
Corporate Social Responsibility and the Legal Profession:

Key Considerations for Bars and Lawyers



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Executive Summary

The purpose of this guidance is to contribute to the current discussions and reflections regarding environmental sustainability by presenting important considerations for the profession of lawyers, in relation to the evolution of CSR requirements.

To start, the guidance provides an overview of ongoing policy developments and delves into the meaning of CSR nowadays (see **Section 2**). In this regard, particular attention is given to the SDGs and to the fact that the legal profession, law firms and lawyers individually can engage in achieving/contribute to the achievement of the SDGs by adopting their own action plans and helping clients adapt to the proposals of the SDGs.

Subsequently, **Section 3** of the guidance expands on the SDGs and concretely illustrates how lawyers and law firms can contribute to their achievement. Three important considerations which are analysed are: (i) advising clients on CSR matters and assisting with access to remedies; (ii) a dialogue with (corporate) clients as partners on matters of CSR; and lastly (iii) responsible business conduct of law firms. In addition, this Section emphasises the necessity to uphold the principle of access to justice attached to the practice of the legal profession, while also raising the issue that lawyers and law firms should not allow themselves to become mere instruments of clients who pursue interests that are evidently in conflict with fundamental principles that CSR standards aim to promote. Moreover, this Section of the guidance explores ways law firms are asked to incorporate environmental, social, governance, as well as ethical considerations into their management and business operations.

The following Section, namely **Section 4**, focuses on the CSR standard relating to diversity and inclusion by highlighting the benefits of an inclusive approach in the profession and the fact that true diversity and inclusion in law firms requires more than just creating policies and programmes.

Lastly, **Section 5** examines the role of Bar and Law Societies which can play a decisive role by including the relevance of these considerations in their organisation, as well as developing and organising training programmes. Annex II of the guidance provides examples of a wide range of best practices by various Bars and Law Societies in this regard.

Additionally, on the basis of the recent developments and this guidance, **the list of questions** which were also set out in the previous CCBE CSR Practical Guidance have been updated and revised (see Annex I). These questions can be used by lawyers, law firms and Bars and Law Societies in assessing challenging issues in their daily activities on what CSR means nowadays.

Although this document does not intend to cover all the implications of CSR requirements, nor to provide rules for lawyers regarding the day-to-day management of their activities, this guidance can constitute a reference point for understanding the ongoing CSR considerations and expand the understanding of how these developments can support lawyers in their core mission: providing access to justice.

Introduction

The current document intends to prepare lawyers, law firms and Bars for the challenges they will have to meet to live up to the current soft and hard law standards as well as future standards regarding CSR, including standards in the field of sustainability.

01. Objective

For many years, the CCBE has followed developments regarding Corporate Social Responsibility (CSR), and its impact on the profession of lawyers.

This document provides an overview of the recent social and policy developments regarding CSR and aims to serve as a tool to develop considerations for Bars and Law Societies, law firms and lawyers. This document builds on previous reports and practical guidances for Bars and lawyers¹ issued by the CCBE (in 2013, 2014 and 2017) and outlines recent key considerations that are useful for the profession of lawyers, particularly in regard to the Sustainable Development Goals (SDGs). The document also provides a list of questions (see Annex I) that can be used by lawyers, law firms and Bars and Law Societies in assessing important and challenging issues in their daily activities on what CSR means nowadays. This document does not intend to cover all the implications of CSR requirements, nor to provide rules for lawyers regarding the day-to-day management of their activities. Lawyers are independent and have an official role in the administration of justice and standards of behaviour as defined by law and Bar rules. Clients have neither legitimacy nor authority to stipulate ethical standards for lawyers. However, the reference to Bar rules and ethical standards is usually not an adequate answer to CSR requests of clients as they cover different issues, or, to the extent there is an overlap, they address them in a different way. This is why it is important to contextualise the approach behind CSR considerations and expand the understanding of how these developments can support the legal profession in its core mission: providing access to justice.

¹ See CCBE Practical Issues for Bars and Law Societies on Corporate Social Responsibility – Guidance III (2017), CCBE Guidance II: Corporate Social Responsibility and the Legal Profession (2014), CCBE Guidance I: corporate responsibility and the role of the legal profession (2013): <https://www.ccbe.eu/documents/publications/>

02. The evolution of CSR: where are we in 2022?

In the field of CSR, there have been dynamic developments in recent years which represent a source of information to understand the existing hard and soft rules.

2.1

From “sustainable development” to “corporate sustainability due diligence”

In 1987, the Brundtland Report² verbalised the first commonly accepted definition of sustainable development:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³

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The Report stated that critical global development problems were primarily the result of the enormous poverty of the South and the non-sustainable patterns of consumption and production in the North. The aim of the Brundtland Commission, also known as the World Commission on Environment and Development (WCED), was to help direct the nations of the world towards the goal of sustainable development.

