

CORPORATE SOCIAL RESPONSIBILITY E-REPORTING AS A TOOL FOR (UN)FAIR COMPETITION IN THE EU

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Abstract

The current EU follows the Europe 2020 strategy which reflects the Corporate Social Responsibility (“CSR”) and its e-reporting by a three pillars legislative framework - Directive 2013/34/EU on annual financial statements, Directive 2017/1132/EU relating to certain aspects of company law and Regulation (EU) 2015/884 establishing technical specifications and procedures concerning the Business Registers Interconnection System (“BRIS”). These three pillars are projected into national laws of EU members and national e-Business Registers. How is this CSR e-reporting perceived by European, especially Czech, businesses? Do they perceive the CSR e-reporting as a tool for (un)fair competition? A pioneering study is performed with the use of both primary and secondary data. This interdisciplinary research is complemented by a Meta-Analysis, which holistically addresses the hypothesis that the CSR e-reporting, as set in the EU, demonstrates the information asymmetry which has an impact on the unfair competition phenomena, such as business secrets, denigration, misleading information, etc. This regime can lead to more transparency, information awareness and CSR commitment, as well as to, so far overlooked, abuses and unfair competition behaviour.

Key words: CSR, EU, e-reporting, unfair competition

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Introduction

The modern concept of sustainability emerged in the 2nd half of the 20th century and was incorporated in the well-known report Our Common Future – A global Agenda for Change aka Brundtland Report 1987, which was published as the UN Annex to document A/42/427 in 1987. Over time, sustainability has been perceived as a systematic and visionary tool governed predominantly by soft law and self-regulation of businesses, with corporate responsibility seen as rather a normative and moral tool regulated by law. Ultimately, sustainability and corporate responsibility merged into the Corporate Social Responsibility

(“CSR”) (Bansal & Song, 2017) and attracted the interest of the EU and EU law, which protect and develop the single internal market where ideally CSR aware, and fully reporting, businesses should compete fairly. Is this reality or a chimera? Does not the CSR e-reporting, as set in the EU, demonstrate the information asymmetry with an unfair competition impact? According to research and methodology scientific requirements, the legal regimes for CSR e-reporting and for protection against unfair competition need to be overviewed and its practical ramifications assessed in order to confirm or reject the hypothesis that the current EU setting can lead to more transparency, information awareness and CSR commitment, as well as to a, so far overlooked, myriad of abuses and unfair competition behaviour.

1 Sources and methods

This paper is founded upon a pioneering study about the interaction of the CSR e-reporting and (un)fair competition in the EU, from predominantly the perspectives of Czech businesses. It uses sources and methods applied in economics and legal science. Both primary data, such as Business Registry exploration, and a field observation about the attitudes of the ten largest Czech companies to the CSR e-reporting and its (un)fair competition impact, and secondary data, such as academic publications, are confronted with the law setting boosted by the teleological interpretation fostered both by the EU executive and judiciary. This interdisciplinary research is complemented by a Meta-Analysis (Silverman, 2013), which uses a comparison and holistically addresses the underlying hypothesis that the CSR e-reporting, as set in the EU, demonstrates the information asymmetry (Plank & Teichmann, 2018) which has an impact on competition and can both support and fight against many forms of the unfair competition phenomena, such as business secrets, denigration, misleading information, etc. (MacGregor Pelikánová, 2017). The implied preliminary result suggests that there are differences in the attitude and perspectives, and the method of systemic and structural analysis suggests an increase in information and a bottom-up approach to resolve these conflicts.

2 CSR e-reporting and (un)fair competition in the EU law setting

The set of crises from 2007 and 2008 (Špetlík, 2017) has prompted the Barroso Commission to issue the current ten year long strategy for the period 2010-2020 (“Europe 2020”) oriented towards the single internal market (MacGregor Pelikánová & Beneš, 2017).

Europe 2020 perceives the CSR and its e-reporting via national, as well as EU, platforms as a tool for smart, sustainable and inclusive growth. The legislative framework

rests on three pillars. The first pillar, Directive 2013/34/EU on the annual financial statements (“Directive 2013”), provides that public-interest entities with over 500 employees must report about the CSR pursuant to the set minimum requirements, i.e. non financial key performance indicators, including information relating to the environment and employee matters (Pakšiová, 2016). The second pillar, Directive 2017/1132/EU relating to certain aspects of company law (“Directive 2017”), brings forth the duty to make this CSR reporting electronically via the system of interconnection of registers, BRIS, and the access fees for this must not exceed the administrative costs. The third pillar, Regulation (EU) 2015/884 establishing technical specifications and procedures concerning them, clarifies the setting and operation of BRIS (“Regulation 2015”), which is placed on the e-Justice portal of the EU. This regime is projected into national laws of EU members and determines the key parameters of data and the operation of e-platforms of national Business Registers, as well as the migration and centralization of this data by BRIS on the e-Justice portal. These CSR e-reports might be perceived as information freely available, i.e. public good, which leads neither to a rivalry nor to excludability (Czyżewski et al., 2016). This perception is advocated by the EU, namely the European Commission and CJ EU (MacGregor Pelikánová, 2017).

