human rights violations and environmental crimes committed by companies, in part as a result of consumers' mistrust in corporate practices since the financial crisis, in part fostered by the rapid expansion of communication technologies, creates a new momentum for responsible corporate action – both for the companies themselves and for governments.

The world faces potentially dangerous and near-term environmental and social changes. Yet, at the same time, public and business support for decisive action is at recent historic lows. In this context, the question is whether Corporate Social Responsibility (CSR) – rather than being a soft and toothless voluntary approach – can in fact be part of the solution to raising awareness about the challenges facing humankind and rallying support for concrete action across the governmental, business and civil society sectors.

Perhaps the most challenging barrier to the promotion of CSR is the fact that it is not perceived as a real governmental priority nationally or internationally, which in turn weakens the interest in and uptake of initiatives by business. The current proliferation of approaches and standards at various levels (national, international, generic, sector-specific) inevitably leads to a lack of orientation for consumers, investors and policy-makers. In addition, most of these initiatives have a clear deficit in effective monitoring and transparency mechanisms, which diminishes their credibility and acceptance. Together with the voluntary nature of standards, these deficits bear a high risk of greenwashing, with participating companies using the scheme to communicate on their claimed high environmental and social performance, while at the same time they fall short in delivering on standards and criteria.

At international level, there are four CSR initiatives that enjoy a high level of explicit political backing by governments. These are: The ILO Declaration on Fundamental Principles and Rights at Work, the OECD Guidelines for Multinational Enterprises (MNEs), the UN Global Compact (UNGC) and the UN Guiding Principles on Business and Human Rights (UNGP). These initiatives should be seen as forming the basis for authoritative global guidance on what constitutes responsible business practice, in spite of their voluntary nature. Through detailed recommendations addressing corporations, they have developed a common language and understanding for CSR principles and approaches.

Other relevant independent reporting and standard setting initiatives, which shape the current CSR activities at international level, are the ISO 26000 Social Responsibility guidance tool, the Global Reporting Initiative (GRI) and the UN backed Principles for Responsible Investment (PRI). Since its origins in the late 1960s, a large number of additional CSR initiatives, covering almost every sector and issue, have been established. Some of these were developed by industry bodies, and some by multi-stakeholder platforms including NGO, business and union participation.

In general, CSR initiatives can be divided into two groups: Those *general frameworks* that provide a rough orientation to governments, consumers and investors and also develop a comprehensive understanding and language of CSR and more *specific frameworks* that tailor certain aspects of CSR to particular sectors. The latter, which sometimes also use certification schemes and labelling, tend to be more effective in the actual implementation of CSR. However, the thematic scope of different CSR schemes is often selective; social and environmental issues are often not contained in a single sector instrument..

Although government backing enhances the legitimacy of initiatives, one of the major barriers to the implementation of CSR has been the lack of political will to consistently promote CSR initiatives at international and national levels. Only a few European governments have gone beyond the voluntary guidelines or frameworks of CSR and have adopted legislative measures on CSR and transparency rules,

for example Denmark, France and the UK. However, CSR policy was boosted in 2011, when the European Commission presented a new package to enhance existing EU legislation on CSR aiming to "support entrepreneurship and responsible business." The package also includes a new strategy on CSR, which highlights different areas, where further action is needed to make CSR a contributing factor to the EU targets on sustainable development. For example, the strategy seeks to increase the visibility of CSR, improve and track levels of trust in businesses and widen company disclosure towards social and environmental information. The European Parliament also sees a need for "regulatory measures to be drawn up within a robust legal frame" on CSR in order to avoid disparate national interpretations and risks of competitive advantages or disadvantages at various levels.

In the aftermath of the global financial crisis, it seems very unlikely that the EU will be able to mobilize the necessary resources and political will to create a common CSR standard at the international level and much less an international treaty on corporate accountability. Even if these were theoretically possible, there remains the real question about international acceptance and enforcement.

Rather than developing yet another CSR standard, the wiser course for the EU at this point might be to seek to massively scale-up engagement of EU business entities in existing initiatives and to improve the effectiveness of (and the consistency between) the most widely used initiatives. This could include a wide range of voluntary and legally binding measures, such as those summarised in the table below. These recommendations mainly address the European Commission and the Parliament but some of the activities impose a need for cooperating with business, CSO, national governments and international institutions:

Action (-activities)
Awareness raising
– Profile examples of how CSR can contribute to sustainability objectives
– Raise awareness of existing CSR standards and initiatives
– Support companies leading on CSR implementation
– Seek policy consistency between Member States through a common CSR action plan
– Encourage best practices through CSR award schemes and other forms of recognition
– Promote international CSR uptake through work with partner countries and institutions (e.g. national parliaments)
– Use trade and investment relations with key partner countries (e.g. US, China, Japan, Brazil, and India) to foster the dialogue on CSR
Provide CSR guidance tools for companies
– Create a inter-active web-based portal including data on the main CSR standards and research on best practices
– Develop and maintain a comprehensive guidance tool on "best practices" in CSR
– Develop targeted "CSR implementation kits" for specific sectors or issues
– Encourage a multi-stakeholder approach to improve the independent monitoring, assessing and assurance of CSR impacts
Improve the assessment of CSR activities and increase the quality of reporting
– Establish international working group at UN level to promote the inter-operability between the most widely used initiatives
– Encourage and support the establishment of an international 'Sustainability Report Watch' facility to provide independent monitoring of CSR claims and achievements

–	**Strengthen the reporting obligations of companies to the disclosure of social and environmental information through amending the EU Directives on Transparency and Accountability**
–	Encourage the establishment of mandatory sustainability reporting for all international companies in the Unfair Commercial Practice Directive
Provide market incentives for companies to act more sustainably	
–	Revise the principle of awarding contracts to the most economically advantageous tender by including environmental and social criteria through amendment of the Public Procurement Directives
Incorporate CSR in relevant EU policies	
–	Insert sustainability standards in trade agreements and ensure consistency between social, environmental, development, trade and industrial policies.
–	Conduct sustainability impact assessments of proposed trade agreements before entering the negotiation phase
–	Use trade agreements as a forum to explore at governmental level, how corporate activities in the respective country could be better controlled and how adherence to existing law could be ensured
–	Implement standards for socially responsible or green investments in government-controlled pension funds
–	Insert CSR reporting obligations for companies in investment treaties

A general challenge for policy-makers dealing with CSR is to find the right balance between voluntary initiatives undertaken by companies with accompanied governmental support and regulation (e.g. on a carbon price) in order to achieve specific sustainability goals.

Furthermore, as the case study on the mining sector in the Democratic Republic of Congo conducted in this study shows, the first step needed is to strengthen national governments' ability to enforce existing laws, even if this often requires committing additional capacities. CSR can only function where both companies participating in CSR schemes and the population potentially being affected by corporate activities can build on a reliable rule of law. Otherwise, CSR can even have detrimental effects as it distracts from the actual problems and increases confusion about the right measures to adhere to in a given country.

Eventually, it has to be kept in mind that in the past CSR has mainly been promoted through sector-specific policies (e.g. mining, finance or textile), ignoring the fact that CSR is actually a cross-cutting issue, which should become an integral part of broader sustainability policies.

1.   INTRODUCTION

With the financial crisis unfolding in 2008, followed by severe economic breakdowns in several countries all over the world, consumers' trust in corporate practices has significantly suffered, particularly in the financial sector (Karaibrahimo 2010). Additionally, events like the oil spill in the Gulf of Mexico, which resulted in the loss of human lives and grave socio-economic and environmental effects, have propelled international attention on Corporate Social Responsibility (CSR) and increased public awareness of companies pursuing mere profit gains while neglecting social and environmental risks (Cherry & Sneirson 2010). Yet, the economic policies of the last twenty years that have effectively liberalised global markets have also reinforced corporations' orientation towards profit gains at the expense of sustainability issues, facilitating increased foreign direct investments (FDI) and boosting

international globalised trade. Hence, corporate power has increased and a continuous economic growth of transnational companies has taken place.

The negative external effects of profit-oriented businesses on the environment and society are most visible and destructive in developing countries, where compensation measures for adversely affected groups rarely exist and where high corruption rates often impede meaningful enforcement of existing legislation. Moreover, the globalised economy imposes a continuous price pressure on companies which, in order to remain competitive, aim to decrease labour and production costs wherever possible. This 'race to the bottom' often comes at the expense of workers in developing countries who experience harsh labour conditions exacerbated by a lack of respect for internationally accepted workers' rights. Environmental indicators for air, soil and water quality as well as biodiversity also suggest that the environment is paying a high price for business practices that fail to integrate environmental concerns (see e.g. UNEP 2012).

An increasing awareness about human rights violations and environmental crimes committed by companies, in part fostered by the rapid expansion of communication technologies, creates a new momentum for responsible corporate action – both by the companies themselves and by governments. For governments, it will be crucial to harness the power of the private sector to first of all adhere to legal obligations (especially in developing countries) and to support sustainability policies and strategies at the national and international level. Sustainability targets can hardly be achieved without the support of the private sector. CSR is therefore a concept for governments reaching beyond traditional ways of regulating the behaviour of private companies via national legislation and law enforcement.

In recent years, some progress has been made in sensitizing the private sector and making companies contribute to social and environmental goals articulated by governments. For example, different efforts to encourage companies to measure and report on sustainability impacts (e.g. the Global Reporting Initiative) were undertaken. Numerous corporations helped to develop such initiatives and eventually became members. Furthermore, transparency of corporate activities was increased by a mix of regulatory and private initiatives (e.g. the EU Accountants Modernisation Directive including non-financial reporting, as well as the Extractive Industries Transparency Initiative (EITI) or the Carbon Disclosure Project (CDP)). This automatically led to further capacity building and know-how on sustainability issues in companies, mostly driven by governmental and societal pressure, but also by increased internal concerns (risk management, denouncements by civil society organisations, etc.)

While the global financial crisis led to increased attention for some CSR issues (e.g. pay differentials between CEOs and shop floor), the focus on short-term economic issues (including historically unprecedented bail-outs of the financial sector using public monies) has resulted in an overall reduction of governmental and public concern for the social and environmental pillars of sustainable development, and the scaling back of support for key strategic sectors (e.g. solar energy). The challenge for policy-makers is both urgent and daunting. The world faces potentially dangerous and near-term environmental and other changes. Yet, at the same time, public and business support for decisive action is at historic lows. In this context, the question is whether CSR – rather than being (as it is sometimes characterised) a soft and toothless voluntary approach – can in fact contribute to raising awareness about the challenges facing humankind and rallying support for concrete action across among governments, business and civil society.

CSR is not a new concept; it has its origins in the late 1960s and early 1970s (Cheit 1964; Heald 1970; Ackermann & Bauer 1976; Carroll 1979). In the 1960s, the idea of CSR came up after multinational corporations had developed the term 'stakeholder', meaning those on whom an organization's activities have an impact (Mitchell, Agle & Wood 1997; Morsing & Schultz 2006). From that point on, a plethora of initiatives, standards and schemes were introduced under the umbrella of CSR. Companies

mainly sought to improve their internal management in response to (new) social, economic and environmental legislation and to increase their credibility to consumers. Governmental organisations mostly supported activities towards a generic approach for more sustainable corporate behaviour. This led to a weakness of CSR: the concept was never clearly defined and therefore left room for different interpretations and objectives (Windsor 2001; Marrewijk 2003; Masaka 2008). The ISO 26000 standard on social responsibility, which was adopted in 2010, aimed at codifying the numerous initiatives to some extent and for the first time provided for a common definition of CSR at the international level. As Kitzmueller (2010) argues, one of the biggest challenges to empirical analysis is to measure CSR in a commonly agreed, scientifically correct and homogenous way. Building on its pioneering policy work in the field, the European Commission has redefined CSR as "the responsibility of enterprises for their impact on society" (COM 2011).