More than 13 years after the Brundtland Report, the European Commission (EC) defined Corporate Social Responsibility (CSR) as “*a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis*”⁴. In October 2011, the EC launched a renewed EU strategy 2011–14 for Corporate Social Responsibility⁵, stating that corporate social responsibility is in the interests of enterprises and in the interests of society as a whole and putting forward a new definition of CSR as “*the responsibility of enterprises for their impacts on society*”.

² <https://digitallibrary.un.org/record/139811?ln=en>

³ United Nations, 1987

⁴ COM (2001)366

⁵ COM (2011) 681 final

The EC maintained the respect for applicable legislation and for collective agreements between social partners as a prerequisite for meeting that responsibility, and introduced the following procedural goals for enterprises:

“To fully meet their corporate 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 (i) maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large and (ii) identifying, preventing and mitigating their possible adverse impacts.”

In an international attempt to define the human rights responsibilities for businesses and enterprises as one of their core corporate responsibilities, the UN Guiding Principles on Business and Human Rights (UNGP) of 2011 manifested, based on a three-pillar structure “*Protect, Respect and Remedy*” that, where national laws fall below the standard of internationally recognised human rights, companies should respect the higher standard; and where national laws conflict with those standards, companies should seek ways to still honour the principles of those standards within the bounds of national law.⁶ The 31 defined principles of the UNGP are based on the major concepts of (i) the actual and adverse human rights impact, when an action removes or reduces the ability of an individual to enjoy his or her human rights, (ii) the business relationship comprising all direct and indirect business relations of the value chain regarding the specific goods or services, (iii) a human rights due diligence to be carried as a measure of prudence, activity or assiduity, (iv) prevention as well as (v) remediation.

The OECD Due Diligence Guidance for Responsible Business Conduct (OECD Guide-lines 2018)⁷ provided further practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises. Implementing these recommendations was intended to help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships. Furthermore, the OECD Guidelines were designed to assist enterprises on implementing the UNGP, as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy⁸ (MNE Declaration). The MNE Declaration provides direct guidance to enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices.

In the context of the above-summarised guidance, principles and goals, and in line with the European Green Deal⁹, the EC published a proposal for a Directive on Corporate Sustainability Due Diligence (CSDDD), amending Directive (EU) 2019/1937 in February 2022.¹⁰

⁶ <https://www.ungpreporting.org/resources/the-ungps/>

⁷ <https://www.oecd.org/investment/ue-diligence-guidance-for-responsible-business-conduct.htm>

⁸ <https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm>

⁹ Communication from the EC on the European Green Deal, COM (2019) 640 final.

¹⁰ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM (2022) 71 final

The proposed Directive lays down rules on obligations for companies regarding actual and potential adverse impacts on human rights and environmental, both in respect to their own operations/subsidiaries and their value chain operations (i.e. companies which have a business relationship with the aforementioned operations/subsidiaries) with the declared aim to succeed in the EU's transition to a climate-neutral and green company in accordance with the European Green Deal.

The draft Directive proposes certain thresholds and concentrates on certain sectors with the aim to limit the applicability of the proposed rules and regulations on EU companies. This would mean that none of the envisaged rules and regulations would be directly applicable to small and medium sized enterprises (SMEs), which account for 99% of all companies in the EU. The proposed scope of the Directive targets only 1% of all companies in the EU, most obviously major players in the respective sectors, but not the vast number of companies in the EU.

Given the fact that the UNGP and the OECD Guidelines address any enterprise, of whatever size and sector (including lawyers and law firms), the proposed CSDDD seems to be controversial as it does not target the vast majority of EU companies: SMEs that may also be implicated, on a case-by-case basis, in adverse human rights or environmental impacts. The proposed scope is justified with the financial and administrative burden of setting up and implementing a due diligence process. It may, however, be possible to design the respectively proposed Civil Liability (Article 22 of the proposal) as well as the Director's Duty (Article 25 of the proposal) as to meet the economic reality of SMEs too.

The proposed CSDDD is based on two pillars:

- 1 the implicit and detailed obligation to conduct human rights and environmental due diligence with the aim to identify actual and potential adverse impacts;
- 2 preventing potential adverse impacts and bringing actual adverse impacts to an end.

As regards combating climate change, Member States must ensure that the referred companies adopt a plan to ensure that their business model and strategy is compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 Celsius in line with the Paris Agreement¹². The CSDDD implies a civil liability of the referred companies in line with prior discussions to ensure the execution of the Directives' rules and regulations.

¹¹ This figure comes from the EC website: [SME definition \(europa.eu\)](https://ec.europa.eu/economy_finance/press_corner/2020/04/20200420_sme_definition_en)

¹² <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

2.2

The Sustainable Development Goals (SDGs)

On 25 September 2015, the UN General Assembly adopted a resolution with the title “*Transforming our world: the 2030 Agenda for sustainable development*” (A/RES/70/1), which is presented as a universal “*plan of action for people, planet and profit*” (the famous ‘triple bottom line’ of CSR). The plan consists of 17 “*Sustainable Development Goals*” (SDGs)¹³ and 169 “*targets*” (around 10 per SDG) covering practically all needs of humanity and securing preservation or restoration of nature.