However, in order to see the bigger picture, other aspects of Europe 2020 need to be explored, namely the drive to protect integration, markets and consumers against unfair commercial practices and other unfair competition behaviors. The key EU law instrument in this respect is Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, i.e. Unfair Commercial Practices Directive (“UCPD”). The UCPD was adopted to contribute to the proper functioning of the internal single market and to achieve a high level of consumer protection by approximating laws (Art.1 UCPD) via a full harmonization (Art.4 UCPD), regardless of strong conceptual disparities in EU member state’s laws (Osuji, 2011). This can be understood as the demonstration of the EU strategic decision to deal with parasitic commercial practices under the auspices of the consumer protection law branch, while attempting to achieve objectives of consumer protection as well as competition protection in the sense of the protection of the European integration, based on the single internal market and the technological potential of EU member states (Balcerzak, 2016). This is both ambitious and uncommon, perhaps even experimental (MacGregor Pelikánová, 2017). The UCPD generally prohibits unfair commercial practices understood as practices contrary to professional diligence and materially distorting the economic behavior with regard to consumers, typically misleading or aggressive practices (Art.5 et foll. UCPD). The UCPD blacklist spells out specified commercial practices which are always considered

unfair (Annex I of UCPD). It is definitely worthy of a theoretic as well as practical exploration as to whether the incomplete or manipulated CSR e-reporting can become close to the above described unfair competition practices.

3 Perception of competition (un)fairness of the CSR e-reporting

Based on the above described legal regime, businesses from the EU member states have to file with their national Business Registers their annual statements which, in the case of public business with more than 500 employees, have to include the CSR data. Via BRIS, this data is migrated into the e-Justice Portal, available at <https://e-justice.europa.eu/home.do> and allows either re-directing to national Business Registers, i.e. a national level research, or a direct search of centralized data, i.e. an EU level search. Prior studies from the EU suggest that there is a trend consisting of an increasing interest in the CSR, which leads to a growing pressure for companies to pay attention to and invest in the CSR (Arminen et al., 2018). However, does it involve as well their commitment to high level in the quantity and quality of e-reporting?

The operation test and field search reveals that the completeness and fullness of the data available via BRIS and the e-Justice Portal is far from perfect. Certain EU member states and their Business Registers appear to ignore or even sabotage the e-reporting standards set by the EU law – either by not offering data or by making a search extremely complicated and costly (MacGregor Pelikánová & MacGregor, 2017). Hence the quantity, or even the existence, of the CSR available data is an issue. Sadly, the well-known split of the EU between northern and southern states, especially the “PIGS” states, again entered into the picture. The information asymmetry can be observed especially if the perfectly free and open data search regarding the UK, Danish and Czech businesses is confronted with the byzantine, complicated and often impossible data search regarding the Spanish, and especially Greek, businesses (MacGregor Pelikánová & MacGregor, 2017). Other studies have already established that Czech subjects, including businesses, are very sensitive regarding the asymmetry of information in this respect (Špetlík, 2017).

In addition, the extent of the CSR and CSR data to be reported is far from being unanimously agreed upon. The CSR is an area where tensions and paradoxes are paramount and where various sustainable objectives, such as environmental protection and social well-being, conflict (Hanh et al., 2018). Naturally, this further contributes to the information asymmetry, especially vis-à-vis consumers open to having their purchasing choices influenced

by CSR data. Indeed, consumers do not want to have just CSR data, but they want to have quality CSR, i.e. particular and categorized CSR data – about social, environmental, human resources, R&D, etc. aspects. At the same time, the majority of consumers have neither the time nor the opportunity to engage in intensive information gathering on CSR, especially corporate social and environmental behavior (Plank & Teichmann, 2018). Similarly, even the more “inside” stakeholders, such as employees, demand more quality data because altruistic motivation is definitely not the only driver of their interest and commitment vis-à-vis the concerned company (Bode & Singh, 2018). The linear hierarchical multiple regression analysis of cross-section samples from EU member states, especially French SMEs, indicates that known personal sustainable behaviors of owners and managers positively influence the CSR and CSR e-reporting of the given company (Chassé & Courrent, 2018). This is logical and demonstrates that the separate legal personality of companies is a legal fiction intimately linked to the corporate veil-lifting doctrine. Further, even in the case of the satisfactory quantity and quality e-reporting, a variable manner of presentation of the CSR data comes into the picture – data can be offered either by financial statements and annual reports and/or on Internet pages of businesses, data can be presented in an objective information manner or in a subjective marketing manner, etc. This data offers many perspectives and they have, regardless whether they have financial or non-financial, aka CSR, features, a competition potential. They can both support and fight against many forms of the unfair competition phenomena, such as business secrets, denigration, misleading information, etc. as stated by the UCPD. In sum, the CSR e-reporting pursuant to the Directive 2013, especially about non-financial key performance indicators, can lead to both types of unfair commercial practices pursuant to the UCPD – misleading commercial practices or aggressive commercial practices.