However, the current discussion about CSR goes far beyond its insufficient definition. Although some promising legal and voluntary regulatory actions to enhance CSR have been taken, they remain inconsistent and are largely unenforceable. Only few countries have a CSR policy in place and such policies are often lacking inclusion of a thematic area, often the environment or labour. As a result, CSR remains inconsistent, poorly resourced and monitored by governments, prompting legitimate questions about its value as an effective policy tool by civil society and public authorities. However, proponents of CSR point out that it is impossible – and probably not desirable – to regulate all corporate activities. A well-defined and promoted CSR approach can provide companies with valuable information not only on how to reduce certain risks, but also on how they are seen in society and how they can develop new products and services to meet growing sustainability challenges.

This study is an attempt to get a solid overview of the current situation of CSR at the international level. Strengths and weaknesses of the implementation of CSR are analysed both in general terms and more specifically in a case study on the mining sector in the Democratic Republic of Congo (DRC). The study ends with a suggestion for future policy action to enhance CSR as a complementing tool to legislation for achieving agreed sustainability goals on a range of economic, social and environmental challenges. Different actions are outlined and discussed.

2. OVERVIEW OF THE INTERNATIONAL FRAMEWORK OF CSR AND SOME IMPORTANT INITIATIVES

2.1. The international framework

Currently, there are a wide variety of international CSR initiatives, some of which developed by governments through intergovernmental organisations, others created by the private sector, and still others developed by civil society organisations. While there are now hundreds of independent CSR initiatives, only a few are widely used international frameworks that cover all three dimensions (social, environmental, economic) of sustainable development in CSR (Hohnen 2009).

There are four initiatives that enjoy a high level of political backing of governments and should be seen as forming the basis for authoritative global guidance on what constitutes responsible business practice, in spite of their being voluntary in nature. Through detailed recommendations addressing corporations, these initiatives have developed a common understanding and language for CSR principles. These initiatives are now briefly described and compared.

The International Labour Organization (ILO) was a pioneering force in addressing injustice in the workplace. Founded in 1919, it is the oldest UN organisation. Originally, it set out to advocate the importance of social justice in securing peace; in particular, it sought to address the exploitation of

workers in the industrializing nations of that time. In the 1960s and 1970s the activities of multinational enterprises provoked internal debate among members who sought to regulate their conduct. The 1977 **Tripartite declaration of principles concerning multinational enterprises and social policy** was adopted by the 181 member states of the ILO and their workers and employers´ organisations and subsequently amended in 2000 and 2006. It mainly reflects the CSR priorities of the ILO and the time period, focussing primarily on human and labour rights issues and not for instance on anti-corruption or the environment.

The **OECD Guidelines for Multinational Enterprises** were first developed in 1976 and were revised two times, most recently in 2011. They apply across all OECD member states but are also recognized by some non-OECD countries.[1] Importantly, the Guidelines apply to all foreign companies operating in OECD countries regardless of whether the "country of origin" of the company is a non-member. They were developed with the participation of business and trade unions and cover issues related to labour and human rights, the environment, bribery, competition and taxation. They have a strong reference to the ILO Declaration of Principles Concerning Multinational Enterprises. The network "OECD Watch", a coalition of more than 80 civil society groups, observes the implementation of the OECD Principles and helps to bring breaches to the attention of National Contact Points, which serve as an informal grievance mechanism in relation to the application of the OECD Guidelines.

The **UN Global Compact (UNGC)** was drawn up by the UN Secretary General and is supported by UN agencies, governments, representatives from the business world, unions and civil society organisations. The final document was recognised by the UN General Assembly and by Heads of States in the UN World Summit Outcome document in 2005. The Global Compact addresses human rights, labour rights in form of the ILO core labour standards, precaution and responsibility towards the environment and corruption. It is the world's largest voluntary CSR initiative with over 10,000 corporate participants and other stakeholders from 145 countries. Members of the Global Compact are required to communicate regularly on their progress in advancing the ten Global Compact principles. Through this self-auditing process the Global Compact aims to integrate and improve internal management of CSR. While the UNGC is voluntary, many companies participate because of the involvement of the UN, which brings a certain moral authority to CSR implementation. At the international level, the UNGC has been a harmonisation mechanism between CSR and existing or future UN commitments. For instance, many of the principles articulated in the CSR strategies listed above are central to the achievement of the UN Millennium Development Goals (MDGs).

In 2011, the UN Human Rights Council unanimously endorsed the **UN Guiding Principles of Business and Human Rights (UNGP)**, sometimes called the "Ruggie Principles" after Prof. John Ruggie, the Secretary General's Special Representative for Business and Human Rights, who developed the principles. The UNGP focuses on the human rights dimension of CSR and sets out to inform actors on how to prevent and address human rights violations in relation to corporate entities. It identified governmental and corporate responsibilities to "Protect, Respect and Remedy". "Protect" addresses the governmental duty to protect against human rights abuses committed by third parties, including business. "Respect" means that companies should respect internationally agreed human rights principles and national laws, both in relation to their own activities and in some cases in relation to the behaviour of parties under their direct influence. "Remedy" addresses the necessity that companies and states alike must ensure the existence of viable grievance mechanisms if human rights are violated. The UNGP are non-binding "soft law", but they are influential because they address corporate entities

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[1] Non-OECD countries that recognize the OECD Guidelines: Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.

through an international law framework. The UNGP are a platform through which international law may hold corporate businesses accountable in the future. As a standard, they also inform other CSR initiatives; for example, the recent amendment of the OECD MNE Guidelines incorporated human rights elements from the UNGP.

These four international initiatives function as points of reference for most of the private and semi-private CSR initiatives. Especially the ILO Core Labour Standards and the UNGC form part of most private codes dealing with human rights and labour issues. The codes of conduct of sport apparel companies, such as Nike and Adidas, follow the ILO Core Labour Standards just as multi-stakeholder initiatives like the Fair Wear Foundation do.

2.2.   Independent Reporting and Standard Setting Initiatives

As noted above, there are a large number of CSR initiatives, covering almost every sector and issue. Some of them were developed by industry bodies, and some by multi-stakeholder platforms including NGO, business and unions. Some involved governmental input. Three of the most widely respected initiatives are briefly described below.

The **ISO 26000 Social Responsibility guidance tool** is an internationally acknowledged standard that was developed through a multi-stakeholder process conducted by the International Organization for Standardization (ISO). Developed over five years by representatives from governments, NGOs, industry, consumer groups and labour organisations, it was finalized in 2010. ISO 26000 serves as a voluntary corporate sustainability guidance tool and is explicitly described as providing guidance, not requirements. It is not certifiable but instead provides a common understanding of ethical behaviour and social responsibility without facilitating organizational changes in management routines and practices. While it has been criticized for being too vague to have an impact and ultimately un-enforceable, its relevance stems from the fact that it provides comprehensive and concise guidance on what responsible behaviour is for organisations. It is available in 22 languages and has been adopted by 60 countries, with 20 additional countries in the process of reviewing for adoption. Since it is not certifiable, the actual level of its uptake by business is not known; however, it is widely regarded as being the most authoritative and comprehensive of this kind of instruments.

The **Global Reporting Initiative (GRI)** develops and disseminates guidelines on sustainability reporting and is arguably the most widely used and referenced CSR instrument. The GRI reporting framework enables organisations to measure and report on their economic, environmental, social and governance policies and performance using agreed indicators. Organisations from diverse sectors, including private and public, use the GRI framework. With its headquarters in Amsterdam, the Netherlands, it operates through several satellite offices around the world and includes over 600 organizational stakeholders and some 30,000 people that represent different sectors and constituencies.

The UN backed **Principles for Responsible Investment (PRI)** is an initiative devised by a group of investors in partnership with the United Nations Environmental Programme (UNEP) and the UNGP and is to create a framework for responsible investment. Responsible investment includes consideration of environmental, social and corporate governance issues, which the PRI initiative acknowledges as impacting the performance of investment portfolios. The PRI consist of a set of voluntary guidelines and six principles for investors. As of 2012, 900 investment institutions and 200 service providers have signed the Principles. Following the market crash of 2008 and the Gulf Oil Spill, the Principles received increasing attention and saw an increase in signatures; they fostered a consensus that environmental externalities matter to institutional investors (UNEP 2011).

Table 1: **Overview of relevant international CSR initiatives**

Initiative	Founding Date (Last Revision)	Initiating Institution	Coverage	Thematic Scope	Mechanisms	Enforcement
ILO Tripartite Declaration	1977 (2006)	ILO	Global	Human rights, labour rights, social policy	Guiding principles	Dialogue and mutual monitoring, but no enforcement
OECD Guidelines for Multinational Enterprises	1976 (2011)	OECD	44 govern-ments repre-senting all regions of the world	Industrial Relations, human rights, environment, information disclosure, bribery, consumer interests, science/technology, competition and taxation.	Voluntary Principles, Standards	Voluntary, but grievance mechanism
UN Global Compact	2000	United Nations	Global	Ten Principles on: Human rights, labour, environment, anti-corruption	Voluntary Guidelines	Annual Communica-tion on Progress Report
Global Reporting Initiative	2000 (2006)	Ceres and Tellus Institute with support from UNEP	World-wide with organiza-tions from 60 countries	Economic, environment and social and governance performance	Organiza-tional Reporting Guidance	Voluntary Guidance
UN Guiding Principles of Business and Human Rights	2011	UN Human Rights Council	Global	Human Rights Framework of Responsibility	Guiding Principles	Groundwork for "soft law", but no enforcement
ISO 26000 Social Responsibility	2010	Swedish Standards Institute (SIS). Brazilian Assoc. of Techn. Stand. (ABNT)	Global	Broad understanding of social responsibility	Guidance without certification	Conformity tests and certificates (but no certification)

2.3.   Means of CSR implementation

CSR can be implemented in various ways depending on the organisational structure and the thematic scope of the various initiatives. The initiatives could either focus on a particular sector with a more narrow perspective on the most relevant sustainability issues or they could address a wide range of different sectors dealing with broader cross-cutting issues. Moreover, CSR schemes vary in the level of commitment they require (e.g. guidance tools vs. certification). This variability indicates that there are very specific needs for guidance on CSR matters.

In general, CSR initiatives can be branched into two groups: general frameworks that provide a rough orientation to governments, consumers and investors and also develop a comprehensive

understanding and language of CSR, and more specific frameworks that tailor specific aspects of CSR to particular sectors. The latter tend to be more effective in the actual implementation of CSR. Most private and semi-private initiatives adapt the general CSR frameworks outlined in 2.1 and 2.2 to the conditions of a specific sector by drawing up more specialised codes, organising a consistent reporting system on CSR issues or implementing certification, auditing and monitoring programs.