The SDGs and their targets are proposals for action (for example, to reduce poverty (SDG1), end hunger (SDG2), achieve gender equality (SDG5), promote inclusive economic growth (SDG8), combat climate change (SDG13), promote peace and justice (SDG16) and strengthen partnerships for the SDGs (SDG17)).¹⁴

Accordingly, the SDGs provide a very broadly used reference framework for communication on CSR issues.¹⁵

The SDGs are interrelated and indivisible. It is not consistent to engage into one SDG without taking into account the effects of such engagement on other SDGs. For example, one cannot engage with SDG7 (“*Ensure access to affordable, reliable, sustainable and modern energy for all*”) without taking into account the sustainability of such initiative regarding SDG13 (“*Take urgent action to combat climate change and its impacts*”). The ambition of organisations taking the SDGs as their reference framework should be to contribute to the realisation of all the SDGs by 2030.

The SDGs are relevant for any organisation, be it an SME, a listed company, an NGO, a law firm, a public entity or even a private citizen.

Sustainable development has been anchored in the European Treaties for a long time (for example, Article 2 of the Treaty on European Union). Since the publication of the UN resolution of 25 September 2015, the EU has consistently affirmed its engagement to contribute to the achievement of the SDGs, and Eurostat regularly publishes progress reports¹⁶ on the subject. Many countries (all the EU Members States) are officially engaged in the realisation of the SDGs and regularly publish and update their plans to achieve the SDGs by 2030.

There is unpleasant evidence that the world is not on track for achieving the SDGs by 2030. COVID-19

¹³ <https://sdgs.un.org/>

¹⁴ <https://sdgs.un.org/>

¹⁵ See, for example, the SDG Compass: <https://sdgcompass.org/>

¹⁶ <https://ec.europa.eu/eurostat/web/sdi>

has generated a delay in many areas and reinforced inequalities. Moreover, the current war in Ukraine boldly reveals the fragility of peace and justice.

The legal profession, law firms and lawyers individually can be engaged in the achievement of the SDGs by adopting their own action plans and helping clients to adapt to the proposals of the SDGs. Many examples of implementation of the SDGs can be found in the practice.

2.3

Sustainable finance – ESG policies and ESG reporting

Compliance with “*Environmental, Social and Governance*” (ESG) objectives is essential for the confidence of investors in financial products and their issuers. Private and public initiatives have flourished since 2017 to standardise the information in a rapidly expanding field.

The Task Force on Climate-related Financial Disclosures (TCFD)¹⁷ globally, and the “*sustainable finance action plan*”¹⁸ in the EU, created a tremendous move in the financial sector by increasing accountability on sustainability issues with respect to the promotion of financial products.

In a couple of years, “*sustainability reporting*” became a key issue for listed companies. A new legislative proposal for a Corporate Sustainability Reporting Directive is being discussed within the European institutions.¹⁹ The ambition of this proposed Directive is to broaden the scope of application of the existing regulation to all large companies and all listed companies, to require an external assurance of sustainability reporting, to introduce mandatory EU sustainability reporting standards and to foster digital ‘tagging’ of reported information. It is closely linked to the CSDDD described in the Section 2.1 of this document.

The masterpiece of sustainable finance is the Taxonomy Regulation²⁰, which aims to identify and classify environmentally (and socially) sustainable economic activities. Information produced in accordance with the Taxonomy Regulation will help companies, investors and policymakers to communicate about the sustainability of a business. It is intended to help combat “*greenwashing*” and create a harmonised regulatory environment for the financial markets.

¹⁷ Task Force on Climate-related Financial Disclosures, <http://www.fsb-tcf.org/>; more specifically: the TCFD recommendations on climate-related financial disclosure (June 2017), <https://www.fsb-tcf.org/recommendations/>

¹⁸ EU Commission Action Plan (March 2018): https://ec.europa.eu/info/publications/sustainable-finance-renewed-strategy_en

¹⁹ Corporate Sustainability Reporting Directive (April 2021): https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

²⁰ Regulation (EU) 2020/852: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_en

All these regulatory initiatives on sustainability reinforce the transformation of our world envisioned by the UN in its 2015 General Assembly Resolution on SDGs. This makes the understanding of CSR issues more important for corporate leaders and financial actors, not only for ethical purposes, but also for risk avoidance. Lawyers have an important role to play in the resolution of these issues.