Tab. 1: UCPD Annex I – Misleading Commercial Practices related to CSR e-reporting

Selected misleading commercial practices	Comments
1. Claiming to be a signatory to a code of conduct when the trader is not.	Early often, now seldom.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.	Slightly less than previously
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, ...	Still „very popular“ and often embraced by businesses

Source: Prepared by the author based on the UCPD, field search (informal interviews) and documented cases

Tab. 2: UCPD Annex I – Aggressive Commercial Practices related to CSR e-reporting

Selected aggressive commercial practices	Comments
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation.	Still present, but change of forms and manners how it is done by businesses
30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.	Rather rare, not sufficient data about it

Source: Prepared by the author based on the UCPD, field search (informal interviews) and documented cases

It is highly illustrative to overview how the 10 largest Czech companies, by sales, approach the CSR e-reporting and to scrutinize any traces about (un)fair competition potential in this respect. The selection of companies for this micro-sample indicative testing was done based on the well established findings based on linear regression analysis which indicates that country-level institutions are most likely and strongly associated with corporate social performance (Arminen et al., 2018). It is worthy to underline that basically all of them included the CSR data on R&D, environmental and employment issues in their annual reports. Similarly, it is important to emphasize that no general trend can be revealed regarding an internal CSR e-reporting focus, i.e. it cannot be stated that they report more concerning one aspect of the CSR than about another. This is rather surprising, because it has been already established by foreign studies in the EU, that social responsibility (social welfare) as compared to environment responsibility is more important to stakeholders (Plank & Teichmann, 2018).

Tab. 3: CSR e-Reporting within 2016 annual reports of the 10 largest Czech Companies and its (un)fair competition potential – including citations from annual reports

Company with ID	CSR/All pages in %	CSR as the marketing information	(Un)fair competition potential: misleading (code, trust mark, false claims) and/or aggressive (unwanted solicitations, jeopardy)
ŠKODA AUTO a.s., 001 77 041	6/112 5%	YES, robustly <i>The Company preaches a policy of harmonising economic and social development plans with ecosystem capacities, while preserving natural resources and biodiversity for current and future generations. Company sustainability rests on social, economic and environmental pillars. These pillars include the CSR strategy,</i>	YES, false claims (diesel scandal !) <i>As in previous years, key parameters that have an environmental impact are systematically monitored and evaluated. Action is constantly being taken to make improvements in response to the results...</i>

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		<i>the Green Future environmental strategy, and principles of ethical and transparent conduct.</i>	
ČEZ, a.s. 452 74 649	12/332 4%	YES, selected spheres <i>Corporate Governance Codex, R&D, safety, international and grant co-operation (TA ČR, Horizon 2020), sustainable power energy (EPRI, ESNII)</i>	YES, false claims (photo-voltalic scandal !) <i>(Alleged support and developement) of photo-voltalic and hybrid power stations</i>
AGROFERT, a.s., 261 85 610	4/59 6%	YES, selected spheres <i>Environment protection, R&D, Employment (OHSAS 18001), etc....</i>	YES, false claims <i>A number of compulsory (by law imposed) duties is presented as a CSR manifestation of Agrofert.</i>
EPH, a.s. 283 56 250	4/200 2%	YES, but only limited and weak <i>!!! No investment in R&D at all !!!</i> <i>Active in environment protection and great communication with employees</i>	??? CANNOT be said <i>The annual report is not specific enough in this respect, i.e. uses general terms and statements</i>
FOXCONN CZ s.r.o. 259 38 002	7/81 9%	YES, robustly <i>Environment protection - ecologic responsibility, Employment and Charity projects (helping people with diseases and handicaps), R&D (co-operation with universities), Ethic Codex</i>	NO, it has not been detected <i>All CSR statements seem to be fully and correctly backed by solid data</i>
UNIPETROL, a.s. 616 72 190	14/207 7%	YES, selected spheres <i>Code of Ethics focusing on the multi-stakeholder model, R&D (co-operation with universities), social projects (blood drives, spinal atrophy,) etc.</i>	Probably YES - probably false claims <i>Statement about the environment protection (highly relevant regarding the involved industry) is not backed by solid data</i>
ČEPRO, a.s. 601 93 531	7/144 5%	YES, selected spheres <i>Environment protection, R&D ...</i>	PROBLEM – liquidation (winding-up) of ČEPRO
innogy ČR s.r.o. 242 75 051	19/215 9%	YES, selected spheres <i>Environment protection, Employment..</i>	NO, it has not been detected <i>All CSR statements seem to be backed by solid data</i>
Tesco Stores a.s. 453 08 314	1/39 3%	YES, selected spheres <i>Environment protection, Employment..</i>	??? CANNOT be said <i>The annual report is not enough specific in this respect</i>
MOL ČR, s.r.o.	2/39	YES, selected spheres	Probably YES - probably issues linked to the

