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Master thesis

on the topic:

'Corporate social responsibility: International and Ukrainian implementation experience'

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ДЕКЛАРАЦІЯ АКАДЕМІЧНОЇ ДОБРОЧЕСНОСТІ

Я, Генералов Олексій Миколайович, студент 2-го року навчання магістерської програми за спеціальністю «Право» факультету правничих наук НаУКМА підтверджую, що написана мною дипломна кваліфікаційна робота на тему «Корпоративна соціальна відповідальність. Досвід впровадження в Україні та світі» відповідає вимогам академічної доброчесності та не містить порушень, передбачених п. 3.1 Положення про академічну доброчесність здобувачів освіти у НаУКМА, зі змістом якого я ознайомлений.



Підпис



Прізвище, ініціали

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LIST OF ABBREVIATIONS

CSR - Corporate social responsibility

EU - The European Union

UN - The United Nations

GDP - Gross domestic product

ISO - The International Organization for Standardization

RBC - Responsible Business Conduct

OECD - Organization for Economic Co-operation and Development

UNGPs - UN Guiding Principles on Business and Human Rights

ESOP - Employee Stock Ownership Plan

NIMBY - an acronym for the phrase 'not in my back yard'

SSCM - Sustainable supply chain management

DFS principles - Design for Serviceability principles

UNCTAD - The United Nations Conference on Trade and Development

UN SDGs - The UN Sustainable Development Goals

IIL - International investment law

FET - The fair and equitable treatment standard

BITs - Bilateral Investment Treaties

TIPs - Treaties with Investment Provisions

ILO - the International Labour Organization

ESG - environmental, social, and corporate governance concerns

CEPU Index - China Economic Policy Uncertainty Index

COVID-19 - Coronavirus disease 2019

SEC - U.S. Securities and Exchange Commission

SASB - Sustainability Accounting Standards Board

CGPA - The Corporate Governance Professional Association

CSR Ukraine - the Centre for CSR Development Ukraine

CIPE - the Center for International Private Enterprise

EMAS - The EU Eco-Management and Audit Scheme

PEF and OEF methods - Product Environmental Footprint and Organization Environmental Footprint methods

NFRD - the Non-Financial Reporting Directive

GPP - Green Public Procurement

SRPP - Socially Responsible Public Procurement

EFRAG - European Financial Reporting Advisory Group

NERP - National emission reduction plan

NSSMC - the National Securities and Stock Market Commission of Ukraine

UCGA - the Ukrainian Corporate Governance Academy

UAH – code of the national currency of Ukraine hryvnia

GRI - Global Reporting Initiative

BSC - the strategy performance management tool

NGO - non-governmental organization

INTRODUCTION

Relevance of the research topic: Social responsibility is now regarded as a necessary element of corporate activity and consists of many elements, which goes beyond its consideration solely as a type of legal responsibility. **Corporate social responsibility (CSR)** consists in the conscious attitude of business entities to their business, in particular in ensuring healthy and safe working conditions, greening of business (energy saving, environmentally friendly technologies), transparency in the activities of companies (transparency and openness, reporting), harmonization of relations with employees, provision of social services (in the field of health care, leisure, recreation). In some countries, it is integrated into public policy, in others - it can be the sole prerogative of companies. A thorough understanding of the basics of Corporate Social Responsibility (CSR), the need to create the right conditions and practical implementation, taking into account the specific features of Ukrainian business, is an urgent task for Ukraine, namely, to implement a strategic course for Ukraine's full membership in the European Union. The entrepreneurial environment is an integral part of civil society, while the maturity of civil society is directly linked to the maturity of entrepreneurship.

Degree of scientific development of the study is currently insufficiently researched in Ukraine. There are a lot of great studies and regulations regarding CSR around the world, including those used in this work. In Ukraine, the implementation and the topic of CSR, is still in the process of formation, although in recent years there have been many new publications and interest in implementation, both on the part of business and at the legislative level.

The object of the study is social relations that arise between business and other stakeholders: employees, customers, contractors, investors, states, which determine the mutual influence and impact on the environment, economic and other processes.

The subject of the study is legal regulation of corporate social responsibility in Ukraine, at the international level, social, economic justification of the effectiveness and profitability of CSR, the development of CSR.

The purpose of the study is to highlight the social and legal nature, prerequisites, implementation process and importance of corporate social responsibility in Ukraine and around the world, proving the economic feasibility of a conscious approach to entrepreneurship, justifying the need to improve Ukrainian legislation in this area.

According to the purpose of the study, *the objectives are:*

- Providing a definition and scope of corporate social responsibility, the formation of a unified approach to its understanding and the results of a conscious approach in business.

- Analysis and correlation of the effectiveness of the legislation governing CSR in different legal systems mainly Ukraine and Europe to the practical relations that develop in business, the stages of development of CSR.

- Justification of CSR profitability and other benefits.

- Identification of further vector and ways to improve the legal regulation of CSR.

Study methods: Methods that correspond to the specifics of the question are used during the study. Such methods were both general dialectical methods and special legal.

The axiological method allows to reflect the relationship between the values that exist in a socially responsible society and their practical implementation through CSR.

The anthropological method allows to see the benefits of using CSR in the organization of human life, the impact on the social environment and attitudes towards CSR.

The system (system-structural) method helps to establish how internal and external factors interact and influence CSR, in particular: the state, public demand, money, the environment.

The statistical method is important for determining the indicators of the real state of CSR, the level of profitability.

The analytical method allows to find out how to increase the effectiveness of the studied indicators, which is crucial when choosing a strategy for the implementation of CSR.

The formal-legal method allows to understand what concepts, constructions are used to regulate relations in the study, to understand their internal interrelation and elements of CSR.

It is important to use the comparative law method to compare the approaches of legal systems and individual institutions, in order to identify common features and differences in the regulation of CSR. There are various terms and forms of CSR, differences in how CSR is applied: voluntarily or compulsorily, which activities are considered the main in the field of CSR implementation.

SECTION 1. EXPLANATION OF THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

1.1. DEFINITIONS OF CSR, ELEMENTS AND APPROACHES TO UNDERSTANDING

The influence of entrepreneurship is noticeable in all spheres of public life: in the economic (business forms the GDP of the country, provides significant revenues to the budget, promotes scientific and technological progress), political (which involves the interaction of public authorities and local self-government, and in many respects from business development depends on the place and authority of Ukraine in the globalizing world), cultural (business creates favorable ground for practical realization of individuals and at the same time promotes national spirit and pride).

We could expect that you heard that ‘the business of business is business’ - which was the slogan of Milton Friedman’s book ‘Capitalism and Freedom’¹ in 1962, however it is not like that in the eyes of all stakeholders today.

As it is said in the Commission Staff Working Document, ‘the actions of companies have significant impacts on the lives of citizens in the EU and around the world not just in terms of the products and services that they offer or the jobs and opportunities they create, but also in terms of working conditions, human rights, health, the environment, innovation, education and training’.²

We completely agree and share the conclusions of Ovchinnikov G. that ‘playing such an important role and having a freedom to choose an activity, it is logical that entrepreneurship imposed with responsibility, namely legal and social, which in turn has a significant impact on the environmental sphere. Certainly, the responsibility comes together with a freedom of will. If the will is the transition from thought to practice of the subject, then the practice should be also responsible. That means responsibility

¹ Friedman, M. (1962). *Capitalism and freedom*. Chicago: Chicago University Press.

² Commission SWD Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress Brussels, 20.3.2019 p. 2

should be also practical and linked to specific methods of forcing social interaction parties to fulfill the obligations arising from this process'.³

Any practical concept born from a specific idea represents the interests of a certain group and, as a rule, spreads and is formed historically, has been tested over time. Corporate social responsibility has long been the issue that is studied by researchers and is formed under the values that exist in society.

In Ukraine, in-depth analysis of prerequisites and stages of the development of CSR have been made by Serhii Lukash and his colleagues for a very long time.

In one of their joint studies, they note that 'the post-war period began in 1953 with the publication of the book by American economics professor Howard Bowen, 'The Social Responsibilities of the Entrepreneur', in which he defined the corporate social responsibility of business and wrote that businessmen are obliged to pursue a policy such that its implementation is aimed at activities that are desirable in terms of the goals and values of the entire society. The further development of CSR in Western Europe and the United States has been linked to many factors including the increase in the activity of civil society'. The researchers give an example of German researchers Holger Backhaus-Maul, Christiane Biedermann, Stefan Nährlich und Judith Polterauer, who wrote that 'in the late 60's - early 70's, the entrepreneurs of Germany felt pressure from the student body, public organizations, the media, which paid their attention to the importance involvement in solving urgent social problems. In doing so, members of the public called upon to recall the German traditions of social market economy and social partnership between companies and trade unions'.⁴

Legal responsibility - is a compliance with specific laws and norms of government regulation.

What does *Corporate Social Responsibility* mean?

³ Овчинников Г. К. Социальная и классовая ответственность бизнеса Alma mater : Вестн. высш. шк. : ежемес. науч. журн. 2013. N 12. С. 98.

⁴ Лукаш С. Ю. Політичні партії в системі ознайомлення підприємців з практикою корпоративної соціальної відповідальності бізнесу в Україні на сучасному етапі (за результатами кількісного дослідження) 2017 (ст. 3-5)

For a lengthy period of time, there was no definition of CSR, and the problem was that the understanding of CSR varied differently.

As it was mentioned in the work of Asit Bhattacharyya, ‘competing definitions tried to be more specific by emphasizing the voluntary character of corporate social responsibility and linking it, thus, more strongly to ethical and philanthropic responsibilities than to economic and legal ones. A great attention was given to the definition provided by Archie B. Carroll in 1999. ‘The social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that a society has of organizations at a given point in time.’⁵

For example, a consolidated table of different definitions of CSR formulated by Bowen H., Friedman M., Carroll A., Drucker P., Vorobey V., Zinchenko O., Khimchenko A., Kolot A., Suprun N., the ILO Mission in Ukraine, World Business Council for Sustainable Development, Memorandum on Corporate Social Responsibility in Ukraine is provided by researchers Sytnyk Yosyf, Yurchenko Halyna in their study⁶.

In 2011, Corporate Social Responsibility got defined by the European Commission as the ‘the responsibility of enterprises for their impacts on society. To fully meet their social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of maximising the creation of shared value for their owners/shareholders and civil society at large and identifying, preventing and mitigating possible adverse impacts’.⁷

Corporate Social Responsibility is commitments undertaken by business itself and with different kinds of collaborations to address socially significant issues, both within

⁵Bhattacharyya Asit Corporate Social and Environmental Responsibility in an Emerging Economy: Through the Lens of Legitimacy Theory Australasian Accounting, Business and Finance Journal p. 81

⁶ Sytnyk Yosyf, Yurchenko Halyna Actualization of the concept of corporate social responsibility in the model of economic development of Ukraine Економіка та суспільство, вип. 24 (Лютий) 2021. Ст. 4

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A renewed EU strategy 2011-14 for Corporate Social Responsibility.

the business community itself and beyond, in a local, national and global levels. It requires a certain level of voluntary response to social problems by organizations that correspond to or lies above the requirements of the law and regulatory activity of authorities. It is also a philanthropic activity that can be reflected in the construction of socially significant institutions, energy savings, maintaining safety and high quality of products without environmental pollution, attracting investment in staff.

The definition of social responsibility can be found in the ISO 26000:2010 standard 'Guidance on social responsibility'. It means 'the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behavior; and is integrated throughout the organization and practiced in its relationships'.⁸

The following key elements of CSR can be identified:

1) Economic and financial sustainability - freedom of economic activity, fair competition, innovative approach, growth of employment of the population of the country. Resource efficiency and circular approach to the economy is needed due to enhance resource scarcity and geopolitical conflicts.

2) Greening the business. Energy efficient, environmentally friendly technologies.

3) Transparency, openness in business activities and privacy expectations. Disclosure of corporate information on climate change is a tool to help monitor business commitments to achieve a carbon-neutral economy and encourage further business transformation and sustainable investment.

4) Ensuring healthy and safe working conditions.

5) High quality products and partnerships with the consumer.

⁸ Source: ISO 26000. 'Guidance on social responsibility'

6) Harmonization of relations with employees, provision of social services (in the field of health care, recreation, leisure).

7) Social and pension programs, investing in companies, projects that meet the criteria of social responsibility, taxation programs.

8) Respect for the rights of shareholders.

9) Participation in development of local communities, interaction with local authorities, corporate partnership projects, social projects of local level for infrastructure development.

10) Improvement of educational level and professional training of staff.

11) Combating bribery and corruption.

12) Activities for the promotion of and responsibility for social responsibility.

There are also alternative terms like Responsible Business Conduct (RBC) which was introduced by the Organisation for Economic Co-operation and Development (OECD) in close cooperation with business, trade unions and non-governmental organisations. ‘RBC entails above all conduct consistent with applicable laws and internationally recognized standards. Based on the idea that you can do well while doing no harm, it is a broad concept that focuses on two aspects of the business-society relationship: 1) positive contribution businesses can make to sustainable development and inclusive growth, and 2) avoiding negative impacts and addressing them when they do occur. Risk-based due diligence and value creation are at the heart of this process’.⁹

It should be noted that there are other approaches of understanding and justifying the need for business responsibility, especially social: the pyramid proposed by Archie B. Carroll¹⁰, defines the hierarchy of responsibility (economic responsibility, legal responsibility, ethical responsibility, philanthropy) and argues that ignoring its elements leads to neglect of business due to the impossibility of the existence of companies in modern realities, which are exclusively focused on a profit. The economic responsibility

⁹ Myanmar: Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises p. 1

¹⁰ Carroll’s CSR pyramid

lying at the base of the pyramid is directly determined by the core function of the company in the production of goods and services to satisfy the needs of consumers and, accordingly, make a profit. Legal responsibility implies the obligation for business to ensure compliance with the expectations of society, fixed in legal norms. Ethical responsibility requires business practice to be in tune with the expectations of society based on moral standards. Philanthropic responsibility encourages the company to actions aimed at maintaining and developing the welfare of society through voluntary participation in the implementation of social programs.