2.4

Environmental and Climate Change

The UN Intergovernmental Panel on Climate Change (IPCC) confirmed in its Sixth Assessment Report²¹ that “*human influence has warmed the climate at a rate unprecedented in at least 2000 years*”, that “*the world faces unavoidable multiple climate hazards over the next two decades with global warming of 1.5°C. Even temporarily exceeding this warming level will result in additional severe impacts, some of which will be irreversible*” and that “*unless there are immediate, rapid and large-scale reductions in greenhouse gas emissions, limiting warming to close to 1.5°C or even 2°C will be beyond reach.*” On 8 July 2022, the Intergovernmental Science–Policy Platform on Biodiversity and Ecosystem Services (IPBES) stated that “*Billions of people, in developed and developing nations, benefit daily from the use of wild species for food, energy, materials, medicine, recreation, inspiration and many other vital contributions to human well-being. The accelerating global biodiversity crisis, with a million species of plants and animals facing extinction, threatens these contributions to people.*”²² This science-based evidence of a severe climatic and environmental crisis generates many legal and regulatory initiatives for urgent action in order to curb the negative influence of human activities on the environment. Moreover, there is a noticeable swift evolution of the judiciary activity in this context.

On 28 July 2022, the UN General Assembly adopted a resolution recognising the right “*to a clean, healthy, and sustainable environment.*”²³ There is a growing recognition of this right by national and international bodies, as well as courts, and a growing proximity between human rights and climate and environmental issues²⁴. This underlines the fact that lawyers will increasingly have to assess the existence of a violation of such a right directly recognised by law or triggered by existing common law principles (the “*duty of care*”) or existing human rights (Article 2 and 8 of the European Convention of Human Rights, to which the Hague District Court refers together with the UNGP in its hotly debated ‘climate’ judgment against Shell²⁵). The debate around the existence of these new sources of liability is far from being exhausted and necessitates a resolute action by lawyers to clarify its tenets, be it on the side of the alleged victims or on the other side.

²¹ <https://www.ipcc.ch/assessment-report/ar6/>

²² https://ipbes.net/media_release/Sustainable_Use_Assessment_Published; <https://doi.org/10.5281/zenodo.6425599>

²³ <https://digitallibrary.un.org/record/3982508?ln=en>

²⁴ See, for example, the work of the Council of Europe, <https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-environment>: “The jurisprudence of the European Court of Human Rights and the conclusions of the Committee of the European Social Charter affirm the undeniable inter-connections between environmental protection and human rights.”

²⁵ On 26 May 2021, the Hague District Court ordered Royal Dutch Shell (RDS) to reduce the CO2 emissions of the Shell group by net 45% in 2030, compared to 2019 levels, through the Shell group's corporate policy. (*Milieudefensie et al. v Royal Dutch Shell plc*, [ECLI:NL:RBDHA:2021:5339](https://www.ecliv.nl/rdha/2021/5339)) Shell appealed this judgment.

To assist Bars and lawyers in this context, the CCBE has created an Environment and Climate Change Committee which will work in close connection with the CSR Committee.

03. Can lawyers and law firms contribute to the SDGs?

As explained above, the SDGs are soft law proposals to help all actors of society to contribute to a sustainable world. Systematic engagement in the accomplishment of the SDGs could have a tremendous beneficial effect on the world. Here below, the possible beneficial role of lawyers who choose to engage in sustainability is explored.

3.1

Advising clients on CSR matters and assisting with access to remedies

Accountability of businesses to comply with climate change prevention and human rights in their value chain and, eventually, the liability of such businesses in case of manifest non-compliance, becomes a major source of concern due to recent judicial developments and the continuous regulatory efforts to issue guiding principles or to legislate on these issues (see above, Section 2.1, particularly on the draft CSDDD). Lawyers must build capacity in this ever-expanding domain to advise their clients on the legal risks and the adequate attitude to adopt in order to prevent such risks to materialise. Lawyers must also be able to accompany possible victims in their access to justice and adequate remedy.

In fact, the protection of human rights and fundamental freedoms to which all persons are entitled requires that all persons have effective access to legal services provided by an independent legal profession. The possibility for everyone to be advised, defended and represented in legal proceedings where their freedoms are at stake is a fundamental right in the European legal sphere. The legal profession plays a crucial role in the realisation of this fundamental right.

This important role of lawyers also means that lawyers shall not be identified with their clients or clients' causes. Of course, this does not mean that a lawyer may act illegally or help or encourage illegal behaviour on the part of a client. As restated in the CCBE Model Code of Conduct for European Lawyers²⁶ (see point 5), *“lawyers shall not support or assist clients in committing or attempting to commit conduct, which is illegal, criminal, or fraudulent. Lawyers' duty is to advise clients on the extent and applicability of the law. If, during the performance of their mandate, lawyers discover that the transaction for which their advice is sought is likely to be of such a nature, they must inform their client of the consequences resulting therefrom. If the client persists, the lawyers must withdraw from the matter.”* In their advisory role,

²⁶ [CCBE Model Code of Conduct for European Lawyers \(2021\)](#)

lawyers can in general only be held responsible for their own advice and service and never for their clients' conduct who may or may not follow their lawyer's advice.

