



ALMA MATER STUDIORUM  
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# ***Incorporating Corporate Social Responsibility in the New EU PTAs***

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# What is Corporate Social Responsibility (CSR)?

- First developed within the fields of economics and social sciences, in contrast to Milton Friedman's view that the only social responsibility of companies is to increase their profits (*Capitalism and Freedom*, Chicago, 1962, p. 133)
- An inherent duty to adhere to minimum ESG standards, considering the interests of a broad range of stakeholders beyond just shareholders
- No single internationally accepted legal definition

EU: "The responsibility of enterprises for their impacts on society" (2011)

ILO: "A way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors" (2006)

OECD: "Business's contribution to sustainable development" (2001)



# What is Corporate Social Responsibility (CSR)?

- The uncertainty surrounding the definition of CSR is reflected in the ambiguity regarding the precise normative value of CSR (voluntary v mandatory debate)
- CSR represents behavior by corporations that goes *beyond* what was legally required, but...
- ... the growing international focus on human rights and the environment, reflecting global societal concerns, has contributed to elevating and strengthening the normative dimension of CSR in international law

‘International law accepts corporate social responsibility as a standard of crucial importance for companies operating in the field of international commerce’ (*Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26, Award (8 December 2016), para. 1195)

States and international organisations ‘*shall make sure that corporations respect corporate social responsibility*’ (Institut de Droit International, Article 19 of Resolution of 4 September 2021, *Human Rights and Private International Law*, p. 7)



# The codification and standardisation of CSR in soft law instruments

Soft law instruments (not legally binding, producing legal effect, playing an important role in international governance)

- *Ten Principles of the UN Global Compact* of 1999
- *UN Guiding Principles on Business and Human Rights* of 2011
- *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* of 1977 (updated in 2022)
- *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* of 1976 (updated in 2023)



# The codification and standardisation of CSR in soft law instruments

Why using soft law instruments?

- the non-binding yet 'persuasive force' of soft law instruments matches the 'hybrid' nature of international CSR standards, which, although voluntary in nature, possess a high degree of normativity
- Directly address companies themselves, requiring them to align their activities with certain standards
- Particularly well-suited to advancing a value-driven, shared objective such as the international harmonization of CSR standards + susceptible to a 'network effect'



# Incorporation of international CSR standards in ‘new generation’ PTAs to which the EU is a party

‘**New generation PTAs**’ → in addition to introducing measures for economic and trade integration, address a wide range of issues, including investment protection, intellectual property rights, and the promotion of sustainable development

As of 2021, there were already about 70 PTAs that refer to CSR (MONTEIRO, *Buena Vista: Social Corporate Responsibility Provisions in Regional Trade Agreements, Staff Working Paper ERSD-2021-11*, 2021, p. 1)

‘The EU is strongly committed to ensuring that its trade agreements foster sustainability, so that economic growth goes together with the protection of human rights, decent work, the climate and the environment, in full adherence with the Union’s values and priorities’ (COM(2022) 409 final, 22 June 2022, *The Power of Trade Partnerships: Together for Green and Just Economic Growth*, p. 1)



# Incorporation of international CSR standards in ‘new generation’ PTAs to which the EU is a party (drafting techniques)

- Reference found in the **preamble of the PTA**: ‘... ENCOURAGING enterprises operating within their territory or subject to their jurisdiction to respect internationally recognised guidelines and principles of corporate social responsibility, including the OECD Guidelines for Multinational Enterprises, and to pursue best practices of responsible business conduct’ (Comprehensive Economic and Trade Agreement between Canada and the EU (2016), 10th recital)
  
- Reference found in the **operative part of the PTA** (increasingly in specific chapters dedicated to sustainable development)
  - I) **Open-ended renvoi to CSR** ‘principles and guidelines’, ‘schemes’, and ‘best practices’, that are recognised internationally and/or have been endorsed or supported by the parties: ‘The Parties shall support the dissemination and use of relevant internationally agreed instruments that have been endorsed or are supported by them ...’ (Sustainable Investment Facilitation Agreement between the EU and Angola (2021), Article 34(3))



# Incorporation of international CSR standards in 'new generation' PTAs to which the EU is a party (drafting techniques)

## II) Commitments by the parties to the PTA to encourage or support the use and implementation of **specific CSR soft law instruments**

Number of articles (including preambles) mentioned: 27 (across 12 PTAs to which the EU is a party). **Percentage:**

- Global Compact: 37% (mentioned in 10 articles)
- UN Guiding Principles: 11% (mentioned in 3 articles)
- ILO Tripartite Declaration: 44% (mentioned in 12 articles)
- OECD Guidelines: 62% (mentioned in 17 articles)
- OECD Due Diligence: 7% (mentioned in 2 articles)
- OECD Due Diligence Guidance: 11% (mentioned in 3 articles)
- FAO Principles: 3% (mentioned in 1 article)
- FAO Guidelines: 3% (mentioned in 1 article)
- Agenda 2030: 25% (mentioned in 7 articles)





# Incorporation of international CSR standards in 'new generation' PTAs to which the EU is a party (drafting techniques)

III) Promoting the adoption of CSR policies by companies can also be framed in terms of **cooperation between the parties**

- 'Exchange of information', 'responsible practices' and 'experiences'
- 'Supporting technical assistance, training and capacity building actions' and 'outreach initiatives'
- 'Dissemination of internationally agreed guidelines and principles...'

... to engage in awareness rising and promoting good practices in the field of CSR



# The legal values and effects of the renvoi to international CSR standards (secondary rules)

No specific 'secondary rules' that directly address this particular question

Treaty interpretation (Article 31(3) of the Vienna Convention on the Law of Treaties)  
'[For the purpose of the interpretation of a treaty] There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.'

Can the interpretative criteria of the 'external' context be taken into account after the 'internalisation' of CSR standards through the renvoi?



# The legal values and effects of the renvoi to international CSR standards (primary rules)

**Case-by-case analysis** of how the reference is articulated in any given PTA, with particular attention to the language used and the intention of the parties

**I) No PTA to which the EU is a party directly requires companies to align their conduct with international CSR standards**, not even in the form of an obligation of conduct (e.g., Article 24(2) of the 2016 Morocco-Nigeria BIT: ‘investors *should* apply the ILO Tripartite Declaration on Multinational Investments and Social Policy as well as specific or sectorial standards of responsible practice where these exist’)



# The legal values and effects of the renvoi to international CSR standards (primary rules)

II) The provision of a treaty **can** convert a non-binding instrument into a binding one for the parties to the treaty (e.g., Article 3(2) of the SPS Agreement:

‘Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.’) – no equivalent in PTAs to the which the EU is a party

III) The parties to the PTA are required to ‘promote’, ‘support’, ‘facilitate’ etc. the adoption of CSR policies by the companies operating under their jurisdiction.

**Real obligations (of conduct)** (cf *Korea Labour Commitments* case (2021)), but

...

**No obligation of result** (incompatible with the inherently **voluntary nature of CSR**)



# Conclusions

- Growing importance of CSR in global governance
- Reference to international CSR standards in PTAs enhance their normativity and make their implementation more plausible
- In the absence of specific primary rules, the renvoi itself is not enough to convert non-binding instruments into binding ones
- The frequent references to international standards in PTAs confirm a shift in how CSR is perceived – from being traditionally viewed as voluntary in nature to forming part of a normative framework more closely aligned with international norms





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Thank you for your attention!