Florian Wettstein notes: ‘human rights have not played an overwhelmingly prominent role in CSR in the past. Similarly, CSR has had relatively little influence on what is now called the ‘business and human rights debate.’ A closer integration of the two debates allows for the formulation of an expansive and demanding conception of corporate human rights obligations. Such a conception does not stop with corporate obligations ‘merely’ to respect human rights, but includes an extended focus on proactive company involvement in the protection and realization of human rights. In other words, the integration of the two debates provides the space within which to formulate positive human rights obligations for corporations’.¹¹

Beyond obligations there is also a theory of self-regulation which is an extension of traditional social contracting theories that provides an innovative perspective on why businesses adopt self-regulatory practices - that is, to avoid the risk of the government stepping into introduce regulations in the future and thus increased compliance costs for businesses. The practical example of this will be provided in the subsection of this study regarding the issues of environmental responsibility as part of corporate social responsibility.¹²

¹¹ Florian Wettstein (2012). CSR and the Debate on Business and Human Rights: Bridging the Great Divide. *Business Ethics Quarterly*, 22(4), 739-770 (Cited from abstract).

¹² Zhang, Linhan & Tang, Qingliang & Huang, Robin Hui, 2021. "Mind the Gap: Is Water Disclosure a Missing Component of Corporate Social Responsibility?," *The British Accounting Review*, Elsevier, vol. 53(1).

The UN Human Rights Council endorsed 31 ‘Guiding Principles on Business and Human Rights’ (UNGPs) back in 2011. It has three pillars structure:

1.’The state duty to protect against human rights abuses by third parties, including businesses, through appropriate policies, regulation and adjudication.

2.The corporate responsibility to respect human rights, in essence meaning to act with due diligence to avoid infringing on the rights of others.

3.The need for an effective access to judicial and non-judicial remedy by victims of corporate abuse. The Commission and Member States have been actively implementing the UNGPs.’.¹³

There are 5 main models of Corporate Social Responsibility:

- 1) European CSR model;
- 2) British CSR model;
- 3) American CSR model;
- 4) Canadian CSR model;
- 5) Japanese CSR model.

The European CSR model has emerged and is developing in the northern EU countries. As it is written by Z. P. Urusova ‘A characteristic feature of this model is that CSR is not an open line of company behavior and is generally governed by the rules, standards, and laws of the respective states’.¹⁴

The British CSR model is typical of the UK and Central European countries - France, Austria, Germany. The distinguishing features of this model are:

- 1) ‘extensive development of the CSR independent consulting sector;
- 2) close attention of the financial sector to CSR projects;
- 3) increased media interest.
- 4) business education system;

¹³ Commission SWD Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress Brussels, 20.3.2019 p. 4

¹⁴ Урussoва, З. (2019). Моделі корпоративної соціальної відповідальності підприємств та доцільність їх використання в умовах змінного середовища. *Підприємництво та інновації*, (10), 94-99. (ст. 96)

- 5) government involvement in CSR development;
- 6) the pronounced initiative of the business itself in the creation of CSR projects (the principle of voluntariness)¹⁵.

‘The active role of the British government is expressed in the policy of supporting companies covering their activities in the social and environmental sphere and in relations with personnel. A number of legislative acts establish a preferential tax regime for companies conducting their business socially responsible and from the standpoint of business ethics, especially in matters of efficient use of energy, recycling of industrial waste’.¹⁶

The American model is common in the United States, Latin America, English-speaking countries of Africa. A key aspect of the American CSR model is the focus on the development of human potential. Employees have payments and services from corporate social security funds that stimulate workers to become more interested in the success and prosperity of the company.

Moreover, the US Government introduce income tax incentives with charitable contributions from taxable income. A striking example of US social responsibility is Employee Stock Ownership Plan (ESOP)¹⁷. The company creates a trust fund that borrows from the bank to acquire number of shares. An employee of the company is allowed to sell their shares freely. Employees only access their savings when they retire. So, ESOP is nothing like a retirement program. In practice, it turns out that corporate investment in the social sphere is a form of partial indirect state financing of the social sphere.

¹⁵ Gitis T., Sobchuk A. The study of foreign experience of social responsibility of business and the possibility of its adaptation to domestic conditions *Економічний вісник Донбасу* № 3(49), 2017 р. 73 (р. 70-74)

¹⁶ POPLAVSKA O. V. Theoretical and practical approaches to analysis of corporate social responsibility models and world experience of their implementation. *Вісник Хмельницького національного університету. Економічні науки.* – 2017. – № 2, т. 1. – С. 57-63. (ст. 62)

¹⁷ National center for Employee ownership website article ‘How an ESOP Works’

In Canada, many organizations have productively collaborated with the National Quality Institute of Canada, which implements a special Canadian standard for corporate social responsibility - a model of excellence in quality and a healthy workplace.

The Japanese do not recognize European standards; they are guided in the field of CSR by their ethical codes, internal corporate directives.

Despite the variety of approaches to build a corporate social responsibility system, they are all united by one common goal - to ensure sustainable development of society.

The concept of sustainable development was formulated at the UN Conference on Environment and Development in June 1992 in Rio de Janeiro. It covers 3 aspects of human activity: economic (effective combination of economic resources in production processes to minimize costs and maximize profit while ensuring the proper consumer quality of products), environmental (economical use of raw materials, energy, natural resources, emission control and minimization, utilization of industrial waste, minimization of the negative impact of products on the environment, respect for environmental rights of citizens, employees), social (organization of safe and comfortable working conditions, compliance with labor and tax laws, principles of social partnership, participation in the implementation of regional and national social and environmental projects) and provides for balanced development, enabling businesses to grow, citizens - to meet their needs, while maintaining natural ecosystems.

According to its main provisions: ‘human is in the center, which has the right to a healthy life in harmony with nature. In this regard, environmental protection must be an integral part of the development process and cannot be considered separately, and the needs of the development and conservation of the environment must be extended not only to the present, but also to future generations’.¹⁸

It is also connected with the concept of the ‘triple bottom line’. Business should be managed in such a way that entrepreneurs should take into account not only financial

¹⁸ Балюк Г. Проблеми законодавчої регламентації та реалізації в Україні екологічної складової концепції сталого розвитку. Право України. 2011. № 2. С. 85-94. (86 стр)

indicators, but also social and environmental performance of the company, based on the following basic criteria: ‘people, planet, profit (PPP)’.¹⁹

Let’s have a look at the practical example. The American footwear brand ‘Nisolo’ has created the Sustainability Facts Label - a product label that is attached to each product of the company with 10 indicators that determine the social and environmental development of the brand based on methodology that include more than 30 industry standards, assessments, tools, ratings, consumer facing labels and more than 35 supporting research.

These indicators backed by 200 different public-facing data points are divided by the company into two basic criteria of ‘P’ (People & Planet) of ‘triple bottom line’ concept.

The company refers the following five indicators to the first criteria ‘People’: wages & payment, health & safety, worker’s rights & governance, gender equality & empowerment, healthcare & benefits.

The last five indicators refer to the ‘Planet’ criteria: carbon footprint, raw materials integrity & durability, processing & manufacturing, packaging & distribution, post use product lifestyle.

The company’s intention with this label and methodology is ‘to raise the floor for transparency. Without transparency, there can be no accountability. Without accountability, there can be no change. Without greater transparency, the fashion industry can’t change. The beauty of this methodology and label is that it can be applied to any product’ in fashion industry.

The company emphasizes that ‘hundreds of millions of people (the vast majority of whom are young women) are held in poverty every day because the fashion industry fails to pay its workers a living wage (Source: Clean Clothes Campaign, 2020). The consequences of lacking an established framework for measuring our products’ impacts are also dire for the planet, which is undergoing accelerating climate change at the hands

¹⁹ Triple Bottom Line (TBL) By Will Kenton

of the fashion industry as well. Fashion is responsible for 1.2 billion tons of annual greenhouse gas emissions, more than all international flights and maritime shipping combined (Source: Ellen Macarthur Foundation, 2017).²⁰

In order to understand the need for research in this area, it is advisable to recall the contributions of Barry Commoner, an American environmentalist, biologist, and politician who, in the early 1970s, formulated ‘Four Laws of Ecology’ which are important in the pursuit of entrepreneurial activity:

1. ‘Everything is Connected to Everything Else. There is one ecosphere for all living organisms and what affects one, affects all.

2. Everything Must Go Somewhere. There is no ‘waste’ in nature and there is no ‘away’ to which things can be thrown. It concerns the problem of responsible use of resources, waste management, used, as an example, in the construction, production and logistics of the enterprise.

3. Nature Knows Best. Humankind has fashioned technology to improve upon nature, but such change in a natural system is, says Commoner, ‘likely to be detrimental to that system.

4. There Is No Such Thing as a Free Lunch. Nothing comes from nothing. Exploitation of nature will inevitably involve the conversion of resources from useful to useless forms’.²¹

The third and fourth laws are closely related. Interventions in the processes of nature to improve or change it or any other environmental impact have consequences, and therefore this must be respected and done responsibly.

According to 2022 Edelman Trust Barometer survey conducted in 28 countries with more than 36,000 respondents, societal leadership is now a core function of business. Respondents believe ‘business is not doing enough to address societal

²⁰ ‘Nisolo’ brand website article ‘Our Sustainability Facts Label Methodology’ with references

²¹ Miller, Stephen (October 1, 2012). "Early Voice for Environment Warned About Radiation, Pollution". The Wall Street Journal. Retrieved October 2, 2012.

problems, including climate change (52%), economic inequality (49%), workforce reskilling (46%) and trustworthy information (42%).

When considering a job, 60% of employees want their CEO to speak out on controversial issues they care about and 80% of the general population want CEOs to be personally visible when discussing public policy with external stakeholders or work their company has done to benefit society. In particular, CEOs are expected to shape conversation and policy on jobs and the economy (76%), wage inequity (73%), technology and automation (74%) and global warming and climate change (68%)²².

It is easy to trace the significance of the state of ecology for people's lives and how it changes as a result of economic activity. Climate sustainability will be examined in the next subsection due to the huge business footprint on climate change.

²² '2022 Edelman Trust Barometer' survey by Edelman Data & Intelligence (DxI) conducted between November 1 and November 24, 2021.

1.2. ENVIRONMENTAL ASPECTS OF CSR

We would like to pay special attention to the issues of environmental responsibility as part of corporate social responsibility. Business directly affects the state of the ecosystem. It turns out that it is the common responsibility of business and the state to take care of the environment.

It is worth understanding the scale of the environmental problem, right before the state begins to demand from business compliance with any additional rules in the field of ecology, or vice versa business itself will begin to declare that it cares about the environment with all its might. In particular, how climate change affects natural physical environment and what does humanity, including business itself, have to do with it?

Experts Dr. Hannah Ritchie (Our World in Data), Joseph Poore (University of Oxford), Dr. Alexios Antypas (The Department of Environmental Sciences and Policy, Central European University), Dr. Matthew Hayek (Department of Environmental Studies, NYU) have conducted a study for the project ‘Kurzgesagt – In a Nutshell’, which provides answers to this topic.

Global warming observed since the middle of the 20th century and is caused by the ‘greenhouse effect’ which produced by humankind. It leads to an increase in temperature and, as a result, devastating consequences for current life on earth (for example, extreme weather events, rising sea levels).²³

There are many types of pollutants like: energy use (in industry, in buildings, transport pollution, unallocated fuel combustion, fugitive emissions from energy production), agriculture, forestry and land use (livestock and manure, agricultural, rice cultivation, crop burning, deforestation, cropland), wastes (landfills, wastewater), cement and chemicals production.²⁴

²³ The Causes of Climate Change, NASA

²⁴ Hannah Ritchie and Max Roser (2020) - "CO₂ and Greenhouse Gas Emissions". Published online at OurWorldInData.org.

According to the research of the mentioned experts ‘the emissions leaking out of landfills are as significant as the emissions of all the jets in the air, while more CO₂ is released to run our homes than from all cars combined. The emissions produced when making a new car is equivalent to building just two meters of road. So, it is nice to switch to electric cars, but they won’t solve anything if we keep building roads the same way. Fixing one small part of the industrial system is not enough.

The most problematic one is food. Because of the nature of modern food production that requires fertilizers or manure, it is impossible to have zero-emissions food. Even if we stopped eating meat, there would still be emissions due to other factors. We would still need fertilizer to grow our crops which also causes emissions. Our current food production practices take up a quarter of global greenhouse gas emissions. Rice alone emits so much methane each year that it practically equals the emissions of all the air traffic in the world. Also, it is important to note that rice is also a staple food for billions of people, and it accounts for ~20% of the world's calorie supply. And as people across the world grow richer, they want more meat. – Today about 40 percent of the world’s habitable land is used for meat production in some form or another, the size of North and South America combined’.²⁵

The mentioned researchers analyzed this question with reference to the calculations of the World Resources Institute which states that ‘with little to no climate action in the agriculture sector, greenhouse gas emissions from agricultural production could increase 58% by 2050’.²⁶

We cannot completely get rid of environmental pollution, since it is part of our life, but we are able to minimize the degree of influence that has already been exerted, is now being exerted and will be exerted on our biosphere, including through proper legal

²⁵ Materials of the YouTube channel ‘Kurzgesagt – In a Nutshell’ team collected for a video on climate change ‘What Can You do To Stop Climate Change? And Should You?’ with the help of experts Dr. Hannah Ritchie, Joseph Poore, Dr. Alexios Antypas, Dr. Matthew Hayek

²⁶ Aleksandra Arcipowska, Emily Mangan, You Lyu and Richard Waite “5 Questions about Agricultural Emissions Answered” World Resources Institute, 2019

regulation of business through CSR. The fact is that such changes will bring changes in both production and consumption.