However, the profession of lawyer has a dual function. The lawyer/law firm is, on the one hand, an advisor and supplier of services to the client, and on the other hand, the lawyer has a crucial function in the day-to-day operation of the rule of law. This also means that some lawyers will act on the side of climate or human rights activists, and other lawyers, subject to the same professional rules, will act on the side of businesses challenged for their alleged role in climate change or human rights violations. The two sides of the courtroom should be able to be represented by lawyers and none of these lawyers can be blamed or shamed for taking up the defence of one side or the other, provided they each exercise their duties in full compliance with the professional and judicial rules and regulations applicable to them.

3.2

A dialogue with (corporate) clients as partners on matters of CSR

Within the parameters discussed in Section 3(i), a lawyer may come to represent clients and defend cases that, in turn, have negative consequences for, for example, the environment. An environmental lawyer may be asked to assist clients in a licensing procedure and, consequently, be considered as an “*enabler*” to possible negative consequences for the environment due to the intended licensed activities of the client. However, this involvement of the lawyer can be justified, precisely because it is the legal procedure in which the lawyer assists the client that is intended to safeguard both the client's freedoms as well as the public interests concerned in compliance with the access to justice principle.

Another matter is that the legal profession, as a profession with a special function as an instrument of justice and associated privileges under the rule of law, should support high CSR standards and lawyers and law firms should not allow themselves to become a mere instrument of clients who pursue interests that are evidently in conflict with fundamental principles that CSR standards aim to promote.

This cautioning is without prejudice to the important principle of access to justice referenced in Section 3(i). CSR standards suggest lawyers and law firms to reflect on their own role and responsibilities, also vis-à-vis clients who, for example, through an instrumental use of private law and/or in cross-border matters, pursue their interests with disregard of the consequences of their actions for people, society or the environment. Moreover, the relevance of the role of lawyers also means the dissemination of training activities on CSR standards in order to improve the awareness of the social role of the profession in this respect. This aspect is further developed in Section 5 below.

Without prejudice to the essential principle of access to justice, law firms can also implement CSR policies in their internal procedures as well as on their clients' acceptance policies, it being understood that such policies are voluntarily adopted

and do not diminish the professional obligations of lawyers as instrument of justice for all.

All this suggests the relevance of a dialogue, both internally led and between lawyers, law firms and their clients, about CSR matters.

3.3

Responsible business conduct of law firms

As mentioned in the previous CCBE CSR Practical Guidance²⁷, law firms qualify as business enterprises in according to numerous international, European and national instruments (UN, etc.). Some law firms have signed up to the UN Global Compact, a number of firms publish CSR reports annually, a few follow the Global Reporting Initiative (GRI) guidelines, which contain key performance indicators regarding the Triple Bottom Line, or have adopted CSR policies, etc.

In that sense, every law firm qualifies as a business enterprise specifically in the context of managing its own organisation, and is therefore asked to incorporate environmental, social, governance, as well as ethical considerations into their management and business operations.

Accordingly, law firms can consider among others:

1 Adhering to social responsibilities towards employees and society

Examples include implementing employee health and well-being programmes, striving towards diversity in a broad sense (see Section 4), engaging in pro-bono activities and contributing to the society in which your firm operates.

2 Adhering to environmental responsibilities

What is your firm doing to reduce the environmental impact of its business such as paper usage, power, gas, water and waste? Which recycling options does your firm use, which CO2 limiting measures? Does your firm have a policy regarding the use of cars, trains and planes?

3 Ensuring good governance of your firm

This is not just about conflict of interest resolution mechanisms, confidentiality issues and integrity policies. Good governance also means, for example, supply chain management. Does your firm have responsible procurement guidelines? Do these take sustainability factors into account? Additionally, more generally: how does your firm address CSR, including its responsibilities in the field of sustainability? Does your firm have policies in place, and are they internalised by the firm's team? Are these based on the UN Global Compact²⁸/ISO 26000²⁹/UNGP?

²⁷ See CCBE Guidance I: corporate responsibility and the role of the legal profession (2013): <https://www.ccbe.eu/documents/publications/>

²⁸ <https://www.unglobalcompact.org/library/236>

²⁹ <https://www.iso.org/iso-26000-social-responsibility.html>

Social certification standards may serve as a tool to ensure matching up with the ways of your firm and good social practices on a longstanding business perspective. There are many different certification schemes existing, each with its own scope and focus. Some of them start measuring social and ecological standards for lawyers and law firms.