Such initiatives range in scope and participation from **corporate codes of conduct,** which are drawn up by single multinational companies (MNCs), to initiatives of whole business sectors like the Business Social Compliance Initiative (BSCI), to single-issue initiatives for a specific sector like the Fair Wear Foundation that deals with labour rights in the textile industry. Some sector-based initiatives are based on a **multi-stakeholder approach**, with governments, private business and civil society organisations involved in the process of implementing CSR codes. A multi-stakeholder approach usually involves the development of a special code of conduct, audits of the activities of member companies and a product label that the companies can use for marketing purposes. Examples of this kind of organisation are the Fair Wear Foundation (textile industry), the SA 8.000 Standard from Social Accountability International (labour rights in factories), the Forest Stewardship Council (wood and paper), the Kimberly Process (conflict diamonds) and EITI (transparency in the extractive industries). CSR measures can also be implemented by introducing **guidance tools**. The Global Reporting Initiative (GRI), for example, concentrates on developing a detailed reporting standard on social, environmental and governance issues for MNCs and involves different stakeholders in the process.

Certification can be seen as the most far-reaching CSR approach. While participation in a certification scheme is usually voluntary, the requirements under the scheme are obligatory for the participant. Certification builds on principles and criteria, which determine the requirements to become certified under the respective scheme. Certification itself is a quite complicated process, which often involves the whole chain of custody for a product or a company to be certified. A robust framework for thematic and procedural requirements is needed for each certification scheme to make it effective and cost-efficient. Certification is often used for marketing purposes because the process may give consumers a visible label, which stands for certain standards in sensitive areas (e.g. fair prices for producers or sustainable forest management), that were adhered to in the production process. However, certification can also be applied as a (non-visible) business-to-business standard, in order to ensure a level-playing field or liability between partners.

Some organisations have specified the certification of business operations in terms of social and/or environmental performance. These organisations often work for more than one business sector, but certification requires professional knowledge about problems in a specific sector and the chains of custody. The Rainforest Alliance and Eco Management and Audit Scheme belong to similar organisations, which work mainly on the certification level of CSR.

2.4.   Thematic scope and corporate participation in CSR

The thematic scope of different CSR implementation schemes is often selective; social and environmental issues are rarely comprised in one scheme. Moreover, labour rights issues may be more relevant for some industries than others - or some CSR issues may be more readily implemented than others, leading to CSR initiatives that only address some aspects of ethical corporate behaviour (Tate, Ellram & Kirchoff 2010). For example, while both labour and environmental issues are relevant for the textile industry, separate codes of conduct have been developed for both and exist in isolation from one another. As a result, companies can be responsive towards one aspect of CSR and simultaneously exploitative of another (Haigh & Jones 2006). This approach has the advantage of encouraging companies to introduce aspects of CSR in a step-by-step manner. It also allows companies to prioritize

their actions based on their own needs and capabilities. However, the approach also contributes to a general lack of transparency about overall sustainable performance of the company that may market itself as implementing CSR, but in reality may only implement certain facets of social, environmental or economic responsibilities, which play an important role for consumers in their purchase decisions.

Further complicating the situation is the fact that CSR themes are often interpreted differently between sectors. The IT and textile sectors, for example, understand environmental issues as mere part of general health and safety concerns. Other industries that deal more directly with environmental resources, such as the extractive and food industries, consider more aspects to be environmentally relevant such as biodiversity, soil and air quality, water pollution, etc. Different interpretations of CSR issues are closely linked to the problems each industry faces.

CSR is also generally more prevalent and established in some sectors and industries than in others. There seem to be two conditions for high involvement of companies in CSR initiatives. Firstly, companies that perceive themselves to be vulnerable to environmental and social scandals are more likely to incorporate CSR in their business and management plan. This is most obvious for companies with direct interaction with private consumers like textile, food and IT companies who own well-known brand names to defend. Secondly, in specific sectors, the incentive to implement and make use of CSR mechanisms results from the concern that companies may lose their operational license. For instance, the mining sector has an infamous human rights reputation and as a result "affected communities" have effectively resisted mining companies with known violation records. Human rights violations in the mining industry have become so well documented and highly publicised that they have engendered a strong civil society movement against problematic company practices. Thus, companies originally being resistant against CSR were pushed to adopt CSR practices.

Furthermore, business sectors that provide products associated with helping society or the environment, thereby appearing to be "inherently good," often have a low level of CSR engagement. Some examples are industries that produce medical equipment, environmental technology and solar and wind energy. Because civil society and the public at large tend not to hold these kinds of companies accountable, these companies often disengage entirely from implementing CSR.

Some businesses whose "raison d'être" contradicts ethical responsibilities tend to exclude themselves from CSR engagement. For example, companies in the tobacco, alcohol or weapons industries rarely join CSR initiatives or create their own codes of conduct. It should also be noted that CSR initiatives are weakened by companies with a highly controversial reputation. For instance, the UNGC has been criticised for its inclusion of companies with dubious humanitarian and environmental records, which contradict the principles outlined in the Compact. In 2012 the executive director of the UN's voluntary sustainability initiative announced a plan to "clean up" the UNGC and announced that over 750 businesses would be "kicked out." This company purge included major corporations, which failed to meet the minimum requirements for reporting and monitoring progress (Guardian 2012).

2.5.   The current role of governments in CSR implementation

CSR originally stems from governmental efforts to increase corporate commitments to policy objectives and complying with legislative obligations. From the very beginning in the 1960s governments played a strong role in setting normative frameworks for responsible corporate behaviour (see especially chapter 2.1). Although, government backing enhances the legitimacy of initiatives, one of the major barriers to the implementation of CSR has been the lack of political will to consistently promote CSR initiatives at the international and national levels. For this reason the existence of numerous CSR initiatives at UN, OECD and other global governance levels does not automatically represent a strong

political commitment to push CSR forward or to consider CSR an integral part of governmental sustainability policy.

A few governments have gone beyond voluntary guidelines or frameworks of CSR and have adopted legislative measures on CSR and transparency rules. For example, the Danish government adopted the "Act Amending the Danish Financial Statements Act (Accounting for CSR in large businesses)" in 2008, which requires the 1100 largest Danish companies to report their CSR activities on an annual basis, how they have implemented CSR in practice, what results have been obtained so far and what expectations management has for the future. If companies do not report their CSR activities they have to explain their reasons for not doing so. The main aim of this amendment is to inspire businesses to take an active position on social responsibility and communicate it to the public.

In France the 2001 law of modernisation of the economy, entitled "Nouvelles Regulations Economiques" (NRE), makes reporting social and environmental impacts mandatory for certain companies. The reports are then susceptible to audits conducted by the French authorities. A study on the application of the law has shown that despite several imperfections, the NRE law has been an impulse for non-financial reporting in France. For example, the Sodexo Group, a French based company for food, caring and other services, now conducts environmental audits of all its operations and production worldwide.

In 2011, the European Commission presented a new package to enhance existing EU legislation on CSR aiming to "support entrepreneurship and responsible business." The proposed measures would amend the current EU Directives on Transparency and Accountability, which exclusively focus on financial reporting obligations for big companies through a Country-by-Country Reporting (CBCR) system. With this system, companies active internationally in the extractive (oil, gas and minerals) and logging sectors will be obligated to present financial information for every country they are operating in. This would unveil the number of taxes, royalties and bonuses a multinational company pays to host governments. Furthermore, the amendment would prevent investors from secretly building up a controlling stake in a listed company ("hidden ownership").

The Committee on Legal Affairs of the European Parliament approved the package of proposals in September 2012[2], with the exception of one paragraph. Moreover, the Committee endorsed a project-level disclosure of information within the CBCR system, which would facilitate a more differentiated picture of corporate activities. This amendment would have a significant impact on companies active in developing and other countries. The disclosure of financial flows would shed light on the conditions under which companies are operating and what attracts them to extract resources in a specific country. The Committee also proposed to extend country-by-country information requirements to banking, telecom and construction sectors.

The Commission proposals for amending the current Directives are embedded in a new Communication on CSR that provides a renewed definition of CSR as, "the responsibility of enterprises for their impacts on society" (COM 2011). This definition broadens the perspective on CSR to the society as a whole and aims to maximise the creation of shared values. Moreover, according the European Parliament, the new definition puts away "the dichotomy between voluntary and compulsory approaches" (EP 2013), which has polarised the CSR debate so far.

The Communication also entails an "agenda for action 2011-2014," which would enhance CSR in the EU and worldwide (COM 2011). The strategy highlights different areas where further action is needed to

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[2] See: http://www.europarl.europa.eu/news/en/pressroom/content/20120917IPR51496/html/Extractive-companies-could-be-forced-to-fully-disclose-payments

make CSR a contributing factor to the EU targets on sustainable development and for "a highly competitive social market economy." For example, the strategy seeks to increase the visibility of CSR, improve and track levels of trust in businesses and improve company disclosure of social and environmental information. In addition, the European Parliament sees a need for "regulatory measures to be drawn up within a robust legal frame" on CSR in order to avoid disparate national interpretations of the Communication issues (EP 2013). Furthermore, the EP states that CSR aspects have to be addressed in EU trade policies. For example, future bilateral investment treaties (BITs) between the EU and a (developing) country should seek for a balance between investment security and the possibility of government intervention in case of human rights violations and in regard to sustainability standards (EP 2013).

A recent example showing that increasing transparency and accountability by law can directly change company behaviour is the US Dodd-Frank Wall Street Reform Act and Consumer Protection Act, which was adopted in 2010. Section 1504 of the Dodd-Frank Act is primarily focused on financial services and specifically sets new standards for transparency in the extractive industries. The provision requires oil, gas and mining companies registered with the US Securities and Exchange Commission to publically disclose their payments to governments for the extraction of natural resources on an annual basis.[3] This act followed the 2008 financial crisis and particularly the Gulf Oil Spill, which highlighted the need for transparency on CSR issues. Despite its recent adoption, this Act has had an enormous impact on extractive industries in the US and the geographic regions where they do business.

On August 22, 2012 the Securities and Exchange Commission of the US adopted final rules on section 1502 of the Dodd-Frank Act and put a de-facto ban on Congolese mineral exports. The legislation achieved this by requiring annual disclosures of the use in manufacturing of four "conflict minerals" sourced from the Democratic Republic of Congo (DRC) to prevent third parties from financing conflicts. The rules apply to companies listed in the US, which use these minerals thereby making manufacturers directly accountable. The rules came into force in January 2013 and have sparked a controversial discussion as they have had impacts all the way down the supply chain to the Congolese miners themselves. The initial reaction by many companies and manufacturers was to completely avoid the Congo as a source of minerals. However, this further threatened the economic livelihoods of Congolese miners who make up a significant part of the population (Seay, 2012). Congolese human rights activists still hope that the legislation will help to improve the conditions in the mining sector in the long run. A legal approach similar to Section 1502 of the Dodd-Frank Act is also discussed within the EU, especially in the European Parliament. Among other controversial issues, the EU Parliament is proposed to extend the list of minerals to more than the four mentioned in the US law and to provide a broader definition of "conflicts" than just the situation in the DRC.