The researchers raise an issue that ‘people want to do something about a problem, but reject a solution when its impact becomes too personal, so-called phenomenon of ‘Not in My Backyard’ (NIMBY).²⁷ ‘One of the reasons that the agricultural sector continues to be so environmentally damaging is that it manages to hide the cost of its devastation from the products you buy. However, if there was a cost assigned to that damage, the price of meat and dairy increases dramatically’²⁸

At the same time, humankind has already found an effective way to combat the greenhouse effect. The researchers pay great attention to the technology of Direct Air Capture of CO₂ that can remove carbon dioxide from the air in a way ‘it can be stored underground or transformed into products, resulting in negative emissions at all instead of simply reducing their release or compensating for emissions after they are released. There are currently 15 direct air capture plants operating worldwide, capturing more than 9 000 tCO₂/year, with a 1 MtCO₂/year capture plant in advanced development in the United States’²⁹

Obviously, these plants are extremely expensive to build and maintain, and direct air capture is still ‘more expensive per tonne of CO₂ captured compared to most mitigation approaches and most natural climate solutions’, according to reports³⁰.

The results of the mentioned research are the following. On the one hand, ‘there is no way to just put these costs on the massive polluters, because it would double the cost of their products – industries that operate on very tight profit margins would be bankrupted without special measures being taken.

²⁷ Peter D. Kinder “Not in My Backyard Phenomenon”, Encyclopedia Britannica

²⁸ Materials of the YouTube channel ‘Kurzgesagt – In a Nutshell’ team collected for a video on climate change ‘What Can You do To Stop Climate Change? And Should You?’ with the help of experts Dr. Hannah Ritchie, Joseph Poore, Dr. Alexios Antypas, Dr. Matthew Hayek

²⁹ Sara Budinis IEA (2021), Direct Air Capture, IEA, Paris

³⁰ The potential for CCS and CCU in Europe. Report to the thirty second meeting of the European Gas Regulatory, European Gas Regulatory Forum, 2019

On the other hand, governments are interested in subsidizing such industries. Researchers give the conclusion that ‘by artificially keeping fuel prices low, shipping and everyday goods are kept artificially cheap too. Which has a major social impact on billions of people around the world. That creates political lobbies and incentives that perpetuate this cycle that makes it so hard to cut off fossil fuel production’.³¹

Technological progress gives abilities to bring closer over emission-free future. There are a lot of new ways to deal with the greenhouse gas emissions mentioned by the researchers: ‘lab grown or cultured meat, that cost 6 to 12 times less CO₂ to produce than raising a cow, new sort of ‘green cement’ that promises to absorb CO₂ during its production rather than release it, green hydrogen that can replace current high-carbon in many areas as fuel, high-quality recycle-materials that could replace oil-based plastic production, ocean energy technologies that exploit the power of tides and waves, as well as differences in sea temperatures and salinity, to produce electricity’.³²

There are five areas of ‘green’ innovation, which are actively implemented by the world: ‘renewable energy: wind and solar energy; hydrogen as a popular source of energy, biofuels receive increased government support; in commercial transportation launched a global transition to electric vehicles; decarbonization in all sectors through carbon capture, use and storage’³³.

Among the ways in which the state can shape environmental policy, researchers Baolong Yuan, Xueyun Cao highlight pollution charges, environmental tax, government subsidies, green credit policy, and emissions trading. They surveyed 424 manufacturing companies in China on green innovation, confirmed that CSR practice significantly promotes green product innovation and green process innovation. As the main source of resource usage, energy consumption, and pollutant discharge, manufacturing

³¹ Materials of the YouTube channel ‘Kurzgesagt – In a Nutshell’ team collected for a video on climate change ‘What Can You do To Stop Climate Change? And Should You?’ with the help of experts Dr. Hannah Ritchie, Joseph Poore, Dr. Alexios Antypas, Dr. Matthew Hayek

³² the same source

³³ KPMG Review Magazine #11 2021 p. 40

corporations should actively implement the government's environmental protection policy to improve their environmental legitimacy. Specifically, they encourage business managers to establish professional environmental protection agencies and establish close collaboration with product design, manufacturing, marketing, and other departments.³⁴

However, each of the mechanisms the state wants to use to form environmental policy based on corporate social responsibility should be economically driven to achieve the goal of sustainability.

Research made by Katsufumi Fukuda, Yasunori Ouchida proves that under time-consistent emission tax in a monopoly market 'when environmental damage is serious and the cost efficiency of emission reduction is low, then a pure profit-maximizing monopolist has some incentives for behaving as a socially responsible firm to enhance its own net profit, and in stark contrast to common belief, CSR can yield an emission-increasing effect. Consequently, this paper reveals that CSR is not *always* beneficial for the environment'³⁵.

The Corporate Climate Responsibility Monitor, conducted by NewClimate Institute in collaboration with Carbon Market Watch not-for-profit association, assesses the climate strategies of 25 major global companies. As emphasized in a press release of the new analysis 'the headline climate pledges of 25 of the world's largest companies in reality only commit to reduce their emissions by 40% on average, not 100% as suggested by their 'net zero' and 'carbon neutral' claims. Lead author of the study Thomas Day of NewClimate Institute said that authors were surprised and disappointed at the overall integrity of the companies: *'As pressure on companies to act on climate change rises, their ambitious-sounding headline claims all too often lack real substance, which can mislead both consumers and the regulators that are core to guiding their*

³⁴ Baolong Yuan, Xueyun Cao 'Do corporate social responsibility practices contribute to green innovation? The mediating role of green dynamic capability'

³⁵ Katsufumi Fukuda, Yasunori Ouchida, 'Corporate social responsibility (CSR) and the environment: Does CSR increase emissions?'

*strategic direction. Even companies that are doing relatively well exaggerate their actions.*³⁶

The rational use of water resources by business is also an important topic for discussion and regulation. According to study by Linhan Zhanga, Qingliang Tangb, Robin Hui Huang, water disclosure is often a part of self-regulations by companies and is made on voluntary basis. Many jurisdictions have enacted various laws and governmental regulations for water use, which have advantages, such as uniformity and enforceability. Self-regulation is meant to complement, rather than to substitute for, coded rules and is more likely to be adopted by firms in less water-intensive sectors. It is important to note as a result of their study, that voluntary corporate environmental disclosure is often not motivated by a desire to improve the firm's organizational reputation and green image, but are driven by efforts to prevent future enactment of stringent governmental legislation.³⁷

Responsible business organizes management in a way that it includes achieving sustainable development goals (SDGs) and environmental protection. This is facilitated by the implementation of sustainable supply chain management (SSCM) practices.

Sustainable supply chain management (SSCM) is ‘the strategic, transparent integration and achievement of an organization's social, environmental, and economic goals in the systemic coordination of key inter-organizational business processes for improving the long-term economic performance of the individual company and its supply chains’.³⁸

A study conducted by Zhu C, Du J, Shahzad F, Wattoo do findings that internal CSR activities (like management decisions and policies related to the employees take in account employees’ needs and wants, encourage develop their skills and careers,

³⁶ NewClimate Institute website press release – ‘Corporate Climate Responsibility Monitor 2022’ 7 February 2022

³⁷ Zhang, Linhan & Tang, Qingliang & Huang, Robin Hui, 2021. "Mind the Gap: Is Water Disclosure a Missing Component of Corporate Social Responsibility?," *The British Accounting Review*, Elsevier, vol. 53(1).

³⁸ Carter & Rogers, *International Journal of Physical Distribution and Logistics Management*

organize good work-life balance) or external CSR activities (participation in activities and programs aimed to minimize negative impact of company on the natural environment) can improve organizational sustainable supply chain management (SSCM) practices in automotive manufacturing organizations. These environmental management practices include environmental management systems that meet ISO standards, concerns of customers in terms of eco-friendly design/distribution of products that consume a reduced amount of input materials/energy, other environmental compliance.³⁹

One of the notable examples of corporate partnership in CSR is Drive Sustainability. It is an automotive partnership with the following Lead Partners - BMW Group, Daimler AG, Scania CV AB, Volkswagen Group, Volvo Cars, Volvo Group - and the following Partners - Ford, Honda, Jaguar Land Rover, Toyota Motor Europe. ‘The Partnership, facilitated by CSR Europe, aims to drive sustainability throughout the automotive supply chain by promoting a common approach within the industry and by integrating sustainability in the overall procurement process’.⁴⁰

Researchers Camila Kolling, José Luis Duarte Ribeiro, Janine Fleith de Medeiros systematized stages of sustainable production or consumption system for the qualification of sustainable practices in the cosmetics industry. They divided the cycle into two processes: the strategic level and the operational level.

They divided the cycle into two processes: the strategic level and the operational level.

‘The strategic level is the insertion of CSR dimensions in the Strategic Plan. It includes:

1) Business orientation for transition to sustainable production and consumption

³⁹ Zhu C, Du J, Shahzad F, Wattoo MU. Environment Sustainability Is a Corporate Social Responsibility: Measuring the Nexus between Sustainable Supply Chain Management, Big Data Analytics Capabilities, and Organizational Performance. Sustainability. 2022

⁴⁰ Drive Sustainability Progress Report. Driving Change Since 2013 (brochure materials)

- 2) External Environment Analysis
- 3) Competitive Environment Analysis
- 4) Establishment of Strategic Partnerships throughout the Product Life Cycle
- 5) Interorganizational and cross-functional collaboration

The operational level is the insertion of Design for Serviceability (DFS) principles in the Industrial Practice. It includes:

- 1) Design and Sourcing
- 2) Packaging
- 3) Manufacturing
- 4) Distribution
- 5) Consumer use
- 6) Post-consumer Use'⁴¹

One of the main principles of environmental business responsibility is the principle of reporting, it is a tool that informs all interested parties about compliance with the principles of corporate social responsibility and the corporation's contribution to the sustainable development of society.

The Global Reporting Initiative (GRI) is an international not-for-profit organization that is the global standard setter for impact reporting. Blaise Hope recommends including three best indicators in a company's sustainability report:

- 1) 'Economic indicators for corporate sustainability. They should be chosen or mixed from the two reporting instruments depending on what suits the company's operating environment better:
 - a) Balanced scorecard (BSC) - the strategy performance management tool that mainly measures financial performance from revenue

⁴¹ Camila Kolling, José Luis Duarte Ribeiro, Janine Fleith de Medeiros 'Performance of the cosmetics industry from the perspective of Corporate Social Responsibility and Design for Sustainability'

growth and mix, cost reduction/productivity improvement, asset utilisation/investment strategy, and risk management.

- b) GRI economic performance measurements focus on economic changes that come as an effect of direct and indirect economic interactions with stakeholders as well as sustainability activities that affect stakeholders.
- 2) GRI environmental indicators that impact corporate sustainability reports. They are divided into materials, energy, water, biodiversity, emissions, effluents, waste, products and services, and compliance. These environmental sustainability indicators are then subdivided based on types, usage, and quantity.
- 3) GRI social indicators for corporate sustainability. They are grouped into labor practices and decent work, human rights, and product responsibility. Social value compacts, impact assessments and monitoring can also be valuable indices for reports'.⁴²

The European Union is already actively taking actions to reduce emissions of CO₂, for example, the 'European Green Deal' - a roadmap with actions to boost the efficient use of resources was presented by The European Commission in 2019 to make EU a climate-neutral economy by 2050⁴³. The more details will be provided in the second section of the study.

* * *

The first section of the study reveals the great importance of business and its impact on society as a whole, on the environment, and on people's living standards. It discloses the rationale that in the modern world business cannot live in isolation from society, including from social obligations.

⁴² Blaise Hope 'The 3 must-haves for your corporate sustainability report' January 18, 2022

⁴³ Official website of the European Union 'A European Green Deal'

Corporate Social Responsibility is a commitments undertaken by business itself and with different kinds of collaborations to address socially significant issues, both within the business community itself and beyond. It requires a certain level of voluntary response to social problems by companies. It can lie above the requirements of the law and have its own regulation.

We have shown that the concept of corporate social responsibility appeared a long time ago, various approaches have been formed to understand what CSR is, both in Ukraine and abroad. It's including the fact of existence of a unified legal definition of CSR, as well as its alternative definitions, which coincide in essence together. In this section mentioned five main CSR models and their brief description. Moreover, in this section, we have proposed a classification of the most common types of CSR forms/elements of realization.

We also focused on disclosing the environmental dimension of corporate social responsibility, as CSR-based environmental policies and business statements about their environmental activities should be realistic, targeted to be comprehensive, cost-effective to truly make progress in environmental protection.

The general conclusion from Section 1 is that CSR is not only a solid theoretical base, but exists in practice and is constantly evolving, as something necessary for business and stakeholders. It is done both from business initiative and at the request of society and governments, which have the ability to regulate business activities.

1.3. PROFITABILITY AND OTHER BENEFITS OF CSR

But how to persuade business that CSR is necessary for them? How does business can benefit from engaging in CSR activities? What do they can get out from it? In this section there is an economic answer.

The analysis made by Namita Rajput, Geetanjali Batra, Ruchira Pathak ‘clearly establish the relationship between CSR and financial performance’. Researchers come to conclusions that corporations invest in CSR projects to improve their reputation in society and compete with global corporations. Companies look at CSR as a marketing tool that helps to establish a strong connection with the public, for example, by boosting about their CSR expenditure in their annual reports, publishing about CSR on their websites, sustainability reports and advertising campaigns ‘to attract investors and satisfy various stakeholders like employees, customers, suppliers, government, regulators, distributors etc’. It is used because it has a critical importance to corporate sustainability and reputation management and ‘is also used as a prevention strategy by the companies to protect them from corporate scandals, unpredicted risks, possible ecological accidents, governmental rules and regulations, protect noticeable profits, brand differentiation, and better relationship with employees based on volunteerism terms’.⁴⁴

Moreover, in that research it is suggested by the researchers to use the following classification for views concerning CSR among business representatives:

- ‘*Sceptic view* who highly criticize CSR. According to this view, the corporates responsibility is only increasing sales and earning profits. The idea of CSR is contrary to the basic purpose of business in a free society to make as much money for company’s stakeholders as possible. The proponents of this view see giving money away for CSR as a self-imposed tax.