04. Diversity and inclusion

There is absolutely no reason for opening a discussion on why diversity and inclusion are important for law firms against the background of Article 3(2) of the Treaty for establishing the European Community³⁰, the Universal Declaration of Human Rights³¹, the UN Convention on the Elimination of all forms of Discrimination Against Women³², the International Convention on the Elimination of all forms of Racial Discrimination³³ and the UN Covenants on Civil and Political Rights³⁴ and on Economic, Social and Cultural Rights³⁵ and the European Convention for the Protection of Human Rights and Fundamental Freedoms³⁶, to which all Member States are signatories and the Employment Guidelines 2000³⁷ and further national constitutional principles. In 2022, this should be a self-evident matter of CSR. However, major challenges remain.

The ABA National Lawyer Population Survey 2021³⁸ reveals a rise of the female share of lawyers in the US from 34% in 2011 to a share of 37 % in 2021, whereas the figures of lawyers by race and ethnicity show a share of 85,4 % White and of 4,8 % Hispanic, 4,7 % Black, 2,5 % Asian, 2,0 % Multiracial, 0,4 % Native American and 0,3 % Hawaiian/Pacific Islander. The EU has so far not issued a similar report, but the Legal Affairs Committee of the European Parliament had commissioned a study entitled “Mapping the representation of Women and Men in Legal Professions across the EU”.³⁹ The aim of this study was to identify areas where women or men are currently underrepresented and to analyse the underlying reasons and constraints. In the context of women and men in the profession of lawyers, the study identified that:

³⁰ See, for example, Recital 14 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin: “*The Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination*”. Article 3(2) of the European Community Treaty became Article 8 the Treaty on the Functioning of the European Union.

³¹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³² <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

³³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

³⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³⁶ <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c#:~:text=The%20Convention%20for%20the%20Protection,force%20on%203%20September%201953>

³⁷ The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

³⁸ <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf>

³⁹ Study for the JURI Committee: “Mapping the representation of Women and Men in Legal Professions across the EU” (PE 596.804 – August 2017): [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU\(2017\)596804_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU(2017)596804_EN.pdf)

“There has been a gradual increase overall in the proportion of women lawyers over the past decade, rising from 35% in 2004 to 43% in 2015. However, the number of women progressing to partnership or to elite levels in the advocacy profession is still very small. There still seems to be largely insufficient commitment to diversity at all levels in firms. Only very few law firms address the issue as one concerning women and men and therefore see the need to address the general attitude of all members of the firm and their culture.”

In addition, the Report “*Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales*” for the Solicitors Regulation Authority and published by the Centre for Employment Relations and Innovation and Change, University of Leeds and Newcastle University Business School (October 2017) highlights that – although the legal profession has become more broadly representative of the population over the last twenty years, with more women and minority ethnic groups entering it – the profession remains heavily stratified by class, gender and ethnicity.⁴⁰

A spokeswoman from the law firm Freshfields Bruckhaus Deringer said in a major public forum that “... all the evidence shows that greater diversity delivers more creativity and innovation, so for firms anything that can help ensure they identify all possible sources of talent is strategically important”⁴¹. Furthermore, Bloomberg⁴² reported that only money makes change when elite law firms in the US and the UK, long seen as fusty bastions of mostly white men, are being pushed by some of their biggest customers to change. The Outlook 2022 on Law Firm Diversity and Inclusion of the National Law Review⁴³ emphasises the importance of further necessary major improvements of diversity and inclusion in law firms and very rightly claims that for lawyers, leadership takes years of experience and personal branding, so the lack of diversity in leadership positions is disconcerting.

Lawyers have meanwhile learned from many of their clients that inclusive teams reflect the diversity in our communities, which results in lawyers making better decisions and finding more innovative solutions. There is no doubt that diversity and inclusion in a law firm is key to positive law firm culture, including its profitability and growth.

It should be noted, however, that true diversity and inclusion in law firms requires more than just creating policies and programmes. Law firms and lawyers need to foster diversity and inclusion through active strategies like branding, discussion, and setting measurable goals for a firm diversity and inclusion. Tracking and following up on such defined goals is an implicit must, and not only a moral obligation: effective implementation is a requirement for any successful business case.

⁴⁰ <https://www.sra.org.uk/globalassets/documents/sra/research/diversity-legal-profession.pdf>

⁴¹ See Article, The Lawyer, 2011

⁴² <https://www.bloomberg.com/news/articles/2021-10-05/big-law-has-a-diversity-problem-and-corporate-clients-are-stepping-in>

⁴³ <https://www.natlawreview.com/article/2022-outlook-law-firm-diversity-and-inclusion>

05. What can be the role of Bars and Law societies in matters of CSR?

Bars and Law Societies play a decisive role in developing the legal profession and thereby assisting their members to fulfil their role in society today and in the future. Against this background, environmental, social, governance, as well as ethical considerations in the management, business operations and client relations should be part of training programmes organised or offered by Bars and Law Societies. Moreover, Bars and Law Societies should consider acting as role models in respect of such considerations to be included in their organisation's day-to-day management and lobbying mechanisms with the aim to convince their members to live up to CSR standards.