Another field of governance directly affecting companies' behaviour is legislation on corruption and business integrity. The UK Bribery Act, for example, holds UK firms accountable for bribery whether committed directly or on their behalf in the UK or overseas. Having been described as "the toughest anti-corruption legislation in the world,"[4] the Act mainly consists of four different offences, which make it easier to accuse commercial organisations, along with any individuals associated with them, who commit bribery on their behalf. However, the formulation of the offences has also created confusion as to what actually constitutes an act of bribery. The wording of the Act is criticised for being too broad and unclear for businesses, which are now unsure of where the lines are drawn.

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[3] See: Global Witness Briefing Document. 2011. The Dodd Frank Act`s section 1502 on conflict minerals. http://www.globalwitness.org/sites/default/files/library/110916%20Summary%20briefing%20on%20Dodd%20Frank%201502%20_2_.pdf.

[4] See Financier Worldwide http://www.financierworldwide.com/article.php?id=8188.

3. CASE STUDY ON THE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY IN THE MINING INDUSTRY

3.1. Introduction

For decades there have been no shortages in the supply of metals to Europe. Until the 2000, most scientists expected a decrease in worldwide demand for metals due to technological innovation and higher efficiency. By contrast, the demand for metals has risen steeply, mostly due the consumption of emerging economies such as China (Hütz-Adams, Bäuerle & Behr 2011). To date many of the most productive mines in the world are depleted. Mining companies often have to switch to mines with lower metal concentration in remote areas leading to both higher costs and more severe environmental impacts. For example, mining and processing minerals is estimated to account for 7% of worldwide energy consumption (BMU 2012).

In addition to ecological problems, John Ruggie, the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises has acknowledged that there are serious violations of human rights in the mining sector, particularly in countries affected by conflicts (UN 2010).

Human rights violations in the mining industry can take several forms. First, mining companies usually try to acquire the legal rights to explore huge areas of land, which may sometimes be thousands of hectares for an operation. As large pieces of land are turned over, the people living on the land are directly affected. Uncompensated eviction or the loss of access to once commonly owned land is commonplace and often happens with no adequate resettlement programs and no assistance to evicted families (Koenig 2002). In states with weak governance this often causes conflicts between the companies and the affected people as well as between central or local governments and the inhabitants who live in the mining areas. Secondly, mining causes severe disturbances to the land because most extraction takes place in open pits, which is more environmentally harmful than underground mining. This method is increasingly used in developing countries. Pollution caused by mining activities or by processing of the ores can harm nearby populations, which depend on the land for food and water resources. Since mining involves toxic substances, poisoning from poorly managed or abandoned mines is a pervasive problem particularly in countries with weak environmental regulation. Most countries require in-depth environmental impact assessments that lead to environmental management plans before and after mining takes place. However, a lack of institutional capacity to carry out such assessments combined with weak enforcement of legal obligations in developing countries makes them particularly prone to human rights exploitation and environmental degradation (Obati and Owuor 2010; Shaxson 2007). Finally, mining is an extremely expensive and lucrative endeavour that is particularly prone to corruption, mismanagement and human rights abuses.

There are multiple initiatives, codes of conduct, laws and international agreements for standards to address some of the issues mentioned above, but they are mostly insufficiently enforced or ineffective. Moreover, the issues that will be discussed in the Democratic Republic of Congo (DRC) case study presented here are unique given the complex domestic situation of conflict and gross mismanagement; however they also represent issues, which exist globally and are pervasive throughout the entire mining sector (Hütz-Adams, Bäuerle & Behr 2011).

3.2. Overview of international CRS initiatives in the mining sector

In the last decade, the international community enacted various initiatives to improve the international mining sector. There are mainly three initiatives, which were led by governments: The Kimberley

Process Certification Scheme (KPCS) was founded in 2003 to prevent trade of conflict diamonds.[5] The OECD Guidelines are a multilateral initiative and the Dodd-Frank Act (see chapter 2.5) was implemented by the US government as an attempt to halt the import of metal to the US from conflict regions in the eastern Part of the Democratic of Congo (DRC). Additionally, there are numerous public and private initiatives led by corporate actors, trade associations, and NGOs, which are often adopted in close cooperation with governments. This case study begins with an overview of initiatives focusing on transparency and voluntary guidelines. While they were not specifically developed for the DRC, they are relevant and important for development in this country. After the main initiatives are explained, this case study explains the situation in the Congo and describes specific programs operating in this country.

Corruption and non-transparent contracts are often cited as a main issue in the mining industry. To combat this problem in 2002 the **Extractive Industries Transparency Initiative (EITI)** was founded as a multi-stakeholder initiative to improve transparency in all extractive industries in order to better address poverty and corruption and to ensure that extractive activities do not fuel or exacerbate conflicts. The initiative was collaborative and developed by governments, companies, investors, international organizations and non-governmental organizations. EITI created a standard that promotes revenue transparency in oil and mining by requiring companies to disclose their payments to governments and also for governments to make their revenues transparent. This creates a basis to compare the data given by companies with the figures published by governments. Independent auditors regularly publish EITI country reports in close cooperation with multi-stakeholder groups. As of 2012, 37 countries were EITI members, of which 18 were evaluated as "compliant" meaning they successfully published reports of payments in the extractive sector. As of 2012, the DRC is listed as non-compliant (EITI 2012). In 2010, the country submitted a report, however it only included companies operating in the formal sector and was found inadequate since most of the mineral trade in the DRC takes place in the informal sector (Feldt & Müller 2011). A second report was published in January 2013. It is based on an audit by KPMG (an international consulting firm) and compares figures of 57 companies from the mining and oil sector with data concerning revenue from natural resources published by the government. The detailed data are big step forward towards more transparency in the Congolese mining sector. But the report also describes many persistent problems, especially in regard to the government agencies supervising financial flows. Therefore, it is not yet decided whether the DRC will receive status as EITI-compliant. Exclusion from the EITI process would be a major setback for future efforts to make the mining sector in DRC more transparent.

Likewise, in 2002 non-governmental organizations founded the network **Publish What You Pay (PWYP)** which has more than 650 member organizations from 35 countries. The initiative calls for a more transparent and accountable extractive sector (PWYP 2013). In the Democratic Republic of Congo, the local PWYP branch was founded in 2006 and consists of more than 30 organizations, which support the Congolese EITI-process. They work under harsh conditions and suffer harassment from the government (PWYP 2013a).

The **International Council on Mining and Metals (ICMM)** was founded in 2001 as an outcome of an international research project on sustainability in the mining sector. The organization aims to promote sustainable development in the mining and metals industry and sets out ten core principles. These principles include ethical business practices, sustainable development, respect of human rights and cultures, a risk management system, the conservation of biodiversity, the willingness to strive for

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[5] Because of wide-spread smuggling the diamond trade in the DRC is still opaque and accompanied by harsh labour conditions, which are not covered by the Kimberley Process. Details see: Hütz-Adams, Koch, Schneeweiss 2010.

contribution to the development of communities where companies operate and the implementation of more transparency and independently verified reporting (ICMM 2012). ICMM has a wide membership consisting of 22 mining and metals companies and 34 national and regional mining associations or global commodity associations (representing approximately 1500 companies). These companies are engaged in more than 800 mining sites in 62 countries and employ 800,000 people.

ICMM includes some of the biggest mining companies in the world. If they implemented changes, they could have a major impact on the whole sector. Many of the enterprises, which are members of the ICMM operate in the mining sector of the DRC. However, ICMM is more than a decade old and has not achieved meaningful progress. While the principles to improve action in the mining sector are identified, there is no concerted strategy to actually address them. Enforcement is also non-existent and there is no established process to react to infringements of standards. In fact, the ICMM has been severely criticized by NGOs because several of its member companies or subsidiaries have established reputations for illegal activities and disregard even their own social and environmental standards[6].

The **Responsible Jewellery Council (RJC)** was founded in 2005 by diverse companies involved in the jewellery supply chain covering diamonds, gold and platinum. As of 2012, the RJC had 420 members. The RJC has developed a Code of Practices that covers core labour standards of the ILO, ecological aspects, management systems and transparency. All members of the RJC are required to undergo audits by third party auditors to verify their compliance with the RJC Code of Practices, which new members have 2 years to achieve. The implementation of RJC standards is relatively recent and it is too early to evaluate its effectiveness. The RJC is relevant to the DRC which has an estimated 700,000 Congolese small-scale miners involved in the diamond trade (World Bank 2008).

In the gold mining industry the **World Gold Council (WGC) and the London Bullion Market Association (LBMA)** started initiatives to exclude gold from the international gold market, which is mined in conflict areas and specifically from the conflict ridden parts of eastern Congo. The standards do not include any social or environmental statutory provisions (WGC 2012; LBMA 2013).

3.3. Detailed analysis of the effects of CSR in the mining sector in the Democratic Republic of Congo

The Congo is rich in raw materials including diamonds, gold, columbium tantalite (coltan), niobium, cobalt, copper, tin, uranium and petroleum. High demand for these raw materials on the international market has brought about resource exploitation by Western companies at an unprecedented rate. "Conflict minerals," or minerals mined in conditions of armed conflict and human rights abuses, have brought about ethical questions about continued exploitation and the need for regulation. Moreover, it is widely recognized that the exploitation of the Congo's raw materials has fuelled the continuation of violent conflicts in the region since 1996, which has raised the question of the role multinationals play in perpetuating organized crime and conflict (Ross 2003). Raw material exploitation in Congo also brings into question whether natural resource abundance in unstable developing countries increases the risk of conflict (e.g. Collier and Hoeffler 2000).

When the DRC achieved independence in 1960, mineral raw materials generated two-thirds of the country's export earnings (World Bank 2008). The mineral industry became an important source of funding for the corrupt regime of Mobutu Sese Seko starting in the 1960s and lasting until the late 1990s. The industry itself, however, underwent important structural changes in the 1980s. Originally dominated by state-owned enterprises (SOE), the dramatic price drop of minerals on the world market

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[6] Like for example reports on situation around the Grasberg complex in Indonesia owned by Freeport-McMoran (Hütz-Adams 2012: 8-10) or the work of Glencore in Zambia (Peyer/Mercier 2012).

put most SOEs out of production and small-scale minors took over the sites (Hütz-Adams 2003; World Bank 2008).

Consecutive corrupt militaristic regimes and persistent conflicts have influenced the mining industry in the DRC. The First Congo War in 1996 overthrew Mobuto Sese Seko, and brought Laurent Désiré Kabila (who was supported by neighbouring countries), to power. In the second war in 1998 rebels sought to overthrow Kabila and again neighbouring countries became involved. By 1999, dozens of armed groups - some of them regular units of armies from neighbouring countries - fought in the DRC and the country was divided into zones of influence controlled by different factions. A process to establish a peace contract started in 1999 and in 2003 an interim government was established. Joseph Kabila, son of Laurent Désiré Kabila who was murdered in 2001, became the new president. In spite of the official end of the war the fighting in some eastern provinces of the DRC, where many mineral deposits are located, continues to erupt every couple of months and various fractions of armed groups are still ruling some regions.

In 2008 the World Bank estimated that 90% of the mineral production of the country comes from small-scale miners. It is estimated that between 500,000 and 2 million people work directly in the sector (World Bank 2008). For each direct worker there are approximately five dependents meaning that the total number of people whose livelihood depends on minerals could be as high as 8 to 10 million – or 14 to 16 percent of the total population of Congo (World Bank 2008). Accurate evaluations are difficult to gauge given the instability of the country and the fact that most small-scale miners are not registered and work in remote and insecure areas controlled by armed groups. The labour conditions are often deplorable in many mines, miners earn low income for dangerous work and child labour is rampant.