⁴⁴ Namita Rajput, Geetanjali Batra, Ruchira Pathak Linking CSR and financial performance: an empirical validation Problems and Perspectives in Management, Volume 10, Issue 2, 2012 (1 42-j49) (стр 43)

- *Idealistic view* reflects the idea that companies have a prior duty to anyone touched by their activity. There is a social contract between business and society involving mutual obligations. Society and business must identify that they have to fulfil these mutual obligations for each other's existence and success.
- *Pragmatist view* is widely followed and practiced. As per it CSR is not about investing funds and expertise in solving social problems, CSR is about the veracity with which a company governs itself, fulfils its objectives, lives by its values, and engages with its stakeholders'.⁴⁵

Aseem Kaul and Jiao Luo in 2015 developed a formal model of CSR, examining competition between a for-profit firm and a nonprofit in the supply of social goods.

To summarize, they show in their conclusions that 'firms can profitably undertake the supply of social goods if they can: a) raise additional resources by differentiating themselves from non-profits; b) gain cost advantages in the production of social goods by deploying scale free resources and capabilities from their core business; or c) take advantage of the information asymmetry between the supporters and recipients by undertaking merely symbolic CSR. While all three sources of firm advantage result in higher profits for shareholders, only the differentiation advantage unambiguously benefits recipients, while symbolic CSR is likely to leave recipients worse off. There is thus a gap between the benefits of CSR for shareholders and stakeholders, with CSR efforts that crowd out non-profits benefiting shareholders but harming stakeholders, or at best leaving them unaffected. Moreover, their model shows that only if the company's CSR efforts are more differentiated than symbolic will benefit both shareholders and stakeholders. The cost advantage does amplify the welfare effect, increasing the welfare'.⁴⁶

⁴⁵ Namita Rajput, Geetanjali Batra, Ruchira Pathak Linking CSR and financial performance: an empirical validation Problems and Perspectives in Management, Volume 10, Issue 2, 2012 (142-149) (p. 46)

⁴⁶ The Economic Case for CSR: The Competitive Advantage of For-Profit Firms in the Market for Social Goods Aseem Kaul and Jiao Luo in 2015 p. 33 (1-45)

For example, Carroll Archie and Shabana Kareem in their research cited Wheeler et al. (Wheeler et al. 2003, p. 7) who showed a real example of ‘the win–win perspective adopted by the life sciences company Novo Group allowed it to pursue its business, which is deeply involved in genetic modification and yet maintains highly interactive and constructive relationships with stakeholders and publishes a highly rated environmental and social report each year’. In contrast, another company faced difficulties that materialized in major problems as a result of perceived imposition of unlabelled, genetically modified food, ingredients in its business due to neglect of stakeholder demands by that company.⁴⁷

Corporate social responsibility is also the subject of research in the field of investments.

Back in 2004, The United Nations Conference on Trade and Development (UNCTAD) proposed different options for incorporating social and environmental responsibility in bilateral, regional or multilateral investment agreements. Each of those options have advantages and disadvantages which were explained in the UNCTAD document:

‘Option 1: No reference to CSR (being subject to the requirements of the host country)

Option 2: Non-binding CSR standards included in the agreement (Using principles of CSR)

Option 3: Reservation of regulatory powers on issues of social and environmental responsibility (The investment agreement allows the exclusion or exemption from investor protection or inclusion articles which do not conflict with the host country law)

Option 4: No lowering of standards clause

⁴⁷ The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice Archie B Carroll Kareem M. Shabana 2010 p. 100 (pages 85-105)

Option 5: Home country measures to promote CSR

Option 6: Inclusion of a generally binding CSR provisions in the agreement'⁴⁸

The paper written by Ying Zhu explores the tension between corporate social responsibility and international investment law (IIL), examines the approaches to reconcile this tension. The researcher gives examples (cases like *Metalclad v. Mexico*, *Glamis Gold v. US*) that show that the rules introduced to implement CSR by a host state can affect the interests of other market participants and their ability to invest due to imbalance between international economic regulation and social regulation of foreign investments, which may lead to a violation of international investment law in three aspects:

‘First, the host state may violate the non-discrimination principle by differentiating between foreign investments having different social and environmental impacts.

Second, the host state may violate the Fair and Equitable Treatment (FET) standard if the regulation on CSR issues has frustrated foreign corporations’ legitimate expectations at the time of investment. The Fair and Equitable Treatment (FET) standard has been a key component in a majority of bilateral and multilateral investment treaties, and has been the most frequently invoked standard in investment arbitration. The host state might frustrate the foreign investor’s expectations by enacting ‘novel’ environmental regulation or if it contradicts the assurances that have previously been made by the host state’s officials to the foreign investors.

Third, the regulation in pursuit of CSR taken by the host state may constitute indirect expropriation if the measure has substantially deprived the value of foreign investments’⁴⁹.

⁴⁸ UNCTAD, International Investment Agreements

⁴⁹ Ying Zhu ‘Corporate Social Responsibility and International Investment Law: Tension and Reconciliation’

At present, countries incorporate CSR provisions to investment treaties. If commit a search in the International Investment Agreements Navigator⁵⁰ for the Bilateral Investment Treaties (BITs), Treaties with Investment Provisions (TIPs) where words ‘Corporate social responsibility’ are present, you can find 106 treaties, which are signed/in force. Ukraine is a party to two of them.

For example, article 422 of Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the One Part, and Ukraine, of the Other Part contains a provision on corporate social responsibility:

‘The Parties shall promote corporate social responsibility and accountability and encourage responsible business practices, such as those promoted by the UN Global Compact of 2000, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of 1977 as amended in 2006, and the OECD Guidelines for Multinational Enterprises of 1976 as amended in 2000’.⁵¹

A similar provision is in another treaty to which Ukraine is a party, namely article 380 of Political, Free trade and Strategic Partnership Agreement between Ukraine and the United Kingdom of Great Britain and Northern Ireland along with article 279 which states the following:

‘1. The Parties reaffirm that trade should promote sustainable development in all its dimensions. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater coherence between trade policies, on the one hand, and employment and social policies on the other.

2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods, services and technologies, sustainable renewable-

⁵⁰ International Investment Agreements Navigator

⁵¹ EU - Ukraine Association Agreement (2014)

energy and energy-efficient products and services, and eco-labelled goods, including through addressing related non tariff barriers.

3. The Parties shall strive to facilitate trade in products that contribute to sustainable development, including products that are the subject of schemes such as fair and ethical trade schemes, as well as those respecting corporate social responsibility and accountability principles'.⁵²

Social and environmental responsibility also extends to investment and corporate governance decisions. As a result, the concept of ESG was born. It comes down to how company socially behave, optimize, improve, and, finally, evidence that behavior with good reporting. Today, investors use, among other factors, ESG indexes, evaluations and scores to decide which companies to back. ESG strategies significantly help them to count on long-term returns. The terms CSR and ESG are often used interchangeably. ESG is considered as an outcome of overall company's sustainability performance.

ESG has three elements: environmental, social, and corporate governance. It is a sustainable development of commercial activity based on the following principles:

1) responsible attitude to the environment. Environmental principles determine how much a company cares about the environment and how it tries to reduce environmental damage. They include focusing on climate risks, energy efficiency, CO2 emissions, pollution, responsible consumption, and biodiversity.

2) high social responsibility. Social principles determine how company maintains connections with its workforce, other stakeholders, how business comply with the labor regulations, work on the safety and the quality of working conditions, monitor the gender balance, diversity, protect human rights, invest in social projects.

3) conscious corporate governance. Corporate governance affects the quality of company management focusing on the internal controls of a company, shareholder

⁵² Ukraine - United Kingdom Political, Free Trade and Strategic Partnership Agreement (2020)

rights, executive remuneration, audits and transparency of reporting, business ethics, anti-corruption measures, cooperation with the authorities.

Former United Nations Secretary General Kofi Annan was the first to formulate ESG principles. In 2004, Kofi Annan led a Global Compact initiative to encourage the integration of environmental, social and corporate governance principles into capital markets, primarily to combat climate change. ‘This was the beginning of what we call today ESG or sustainable investing, and it led directly to the formation in 2006 of the UN Principles for Responsible Investment (PRI) focused on encouraging the development of sustainable investing. Asset-manager and institutional-investor signatories commit to integrating ESG issues into their investment processes’.⁵³

ESG shows the potential of the business to both management and investors and is becoming not only a requirement, but the desire of management and business owners. Sustainable investing integrated into investment processes.

‘A company’s ESG performance is monitored by prospective investors, employees, partners, journalists, and the general public. Whether driving for a ‘triple bottom line’, competing for the best talent, or simply positioning your company to survive long term, nailing your ESG strategy and delivering on it is crucial. So, it has moved firmly into the ‘must-have’ category for firms, as traditional investors themselves transform into ESG advocates and activist shareholders seeking change and board refreshment - even in the most un-sustainable industries’.⁵⁴

‘According to the annual KPMG survey ‘Business Leaders: Perspectives in Ukraine 2021’, almost half of the leaders of Ukrainian companies see an increase in demand from stakeholders to implement the ESG principles in their business strategy.

⁵³ Jon Hale article ‘Sustainable Investing Events Highlight Kofi Annan’s Legacy’ Sep 20, 2018

⁵⁴ Blaise Hope article ‘A beginner’s guide to developing your company’s ESG strategy’ March 07, 2022

However, only 14% of managers believe that their ESG programs improve financial performance. In the world, this figure is four times higher - 52%.⁵⁵

According to Ernst & Young survey '91% of institutional investors consider nonfinancial performance core to their investment decision making process over the past year'.⁵⁶

'89% of investors surveyed in the 2021 Institutional Investor Survey would like reporting of ESG performance measured against a set of globally consistent standards a mandatory requirement, but this decreased to 74% of finance leaders surveyed in the 2021 Corporate Reporting Survey.'⁵⁷

According to the annual KPMG survey 'Business Leaders: Perspectives in Ukraine 2021', almost 'almost half of respondents in Ukraine (47%) and two thirds in the world (67%) today say there is a request from stakeholders, including investors, regulators and customers, to increase reporting and transparency on ESG (environmental, social and governance) issues. 30% in Ukraine and 58% of respondents in the world describe this request as significant, noting that the greatest pressure is seen by institutional investors - 67% in Ukraine and 52% worldwide.

In today's world, the focus is on the social dimension of the ESG program, with 81% of executives saying, 'The pandemic has forced us to shift the focus to the social dimension of our ESG program'.

On the one hand, 71% of managers stated that they will increasingly bear personal responsibility for making progress in solving social problems.

But on the other hand, more than half (56%) of respondents acknowledged that given the growing expectations on diversity, equality and inclusiveness, it will be

⁵⁵ Andriy Tsybmal KPMG Review Magazine #11 2021 p.3

⁵⁶ Ernst & Young Global Limited website press release 'ESG disclosures take center stage as investors raise stakes to assess company performance' 23 Jul 2020

⁵⁷ Ernst & Young website information 'ESG Reporting'

difficult for them to live up to them. In addition, 46% of managers surveyed said that the negative impact of the global pandemic on women in the workplace makes it difficult to achieve their goals of gender parity at senior management level.

58% of executives worldwide and 30% in Ukraine face increased demands from stakeholders, including investors, regulators and customers, on ESG reporting⁵⁸.

According to Bloomberg Intelligence's ESG report 'Global ESG assets are on track to exceed \$53 trillion by 2025, representing more than a third of the \$140.5 trillion in projected total assets under management'.⁵⁹

Lawmakers around the world are drawing up legislation regarding ESG to make it more unified and mandatory. A great example is the Regulation on sustainability-related disclosure in the financial services sector adopted by the European Parliament and The Council of the European Union to pursue the objective of sustainable investment. It forces financial market participants disclosure detailed information in the public eye about the way they 'tackle and reduce any possible negative impacts that their investments may have on the environment and society in general. Compliance with sustainability-related disclosures contribute to strengthening investor protection and reduce greenwashing'.⁶⁰

'Greenwashing' is another term that is related to ESG and CSR. It means a form of marketing that aims to mislead stakeholders about the company's progress in the environmental friendliness of products or services. It is done by presenting products or services in a more favorable light, concealing harmful factors or by making unsubstantiated or abstract statements.

According to the words of U.S. Securities and Exchange Commission (SEC) Acting Chair Allison Lee at the CERAWEEK conference in March 2021 'the voluntary

⁵⁸ KPMG Review Magazine #11 2021 p. 35-36 with reference

⁵⁹ Adeline Diab and Gina Martin Adams Bloomberg Intelligence Research 'ESG assets may hit \$53 trillion by 2025, a third of global AUM' February 23, 2021

⁶⁰ European Commission press release 'Commission adopts disclosure rules on sustainable investments'

disclosure regime for climate and other sustainability issues in the U.S. has failed to produce the level of consistent, comprehensive and comparable information that investors needed'. The SEC taken the first steps toward developing a framework for climate and ESG disclosures. The SEC has an aim to harmonize it with international common principles that will serve as a baseline once established.⁶¹

There is still no single worldwide standard for ESG reporting. There are several ESG-related regulations and reporting standards that can be used to develop ESG strategy, regulation and a clear roadmap for implementation.

For example, the Sustainability Accounting Standards Board (SASB Standards) is an ESG guidance framework which highlight ESG issues for 77 industries.⁶²

The UN Guiding Principles on Business and Human Rights and The UN Sustainable Development Goals (SDGs) can also be helpful to plan ESG strategy in key areas for the company.

In the end of 2021, the International Financial Reporting Standards Foundation (IFRS) announced its intentions to develop a worldwide sustainability reporting standard. 'The IFRS was supported by the five organizations to combine their existing standards frameworks to produce a common approach for ESG reporting: CDP (not-for-profit charity that runs the global disclosure system), CDSB (Climate Disclosure Standards Board - international consortium of business and environmental NGOs regarding reporting), GRI (the Global Reporting Initiative), IIRC (global coalition in the field of accounting, academia and NGOs regarding integrated reporting), and SASB.