Already existing practices in Bars and Law Societies demonstrate a large spectrum of activities, ranging from public pledges to guidances, resolutions and charters to encourage identification with CSR standards. In addition, some practices suggest methods of measuring the advancement of specific CSR initiatives of individual member firms and aim for an accreditation of firms showing the defined measured results. A set of such existing practices is contained in the Annex II to this document.

Annex 01

Key questions for lawyers and law firms

For lawyers and law firms that want to explore what CSR means for them today, below is a list of useful questions.

Governance

- a How does your firm address CSR, including its responsibilities in the field of sustainability? Does it have policies in place and is it published internally? Are these based on UN Global Compact/ISO 26000/UNGP?
- b Has your firm identified its key stakeholders: employees, clients, local communities, fellow lawyers, counters? How do you communicate with them about CSR matters?
- c Have you formally allocated resources with defined responsibilities and accountability in all aspects of CSR?
- d Have you developed a CSR action plan and set goals?
- e Do you measure the return on investment/impact of your CSR initiatives?
- f Does your firm know what the main ESG effects of its business are? Have these been identified through a formal assessment process?
- g Have you linked performance to CSR-related objectives within the key employee appraisal process?
- h Do you want to disclose non-financial information? For example, does your office publish a sustainability report?
- i How is your firm governed? Do you follow corporate governance recommendations and take, for example, composition and diversity of the board into consideration? Is your governance structure clear and effective? How do you evaluate the performance of the board and other management?
- j Does your firm have a Code of Conduct or other similar documents and how are they used and updated in practice? Has sustainability been taken into consideration also in these documents (and if yes, how)?

Environment

- a** What is your firm doing to reduce the environmental impact of its business, such as paper usage, power, gas, water and waste? Which recycling options does your firm use, which CO2 limiting measures? Does your firm have a policy regarding the use of cars, trains and planes?

- b** Are there any benchmarks you can check?

- c** Have you set goals for the coming years? Who will assess progress?

Investing in the community

- a** How does your firm contribute to the community(ies) in which you operate?

- b** Are there any specific needs that you could contribute to or that your legal and non-legal staff's volunteer or community activities could be focused on?

- c** Do you have a matching budget? Who decides on the spending of that budget and based on which criteria?

Staff – general

- a** What is your firm doing about the health and well-being of your employees?

- b** What is your firm doing to develop the skills of its employees?

- c** How does your firm train and involve employees in formulating CSR aspirations and core values?

- d** Do you expect your employees to participate in community investment and volunteer programmes? What time do you make available for this? How does this time relate to billable work in business?

Staff – diversity and inclusion

- a** What is your firm doing about diversity and inclusion in the workplace? What dialogue takes place on this topic, what vocabulary is used (for example, relating to social or cultural background, gender, sexual orientation, education, etc.)? How do you measure the state of affairs?

- b** What is your hiring policy – is your firm open to all?

- c** To what extent do people with a non-traditional profile for your office and context (for example, in terms of social or cultural background, gender, sexual orientation, education, etc.) experience challenges that those with more traditional profiles do not in your firm? Do you believe that you have experienced challenges in your career that your peers have not and why?

- d** Does your firm offer work experience or other opportunities to develop the aspirations of young people with a non-traditional profile for your office and context (for example, in terms of social or cultural background, gender, sexual orientation, education, etc.)?

- e** What is the biggest diversity challenge for your firm? To what extent do you believe that your firm's current employees are diverse?

- f** What do you believe your firm looks for in a lawyer and, more specifically, a trainee, associate or partner? What do you believe your firm looks for in a secretary, paralegal assistant or assistant?

- g** What would be your vision of a truly diverse and inclusive organisation (in your firm)?

Client Relations

- a** In the event your firm has procedures for accepting and engaging in cases or new business, do such procedures (proportionate to the size and resources of the firm) include a reflection on the CSR implications of your advice or assistance, respectively on the question whether your client or his case is involved in human rights violations, adverse impact on the environment or negative social effects?

- b** Does your firm engage in a dialogue with clients on CSR matters?

- c** Can you advise on soft and hard law related to CSR? Do you want to include or exclude it as part of your client offering?

- d** Does your firm have a formal pro bono programme?

Suppliers

- a** Does your firm have responsible procurement guidelines? Do these take sustainability factors into account?

- b** Have you assessed your existing supply chain for compliance with your values and objectives?

- c** What obligations do you have to your clients in this regard?

Key questions for Bars and Law Societies

- a** Does your Bar/ Law society/ include CSR standards in the deontological rules? To what extent are such standards reflected in recommendations, rules or regulations?

- b** Does your law society/bar organisation develop a CSR action plan for its organisation and set goals?

- c** Does your law society/bar raise awareness about CSR standards to its members and does it offer training or organise events for its members in that respect?