The debate about the Congolese mining industry mostly focuses on the situation in the north-eastern provinces of North and South Kivu where rebel groups are active. However, miners face problems nation-wide as corruption is rampant among high-ranking Congolese officers of the armed forces who are heavily engaged in criminal networks. They control a part of the illegal trade of natural resources, contraband and even weapons to supply rebel groups (UNSC 2012). The massive problems inside the Congolese army combined with activities of various armed groups are a constant threat to all miners. The highest level of insecurity can be found in the gold mining sites not only in the war-torn regions of the Kivu-provinces, but also in most regions throughout eastern Congo including Katanga (UNSC 2012).

Dangerous and unpredictable conditions have not deterred international companies from mining and many of these have continued to open mines in the Katanga province to access the large deposits of minerals. Copper and cobalt production in Katanga doubled between 2007 and 2010 and more mines went into operation in 2011 and 2012 (Yager 2012). International operation in Katanga has put pressure on a huge number of small-scale miners who presently work in the copper and cobalt mines (Peyer & Mercier 2012). More accurate information is hard to come by and the general state of opacity in the DRC mining sector results from the secrecy and corruption of the government and the mining companies concerning their contracts.[7]

3.3.1.   Certification initiatives in Eastern Congo

Since 2001, a UN initiative entitled, the *Group of Experts on the Democratic Republic of the Congo,* has regularly published reports on the economic background of the conflict. These reports include detailed descriptions of the illegal trade, i.e. mining without legitimate concessions, smuggling of minerals to avoid taxes, trade of stolen material etc. and responsible individuals. The UN demanded international customers of Congolese minerals not to buy minerals from certain traders, which were strongly aligned

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[7] For further information see IPIS: 2008; Johnson 2008: 182-183.

with military groups and human rights abuses. In 2008, the UN named three necessary steps to achieve due diligence: First, "determine the precise identity of the deposits from which the minerals they intend to purchase have been mined (…). Second, once the precise identities of the mineral deposits are known, purchasers establish whether or not these deposits are controlled and/or taxed by illegal armed groups. Third, purchasers refuse to buy minerals known to originate — or suspected to originate — from deposits controlled/taxed by these armed groups" (UNSC 2008).

Similar guidance is reiterated by John Ruggie in the Dodd-Frank Act and the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas," which was published in 2011. The OECD published a supplement for tin, tantalum and tungsten and another one for gold (OECD 2011a; OECD 2012). These guidelines are widely recognized as a framework to meet the new standards set by the US Securities and Exchange Commission (SEC) (OECD 2013: 12).

An easy solution taken by some companies has been to simply boycott minerals originating from regions where conflict minerals are traded. They ordered their supply chain to source only metals from smelters who do not buy any ores from central Africa (ITU/UNU 2012; Tegera 2011). However, side programs and initiatives have been launched to make the trade in tantalum, gold, cassiterite (tin ore) and tungsten originating in central African states more transparent.

One inter-governmental initiative developed by African states in the Great Lakes Region was **Certified Trading Chains (CTC)**, which is part of a larger good-governance partnership initiated by African governments called the International Conference on the Great Lake Region (ICGLR) [8]. CTC pilot projects aim to improve transparency and tracking through tagging**.** The bags of ore are tagged in the mines where they are sourced, the volume of the mineral is registered combined with the number of the tag and they are documented on their way to the smelter. The German Federal Institute for Geosciences and Natural Resources (Bundesanstalt für Geowissenschaften und Rohstoffe - BGR) has played an important role and cooperated with the governments of Rwanda and the DRC to develop a new set of standards. These include traceability, fair working conditions, security and human rights, community development and the environment. The CTC-system is viable for tin, tantalum, and tungsten. Mines who want to work with the scheme need environmental impact assessments and an environmental management plan that considers the treatment of hazardous material, proper disposal of waste and rehabilitation of site (ITU/UNU 2012). The first pilot project started in 2009 in Rwanda and in spring 2011 the Congolese government obliged all companies that want to export mineral ores to take part in such a system. But due to the unstable situation in many mining regions of eastern Congo and a lack of funding, progress is slow.

To facilitate CTC the German Federal Institute for Geosciences and Natural Resources works on an **Analytical Fingerprint (AFP)** method, by which they can identify the origin of tantalum ('Coltan'), tin, and tungsten ore. The BGR took samples from hundreds of mining sites and analysed these to identify their characteristic mineralogical and geochemical "fingerprint" (BGR 2011). The Analytical Fingerprint is still in a pilot phase. A lot of work still has to be done to retrieve and analyse samples from the hundreds of small-scale mines throughout the Congo, making this a complex and cost-intensive project.

The CTC is part of a **Regional Certification Mechanism (RCM)** to be introduced by the governmental members of the ICGLR, which cooperates in a Regional Initiative against the Illegal Exploitation of Natural Resources (RINR). Resulting from this initiative, the DRC and its neighbouring countries decided to implement a binding certification system for trade of cassiterite, tantalum, tungsten, and gold at a

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[8] Members are: Democratic Republic of Congo, Rwanda, Burundi, Uganda, Tanzania, Sudan, Republic of Congo, Central African Republic, Zambia, Kenya and Angola (ITU/UNU 2012: 6).

conference in November 2011. The governments want to follow the guidelines of the OECD due diligence requirements. The RCM aims to make the supply chain, from mines to export, more transparent, track the mineral flows in the region, implement regular third-party audits, and cooperate with independent chain auditors. The underlying objective is to prevent conflict financing, ensure the payment of taxes, and avoid serious human rights violations. It also contains environmental requirements (ITU and UNU 2012).

The international **Tin Supply Chain Initiative** (iTSCi) is a joint initiative of the ITRI (an umbrella organisation of the tin industry) and the Tantalum-Niobium International Study Centre (TIC). The initiative was started in 2009 and developed a tagging system for improved supply chain transparency for cassiterite, tantalum, and tungsten. The standards are similar to CTC and RCM and include data collection (traceability), risk assessment, and independent third-party audits. The system works with companies to conform to the OECD due diligence requirements. In 2011, implementation started in Rwanda and the DRC province of Katanga. If there is enough funding, the program may be extended to Burundi and Uganda (ITRI 2012). The initiative represents a great opportunity because tin with a conflict-free label is in high demand (ITU and UNU 2012).

In 2009, the **Global e-Sustainability Initiative (GeSI)** and the **Electronic Industry Citizenship Coalition (EICC)** jointly initiated the **Conflict Free Smelter Program (CFS)** as a voluntary program (Hütz-Adams 2012: 23). The core element of the programme is an auditing system that aims to verify the regional origin of the minerals entering a smelter. If minerals are sourced from conflict regions in eastern DRC or from neighbouring countries of the Congo, auditors investigate the supply chain. The project concentrates on tantalum, tin, tungsten, and gold, which are regulated by the Dodd-Frank Act. A first list of CFS-compliant smelters was published in 2011. The programme accepts third-party validated ore from other initiatives, such as material certified by iTSCi. The CFS has been criticised for concentrating too much on conflict financing. By doing so, it falls short of the due diligence requirements of the OECD. The number of certified smelters is still limited (OECD 2013).

The common goal of these diverse certification initiatives is to avoid further financing of conflicts in the DRC. All the initiatives identified aim to establish transparent supply chains from mine to smelter. There are efforts to join forces as indicated in September 2012, when the Conflict Free Smelter (CFS) programme, London Bullion Market Association (LBMA), and RJC announced mutual recognition of their independent third-party audits of refiners, as well as conformity with the OECD due diligence guidance (UNSC 2012). The cooperation of the different standards is necessary to develop a common and comprehensive approach to conflict minerals.

It is important to note that not all of the described programmes include social and environmental terms in their standards. If, for example, the CFS, the LBMA, and the RJC join forces, there is a risk that core labour standards, such as those developed by the ILO, will be left out. Concerns about the incorporation of ecological aspects, management systems, and ethical criteria, all of which are part of the RJC but not of the other programs, highlight the complexity of coordinating and integrating different initiatives. As a tag, "conflict free" can only be part of a broader solution and will not necessarily address labour issues, human rights, or environmental aspects.

3.3.2. The role of the Congolese government

The United States' adoption of the Dodd-Frank Act was an unexpected development for the DRC and led to several declarations of change by President Joseph Kabila. On 9 September 2010, Kabila announced a ban on mineral exports originating from the provinces of South Kivu, North Kivu, and Maniema and outlined conditions for the reopening of trade; however, such a declaration has only limited effectiveness, as the government lacks control in the eastern parts of the country. The new

regulation attempt by Kabila included the construction of processing plants in the region, the implementation of a system to certify and label ores, the organisation of the artisanal miners into cooperatives, the concentration of the mineral trade in organised training centres, and the payment of taxes and duties. He also demanded an end to the smuggling of minerals and the influence of armed groups in the mining regions. In order to control the trade, Kabila forbade mineral transport by aircraft and the transport of mineral products from one province to another. Additionally, Kabila banned pregnant woman and children from working in the mines (Tegera 2011).

In a parallel effort, the President ordered a military campaign against various rebel groups. The Congolese army ousted armed groups and "simply took over control - and exploitation - of the 'liberated' mining and trading sides" in many areas (Koning 2011). The ban of mineral exports lasted until 10 March 2011. Afterwards, the situation on the ground turned into chaos. Many traders who had stockpiled minerals during the time of the ban tried to sell as much as fast as possible before 1 April 2011, the day the Dodd-Frank Act came into force (Tegera 2011).

3.3.3. The present situation

A report by the Group of Experts on the DRC United Nations Security Council, published in November 2012, comes to the conclusion that smuggling of tin, tantalum, tungsten, and gold is still omnipresent. The official exports of tantalum and tungsten decreased between 2010 and 2012, while smuggling increased. Tin is an exception and smuggling seems to have declining, perhaps due to the fact that tantalum is easier to smuggle because of its lower weight and higher value (UNSC 2012).

Well-connected traders evaded transparency measures by successfully getting the conflict-free tag on smuggled tantalum via the illegal purchase of tags, obtained by pushing them through the Rwandan certification system (UNSC 2012). It is impossible to estimate the amount of Congolese minerals that somehow find their way into the Rwandan tagging system (UNSC 2012).

The situation in the gold sector is even worse. According to experts, there is nearly no legal trade any more. It is easy to smuggle the gold, and much of it ends up in Dubai (UNSC 2012; Koning 2011).

According to the UN, the success of the reforms of the Congolese minerals sector is limited. "Tin, tantalum and tungsten ore production continues in most areas. Most minerals are either smuggled out or stockpiled" (UNSC 2012). Nowadays, miners and smugglers tend to get a lower price for their minerals. This is partly because of the decreased world market price but also because it is obvious that the trade is illegal, weakening the negotiation position of the miners and affecting their incomes tremendously. Some of the miners looked for other metals, often gold, or gave up mining altogether, leading to severe income issues for households and increased poverty among the poorest parts of the population. Bans on air transport further hindered small-scale minors who could not export from remote areas to the market. At the same time, the cost of food and other daily supplies rose significantly because such supplies had previously been flown into the mining region by the same planes that flew out the minerals (UNSC 2012). On the other hand, the security situation in relation to minerals and armed conflict has improved. The trade in tin, tantalum, and tungsten has become a much less important source of financing for armed groups. In Katanga, where the tagging system improved transparency, business flourished due to increased investment from actors searching for a transparent market (UNSC 2012).