On 3 November 2021, the IFRS Foundation Trustees announced the creation of a new standard-setting board—the International Sustainability Standards Board (ISSB)—to help meet this demand.'⁶³

⁶¹ Esther Whieldon 'SEC acting head explains why voluntary ESG disclosure regime is not enough' S&P Global Market Intelligence 1 March, 2021

⁶² Sustainability Accounting Standards Board website

On 31st January 2022, the CDSB was consolidated into the IFRS Foundation to support the work to deliver a comprehensive global baseline of sustainability-related disclosure standards - International Sustainability Standards Board (ISSB). ISSB Drafts and comment letters related to general and climate-related sustainability- disclosures can be already examined on the IFRS Foundation's website.⁶⁴

A study conducted by Krueger, Philipp and Sautner, Zacharias and Tang, Dragon Yongjun and Zhong Rui identified 25 countries that introduced mandatory ESG disclosure regulations for firms between 2000 and 2017 including Australia (2003), China (2008), South Africa (2010), or the United Kingdom (2013). Researchers examined the impact of mandatory ESG disclosure on ESG reports filed in the reporting databases of the Global Reporting Initiative (GRI) and of Asset4 ESG (now Refinitiv ESG that also provides ESG ratings)

According to the results of the research ‘there is a significant positive impact of mandatory ESG disclosure regulations on the number and quality of ESG reports, particularly among firms where ESG-related concerns and information demands by investors are largest. Mandatory ESG disclosure improves the corporate information environment and leads to beneficial real outcomes. It increases the accuracy of analysts’ earnings forecasts, lowers forecast dispersion, reduces negative ESG incidents, and lowers the likelihood of stock price crashes.’ The researchers encourage to introduce mandatory ESG disclosure in the countries that do not have it yet⁶⁵.

It is now obvious that international investors and business owners are increasingly integrating ESG factors into the decision-making process, while as more and more

⁶³ Joint press release by CDP, CDSB, GRI, IIRC and SASB ‘Global sustainability and integrated reporting organisations launch prototype climate-related financial disclosure standard’ 18 Dec 2020

⁶⁴ IFRS Foundation website statement

⁶⁵ Krueger, Philipp and Sautner, Zacharias and Tang, Dragon Yongjun and Zhong, Rui ‘The Effects of Mandatory ESG Disclosure Around the World’ (November 30, 2021). European Corporate Governance Institute – Finance Working Paper No. 754/2021, Swiss Finance Institute Research Paper No. 21-44

countries are enforcing them. As Ukraine aims to attract international investment, it is important to consider at the national market the standards that are being set globally.

According to the survey ‘24% in Ukraine and 30% of executives in the world plan to invest more than 10% of their income in their companies' sustainable development programs. 77% of managers say that government incentives are also needed to stimulate climate investments by the business community’.⁶⁶

The ESG Transparency Index developed in Ukraine can help. ‘The Corporate Governance Professional Association (CGPA) and the Centre for CSR Development Ukraine (CSR Ukraine), supported by the Center for International Private Enterprise (CIPE), present the ESG Transparency Index Ukraine 2020 on December 2, 2021. ‘This Index assesses Ukrainian enterprises by ESG criteria. Public information was assessed following ESG criteria on the websites of Ukrainian companies. All information collected in this Index is based on publicly available information, and all featured companies participated in the assessment voluntarily.

As the result, the level of transparency of Ukrainian companies is gradually increasing. ESG indicators disclosed by Ukrainian companies include: environmental aspects – 36,6%; social aspects - 26,4 %, corporate governance aspects’27,7%’.⁶⁷

In November 2021, National Bank of Ukraine (NBU) presented Sustainable Finance Development Policy 2025, developed in collaboration with the International Finance Corporation (IFC). A key element of the policy is sustainable development and sustainable financing, namely the integration of ESG criteria into financial services. The roadmap envisages:

1) ‘implementation of environmental, social and governance (ESG) factors in the corporate governance system of banks.

⁶⁶ KPMG Review Magazine #11 2021 p. 35-36 with reference

⁶⁷ The ESG Transparency Index Ukraine 2020 by experts of the CGPA and the CSR Ukraine with the support of the CIPE

2) environmental and social risk management (ESRM).

3) evaluation and selection of projects for funding, taking into account their role in sustainable development.

4) the obligation of financial institutions to disclose information on the sustainable nature of their activities'.⁶⁸

According to the annual report of the National Bank of Ukraine (NBU) 2021, the NBU plans to implement ESG factors in the corporate governance systems at the beginning of 2022 for banks, and in late 2024 for nonbank financial institutions. The NBU plans to control the disclosure of this information by nonbank financial institutions only in early 2025⁶⁹.

A significant event in the development of environmental policy of sustainable development of Ukraine was the issue of so-called ESG-bonds ('green' bonds) of the National Power Company 'Ukrenergo' in 2021. 'Green' bonds are securities that are provided on a repayable basis and are used exclusively to finance environmental projects. National Power Company 'Ukrenergo' raised these funds, mainly to cover the debt, which was formed in 2020 due to the crisis in the electricity market and has already made the first interest payment on its 'green' bonds during the war, sending securities holders 28.4 million dollars. 'This was the largest issue of Eurobonds of Ukrainian corporate issuers (\$ 825 million) and the first issue of securities, which are both a tool for investment in 'green' energy and sustainable development,' said CEO of National Power Company 'Ukrenergo' Volodymyr Kudrytskyi⁷⁰.

Investing in CSR is not only about making money. The next research made in February 2020 prove that organizational CSR investments pay back by positively influencing customers. The data collected shows that the young customers are highly

⁶⁸ National Bank of Ukraine press release 'The National Bank presented the Policy on the Development of Sustainable Financing until 2025' 25 November. 2021

⁶⁹ National Bank of Ukraine annual report 2021

⁷⁰ Volodymyr Kudrytskyi Facebook page statement on 10 May

influenced by the CSR investments of food providers and as a result they respond with their positive perceptual, attitudinal and behavioral responses: ‘if a company invests in CSR activities, the customers feel positive about its services and develop a commitment level with food providers. They respond by taking up volunteer behaviors towards restaurants by recommending it to others, praising it and doing what customers are often not bound to do (voluntary behavior)’.⁷¹

The research made in China by Tiezhen Yuana, Ji (George) Wub, Ni Qinc, Jian Xud proves the theory of strategic growth option that companies should increase its CSR investment to show a positive signal on their health development to its stakeholders during facing a high uncertainty period (for example, forced governor turnover). Choosing China as a place for research was the right decision due to the volatile business environment in which companies usually do not obtain a chance to persuade the central government to implement a favourable economic policy and having the ability to monitor China Economic Policy Uncertainty Index (CEPU Index) using Chinese data from 2008 to 2015.

Their paper figured out that higher economic policy uncertainty leads to increasing the firm's CSR engagement mainly in supplier protection, environmental protection, and CSR system construction. The CSR engagement is more significant for firms losing political connection unexpectedly and for firms in regions with low social trust, as losing political connection or low trust level and those that have high profitability ability. Their results remain the same in several robustness tests.

Finally, they show that investor reaction to CSR investment is significant when policy uncertainty is high, the CSR engagement should be adjusted dynamically, and the

⁷¹ Ahmed, I.; Nazir, M.S.; Ali, I.; Nurunnabi, M.; Khalid, A.; Shaukat, M.Z. Investing In CSR Pays You Back in Many Ways! The Case of Perceptual, Attitudinal and Behavioral Outcomes of Customers. *Sustainability* 2020, 12, 1158. p.11 (p. 1-15)

results have important policy implications for both firms and the government. The government may provide explicit protection to CSR firms when EPU increases⁷².

In the paper written by Trung K. Do examined the effect of corporate social performance on bankruptcy risk. As a result, the research states that ‘CSR is negatively associated with default probability and helps lower transaction costs and enhance access to capital markets, which in turn reduces probability of default. Further, firms with high CSR engagement can mitigate their risk of falling into default and enjoy high credit quality due to building greater trust and reputation’⁷³.

Juanjuan Zhang, Yuming Zhang, Yongkun Sun investigated the importance of corporate social responsibility to firms in COVID-19. Using data from listed companies in China, they found that a high-level of CSR is conducive to improving stock returns. According to their study, corporate social responsibility can bring social trust capital to enterprises, and it can improve the corporate performance during the epidemic. Their findings reveal that the impacts of employee protection and environmental protection responsibilities on stock returns are even more significant.⁷⁴

Therefore, the idea that the COVID-19 pandemic will accelerate the development of CSR in the long run is more optimistic, as more and more firms realize that their long-term survival and development depend on achieving a balance between profitability and harmony with various stakeholders. The most pressing and urgent issue is not whether to invest in CSR or not, but how to invest in CSR to achieve mutually beneficial and interdependent social, environmental and economic goals.

The study made by Stephan Meier and Lea Cassar indicates that ‘firms probably should not use CSR initiatives as merely another tool to benefit their HR strategy. It shows that it probably can have opposite effect on the effectiveness of the workers’,

⁷² Yuan, Tiezhen & Wu, Ji (George) & Qin, Ni & Xu, Jian, 2022. "Being nice to stakeholders: The effect of economic policy uncertainty on corporate social responsibility," *Economic Modelling*, Elsevier, vol. 108(C).

⁷³ Trung K. Do ‘Corporate social responsibility and default risk: International evidence’

⁷⁴ Juanjuan Zhang, Yuming Zhang, Yongkun Sun ‘Restart economy in a resilient way: The value of corporate social responsibility to firms in COVID-19’

depending on how and why the company has decided to share the money for charity. The results may differ depending on whether employees should do extra work or not, whether the company has previously conducted research on the impact on the company's profitability after the voluntary campaign or donated money to charity without such an analysis.⁷⁵

In the report made by John Peloza and Jingzhi Shang presented 'recommendations on how board members and senior executives committed to their company's social and environmental responsibility can ensure effective and profitable investments in CSR. By linking CSR activities with increased customer value, or developing new sources of customer value, companies can gain a competitive advantage'.⁷⁶

The Indian research showed that 'after entering into force in 2013 the Indian Companies Act which contains different mandatory provisions regarding CSR for Indian business like spending at least 2% of company's average net profits during the last three financial years on CSR activities, if an organization invests in CSR activities, then this investment provide cushion against negative events which may affect the reputation of the business. After legitimation, various reports suggest that CSR law is essential to support CSR initiatives. Because of CSR legislation, companies are aware of the concern about social responsibilities in India and ready to respond accordingly. Mainly all survey indicates CSR as an important part of their business plan and if ignore, are likely to suffer. As per different survey reports, it seems that before legitimation of CSR companies considered it as an act of philanthropy or just a business practice towards the society'.⁷⁷

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⁷⁵ Stop Talking About How CSR Helps Your Bottom Line by Stephan Meier and Lea Cassar

⁷⁶ Peloza, John and Shang, Jingzhi 'What Business Leaders Should Know: Investing in CSR to Enhance Customer Value' p.8 (1-10)

⁷⁷ Singh, Kuldeep & Sr, Madhvendra. (2018). Corporate Social Responsibility (CSR): An Investment Opportunity or a Forced Expenditure. (85-92)

In the second section, We focus on disclosing *the primary important aspect for a business*: is CSR something profitable or is it just a cost?

This study presents examples from studies that analyze how CSR affects business, depending on how much attention and money is paid to it. This section mentions studies from different countries that are based on both theory and modeling and practical experience.

It has been proven that CSR is profitable and necessary for a business to be competitive in the market. Among other things, CSR helps to minimize risks for the company. It is concluded that ESG reporting is widely used by businesses and investors, but this reporting often lacks consistency and credibility. That is why there is a need to develop state policies in the field of mandatory reporting of companies.

The general conclusion of the section 2 is that mentioned studies prove not only the profitability of CSR, but a necessity for a favorable attitude of society towards business, improving the standards of living of society, company's marketing, minimizes the risk of bankruptcy, promotes the development of green technologies, creates closer ties between state and local authorities and business and helps to reach success in market relations nowadays.

SECTION 2. CSR DEVELOPMENT IN UKRAINE AND EUROPE

2.1. STATE OF CSR DEVELOPMENT IN UKRAINE AND EUROPE

The UN Sustainable Development Goals (SDGs) and the European Commission in its Multi-stakeholder Platform on the SDGs have outlined the overall direction for the role of business going forward. ‘These include the shift from a linear to a circular economy, the development of a sustainable food production system, and the drive to meet the Paris Agreement climate targets by embracing renewable energy and ensuring buildings and transport systems are energy efficient’.⁷⁸

In 2017, with the assistance of UN agencies in Ukraine and with the participation of 800 leading experts, a national system of Sustainable Development Goals was formed which is an adapted version and takes into account the specifics of national development. It includes 86 development tasks and 172 indicators to monitor their implementation.

According to the text of the Law ‘On Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030’, ‘the processes of globalization and social transformation have increased the priority of environmental protection, and therefore require Ukraine to take urgent measures. For a long time, the economic development of the state was accompanied by unbalanced exploitation of natural resources, low priority of environmental issues, which made it impossible to achieve balanced (sustainable) development. In particular, it is determined that the root causes of Ukraine's environmental problems are: low level of public understanding of the priorities of environmental protection and the benefits of balanced (sustainable) development, imperfection of the system of environmental education and training; unsatisfactory level of compliance with environmental legislation and environmental rights and

⁷⁸ Commission SWD Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress Brussels, 20.3.2019 p.3

responsibilities of citizens; unsatisfactory control over compliance with environmental legislation and failure to ensure the inevitability of liability for its violation'.⁷⁹

The European Commission takes steps to encourage socially-friendly business practices, promoting social entrepreneurship and social innovation, promoting market uptake through labelling (the EU Ecolabel, the EU Organic Label), innovative approaches to measure environmental impact (EMAS, PEF and OEF methods), making popular corporate social responsibility.⁸⁰

In European countries, non-financial reporting is compiled and presented in various forms, the most important being the UN Global Compact Progress Report and the Global Reporting Initiative's (GRI) Sustainable Development Report.

