**Some Legal Aspects of Corporate Social Responsibility**

1. *General Remarks*

*Corporate social responsibility* (CSR) is the object of a worldwide scientific and political debate. In this debate, taking usually the form of a business economics or societal discussion, legal views have seldom been adopted. However, the pivotal issues of CSR relate to an environment shaped by many factors the research of which requires a combination of methods of legal science, business economics and social sciences. Especially the discursive dynamics between economy (market efficiency) and other societal interests as factors affecting regulation can most suitably be approached by such tools, improving the possibilities of research to serve different societal and economic views in a more versatile way.

The combined approach referred to above helps to disclose the mechanisms in which different interests in the society are reflected on legislation, e.g. in labor law and company law. Each piece of legislation represents a specified set of interests and thus, unlike the CSR discourse in society, offers only pre-defined and non-interchangeable market positions to different actors. These positions are based e.g. on legal roles as shareholder, creditor, board member, employer or consumer, to mention some examples from company law, labor law and consumer law. The vague line between law and CSE reflects the conflicting challenges imposed upon law in the globalizing environment.

1. *Especially on Company Law*

The mainstream research of company law in Finland – and also internationally – is based on the classical theory of the firm and applies mainly the law and economics approach. An alternative approach – applied in Finland especially by *Heikki Toiviainen –* focuses more on the sociological environment of business and CSR.[[1]](#footnote-1) In applications of discourse analysis, company law can be considered a result of scientific discourses and societal interests. Such an analysis can deepen our understanding of the limited liability company model – and its legal regulation – as tools of activity that must be at the same time economic and socially responsible. Also the discourses of financial markets (as concerns listed companies) and corporate governance have to be taken into account in this context.

E.g. the statutory purpose of the company to generate profits for the shareholders (Finnish Limited Liability Companies Act LLCA Ch. 1 Sect. 5) is important, as well as the principle of equality of shareholders (LLCA Ch. 1 Sect. 7, the profit sharing system based on the conflicting interests of creditor protection and minority dividend rights (LLCA Ch. 13), the provisions on the organization of the company and legal liabilities. All these factors belong to the determinants of possibilities for corporate actions such as damages compensation claims of the company or its shareholders against the management, based on infringements of legal provisions. Principal – agent theory, stakeholder theory and CSR offer views to examine the (lacking) corporate position of employees of the company – a view that opens up the links between the traditional areas of company law and labor law.

*Compliance* (the internal control of a company of the systematic fulfillment of legal standards in its business activity) is one of the key areas of *corporate risk management*. It is in many ways linked to *corporate governance,* legal risk management and company law regulation. On the one hand, compliance is a means of risk management and the internal control provided in company law provisions, and on the other hand compliance is a tool for protecting the property of the company. Efficient compliance also supports the fulfillment of *corporate social responsibility (CSR).*

*Legal risk* is an operational risk related to all business activities and having a negative impact on them. The losses related to legal risks include legal liabilities based on legislation or contracts of the company.

When acting on the markets, all the above views have to be combined into a versatile tool of business. Business law study should improve the understanding of the application of legal means as tools of business management to generate profits in business (and, of course, to fulfill the statutory requirements of business activities). This is also a question of understanding the conflicting discourses of profitability in law and CSR. It is also important to elaborate the understanding of law as a business economic tool for company management, not only a tool for regulation.

Linking legal views more closely to business planning should be seen as an important precondition of competitive business. A practical example of the significance of legal risks and risk management by legal means is the relationship between the statutory purpose of the company to generate profits for the shareholders (LLCA Ch. 1 Sect. 5) and the duty of the management of the company to act with due care and promote the interests of the company (LLCA Ch. 1 Sect. 8).

1. *Especially on Labor Law*

Labor law is a legal field with a very strong emphasis on the protection of the employee, regarded as the weaker party. This field of legal regulation, together with the CSR discussion in business and society, affects the globalizing patterns of labor life. There is a recent phenomenon in labor law regulation that ties together some trends in CSR and labor law. This phenomenon is *flexicurity.*

Flexicurity, as defined in *Wikipedia* (<http://en.wikipedia.org/wiki/Flexicurity>,visited May 29, 2013), is a portmanteau of flexibility and security. The term refers to the combination of labour market flexibility in a dynamic economy, social security for workers and an active labour market policy with rights and obligations for the unemployed.

In Finland, the legislative ground for flexicurity (“muutosturva”) has been arranged in the Employment Contracts Act with provisions on grounds and procedure forthe termination of an employment contract, in the Act on Co-operation within Undertakings (334/2007 and in the Act on the Public Employment Service with provisions on the employee’s right to the employment programme.

In the European Commission's approach, flexicurity is designed and implemented across four policy components: 1) flexible and reliable contractual arrangements; 2) comprehensive lifelong learning strategies; 3) effective active labour market policies; and 4) modern social security systems providing adequate income support during employment transitions.[[2]](#footnote-2) The idea is that flexibility and security should not be seen as opposites but as complementary. Flexibility is about developing flexible work organisations where people can combine their work and private responsibilities; where they can keep their training up-to-date; and where they can potentially have flexible working hours. It is also about giving both employers and employees a more flexible environment for changing jobs. Security means ‘employment security’ – to provide people with the training they need to keep their skills up-to-date and to develop their talent as well as providing them with adequate unemployment benefits if they were to lose their job for a period of time.

In the article *Kriittinen diskurssianalyysi lainsäädännön tutkimuksessa* (Kapulainen -Rudanko 2012)[[3]](#footnote-3) the authors argue that the Finnish employment legislation rests on two discourses – the employee discourse and an economistic employer – discourse. The former discourse emphasizes the social need for employee protection in respect to working conditions and employment security. The latter discourse, resting on the economic profitability and competitiveness of the employer and their importance to employment and political economy, emphasizes the freedom of the employer to arrange working conditions of employers and to terminate the employment contract when necessary. The article (2012) also analyzes the mutual balance of discourses in regulation, seen as a result of discursive struggle.

According to the article (2012), the contemporary legislation is *a still-picture of the battle of discourses*. In the European Commission's approach, as presented above, seemingly controversial policy components are combined in a harmonious model for regulation. Efficient and active labour market policies and social security systems, flexibility and security, work and private responsibilities of people should not be seen as opposites but as complementary.

Combining CSR and legal views in the study of flexicurity – as well as other fields of labor market regulation – can deepen and broaden our understanding of the role of legislation as a tool of promoting seemingly conflicting interests that affect labor markets, the labor life of people as well as national and global economies.

1. *Toiviainen, Heikki:* Suomen yhtiöoikeuden arvoperusta. Ajatuksia oikeustaloustieteestä yksityisoikeudellisia yhteisöjä ja säätiöitä koskevassa oikeudessa . (The Value Basis of Finnish Company Law. Some thoughts on law and economics in law concerning private associations and foundations). Jyväskylä 2002. [↑](#footnote-ref-1)
2. EC (European Commission) (2005) Working Together for Growth and Jobs. Integrated Guidelines for Growth and Jobs (2005–2008), Office for Official Publication of the European Communities: Luxembourg. [↑](#footnote-ref-2)
3. *Kapulainen, Piia and Rudanko, Matti*: Kriittinen diskurssianalyysi lainsäädännön tutkimuksessa. Critical Discourse Analysis in Legislation Research (Abstract in English). Business Law Forum 2012. 9. vuosikerta. Helsingin yliopiston yksityisoikeuden laitoksen julkaisuja. Helsinki 2012. P. 177 – 211. [↑](#footnote-ref-3)