Nevertheless, there could be some success stories in the near future even in the Kivus. Trading companies are trying to shorten their supply chains by investing in and building smelters for cassiterite and tantalum in the eastern provinces of the DRC. The amount of smuggled minerals bought by

Chinese traders decreased, especially in the tin sector, in 2012. More and more of them are now asking for tagged material (UNSC 2012).

However, the ongoing insecurity in many mining regions has slowed progress. Widespread fighting erupted again at the end of 2012 in the Kivus and in Katanga where militias ("Mai-Mai") control some of the mining areas. At the end of March 2013 the militias attacked the regional capital Lubumbashi.

3.4.   Conclusions and outlook

From 2001 onwards, different reports by the UN that explicitly documented the connection between the atrocities in the DRC and the mining sector brought about several important initiatives at the international, regional, and local level by private and governmental actors. The UN report provided evidence of the financing of rebel groups and also made it clear that the minerals traded on the world market were inadvertently involved in mining that fuelled conflict and war atrocities. The explicit identification of companies and individuals profiting from the trade led to controversial debates and the withdrawal of some companies from the region. Success was only partial, however, and for many years not even the detailed reports of the UN could stop the flow of conflict minerals onto the world market.

A precondition for the achievement of major changes is a deeper knowledge about the flows of the minerals. The existing certification systems represent a major step toward creating more transparent value chains. To scale up the existing initiatives, the international community and the companies need to cooperate. Involved parties need to agree on a common approach not only on conflict financing but also on human rights, labour conditions, and ecological standards. Moreover, joint efforts should be launched to invest in transparent supply chains. Above all, the political will of the government of the DRC to implement programs and initiatives is needed. Efforts to create more transparent supply chains increased massively after the Dodd-Frank Act put pressure on all parties involved.

However, initiatives to improve transparency in the supply chain can inadvertently have devastating effects on small-scale miners that are involved in illegal trade, yet not responsible for the larger networks of corruption and conflict. Given the high number of Congolese operating and depending on small-scale mining, any tagging or certification schemes could dramatically affect welfare issues, poverty, and food security of significant parts of the population.

The situation in the eastern part of the DRC remains one of the most complex among the mining regions of the world. But this does not mean that it is not possible to draw conclusions from the situation in the Congo that have significance for mining areas in other countries. It is obvious that CSR-programs alone will not solve the complicated situation: voluntary standards and CSR programs depend upon a statutory framework to have a real impact. The developments in the mining region of DRC show that a solution to conflict requires much more than just controlling some of the minerals. For a sustainable solution, a comprehensive approach is necessary that can address a wide a range of issues:

–   a recognized definition of human rights shared by all stakeholders

–   a reform of the security sector

–   the demilitarisation of the mining areas

–   investments in the infrastructure in mining regions, including the construction of access roads to the mining areas

–   the combination of the development of alternative income sources with poverty reduction programmes

−	the implementation of affordable systems to achieve transparency from mine to smelter

−	the harmonisation of the different projects to improve the situation of the miners

−	the inclusion of social and environmental aspects in all certification programs

To promote improvement, all stakeholders involved in the Congolese mining sector need to expand their cooperation. The different initiatives described in the previous chapter have many overlaps but also many differences. This makes it nearly impossible for small-scale miners to fulfil the new requirements and increases the temptation to smuggle minerals.

International development agencies play a major role in the mining sector in the DRC. The CTC programme, for example, was initiated by the German development aid agency/ministry. At the moment, various efforts from national development agencies are trying to address the problem of conflict ores from the DRC. These include programmes run by the EU, the US government, the British development agency DFID, the Belgian Government, and the World Bank. These actors and initiatives should be embedded in the comprehensive approach in close consultation with the government of the DRC.

In addition, a global approach is necessary to improve transparency on global mineral markets. The extensive smuggling in the tantalum sector illustrates that it will not be easy to improve the situation in the DRC without having more information about supply and demand flows on the global tantalum market. It remains unknown what percentage of the world supply of tantalum comes from the conflict regions of the Congo. The US Geological Survey estimates that less than 10% of the world supply of tantalum came from the DRC in addition to a similar amount from Rwanda in 2009 (USGS 2012). Other experts have estimated that at least one third of the world production came from the DRC or its neighbours (SATW 2010). Most of the tantalum of undeclared origin goes to China (Bleischwitz et al. 2012). It would be much easier to assess the extent and the impact of illegal tantalum trade if other producer countries[9] also published exact production figures and information on the destinations of their material.

Although there are major problems connected to the implementation of the Dodd-Frank Act, the developments in the DRC still show that the binding character of the law accelerated valuable improvements in the supply chain of many minerals. This experience shows that binding standards jointly generated by world leaders such as the EU, the US, and the OECD could bring about the creation and implementation of an international standard for transparency in mineral trade and improve the situation in the DRC. In the long run, these standards should reach beyond the Congo. Human rights abuses in mining areas are widespread and these standards should apply in many other mineral exporting countries as well.

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[9] The most important mines beside those in the DRC are in Brazil, Mozambique, Rwanda, Australia and Canada, small amounts of Tantalum come from Burundi, Congo (Kinshasa), Ethiopia, Somalia, Uganda, and Zimbabwe (USGS 2012: 163).

4. OPTIONS FOR STRENGTHENING STANDARDS ON CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

4.1. Brief assessment of the current status of international implementation of CSR

This section summarises the main findings of the previous chapters focussing thereby on the current situation in implementing CSR at the international level. The main drawbacks and obstacles are discussed, but promising recent developments that might serve as starting points for different policy options to enhance CSR are highlighted.

One of the major challenges to assessing CSR initiatives identified by Bernstein and Cashore (2007) is the conflation of diverse mechanisms with different characteristics, scope, depth and prospects for transforming the market place. On the one hand, the overarching inter-governmental CSR initiatives— the OECD MNE Guidelines, ILO Doctrine, UNGC, and UNGP—represent voluntary approaches that have been instrumental in developing a consensus and a common language of CSR. Ultimately, however, so far they have proven ineffective in terms of significantly contributing to the achievement of global social and environmental objectives.

A number of deficiencies have been noted. These include different methodologies in reporting and accounting between the various codes of conduct, certification schemes and standards, which prevent reliable measurement, assessment or benchmarking of the different initiatives. This has also led to a high level of disillusion within civil society organisations (CSOs) about the potential contribution of CSR. This has also been accompanied by a rising sense of distrust of sustainability claims by the corporate sector and a further erosion of support for the role of voluntary instruments. These considerations may explain why CSOs in general do not accord CSR a high priority and usually seek a tougher regulatory approach, including international agreements. It has to be noted, however, that past attempts to develop binding international regulations on CSR have been strongly opposed by many actors, both from the private sector and from government. In spite of well-founded CSO critiques of CSR practices, it seems most unlikely that sufficient political support will exist for any far-reaching international treaty or national legislation to toughen corporate sustainability practices in the near future.

This leads to the question of what practical and effective measures governments can now take to raise the level of awareness, concern and action across the private sector in relation to vital human rights and environmental issues.

Perhaps the most surprising aspect of global CSR practices is that little or no governmental, NGO or business capacity exists whereby the diverse actions and activities by companies can be independently monitored and assessed in terms of their effectiveness and impacts. Indeed, without such scrutiny, it is impossible to form a reliable judgement on how well companies are doing in relation to their (and society's) social and environmental goals, or to make recommendations for improvements. This is a serious gap in policy making. How else can governments and others actors distinguish between the many measurable and robust actions that many companies are taking (e.g. to improve energy efficiency, to develop more sustainable products, and to increase transparency around their human rights policies), from bogus claims (or 'greenwashing', as it has been termed)? How otherwise can a virtuous cycle be created based on competition based on recognized superior CSR performance?

With governments neglecting their important monitoring role on CSR, the private sector is increasingly capturing the CSR concept for its own purposes. For instance, many CSR conferences are now convened by private consultants and corporations themselves. As a result, the "best practices" in CSR are not widely known among actors outside business, nor are they substantively debated. Most

major companies now have CSR policies outlined on the web pages and even advertise their CSR activities and accomplishments. Widespread integration of CSR in the private sector does not necessarily mean that it is legitimate. Private-led CSR initiatives lack the necessary checks and balances that would be required to determine whether a company's CSR policy is actually effective and contributing towards sustainability objectives.

But also companies themselves suffer from the already mentioned standard and initiatives proliferation. Firstly, broad resources and capacities are required to find out which one fits best to their operations and business targets and secondly, the visibility of their activities for sustainability stays limited with so many labels and certificates on the market showing more or less similar things.

All perspectives, the one of CSOs, governments and of business, show that there is an urgent need to streamline current CSR initiatives to increase the transparency of their outcomes, to make them more comparable and to increase their visibility. Otherwise, all actors engaged in CSR, no matter if observing the outcomes or actively participating in a reporting schemes, cannot obtain the capacities needed to oversee trends, practices and policy changes in order to learn from such processes and to adapt to upcoming needs. All these shortcomings inevitably lead to limited potential of CSR to effectively complement regulation for sustainable development, resulting in decreasing interest in its promotion.

However, the rapidly growing number of standards, tools, certification and reporting schemes also shows a continuous interest in CSR and a widely perceived need by business to improve their credibility towards consumers. Furthermore, despite the lacking consistency in promoting CSR, a solid leadership has been established by European governments and some bigger companies more recently. For example, the EU Commission initiative on CSR definition (COM 2011) has led to more common understanding on which activities can actually be considered as CSR and how these can be promoted. The activities around the current EU strategy on CSR are being watched carefully around the world and could thereby create a new momentum for better coordination and streamlining CSR at international level.

In principle, the implementation of CSR, namely the collection of data, reporting and publishing the results, has never been easier than today due to progressing IT technologies. Efforts in assessing and progressing of data could be significantly reduced with the application of complex IT models and programs, which also reduces the overall financial inputs for companies when participating in accounting or reporting initiatives.

4.2.   Limits and opportunities of a single standard on CSR

Mainly in response to the ongoing proliferation of standards, different approaches were discussed in recent years on how to streamline all existing initiatives to come up with a broad generic standard for all corporate activities. While some experts argue that an increasing number of certification initiatives would just lead to beneficial competition, resulting in constant improvement in standards and standard application, others point out that further proliferation of standards will lead to a loss of control, a loss of opportunity for meaningful participation, and substantial confusion among various stakeholders (see Kaphengst et al. 2009). Moreover, the proliferation increases the threat of greenwashing, since poor performers among companies can hide between the various and often poorly enforced initiatives while at the same time using the labels to "demonstrate" their responsible behaviour. However, the question of whether a new common standard, which would replace all existing standards, codes of conducts, and also some certification schemes, will be a solution for these problems is highly controversial. Moreover, it raises a wide range of questions about responsibilities, methodological issues, acceptance among stakeholders, implementation, and enforcement. This chapter briefly outlines the different

options for a common standard that are currently being discussed and will conclude with a note on the feasibility of such approaches for future CSR development.

