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**The influence of corporate social responsibility on business performance of companies**

The concept of corporate social responsibility, also known as CSR, is increasingly gaining in popularity in recent decades as the way of running businesses. In general this strategy has a positive connotation, since public perceives such companies as businesses that aim not only towards increasing their profits, but also towards voluntary contribution for cleaner environment and other factors that lead to a higher living quality of entire society.

In the master thesis, the concept of CSR is discussed from two different perspectives: economic and legal. Firstly, the thesis presents the economic effects, which are reflected in many areas of business. Different authors systematizethese economic effects differently, however in general they can be divided into direct and indirect economic effects. Direct effects are reflected in higher productivity and better use of natural resources, while indirect effects are shown in increased interest of buyers and investors, better business opportunities of such companies on the market, competitiveness of such companies etc.

Secondly, the thesis focuses on the legal aspects of CSR and tries to present evidences why the current regulation is not optimal in terms of CSR concept. The renewed EU Strategy for Corporate Social Responsibility 2011[1, p. 6] defines CSR as the responsibility of companies for their effects on society, which means that such companies effectively, and not only theoretically, take responsibility for all their negative impacts i.e. negative externalities of their operations. The question that arises is, to what extent is the socially responsible business even possible according to the fact that (Slovenian) Companies Act defines companies as legal entities that perform a gainful activity as their exclusive activity on the market, i.e. obtaining profits.[2] Is therefore the real aim of CSR strengthening the company’s own brand and increasing its profits rather than taking care of the society?

Regarding the legal nature of social responsible business, I find that current European legislation in force (as well as other legislations around the world), generally treats the concept of CSR as a voluntary concept. Consequently, there are firstly, no prescribed standards to determine precisely what can be considered as socially responsible and what not, but there are only various guidelines that partially regulate these issues; and secondly, there is no legal obligation to respect the standards of corporate social responsibility, nor there is a sanction for their violation. Therefore, the decision how the company will be operated and to what extent the regulations (more precisely to which recommendations and guidelines from various documents that determine the standards of corporate social responsibility) will be respected, is completely up to company’s management.

Due to voluntariness of the concept of CSR, the theory labels the current concept of CSR also as a business case for CSR. The market is actually the factor that dictates when and to what extent a company should act socially responsible. Until the benefits of the company are greater than the costs associated with socially responsible operating, the company will operate in a socially responsible way. On the other hand, when the benefits of the company are smaller than the costs of socially responsible operating, the company will not operate that way. In some cases it will even try to present the matter as socially responsible, although in fact it is not the case.

Many issues arise from such practices and current legal regulation of CSR. One of them is the issue of the liability of the management and supervisory bodies, which arises from their decision-making. In relation to socially responsible business, liability for damages is problematic from two aspects.

The first aspect is that the (Slovenian) Companies Act does not require directors to act socially responsible. Under the law, the directors' duties are not precisely defined. The law only stipulates that there is a duty of careful and fair conduct of the members of the management and supervisory bodies in favour of the company [3]. However, in comparison with the Slovenian Companies Act, the English Companies Act explicitly stipulates that directors are obliged to take into account the interests of employees, to take care of the environment, equality etc. [4] Such legal regulation is from the CSR point of view undoubtedly better.

The second aspect related to the liability of the members of the management and supervisory bodies is the issue of assessment of their liability. This problem however is not present only in Slovene legislation, but also elsewhere. In Slovene legal order, as in the English legal order, the liability of the members of the management and supervisory bodies is assessed in the context of an entrepreneurial judgment (also known as a business judgment rule). Hypothetically this means, that if the director makes a business decision that is not in favour of the company, but only benefits the social society as a whole, he/she could be theoretically liable. Consequently the potential socially responsible decisions which do not benefit the company, could be problematic from the current legislation perspective.

The presented problem, as stated, is not only a problem in Slovenia, but also other countries face similar problems. For example, in England, regarding the liability of directors, case-law is still based on the 1883 precedent of Hutton vs. Hutton. West Cork Railway Co. [5], from which it is apparent that directors are only obliged to accept those decisions that are beneficial to shareholders, and therefore some English legal theorists draw attention to the necessary changes in this area. One of the possibilities, how this could be achieved in Slovenia is to update and complement the Article 263 of the Companies Act, which sets out the responsibility of the members of the management and supervisory bodies. The article could be amended in a way that it would be required from the management to act in a way that enables the creation of a surplus, which is returned to shareholders, but at the same time, they would be required to internalize all externalities, which appear during their conduct of the company.

To conclude, it can be observed that the concept of corporate social responsibility is unarguably a positive concept; however, it will require some corrections, especially in the aspect of its voluntariness. Taking into account, that the main goal of private companies is unfortunately not the concern for the society, but making their own profits, it will be necessary to adopt appropriate regulation that will not only enable, but also force enterprises to compete in harmony with the society and not only at its expense.

Literature

1. ‘A renewed EU strategy for Corporate Social Responsibility’, Communication From The Commission (COM(2011) 681 final, 25.10.2011)

2. Article 3 of the (Slovenian) Companies Act (Zakon o gospodarskih družbah (Uradni list RS, št. 65/09 – uradno prečiščeno besedilo, 33/11, 91/11, 32/12, 57/12, 44/13 – odl. US, 82/13, 55/15 in 15/17))

3. Article 263 of the (Slovenian) Companies Act

4. Article 172 of the Companies Act 2006 (UK)

5. Hutton v West Cork Railway Co (1883) 23 Ch D 654.