494 50 301	5%	<i>Environment protection, (Green Oasa), Employment, Sport sponsoring</i>	sponsoring of MOL Cup (Czech Soccer)
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Source: Prepared by the author based on BRIS and Czech Business Register available at www.justice.cz

The above tables reveal that, although all 10 of the largest Czech companies provide available CSR e-reporting data via annual statements freely accessible via BRIS or the Czech Business Register, and attempt to use them for marketing and advertising, it can be hardly argued that this formal perfection is matched by a high content of quantity, quality and objectivity. Generally, the quantity of the CSR reporting is matched by the quality, i.e. especially companies with short CSR reporting statements (the CSR reporting is way less than 9% of the total extent of the annual report) do not offer information backed by solid data and hence are more likely to fall under suspicion of false claims. In sum, the entire CSR reporting appears more like an indicative marketing than a true source of information. In addition, often the presented CSR projects are linked to highly problematic areas (Environment v. Diesel scandal, Supporting Czech soccer association v. bribes, etc.) and thus such a CSR can be rather contraproductive. Ultimately, the Czech stakeholders, similar to other stakeholders tested via foreign EU studies (Plank & Teichmann, 2018), cannot really make informed choices even if they had ethical preferences. Further, unlike in other EU member states, there are not yet indices in the Czech Republic that companies are moving from stand-alone CSR projects to social initiatives integrated into strategy (Bode & Singh, 2018). However, as with other EU members states, the equation between the commitment to sustainability of owners and managers and the company CSR and CSR e-reporting (Chassé & Courrent, 2018) can be observed in this micro-sample.

Conclusion

There is a clear legislative (Hahn, 2018, MacGregor Pelikánová & MacGregor, 2017), social (Bode & Song, 2017, Chassé & Courrent, 2018), technological (Balcerzak, 2016) and even practical (Arminen et al., 2018) drive towards the recognition of the CSR in EU member states, including the Czech Republic's legislature (MacGregor Pelikánová, 2017, MacGregor Pelikánová & MacGregor, 2017). However, the performed indicative research of available e-platforms on the EU level, e-justice with BRIS, and on the national level, justice.cz with the Czech national Business Registry, do not confirm that this would be matched by the commitment to perfect CSR e-reporting, i.e. neither in quantity nor in quality. The Czech Republic benefits by a good EU and national law framework in this respect and the largest

Czech companies respect it, but not in an overly-enthusiastic manner. The CSR e-reporting represents often a marginal and not well balanced part of annual reports, which is done to satisfy the mandatory law requirements and to be used for marketing and advertising in a basic form.

This pioneering study provided indices pointing towards the confirmation of the hypothesis that the CSR e-reporting, as set in the EU, has a potential for both fair and unfair competition practices. The Czech CSR e-reporting is provided in a free and open manner in annual reports, but its short length and mostly general statements, often without the support of robust data, ultimately leads to the information asymmetry which has an impact on the unfair competition phenomena, such as business secrets, denigration, misleading information, etc. From the perspective of the Czech largest companies, the current regime can be used as a tool both for or against more transparency, information awareness and CSR commitment. To correct this deplorable situation, basically two options are available – either make a legislative push from above dictating by the law more about the CSR e-reporting, or push from the bottom up by the multi-stakeholders voicing their demands for more accurate, extensive and full information. The latter approach matches more with the conceptual proclamations of modern European integration, namely Europe 2020, and does not exhibit a certain legitimacy deficit linked to the former approach. Hence, perhaps, it is up to Europeans to pressure the European companies and their management to feel that the CSR matters, and that it deserves an appropriate e-reporting. If this fails, then let EU institutions do their imposition legal job! The CSR e-reporting should be made real, and if this cannot be done by the method of the carrot, then let's use the method of the stick.

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