A common or generic standard could essentially be designed in either a meta-standard or new generic standard. Both options build on the assumption that standards are in principle equally structured, consisting of principles, criteria, and indicators and often have a lot of overlap and similarities that create synergies that could be potentially merged into one single standard (see Schlegel et al. 2008).

A **meta-standard** serves as a benchmark standard (Kaphengst et al. 2009). The meta-standard thereby serves as an overarching standard to which existing (CSR) standard systems have to adhere. These schemes would need to prove that they provide a sufficient guarantee that (most of) the principles and criteria of the meta-standard are in compliance with their own ones. Existing standards that provide this guarantee would then be called 'qualifying standards,' while others would have to adjust their settings to the requirements of the meta-standard in order to become accepted.

The alternative would be a completely new standard with its own set of principles and criteria. Such a **new generic standard** would require establishing a non-governmental umbrella organisation composed of stakeholders of the existing and developing CSR initiatives and standard-setting schemes. Consequently, schemes participating in such an initiative would need to agree to revise their standards to achieve full alignment with the new generic global standard, eventually merging into the new standard, which seems quite unlikely due to limited political will and lack of acceptance among standardisation initiatives (Kaphengst et al. 2009).

At the same time, the meta-standard approach has its caveats. It actually bears the risk of proliferation of meta-standards themselves, which would essentially undermine the basic idea of streamlining CSR initiatives and certification efforts. Moreover, creating a new standard at the cost of all existing standard initiatives would to some extent ignore the high complexity of issues CSR standards have to take into account. It would even undermine well-functioning standard schemes that have adapted to certain conditions (for example to specific sectors or regions) over time and have become effective exactly because of their specialisation (see also chapter 2.4).

Apart from these obvious constraints, it must also be noted that concentration on one specific standard bares the risk of having that standard watered down by interest groups. An agreement on one standard-setting scheme, should it be a meta-standard or a new generic one, would only be possible if compromises especially on the level of ambition of the standards are made in order to gain sufficient support among stakeholders. That might result in unambitious requirements, which would then function as a benchmark for all CSR activities. In turn, the more stringent the requirements, the fewer supporters are likely to be found, which would result in yet another CSR initiative operating in parallel to all the others.

For those reasons, it is argued in this study for focusing on existing CSR standards and initiatives to make them more effective and to increase their uptake by companies. Policy actions to support these goals are further developed in the next chapter.

4.3.   EU Policy action to improve the effectiveness of CSR

The purpose of this chapter is to outline and discuss possible EU policy actions for improving the uptake and effectiveness of CSR. It seeks to build on the findings of previous chapters and describes options for practical ways forward to maintain and advance the best elements of voluntary actions by the private sector. The different actions outlined encompass voluntary as well as soft law, and legislative measures. They are framed in the context of the renewed EU strategy 2011-14 for CSR (COM 2011) and the recent positioning from the European Parliament on CSR (EP 2013), which already outline specific activities to

boost CSR among businesses. Each section on a specific action ends with a short overview table on activities.

Action 1: Raise awareness and consistently promote CSR at various levels

Awareness within the corporate sector about CSR is currently not sufficient to bring about widespread and effective and systemic change. Most companies worldwide (including SMEs in particular) have little or no knowledge of the scale of the challenges facing humankind, of their own impacts, nor of the various international CSR standards and tools, such as ISO 26000, that might help them improve their understanding. Nor are they aware of the ways in which many leading companies are now beginning to build CSR into their risk management and business opportunity identification management strategies. In this context, a 'low hanging fruit' approach would be to launch a broad-based and sustained awareness raising campaign. This might seek to profile examples of how CSR can contribute to sustainability objectives and how CSR standards can be a valuable tool for helping companies identify global trends and opportunities to build business by developing products and services that meet growing human needs (e.g. for more water efficient food production, energy efficiency, etc.). By re-engaging in this space, policy makers can deepen their own understanding of how the private sector operates and help it respond to the sustainability challenges that they have led in identifying. An awareness campaign focusing on the use of existing CSR approaches could also encourage CSOs and the media to take a closer interest in corporate performance, and play the monitoring and watchdog role, rewarding good performers and challenging those that underperform. The objective should not simply be to increase membership in the UNGC, EMAS or the GRI, ISO etc., but would be to improve a company's ability to assess and use commercially vital information on social and environmental issues by leveraging the value of CSR initiatives that already exist. The fact that a large cohort of companies already use and profile such initiatives should make such a campaign more credible, helping also to provide recognition to their leadership.

It is noteworthy that only 15 out of 27 EU Member States currently have a national CSR policy framework. In this regard, an EU driven awareness campaign could prove valuable in creating a more consistent European level policy playing field, which would be generally beneficial in the supply chain context, enhancing communication between European companies. This might form part of a wider CSR action plan with time-bound targets and would be consistent with the 2011 Communication on CSR (which encouraged all 'large enterprises' in Europe to commit either to the UNGC, OECD, or the ISO 26000 Guidance Standard). Large enterprises would implicitly include European MNCs that operate globally, including in the developed world.

In a further step, the EU could develop a system of recognition whereby top performers in CSR are awarded for their good performance in CSR implementation. Such recognition would serve the dual purpose of providing third party checks and balances for companies that undertake self-auditing/reporting in CSR and utilizing it as a marketing tool, and would also disseminate information regarding best practices by virtue of "best performers." Such an award scheme could potentially be enhanced towards a "European social label", to be awarded to social enterprises to ensure greater transparency and accuracy of their CSR efforts in regard to consumers and investors. Consistency in promoting CSR should also be established on international level. To encourage knowledge generation on best practices in CSR, the EU could promote and support initiatives (including by universities and research bodies) to better monitor and identify business entities that are CSR leaders, thereby providing incentives for other EU enterprises through national and international awards and recognition, as well as profiling and disseminating best practices.

In general, such an awareness raising campaign would not stop at European borders. The Commission and other European institutions could seek international partner countries and institutions (e.g. national parliaments), to help advance the initiative. This would provide opportunities to improve dialogue and trade and investment relations with key partner countries such as the US, China, Japan, Brazil, and India. TNCs from these countries are encountering similar challenges world-wide (e.g. competition for raw materials, volatile energy prices, etc.) and a renewed emphasis on social and environmental issues could be welcomed.

In short, the European Commission together with the Parliament and in cooperation with research and the civil society should:

– **Profile examples of how CSR can contribute to sustainability objectives**
– Raise awareness of existing CSR standards and initiatives
– Support companies leading on CSR implementation
– Seek policy consistency between Member States through a common CSR action plan
– Encourage best practices through CSR award schemes and other forms of recognition
– Promote international CSR uptake through work with partner countries and institutions (e.g. national parliaments)
– Use trade and investment relations with key partner countries (e.g. US, China, Japan, Brazil,and India) to foster the dialogue on CSR

Action 2: Provide guidance (tools) for corporations on participation in CSR initiatives

As part of an awareness raising campaign, there would be value in providing CSR guidance tools. These might provide short, up-to-date and readable descriptions on what CSR is, why it is crucial to good business, and where help can be found. Such tools could be either compiled or commissioned by the European Commission, with support from business and research institutes. They would help to make CSR implementation more accessible by clearly presenting the initiatives that exist, identifying in what context they are most effective and where initiatives are complementary. This guidance could take various forms. One approach might be an inter-active web-based portal, which all users could use to explore the main CSR standards and to research best practices. Another might be to conduct a comprehensive stocktaking exercise of all the non-state governance mechanisms (industry-led, NGO, Civil Society) that include standards, certification and labelling schemes, codes of conduct etc., and to develop and, desirably, maintain a comprehensive guidance tool on "best practices" in CSR. Between these two options, the concept of a 'CSR Wikipedia' might be considered.

A further potential option would be to develop targeted "CSR implementation kits". These might focus on a company's sector and size, and then explain the most relevant CSR standards and instruments to that sector, and how they can be used.[10] Such "implementation kits" would highlight, which initiatives were most effective, and for which issues and companies, and in which situations, etc., such a stocktaking report. This approach could increase engagement in CSR initiatives, encourage

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[10] A good example for such guidance documents is the guide to human rights for small and medium-sized enterprises form the Commission: http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf

consolidation of fragmented initiatives, and provide a cost-effective guide for companies interested in using the CSR approach.

As noted above, a key weakness of CSR to date has been the challenge of assessing the impact of actions taken in the CSR context. To this end, the EU could adopt a multi-stakeholder approach that seeks to harness the energies and expertise of different sector representatives, industries, civil society organisations, private-sector, in monitoring, assessing and taking stock of progress on the ground. Well-developed and successful multi-stakeholder examples, such as the Kimberley Process, might be a starting point for improving the application and adaption of certification schemes to different sectors and industries. These sector-/industry-specific strategies would aim to identify bottlenecks in implementing CSR throughout the relevant supply chains and provide advice on how to address barriers.

In short, the European Commission, supported by research and business, should

- Create a inter-active web-based portal including data on the main CSR standards and research on best practices
- Develop and maintain a comprehensive guidance tool on "best practices" in CSR
- Develop targeted "CSR implementation kits" for specific sectors or issues
- Encourage a multi-stakeholder approach to improve the independent monitoring, assessing and assurance of CSR impacts

Action 3: Improve the assessment of CSR activities and increase the quality of reporting

Getting a clear understanding of what "best-practice" in CSR implementation means on company level as well as a transparent reporting on company activities is crucial for the future development of CSR. Governments currently have very limited capacity to monitor and understand what companies – their own and foreign - are doing in the CSR and sustainability space. This limits their capacity to understand how well sustainability policy is working and to ensure that the business sector is not unnecessarily exposed to sustainability risks or missing trade opportunities. Water scarcity, energy crises and health pandemics have all been identified as imminent and high impact business threats by business leaders. In this context, governmental organisations worldwide should play a more active role in assessing outcomes of CSR and improving usability of existing schemes.

This can be done for example by profiling success stories (see also Action 1), analyzing problems of implementation and suggesting solutions. Moreover, an international working group at UN level could explore the inter-operability between the most widely used initiatives (e.g. UNGC, OECD, GRI and ISO 26000) in order to see how their complementary features and synergies can be most effectively used. This would be consistent with the EU Strategy on CSR, which calls for the consolidation of codes through the "increased standardization of existing principles" (COM 2011).

While the rise of CSR reporting has been impressive among larger multinational companies, there are wide variations in terms of accuracy, completeness and materiality. In the absence of an independent and qualified monitoring/assessment capacity, the real potential of CSR report will not be realized. In some form or other a kind of 'Sustainability Report Watch' is needed to regularly assess the quality of company reporting on sustainability claims. From such assessments, a common standard for reporting could be derived, serving as benchmark against which companies and their stakeholders can assess their performance.