According to Commission Staff Working Document 'the Non-Financial Reporting Directive (NFRD) requires the largest EU companies to disclose, amongst other things, the due diligence process that they implement with regard to environmental and social issues, human rights, and bribery and corruption. The 2014 Public Procurement Directives (Green Public Procurement (GPP)/ Socially Responsible Public Procurement (SRPP) create additional market opportunities for sustainable products, promote supply chain due diligence and encourage the market to shift towards more environmentally friendly and socially responsible solutions. In November 2018, a European Corporate Reporting Laboratory was launched with the aim to identify and document innovations in reporting practices, especially non-financial reporting. The laboratory is hosted by the European Financial Reporting Advisory Group (EFRAG)'.⁸¹

On 21 April 2021, the European Commission adopted a package of measures as a part of 'European Green Deal' to improve sustainable reporting in the EU.⁸²

⁷⁹ Law of Ukraine "On Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030" «Про Основні засади (стратегію) державної екологічної політики України на період до 2030 року»

⁸⁰ Commission SWD Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress Brussels, 20.3.2019 p.3

⁸¹ Commission SWD Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress Brussels, 20.3.2019 p. 20

⁸² Українська енергетика ЄЗК: стале інвестування 28 травня 2021

Corporate Sustainability Reporting Directive (CSRD) is one of them, which amends and introduces more detailed reporting requirements of the NFRD to almost all companies listed on regulated markets, requires the audit of reported information and to report according to mandatory EU sustainability reporting standards (ESRS).⁸³

ESRS - are a set of reporting requirements across 13 ESG issues 'categorized into four areas: cross-cutting (general provisions), environment, social and governance. On April 29, 2022, the European Financial Reporting Advisory Group (EFRAG) launched the first draft of ESRS for public consultation ending on 8 August 2022'.⁸⁴

According to the updated national contribution of Ukraine to the Paris Agreement, which is the roadmap for reducing industrial emissions, Ukraine approves conditions for reduction of CO₂ emissions by 65% by 2030⁸⁵. It is worth noting that this decision is more ambitious than the goal of the European Union, which has pledged to reduce it to 55% by 2030, so-called 'Fit for 55 package', as part of the European Green Deal⁸⁶.

It should be noted that the text of the updated national contribution of Ukraine to the Paris Agreement states that 'one of the main obstacles to reducing greenhouse gas emissions is the armed aggression of the Russian Federation and its temporary occupation of the Autonomous Republic of Crimea, Sevastopol, and some areas of Donetsk and Luhansk regions. It requires the involvement of significant political, financial and human resources to protect the territorial integrity and sovereignty of Ukraine. The ongoing armed aggression has a significant negative impact on the economic situation in Ukraine and has led to a reduction in industrial production. All the above factors, together with low incomes, lead to energy poverty'⁸⁷.

⁸³ European Commission website article 'Corporate sustainability reporting'

⁸⁴ Chris Fenwick 'EFRAG Issues Draft European Sustainability Reporting Standards' May 4, 2022 OneTrust Blog

⁸⁵ Розпорядження КМУ від 30 липня 2021 р. № 868-р 'Про схвалення Оновленого національно визначеного внеску України до Паризької угоди'

⁸⁶ Official website of the Council of the EU and the European Council Press release 3 June 2022 'The EU's plan for a green transition'

⁸⁷ Оновлений національно визначений внесок України до Паризької угоди

russia's full-scale invasion of the territory of Ukraine threatens to achieve these goals even more.

Part of the European Union "Fit for 55" package is three draft laws that has been recently sent back for revision to committee: draft legislation on the Emissions Trading System (ETS) reform, the Social Climate Fund legislation and the EU Carbon Border Adjustment Mechanism (CBAM).⁸⁸

‘CBAM targets imports of carbon-intensive products, in full compliance with international trade rules, to prevent offsetting the EU’s greenhouse gas emissions reduction efforts through imports of products manufactured in non-EU countries, where climate change policies are less ambitious than in the European Union. It will also help prevent the relocation of the production or the import of carbon-intensive products’.⁸⁹

In fact, Carbon Border Adjustment is a payment that will be charged when products are imported into the EU, based on the amount of CO2 emissions during its production. Ukrainian businesses may have not access to the EU market if Ukraine will not be able to adapt to changes by implementing necessary costly technological solutions and Ukrainian products will no longer be environmentally friendly for EU market.

At the end of 2021, the Law of Ukraine ‘On Energy Efficiency’ was adopted to fulfill Ukraine's obligations under the Treaty establishing the Energy Community and the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, the One Part, and Ukraine, of the Other Part. This law regulates relations arising in the field of energy efficiency and is aimed at strengthening energy security, reducing energy poverty, sustainable economic development, conservation of primary energy resources and reducing greenhouse gas emissions. The field of energy efficiency covers energy efficiency measures carried out

⁸⁸ European Parliament Press Release ‘Fit for 55: Environment Committee to work on way forward on carbon-pricing laws’

⁸⁹ Official website of the Council of the EU and the European Council Press release 15 March 2022

during the production, transportation, transmission, distribution, supply and consumption of energy. This law implemented European Union legislation in the field of energy efficiency on the establishment of eco-design requirements for energy-related products and energy labeling.⁹⁰

In pursuance of this Law, the State Agency on Energy Efficiency and Energy Saving of Ukraine is working to develop a government decision on the establishment and operation of the National Energy Efficiency Monitoring System. The system will help monitor and systematize information on the level of energy efficiency in Ukraine and the implementation of national goals in this area.

At the same time, the Cabinet of Ministers of Ukraine adopted the Strategy for Environmental Security and Adaptation to Climate Change until 2030. The government has identified the main problems in the field of environmental protection and natural resources that negatively affect human health and ecosystem sustainability, strategic goals, objectives aimed at achieving the goals, stages of their implementation, expected results. The same document approved an operational plan for the implementation of the Strategy for Environmental Security and Adaptation to Climate Change until 2030 in 2022-2024.⁹¹

Ukraine has an updated roadmap for reducing industrial emissions. This is a National emission reduction plan of major pollutants from the large combustion plants (NERP). The NERP has a step-by-step annual reduction in pollutant emissions from large combustion plants, a gradual significant reduction in coal production by 2033 with the decommissioning of most coal-fired power units.⁹²

⁹⁰ «Про енергетичну ефективність» Закон України № 1818-ІХ від 21.10.2021

⁹¹ “Про схвалення Стратегії екологічної безпеки та адаптації до зміни клімату на період до 2030 року” розпорядження Кабінету Міністрів України № 1363-р від 20.10.2021

⁹² “Про Національний план скорочення викидів від великих спалювальних установок” розпорядження Кабінету Міністрів України № 796-р від 08.11.2017

A very important bill the Verkhovna Rada of Ukraine has not been able to pass for a long time is the draft Law № 2207-1-d ‘On Waste Management’.⁹³

The bill lays down the legal basis for introduction of transparent rules in the field of waste management that would allow wastes to be collected, sorted and processed. This is one of the steps towards the implementation of the Association Agreement between Ukraine and the EU.

Ministry of Environmental Protection and Natural Resources of Ukraine announce that ‘the law will be the basis for the preparation and adoption of more than 30 sectoral regulations. It will facilitate the development of national, regional and local waste management plans and programs. Introduce a European hierarchy of waste management, where the priority is to prevent their generation, reuse and recycling.

‘With the beginning of the large-scale russian invasion of Ukraine, the problem of waste has become not just urgent, but glaring. Each destroyed house generates about 50 cubic meters of waste. Unfortunately, we have thousands of such objects. I hope that the bill will be adopted in the second reading as soon as possible’, commented Ruslan Strelets, Minister of Environmental Protection and Natural Resources of Ukraine’⁹⁴.

On March 16, 2022, the Ukrainian power system was synchronized with the European one. Against the background of large-scale russian invasion of Ukraine and the transition of the Ukrainian energy system to an isolated mode of operation from russia and belarus, the European Union supported the decision to accelerate the integration of the country's energy system into Europe's energy union planned for 2023-2024. This should be a stimulating factor for the development of renewable energy sources, the abandonment of coal generation and for the decarbonization of the Ukrainian energy system through deeper integration into the European energy market.

⁹³ Проект Закону про управління відходами 2207-1-д від 04.06.2020

⁹⁴ Міністерство захисту довкілля та природних ресурсів України ‘Законопроект про управління відходами готовий до другого читання’ 8 Червня 2022

Given the global environmental regulatory policy that push the business to ESG practices, companies will have to make more commitments in the corporate social responsibility sphere.

In March 2020, a new Ukraine Code of Corporate Governance was adopted, approved by the National Securities and Stock Market Commission of Ukraine (NSSMC) agreed with the Ukrainian Corporate Governance Academy (UCGA), which contains set of recommended corporate governance practices for listed companies in Ukraine.

The Code recommends the companies to implement best up-to-date sustainable development standards and practices to the extent possible, complies with all laws designed to enhance sustainable development, publish financial and non-financial reporting, and report on sustainable development projects on companies' websites. 'The companies should develop a Sustainable Development Policy that describes how the company plans to interact with its environment and also considers potential risks related to the environment. The Sustainable Development Policy should be approved by the Board'.⁹⁵

The National Securities and Stock Market Commission of Ukraine (NSSMC) has also summarized the practice of applying corporate governance legislation and developed an appendix on corporate governance and sustainable development to the Code. According to the appendix to the Code, for reporting purposes, 'a company should adhere to the ESG Disclosure Guidelines approved by the NSSMC until generally accepted international ESG reporting standards are adopted'.⁹⁶

The Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' contains a rule according to which medium and large enterprises compile a management

⁹⁵ The Core Code of Corporate Governance: Requirements and Recommendations №118 12.03.2020 by the NSSMC of Ukraine

⁹⁶ 'Щодо узагальнення практики застосування законодавства з питань корпоративного управління' рішення №1182 Національної комісії з цінних паперів та фондового ринку від 02.12.2021

report – ‘a document containing financial and non-financial information that characterizes the state and prospects of enterprise development and reveals the main risks and uncertainties of its activities.’⁹⁷

The Guidelines for the preparation of the management report state that ‘large enterprises with an average number of employees exceeding the criterion of 500 employees at the date of preparation of the annual financial statements are recommended to include non-financial performance indicators in the management report regarding the environment, social issues, including issues of social protection of employees, respect for human rights, the fight against corruption and bribery’.⁹⁸

The keynote is that even large enterprises are not obliged to compile a part of non-financial reporting on the impact on the environment under Ukrainian law, which significantly reduces the social responsibility of business.

According to the Corporate Governance Professional Association (CGPA) statement ‘only 58.5 percent of companies made their Governance Reports publicly available on corporate websites as of 2020. It is both CGPA and CSR Ukraine’s opinion that the main reason why the legislative norms of disclosing non-financial information in governance reports have not influenced an increase in the number of reports is that the issues of administration of collection and analysis of governance reports remain uncertain and the norms of administrative responsibility for violation of the procedure of submission and disclosure of governance reports are not applied’⁹⁹.

In the previous section of the paper, we are convinced of the profitability of corporate social responsibility. Not surprisingly, numerous companies are willing to notify stakeholders and comply with government regulations regarding reporting. At the same time, I would like to analyze those situations in which the company will have to

⁹⁷ Law of Ukraine «Про бухгалтерський облік та фінансову звітність в Україні: Закон України»

⁹⁸ Order of the Ministry of Finance of Ukraine «Про затвердження Методичних рекомендацій зі складання звіту про управління»

⁹⁹ The ESG Transparency Index Ukraine 2020 by experts of the CGPA and the CSR Ukraine with the support of the CIPE

report on the negative impacts on the environment, insufficient work in the field of corporate social responsibility.

A study conducted by a Yuting Lin will help us find out discursive strategies UK and Chinese Fortune 500 companies used for communicating negative aspects in the annual corporate social responsibility report, a document in which companies disclose their impacts including the environment, health and safety, employees, community, products and customers, business ethics, and corporate governance in accordance with the standard for CSR disclosure Global Reporting Initiative (GRI). The researcher chose UK as a country for the research, because it has a long history of reporting, one of the highest reporting rates, and one of the largest degree of standardization in reporting. The number of companies that report in China has also grown tremendously over the past decade. That's why it is also a great choice for the comparison with UK. The researcher presented a summary of communicative strategies companies may use based on previous studies: denying or avoiding negative aspect; emphasizing positive aspect, minimizing negative aspect, rationalization or justification, evading responsibility, corrective actions or compensation, apologizing, admitting guilt.

In my opinion, the conclusion of the study can be drawn as follows: companies are ready to report about their failures in the field of attempts to achieve the goals of corporate social responsibility, speaking about it directly and covertly, including refuting or confirming information published regarding their activities by state bodies or established by court decisions. Unfortunately, it is impossible for the researcher and stakeholders to fully verify the accuracy of the information provided by the company, and to what extent the information should be considered as marketing materials, which are not based on facts¹⁰⁰.

The judgement of European sustainability experts shows that 'even if some advances have been made in the last two years – overall, society's progress on meeting

¹⁰⁰ Lin, Yuting. (2021). Legitimation strategies in corporate discourse: A comparison of UK and Chinese corporate social responsibility reports. *Journal of Pragmatics*. 177. 157-169.

the SDGs is lacking. Progress across all SDGs seen as poor and the SDGs that get the most attention within organisations are not always those that are seen as most urgent'.¹⁰¹

As we have already mentioned in Section 1 of this study there are also alternative terms to CSR like Responsible Business Conduct (RBC) which was introduced by the OECD. The OECD Guidelines are not legally binding on companies, but they are binding on signatory governments, which are required to ensure the Guidelines are implemented and observed.

One of the primary steps towards creating favorable conditions for conducting socially responsible business in Ukraine and improving the legal framework in the country that would facilitate this activity is the need to create a coordination center, a platform for dialogue between business and other stakeholders, the establishment of a separate governmental department or other governmental institution responsible for CSR. For a long time, we did not have one.