- d** Does your law society/bar have any other kind of ethical rules which reflect CSR standards in place for its members?

Annex 02

Existing practices in law firms, Bars and Law Societies

The Diversity and Inclusion Charter of the UK Law Society

The Diversity and Inclusion Charter of the UK Law Society is a public commitment by legal practices to promote the values of diversity and inclusion throughout their business (<https://www.lawsociety.org.uk/campaigns/diversity-and-inclusion-charter>). Firms and practices who sign up to the charter are required to participate in the Law Society's Diversity and Inclusion Biennial Report, which shows how well they are meeting their charter commitments and where more work still needs to be done (<https://www.lawsociety.org.uk/campaigns/diversity-and-inclusion-charter/diversity-charter-biennial-report>).

The Women in Law pledge

The Women in Law pledge, launched in partnership with the Bar Council of England and Wales and the Chartered Institute of Legal Executives (CILEX) in June 2019, was created to bring gender equality to the forefront of the conversation (<https://www.lawsociety.org.uk/campaigns/women-in-leadership-in-law/tools/the-women-in-law-pledge>).

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The Climate Change Resolution of the UK Law Society

The Climate Change Resolution of the UK Law Society has been published to support both individual solicitors and the companies or firms that they work for, to develop a climate-conscious approach to legal practice (<https://www.lawsociety.org.uk/about-us/corporate-responsibility>).

Guide on the Social Responsibility of Law Firms (RSCA)

Guide on the Social Responsibility of Law Firms (RSCA) of the French National Bar Council (2017), the aim of which is to provide the profession with a preventive tool enabling it to intervene upstream of any difficulties that may arise (only available in French): (<https://www.cnb.avocat.fr/fr/actualites/le-guide-sur-la-responsabilite-sociale-des-cabinets-davocats-rsca-fait-peau-neuve>)

ÖRAK fostering Women Lawyers Careers

The Austrian National Bar and the Austrian Regional Bars have started a broad initiative to foster women lawyers careers by reducing certain financial and professional burdens which may conflict with a female lawyer's motherhood and lead to leave to the profession (<https://www.rechtsanwaelte.at/kammer/frauen-in-der-rechtsanwaltschaft/>): Lawyers can ask for a timely limited release from their obligations from the Austrian Legal Aid Programme on the occasion of a child's birth, or for a reduction of membership fees or of their contribution to the Austrian Lawyers Pension Schemes with the effect that such times will be accounted for in full during maternity leave and aliquot for the 12 months following the child's birth.

The Inclusion and Diversity Platform of the Netherlands Bar

In 2018, the Netherlands Bar drew up a diversity and inclusion statement. The Netherlands Bar emphasises the importance of equal opportunities, diversity and inclusion. From a social point of view, but also because embracing these principles enriches the legal profession itself. With the "Inclusion and Diversity platform", the Netherlands Bar wants to further promote an inclusive and diverse bar. This initiative, to which more than 30 lawyers have committed themselves, started at the beginning of 2021. Together with the Netherlands Bar, the participating lawyers in working groups investigate the possibilities for promoting (awareness of) diversity and inclusion within the legal profession and put forward proposals for social innovation. This involves issues such as: (i) how do we ensure that more law students from different cultural and/or ethnic backgrounds are attracted to the legal profession?, (ii) once they have joined the bar, how do we ensure that they stay?, and (iii) what is happening in the field of inclusion and diversity within the legal profession?

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Belgium Bar

The Belgian-French and German-speaking Bar Association (AVOCATS.BE) initiated a UNITAR (United Nations Institute for Training and Research) certification process on sustainable development with the help of a regional ICC. This process is focused on the bar's organisation itself in order to **foster sustainable activities** at the national level, in line with the SDGs. AVOCATS.BE has set up an internal working group on **gender equality**. This group has not met yet, but its aim is providing information and guidance to law firms in order to promote gender equality within the whole exercise of the profession (for example, equal access to partner positions, equality of remuneration, balance between professional and social life, etc.), without going so far as to regulate with binding instruments. Some local bars have enacted rules to favour gender equality for the election of their council members. Some local bars are conducting initiatives to foster diversity in a broader way in the legal profession.

Belgium law firms - best practice examples:

<https://www.eubelius.com/en/sustainable-development-objectives-at-eubelius>

<https://cms.law/en/bel/about-us/responsible-business>

<https://www.parallaxe-avocats.be/01105/fr/RSE-nos-engagements-durables>

<https://casalegal.be/>

<https://latribune.avocats.be/fr/casa-legal-un-cabinet-innovant-en-matiere-d-aide-juridique-et-d-acces-a-la-justice>

<http://www.quartierdeslibertes.be/le-cabinet/page-d-exemple/>

Luxembourg Bar

A survey is currently ongoing within the Bar regarding lawyers' working conditions and environment. Depending on the results, the Bar may take up actions.