Reporting in general should be based on due diligence, which is also a requirement in various EU policies (e.g. the Timber regulation No 995/2010). Besides adequate access to information, due diligence usually includes a risk assessment of operations and mitigation measures for potential risks. Moreover, sustainability reporting should go far beyond financial reporting and should include the disclosure of social and environmental information (see also COM 2011). Different indicators and methodologies have to be developed for an efficient reporting on, for instance, climate or biodiversity related issues of company activities. While GHG calculators for companies are already in place, the calculation of impacts on biodiversity is still in its infancy. However, upcoming EU initiatives between business and stakeholders are starting to tackle this issue. [11]

An EU initiative on sound sustainability reporting by companies could perfectly build on international processes and initiatives already in place. Paragraph 47 of the Rio+20 Declaration, for example, acknowledges "the importance of corporate sustainability reporting and encourage(s) companies, (…) to consider integrating sustainability information into their reporting cycle." While the declaration does not call for the establishment of mandatory sustainability reporting, this option could be further explored, perhaps first at the European level, drawing on national experiences (e.g, in Denmark, see also chapter 2.5). This could also include sanction mechanisms for false reporting on CSR claims or insufficient disclosure of information. In its current CSR strategy (COM 2011), the European Commission has already proposed to tackle the "greenwashing" issue by possible measure to be integrated in the Unfair Commercial Practice Directive.[12]

The Amsterdam-based Global Reporting Initiative (GRI), which already consists of a huge network of relevant stakeholder organisations worldwide, would provide a convenient basis to align a European process towards sound reporting practices at the international level.

In short, the European Commission together with the Parliament and in cooperation with the Member States and international institutions should

–	**Establish international working group at UN level to promote the inter-operability between the most widely used initiatives**
–	Encourage and support the establishment of an international 'Sustainability Report Watch' facility to provide independent monitoring of CSR claims and achievements
–	Strengthen the reporting obligations of companies to the disclosure of social and environmental information through amending the EU Directives on Transparency and Accountability
–	Encourage the establishment of mandatory sustainability reporting for all international companies in the Unfair Commercial Practice Directive

Action 4: Provide market incentives for companies to act more sustainably

Awareness raising and providing guidance on CSR (Action 1 and 2) will probably not suffice for a substantial increase in companies' participation in CSR initiatives. It also has to be kept in mind, that corporations seek for profits in the first place and will therefore be reluctant when the participation in CSR does not offer any potential for increasing profit or long-term capital value. Moreover, integrating social and environmental standards in many circumstances generates costs and provides relatively low return on investments. Additional incentives will have to be provided to make CSR activities more attractive for companies to embrace them.

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[11] For more information see: http://www.business-biodiversity.eu/
[12] Directive 2005/29/EC

In this respect, governments can exercise significant leverage through their public procurement policies. One concrete measure would involve the amendment of the Public Procurement Directives. The indicative target set by the Commission (COM 2010) that 50 % of all public procurement has to comply with agreed environmental criteria arguably does not go far enough. A public procurement policy, which aims to provide meaningful incentives to all companies to produce more sustainably, would require a more fundamental shift. In this context, the principle of awarding contracts to the most economically advantageous (but not necessarily the most environmentally or socially sound) tender should be reconsidered. Giving preference to the lowest price tender will reinforce business as usual and discourage the needed innovation and investment in more sustainable products and services. It also undermines the market differentiation that European firms can have internationally by strengthening their lead in this sector (see also EP 2013).

There are of course several other economic instruments, which would create a level-playing field for companies and encourage or even enforce them to change their practices to more sustainable operations, but they are often controversially discussed and not easy to implement on broader levels. These could include for example a limitation of carbon certificates in the European Emission Trading Scheme (ETS), obligatory social standards for biofuel production under the Renewable Energy Directive (RED) or stricter regulation for money transfers to tax havens. However, these cannot be discussed further in this study.

In short, the European Commission should

- Revise the principle of awarding contracts to the most economically advantageous tender by including environmental and social criteria through amendment of the Public Procurement Directives

Action 5: Incorporate CSR in relevant EU policies

Promoting CSR should not be restricted to awareness raising (see Action 1), but should find its direct way to EU policies, which affect developing countries. Most importantly, CSR standards should play a substantial role in trade policies. So far, trade agreements between the EU and developing countries mostly consist of provisions for market access and investment security. However, sustainability issues such as environmental standards and human rights are mostly lacking or hardly play a role. CSR could function as a vehicle to also involve international companies that have an interest in markets in developing countries to commit them to sustainability standards outlined in the trade agreement. This could be additionally enhanced by a sustainable impact assessment (SIA) of the agreement itself before entering the negotiation phase with the partner country.

In addition, as the European Parliament suggests (EP 2013), there is a need for transnational legal cooperation between the EU and signatory countries, to ensure that victims of breaches of social or environmental legislation by multinational companies, can effectively access jurisdiction. Law enforcement is a continuous problem in many developing countries and often makes the implementation of CSR ineffective (see also case study in chapter 3). While this is a sensitive issue in terms of "the EU dictates developing counties to clean up their law", trade agreements could be the right forum to discuss on governmental level, how corporate activities in the respective country could be better controlled and how adherence to existing law could be ensured. This would need further thinking, which cannot be stressed in detail in this study.

In response to the financial crisis, a great number of reforms and regulatory approaches were launched not only in the EU but also worldwide, to make the financial sector more transparent and accountable.

In this context, investment policy can potentially leverage more sustainable business behaviour and CSR can play an important role in the future. Government-controlled funds such as pension funds are often large players in the investment field, for which standards for socially responsible or green investments could be implemented comparatively easy. This would provide a good example but can thereby encourage private funds to join respective CSR initiatives such as the PRI (see chapter 2.2). Investing companies should generally be encouraged or possibly obliged to disclose non-financial information, for example on the criteria they build on their investment decisions or, in the financial sector, how they refer to good tax governance. It is quite likely, that government' efforts towards the promotion of or legal obligation for sustainability standards for investments will be backed by an increasing interest from the public to obtain more information about investment decisions and their impacts.

In short, the European Commission together with the Parliament and the Member States should

– **Insert sustainability standards in trade agreements and ensure consistency between social, environmental, development, trade and industrial policies.**
– Conduct sustainability impact assessments of proposed trade agreements before entering the negotiation phase
– Use trade agreements as a forum to explore at governmental level, how corporate activities in the respective country could be better controlled and how adherence to existing law could be ensured
– Implement standards for socially responsible or green investments in government-controlled pension funds
– Insert CSR reporting obligations for companies in investment treaties

5.   CONCLUSIONS AND RECOMMENDATIONS

To summarise the present policy context, it seems very unlikely, in the aftermath of the global financial crisis, that the EU will be able to mobilize the necessary resources and political will to create a common standard of CSR on international level and much less an international treaty on corporate accountability. Even if these were theoretically possible, there remains the real question about international acceptance and enforcement. The 1992 Framework Convention on Climate Change (UNFCCC) and the disappointing outcome of the Rio +20 summit stands as a reminder of the actual limits of international agreements. .

Rather than develop yet another CSR standard, the wiser course for the EU at this point might be to seek to massively scale-up engagement of EU business entities in existing initiatives and to improve the effectiveness of (and the consistency between) the most widely-used initiatives.

Chapter 4.3 has pictured a mixture of legal and non-legal measures, which together can significantly enhance the role of CSR in achieving sustainability goals at European and international level.

As a first step, European corporate entities should be made more aware of the main international CSR frameworks developed by the ILO, UN and OECD and encouraged to embrace them. This can be mainly achieved by a broad-based and sustained awareness raising campaign as well as by providing rigorous guidance for companies why and how to participate in CSR initiatives (see Action 1 and 2).

Secondly, reporting on corporate activities can be substantially improved. Popular frameworks such as GRI and commercially available software tools now make this easier than ever and investors are seeking better information on Environmental, Social and Governance (ESG) performance. A mix of voluntary and legally binding measures can significantly contribute to more transparency, most importantly through

the founding of an international working group at UN level for exploring the inter-operability between the most widely used initiatives and the creation of a common standard for reporting which includes the disclosure of non-financial information (see Action 3).

Thirdly, companies need more economic incentives for "doing good", i.e. contributing to social and environmental 'goods'. At European level, these can be provided by a revision of the public procurement Directives, mainly by reconsidering the principle of awarding contracts to the most economically advantageous (but not necessarily the most environmentally or socially sound) tender (see Action 4).

Last but not least, with respect to developing countries and in the context of the financial crisis, CSR can gain an increasingly important role in trade and investment policies, which is discussed in Action 5.

In all activities outlined in under the specific actions, the European Parliament can play a major role, most importantly in fostering and shaping the public debate on a more effective implementation of CSR. With national experiences from Parliamentarians, the EP could also bring in distinguished proposals on both legislative measures and their amendments and on non-legislative initiatives such as awareness raising and guidance. Although the Commission has the mandate to negotiate trade and investment agreements with partner countries, the EP could take its "watch dog"- role more seriously and inform the public about the consequences of trade agreements for sustainability issues. Making CSR principles a core component of EU trade, investment, development and other business related policies would represent a major contribution by the EP to policy coherence and consistency on the EU innovation, green growth and sustainability agendas.

In general, both policy makers and corporate actors have to understand what can be achieved by CSR and where its limits are. In other words, governments have to recognise that sustainability issues do not always correspond with the aim to make profits even in the long term. Due to the market failure to correctly price pollution and human rights, fierce competition and demanding investors remain powerful drivers for unsustainable practices and strategies by business. In this context, governments have to distinguish situations, where it is beneficial to build on voluntary initiatives undertaken by companies with accompanied governmental support and on the other hand, where regulation (e.g. on a carbon price) may be essential to achieve specific sustainability goals.

Furthermore, it has to be noted, that in a globalised world CSR responsibilities can fail, because multinational companies operate in countries with different domestic laws. One formidable issue is the low level of environmental and labour law enforcement at the national level in developing countries where many multinationals conduct business. Many CSR codes or principles merely imply that companies adhere to national laws wherever they or their suppliers do business. CSR codes, therefore, ultimately function as a voluntary substitute for neglected national law enforcement. As a result, CSR and the associated initiatives often fall short of effective implementation because they do not have the necessary legal support at the national governmental level. In this context, and as it was shown in the case study on the mining sector in the Democratic Republic of Congo, it seems far more appropriate, first of all to strengthen national governments' ability to enforce existing laws, even if this often requires a high commitment of additional capacities. CSR can only function where both companies participating in CSR and the population potentially being effected by corporate activities can build on a reliable rule of law. Otherwise, CSR can even have detrimental effects as it distracts from the actual problems and increases confusion about the right measures to adhere in a country. At any rate, in such circumstances like it has also been highlighted for the DRC, it is unlikely, that CSR can significantly contribute to more sustainable production patterns.

Eventually, it has to be kept in mind, that in the past, CSR was mainly promoted through specific sectoral policies (e.g. mining, finance or textile), ignoring the fact that CSR is a cross-cutting issue, which actually needs to become an integral part of broader sustainability policies. Chapter 2.4 of the study highlighted that many CSR initiatives only address either social or environmental issues in their standards, which might be suitable for a higher uptake among companies dealing under specific sectoral conditions. However, this partial uptake of CSR relevant issues could result in a reduced and therefore misleading understanding of sustainability among stakeholders and impedes CSR to be used as a core element in political strategies towards more sustainability. In this context, the UN working group mentioned above should also explore thematic synergies between the different initiatives for a broader coverage of environmental, social and economic standards. Sectoral guidance tools could then provide more specific advice on how all dimensions can be considered in CSR standards operating in specific sectors.

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