Following Ukraine's accession to the Declaration on International Investment and Multinational Enterprises, becoming an associate member of the OECD Investment Committee, a National Contact Point (in other countries there are the same dedicated authorities) was established at the Ministry of Economic Development and Trade. Its task is to develop draft normative legal acts, in particular the Concept of implementation of state policy in the field of promoting the social responsibility of business in Ukraine; measures to implement the principles and standards of responsible business in Ukraine; facilitating the resolution of OECD Guidelines for Multinational Enterprises by businesses by addressing complaints from the injured party (trade unions, consumers, non-governmental organizations, business partners) and establishing a tripartite dialogue between government authorities, business representatives, and injured party in developing a mutually beneficial solution.¹⁰²

¹⁰¹ From Urgency to Action: Business and The SDGs CSR Europe White Paper 2019

¹⁰² За матеріалами звіту про діяльність Національного Контактного пункту Розбудовуємо потенціал 2017-2018
Укладачі: Зінченко А., Саприкіна М. – К.: Видавництво «Юстон», 2018. – 44 с.

However, according to a survey conducted in 2018, only 8% of companies surveyed are aware of the creation of a National Contact Point.¹⁰³

Moreover, OECD rules regulate the activities of multinational enterprises and not business in Ukraine in general. The latest news on the website of the National Contact Point in Ukraine dates back to 2019¹⁰⁴.

¹⁰³ Розвиток КСВ в Україні: 2010–2018. Укладачі: Зінченко А., Саприкіна М. Видавництво «Юстон», 2017. – 52 с

¹⁰⁴ Сайт Національного Контактного пункту в Україні

2.2. CSR IN UKRAINE DURING THE WAR WITH RUSSIA

russia's full-scale invasion of the territory of Ukraine reflects in practice the responsibility of business to society. It is crucial for businesses to understand they cannot be neutral side even when they do not take involved in war actions directly. No matter whether the company will decide to continue business activity or choose to relocate the business, it's operations will have an impact on armed conflict dynamics and company's reputation.

Moreover, business have obligations to analyze existing human rights due diligence and set up mechanisms to identify, prevent and mitigate risks in response to the russian invasion in Ukraine.

Business & Human Rights Resource Centre emphasizes that 'in situations of armed conflict business should conduct enhanced human rights due diligence to identify, prevent and mitigate heightened risks and adopt a conflict-sensitive approach as set out in the United Nations Guiding Principles on Business and Human Rights (UNGPs). Companies need to do so because of the severe risk of gross human rights abuses and the risk of exacerbating conflict-drivers, in addition to the need to abide by international humanitarian law'.¹⁰⁵

According to the conclusion of Business & Human Rights Resource Centre research, international companies 'have taken unprecedented action and public announcements in response to both the invasion and the imposition of sanctions on russia. But only a small number of companies appear to be taking their obligations under international human rights law and humanitarian law seriously. It is now imperative that companies operating in russia and Ukraine, and their investors, institute robust human rights due diligence to identify and mitigate the risks they may be creating for workers

¹⁰⁵ Business & Human Rights Resource Centre Briefing 'russian invasion of Ukraine: Analysis of companies' human rights due diligence' 24 May 2022

and communities in the precarious and dangerous conditions of war, and to ensure they are not contributing to the underlying drivers of conflict or triggers for violent episodes.

Without this effort, companies and investors may abuse workers and communities, and are leaving themselves exposed to significant legal and reputational risk.¹⁰⁶

According to a survey conducted by Factum Group Ukraine on April 15-18, 2022, respondents mentioned what they think is most important for business to do during the war: ‘support of the Armed Forces of Ukraine and defenders (humanitarian aid, money) – 39%; employee support (relocation, job retention, etc.) – 18%; resumption of the company (if the situation in the region allows) – 14%; civilians support (vulnerable groups / migrants, food, medicine) – 12%; fulfillment of obligations to the budget of Ukraine (taxes, deductions) – 7%; manifestation of the position on military action in Ukraine through statements, content – 7%; support for volunteer organizations and charitable foundations – 2%’.¹⁰⁷

Ukrainians began to massively refuse to buy and support russian business after the annexation of Crimea in 2014. During the full-scale war with russia, Ukrainians are already giving up goods and services of foreign brands that continue to operate in russia.

According to a survey conducted by Gradus Research, 60% of Ukrainians have refused to buy products of international brands that continue to operate in russia¹⁰⁸.

Between February 22 and May 17, 2022, Australia, Canada, the European Union, France, Japan, Switzerland, the United Kingdom, and the United States imposed restrictions on a total of 6,680 individuals from russia. Furthermore, 1,017 entities were

¹⁰⁶ Business & Human Rights Resource Centre Briefing ‘Russian invasion of Ukraine: Analysis of companies’ human rights due diligence’ 24 May 2022

¹⁰⁷ Survey conducted by Factum Group Ukraine on April 15-18, 2022

¹⁰⁸ Gradus Research Shared reports Survey period: May 9-11, 2022

targeted by the sanctions over that period in response to the russia's invasion accompanied by brutal military crimes and crimes against humanity¹⁰⁹.

Consequently, international companies have also begun to boycott russian markets, suspend or significantly limit the activities of their units in russia.

Douglas Schuler, Laura Marie Edinger-Schons express an opinion that 'many companies likely were more worried about the risks to their reputation were they to do nothing. With so many other companies pulling out, it likely seemed better to explain to shareholders and customers back home why they're leaving than why they're staying'.¹¹⁰

Researchers at the Yale University School of Management estimate that as of May 15, 2022, during the monthes of russia's war against Ukraine, almost 1,000 companies have curtailed operations in russia— but some remain even as their business in Ukraine has suffered because of russia. They continue to pay millions of dollars in taxes to the aggressor country's budget¹¹¹.

CSR Ukraine, an expert organization of the CSR Development Center, has created a single Catalog of Business Contributions in the russian-Ukrainian War. The catalog already includes cases of more than 300 companies that have made their regional and/or national contribution to the fight against russia's military aggression¹¹². It is worth mentioning, that there is a similar catalog of companies that were helping during the Covid-19 pandemic in Ukraine.¹¹³

¹⁰⁹ Total number of list-based sanctions imposed by Australia, Canada, the European Union (EU), France, Japan, Switzerland, the United Kingdom (UK), and the United States on russia from February 22 to May 17, 2022, by target

¹¹⁰ Douglas Schuler, Laura Marie Edinger-Schons 'Why Apple, Disney, IKEA and hundreds of other Western companies are abandoning russia with barely a shrug' The Conversation March 9, 2022

¹¹¹ Yale School of Management "1,000 companies have curtailed operations in russia— but some remain"

¹¹² CSR Development Center 'Catalog of Business Contributions in the Ukrainian victory'

¹¹³ Catalog of actions of companies in the fight against COVID-19

There is also a list of international consulting firms' position on russian war against Ukraine made by Dead Lawyers Society a collective legal media before the war. Now they are raising the donations for army and support those who needed.¹¹⁴

Ukrainian law firms are also actively involved in countering russian military aggression and corporate social responsibility in general.

The importance of the legal profession for society, the functioning of the legal system, the establishment of the rule of law, ensuring access to justice is obvious. This is the first reason which should motivate lawyers to engage in pro bono activities and generally work in the profession in order to affirm social values.

But it's not just about values. Professional activity of a lawyer is a business, which is the second reason to practice pro bono and comply with other CSR. The benefits are the same as for any other company that focuses on corporate social responsibility. It is a great way to attract new clients and colleagues, increase lawyers' and company's reputation, develop new skills and experience, and help those who encourage sustainability projects or just cannot afford costly legal aid. In pro bono cases it is not necessary to adjust the strategy with an eye on the client's budget. A nice bonus is when pro bono hours can be paid for by the law firm, as a result, the pro bono activity is supported by the company financially.

For example, the law firm EVERLEGAL presented Sustainability Progress Report 2021 in which stated company's mission and goals, socially important projects in which they as a company participate together with clients, approach to sustainability in the company, reporting on Sustainability (according to SDG's).¹¹⁵ During war EVERLEGAL announced the launch of pro bono business legal support program to help

¹¹⁴ Dead Lawyers Society "International consulting firms' position on russian war against Ukraine"

¹¹⁵ EVERLEGAL Sustainability Progress Report 2021

businesses in Ukraine with legal challenges due to the full-scale war of russia against Ukraine.¹¹⁶

Another example is the contribution of Baker McKenzie and Integrites law firms to the completion of the European Commission questionnaire regarding Ukraine's application for European Union membership. Both teams worked pro bono¹¹⁷.

There is also a platform UA.Support that connects Ukrainians and refugees from Ukraine in need of legal assistance with lawyers who are ready to provide pro bono legal help. And this is just one of many examples of corporate social responsibility of lawyers in wartime.¹¹⁸

According to the mentioned survey conducted by Factum Group Ukraine, '7 out of 10 respondents (67%) mention assistance from Ukrainian companies / businesses operating in Ukraine during the war. Respondents are most likely to see help from telecommunications and mobile companies, followed by food / industry, logistics and delivery, banking / finance, and IT sector.

Assistance from ordinary Ukrainians is the most frequently mentioned resource of assistance to the country (88%), as well as assistance from: Ukrainian volunteer organizations (82%), foreigners (76%), foreign and Ukrainian governments (74% and 73% respectively)¹¹⁹.

It is critical to create the most favorable conditions for businesses to work and to encourage their initiatives aimed at fulfilling their social obligations in times of war. So how business and government interact and support each other?

¹¹⁶ American Chamber of Commerce website article 'EVERLEGAL Announced the Launch of our Pro Bono Business Legal Support Program to Help Businesses in Ukraine with Legal Challenges Due to the Full-Scale War of Russia Against Ukraine' 05.04.2022

¹¹⁷ Teona Gelashvili 'Baker McKenzie and Integrites Contribute to Completion of Ukraine's EU Membership Questionnaire' CEE Legal Matters 26 May 2022

¹¹⁸ non-profit project 'UA.SUPPORT Linking help' website by AgiLawyer Society NGO

¹¹⁹ Survey conducted by Factum Group Ukraine on April 15-18, 2022

The Ministry of Digital Transformation of Ukraine has launched an information section on government and donor programs, private initiatives to support entrepreneurs in wartime, which will help save business, jobs and support Ukraine's economy¹²⁰.

Ukrainian government has established a program to support the employment of internally displaced persons. According to it, compensations to employers for the salary costs of employed internally displaced persons are provided in the amount of UAH 6,500 for each such employee for two months¹²¹.

There is also a government program according to which Ukrainian enterprises in the zone of active hostilities can receive state assistance in moving their facilities to the western regions of Ukraine (in selecting places for their production facilities, transportation and resettlement of personnel, finding new employees).

First of all, state assistance for forced relocation will receive strategically important enterprises and enterprises that produce basic necessities (bread and other food, drinking water, clothing, etc.) to meet the needs of civilians and military. Also, priority in the order of relocation is given to enterprises that can independently ensure the dismantling and transportation of their facilities to the nearest station of JSC 'Ukrzaliznytsia'.¹²²

In addition, special credit programs and state guarantees have been introduced to ensure partial fulfillment of debt obligations for businesses as well as the tax burden on business was reduced.

The National Food Security Platform has been established on the basis of the State Service of Ukraine on Food Safety and Consumer Protection, which allows to unite the efforts of military administrations, food producers, trade networks, international organizations to stimulate the development of the Ukrainian economy during the war

¹²⁰ Online platform "Дія.Бізнес" Підтримка бізнесу в умовах війни

¹²¹ Ministry of Economy of Ukraine press release "Уряд та міністерство економіки запускають програму підтримки працевлаштування внутрішньо переміщених осіб" 22.03.2022

¹²² Online platform "Дія.Бізнес" Підтримка бізнесу в умовах війни

and provide food and basic necessities to residents, members of the Armed Forces of Ukraine and territorial defense. The State Agency of Fisheries of Ukraine established a similar platform.¹²³

Together with international partners, platforms have been created or updated to help businesses start, resume and enter the European and global markets. (projects «Biz For Ukraine», «KeepGoing», «Prozorro+», «Один одному», «1991 Reload», «ProdUkraine», «Clusters4Ukraine», marketplaces like «LITEPROM», «Do Business with Ukrainians», «Є-Товар», «Support Ukrainian Businesses», financing of charitable production by «Економіка довіри» LLC, line of legal support for business during the war from the Business Ombudsman Council, abolition of the commission from world marketplaces for sellers from Ukraine, «EU4Business» programme).¹²⁴

A large number of Ukrainian brands have reshaped their activities to help the army, territorial defense, and hospitals. Chains of restaurants under fire are preparing meals for territorial defense, those in need.

Well-known brands that used to sew bags, backpacks from the beginning of the full-scale war sew plates, first aid kits and other equipment. Many of them also resumed their core business in parallel.

It is almost impossible to list how much Ukrainian business is doing for our victory. A small part of these stories can be found at sites like www.uabusiness911.com.

The state of Ukraine introduces additional regulation of companies resident in Ukraine, which have economic ties with the aggressor state in the context of regulations on social responsibility of business. It is justified and aimed at protecting the lives and health of the civilian population of Ukraine.

¹²³ Online platform “Дія.Бізнес” Підтримка бізнесу в умовах війни

¹²⁴ the same source

Verkhovna Rada of Ukraine adopted as a basis the draft Law of Ukraine on Amendments to the Tax Code of Ukraine on Taxation of Business Entities Related to Economic Relations with the Aggressor State.¹²⁵

The purpose of this bill is to create an additional tax burden on companies that continue to work in the aggressor country despite the full-scale war against Ukraine, increase financial and reputational pressure on the head offices of such companies, create additional incentives to cease their activities in russia. As the result, to stop funding military aggression against Ukraine and humanity, to break supply chains, which further weakens the aggressor's economy and helps to isolate the aggressor country from the world economy and trade and reduce its negative impact on the economies of the world.

According to the provisions of the bill, an increased coefficient of 1.5 is applied to the rates of the following taxes: corporate income tax, environmental tax, resource tax and property tax for companies which maintain shareholding relations with russian entities or carry out any types of operations in russia either directly by Ukrainian company or by its foreign sister or parent company.

Such entities must notify the state of the acquisition of such status in order to apply the increased tax rate. It is planned to publish such a list of taxpayers.

At the same time, companies can receive appropriate exemptions if they terminate their economic ties with the aggressor state or the company's activity in Ukraine is considered to have significant social, humanitarian or economic impact. The criteria of "significant social, humanitarian or economic impact" are to be developed by the Cabinet of Ministers of Ukraine¹²⁶.

¹²⁵ Resolution Verkhovna Rada of Ukraine the № 2183-IX of 01.04.2022

¹²⁶ Draft Law of Ukraine on Amendments to the Tax Code of Ukraine on Taxation of Business Entities Related to Economic Relations with the Aggressor State

According to the explanatory note to the bill, the provisions of national and international law do not in any way restrict the right of a state to enact such laws as it deems necessary to control the use of property in the general interest or to ensure payment of taxes or other fees or fines, if a "fair balance" is ensured between the general interest of society and the requirements of protection of the fundamental rights of a particular person.

In the explanatory note to the bill mentioned the need to bring to social responsibility businesses that help Russia kill Ukrainians:

‘After all, such an economic presence undoubtedly provides the aggressor state with the necessary financial resources (through taxes, access to markets, relevant goods, services, etc.) to continue hostilities in the sovereign territory of Ukraine, and in accordance with the killing of civilians, damage to health and property.

Many international groups of companies that continue to operate in the markets of the Russia, have repeatedly stated compliance with the concept of social responsibility in the context of business, which provides that the firm / company, functioning to achieve its financial goals, while undertaking public commitments to help society. That is, a socially responsible company should not work solely to maximize profits, but should make decisions and perform actions that are acceptable in terms of the goals and values of society, in particular the protection of human life and health as the highest social value¹²⁷.

The unity of Ukrainian society and manifestation of the position on military action in Ukraine through statements and active support actions by local and foreign business environment are an example for the entire corporate world in achieving the goals of sustainable development, commitment to humanitarian values and corporate social responsibility.

¹²⁷ Пояснювальна записка до проекту Закону України “Про внесення змін до Податкового кодексу України щодо оподаткування суб’єктів господарювання, пов’язаних економічними зв’язками з державою-агресором”

As such, companies are part of society, contributing to the urgent social problems of Ukraine despite financial losses.

Olena Ero European Business Association Unlimit Ukraine Project Manager share statistics that ‘in addition to salaries, a third of the surveyed entrepreneurs provided their employees with material and psychological assistance, organized evacuations and provided housing. The companies also supported their employees who serve in the army and defense. From the first days of the war, small entrepreneurs, as a socially active group of the population, became involved in supporting the country and its defenders. The number of proactive businesses has hardly changed in two months. Most entrepreneurs helped financially - more than 60%, products - 24%, services - more than 20%, medicines - 10%, means of protection / defense - from 9 to 12%. However, as of April, 18% of entrepreneurs admitted that they had already exhausted their resources to help’.¹²⁸

European Business Association formed a general conclusion: ‘Ukrainian business has shown its best side - united and focused on helping the state and the people. Adherence to the principles of sustainable development has been confirmed in the active implementation of at least three principles: "No poverty", "Zero hunger", "Good health and wellbeing" and has become even broader, focusing on helping all people during the war. This is only part of what companies do that promote the values of sustainable development and social responsibility, both in peacetime and in pandemics and during war’.¹²⁹

¹²⁸ Olena Ero European Business Association Unlimit Ukraine Project Manager Manager article ‘How does the country's small business feel?’

¹²⁹ Statement of European Business Association “Соціальна відповідальність бізнесу у період воєнного стану”

2.3. FURTHER DEVELOPMENT OF CSR IN UKRAINE AND EUROPE

In Europe ‘the first decade of the 21st century was characterized by a focus on awareness raising and early development of the CSR and sustainability agenda. The second decade was all about mainstreaming and integration of sustainability into the core of the business strategy in each company and by enhancing transparency and engagement with key stakeholders, enhancing the link between sustainability and different corporate divisions like research and development, purchasing and marketing’.¹³⁰

The European Commission has set out the major transitions underway in four key areas in the reflection paper ‘Towards a Sustainable Europe by 2030’:

- *‘Moving from a linear to a circular economy* – challenging the assumptions of a culture of consumption and moving away from the concept of ‘waste’ to ensure the economy can be grown in a sustainable way;

- *Sustainability from farm to fork* – addressing the strain that our food production system places on our environment, creating new economic value and jobs in sustainable agriculture that protects our ecosystems;

- *Future-proofing energy, buildings, and mobility*– fully embracing renewable energy and reducing our dependency on fossil fuels to meet the Paris climate target, modernizing buildings to boost energy efficiency, and managing transport’s environmental impacts;

- *Ensuring a socially fair transition* – managing the technological, structural, and demographic changes that are underway and that are transforming the world of work, leaving no one and no place behind’.¹³¹

Following the text of the CSR Europe’s 2030 Strategy, sustainability is no longer about individual company’s management, but it is about the entire eco-system and is only possible if implemented through strengthening local communities. Multi-sectoral

¹³⁰ CSR Europe’s 2030 Strategy Mainstreaming the Urgency for Action

¹³¹ Reflection paper ‘Towards a Sustainable Europe by 2030’ 30.01.2019

partnerships are initiatives that ‘can play a leading role in the interlinkages between the SDGs, and in reinforcing action. Through collaborative partnerships and multi-sectoral platforms, more impact is possible: these collaborations can match the commitment and expertise of NGOs and social entrepreneurs with the ability to directly shape society that government and the private sector bring. Partnerships show that continued investment in collaborations creates leadership and change, both inside companies and towards society at large.’¹³²

Despite the unequivocally global goals that Europe sets for itself for the future, they recognize that CSR is not what Europe was aiming for 5 or 10 years ago, for example, according to reports ‘businesses often struggle to see the links between their own activities and wider progress on the SDGs. For companies, the pressure to prioritize short-term shareholder value is often much more intense than the pressure from government and civil society to embrace sustainability. Rewards for finding solutions to complex sustainability problems are poorly aligned and stakeholder collaboration to help meet the goals is scattered and haphazard. A key element for change will be to establish a narrative and practice on how the SDGs can be translated into business opportunities that drive value in and for the company. In this sense, reporting as such should not be the goal but a means to the end of a more integrated approach to value creation.’¹³³

For the future the CSR Europe which have 40+ corporate members and National Partners and represent over 10.000 companies in Europe set such 3 pillars of goals:

- ‘*An economy with and for people.* They aim for an inclusive economic system and labour market that promote life-long employability. Future of Work, Corporate Digital Responsibility, the realities of the ‘fourth industrial revolution’ are changing the workplace and putting a premium on the sort of skills that not enough Europeans possess and risk entrenching inequality;

¹³² CSR Europe’s 2030 Strategy Mainstreaming the Urgency for Action

¹³³ From Urgency to Action: Business and The SDGs CSR Europe White Paper 2019

- *Sustainable raw materials & value chains.* Work towards a carbon neutral, sustainable & circular economy, where sourcing & processing of materials takes place with respect - Sustainable sourcing, Circular economy, Sustainable supply chain, platforms, Business & Human Rights, Sustainable Raw Materials, the financial sector could be supported to re-orient capital flows to contribute to sustainable development. But this needs a framework for concerted business action to provide clarity among investors and integration of ESG factors for investment decision-making. Investors should assess the long-term value creation of companies and their management of sustainability risks;

- *Sustainable markets & finance.* They endeavour to make sustainability driven investments through enhanced Total Impact Disclosure the new normal. Fair and transparent markets and governance, sustainable finance, non-financial reporting, transparency and responsible tax behavior, existing consumption and production patterns continue to hold back progress, and while more than half of Europe's energy supply is now carbon neutral, the EU's energy producers are not yet in a position to fulfil the continent's energy demands'¹³⁴.

Ukrainian model of CSR is in its development. It was characterized by haphazardness and inconsistency. However, last years the progress is going in the right direction. It becomes noticeable how CSR receives support both from business itself and from the state, which has finally begun creating a legislative basis for controlling and achieving goals in CSR.

CSR should become a part of the Ukrainian business strategies and be one of the core elements of corporate culture.

The following steps should be taken to stimulate practical implementation and further development of CSR in Ukraine, paying attention to the international experience, especially of European countries and the peculiarities of Ukrainian realities:

¹³⁴ From Urgency to Action: Business and The SDGs CSR Europe White Paper 2019 p. 9

- transition from declarative and recommended provisions to the creation of a systemic strategic vision for the development of the circular economy in Ukraine;

- further development of national CSR policy based on European Union legislation (European Green Deal), international standards (ISO, EMAS, OHSAS, SA, AA series); The UN Global Compact; ILO Declaration of Fundamental Principles and Rights at Work; principles of global corporate responsibility; Global Reporting Initiative (GRI); unified socially responsible investing indices; American Worker and Employee Shareholder Development Program (ESOP);

- introduction of mandatory disclosure of non-financial indicators for large and state-owned companies in the annual report, transparent rules in the field of waste management, Ukrainian taxonomy of 'green' finances. There is a need to establish an effective mechanism and determine the body that will ensure the transparency of the sustainable investment market and prevent greenwashing. Focus on sustainable development through ESG strategies will increase investment opportunities;

- promotion of multi-sectoral partnerships and development of sector-specific roadmaps for climate neutrality in different areas of the economy and forge stronger public-private partnerships;

- creating an effective platform for dialogue between business and other stakeholders and its promotion. Further involvement of business associations and non-governmental (public) organizations in the CSR implementation process is needed.

- develop a system of grants and subsidies, the green bond market, alternative energy to promote CSR and increase attractiveness of collective investments, collaboration and business transformation.

In the context of a full-scale war with russia, it is obviously difficult to find affordable lending programs, investments that are essential for the modernization of enterprises and construction of balancing capacity energy storage systems to achieve the environmental goals of CSR in Ukraine. The same applies to the financing of ambitious

CSR initiatives, reforms that Ukraine planned to implement, which were difficult to implement before the war as well.

The difficult unstable political and economic situation, outflow of personnel abroad, destruction of infrastructure and killings makes long-term projects practically impossible for business. At the same time, competition in the markets intensifies. The implementation of EU Green Deal, including CBAM, EU sustainability reporting standards) and not the readiness of Ukrainian business may affect the access of domestic producers to EU markets in the future.

In addition, EU sustainability policy is likely to be slightly revised in the context of the war in Ukraine to take into account the need for energy independence from russia and encourage EGS investment in defense.

Thus, there is a cascade of problems that Ukraine has faced. Business from restrained optimism about its development has returned to the conditions in which it thinks about its survival and contribution to the victory of Ukraine. This all largely relegate to the background issues of environmental goals and other CSR projects. Without having peace and stability, the progress in sustainability is under threat. It will be the joint responsibility of business, civil society and the state to develop a new roadmap and ensure the implementation of above-indicated after the victory in the war.

* * *

The second section of the study focuses on current and further development of CSR in Ukraine and Europe. In contrast to Ukraine, CSR in Europe is not just at the stage of formation, but is a part of strategies for decades.

In Europe various business groups already effectively interact with each other in order to achieve sustainable development goals, set new goals to create a link between business groups and entire regions, which would give an opportunity to step into a new level of CSR development.

This section presents the main European acts and guidelines for the next decade, which helps to understand what problems Europe is facing now, what European

community wants to achieve further and what, as a result, we should in Ukraine also strive for.

As it is written in the section, in Ukraine only relatively recently appeared CSR policy based on European Union legislation, as a result, much remains to be tested and put into practice. Ukrainian companies are gradually beginning to realize what CSR is and why it is necessary to be interested in CSR.

This section of the study reveals the current state of Ukrainian CSR legislation and corporate social responsibility in Ukraine during the war with Russia. It contains new government regulations and support programs, data on how the war has affected business and the achievement of CSR goals in Ukraine.

In addition, steps that can help stimulate business in Ukraine to introduce CSR policy more actively are proposed.

CONCLUSIONS

Summarizing the above, corporate social responsibility is a prerequisite for further business development, high standards of living, environmental protection, and ensuring a competitive position of the business and the government at the global level. The European Union and Member States pay great attention to the development of the CSR, the same is being done by other countries.

Implementation of the concept of sustainable development is an urgent task for Ukraine to survive in a competitive business environment. It is possible in case of stabilization of the economic and political situation in Ukraine by restoration of the territorial integrity of Ukraine and isolation of Russia. Further implementation of elements of corporate social responsibility in Ukraine provides the creation of an effective regulatory framework, encouraging businesses to do so and attracting lots of investments, further educational work in this direction and control from the state and civil society, implementation of the strategic course of full membership in the European Union.

This study discloses the meaning of CSR, approaches to its understanding, develop the classification of the main elements of CSR, reveals the practical nature, profitability of CSR and usefulness to society.

The study presents current state of legislation development of CSR in Ukraine and in the European Union, as well as guidelines for the next decade.

In addition, the following vision of steps that can bring the level of CSR policy in Ukraine closer to what already exists in Europe is presented: transition from declarative and recommended provisions to the systemic strategic vision of the circular economy in Ukraine; introduction of mandatory disclosure of non-financial indicators for large and state-owned companies; ESG reporting that prevents greenwashing; transparent rules in the field of waste management; creating Ukrainian taxonomy of 'green' finances, the green bond market, investments, grants and subsidies.

There is also a need for promotion of multi-sectoral public-private partnerships, sector-specific roadmaps for climate neutrality in different areas of the economy, establishment of a platform for dialogue between business and other stakeholders and further involvement of business associations and non-governmental (public) organizations in the CSR implementation process.

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