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The Danish CSR Reporting Requirement as Reflexive Law: Employing CSR as a Modality to Promote Public Policy Objectives through Law

Karin Buhmann[*]

Abstract

With effect for financial years beginning January 2009 or later, the Danish Financial Statements Act and related regulations have required large Danish companies and institutional investors to submit an annual Corporate Social Responsibility (CSR) report. Through application of reflexive law theory and an analysis of the preparatory works and guidelines for the CSR-reporting requirement, this article demonstrates that the reporting requirement aims to obtain public policy objectives through stimulating companies to self-regulate based on reflection on their impact on society. The legislative history and reporting guidelines indicates a definite objective of drawing on the CSR paradigm to complement national substantive law, engaging company practice in the implementation of national public policy goals and in the extraterritorial implementation of public policy goals related to conditions beyond the reach of national law. The article argues that the Danish model for CSR-reporting exemplifies application of reflexive law as a regulatory strategy applied to push company self-regulation in a direction defined by public law standards and policy objectives, *in casu* particularly human rights, labour rights, environment, climate and anti-corruption.

1. Introduction[1]

Inserting a new section (section 99a) into the Danish Act on Financial Statement, the Danish legislature in December 2008 introduced mandatory annual Corporate Social Responsibility (CSR) reporting for large Danish companies. With effect from financial years beginning January 2009 or later, these companies must inform the public on their CSR policies, the implementation of these policies, and outcomes. The reporting provision does not require companies to have a CSR policy, nor to engage in any other specific type of action other than providing transparency on their CSR activities through reporting. Section 99a provides an open understanding according to which CSR is the voluntarily "consideration of", amongst others, human rights, societal, environmental and climate conditions as well as combating corruption in their business strategy and activities. These

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issues all correspond to Danish governmental objectives related to national or global concerns and corresponding legal or policy objectives. These relate both to internal national objectives, and to developments in international soft law and intergovernmental initiatives to promote CSR, such as the 2011 UN Guiding Principles, the 2011 revision of the OECD Guidelines for Multinational Enterprises, and EU policies (see further below).

Recent decades' process of transnationalisation of law regulating corporate conduct remains mainly informal and largely subjected to voluntary engagement by companies or NGOs of soft law schemes through 'global administrative law', labelling schemes or related developments.[2] Citizens, politicians and others concerned with business impact on society and with the potential of the market to regulate adverse impact have been looking to public law to address these concerns, so far however with only limited outcome as a result of the fact that many of the activities that cause sustainability problems are trans-boundary in nature or effects, and therefore also transgress national jurisdictions. Emanating from within public law, some emerging developments however seek to promote social responsibility by stimulating companies' internalisation of externalities. This article considers how the Danish CSR reporting provision is intended to promote internal self-regulation in companies, in order to promote interests that are essentially sustainability related public policy interests or legal objectives.

Instrumental use of law as a means towards implementing public policy objectives is by no means unusual, although of course this is but one aspect of law. Yet this does not diminish the need for insight into both theoretical and practical issues related to instrumental regulation. So far, political agreement among states to regulate companies' social or environmental impact through conventional international law has been only limited. Later years' experience with international climate regulation and the difficulties that the development of human rights norms for companies has encountered talks to the relevance of considering alternative modalities that may have an impact on companies' trans-boundary impact on society and environments through promoting self-regulation.

This article discusses the Danish CSR reporting obligation from the perspective of the theory of reflexive law. Developed by German legal theorist Gunther Teubner in the 1980s,[3] reflexive law is both a theory on regulation and a practical regulatory strategy. Applying legal method (conventionally used in Danish law) the analysis considers the legislative history, particularly explanatory comments to the reporting provision Bill and its follow-up (sometimes referred to as 'afterworks'), particularly reporting guidelines issued by the implementing Government agency, The article argues that the reporting requirement functions as a form of reflexive law as a regulatory strategy to induce self-regulation in companies with the overall objective of implementing public policy and legal objectives. This approach to CSR differs fundamentally from the 'business case for CSR' which organisational scholars have sought to establish with mixed results.[4] Along lines of

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[2] See for example, Colin D. Scott, Fabrizio Caffagi and Linda Senden, *The Conceptual and Constitutional Challenge of Transnational Private Regulation*, 38 Journal of Law and Society 1-19 (2011); K.D. Wolf, et al., *The Role of Business in Global Governance: Corporations As Norm-Entrepreneurs* (London, Palgrave-Macmillan 2010); B. Horrigan, *Corporate Social Responsibility in the 21st century: Debates, Models and Practices Across Government, Law And Business* (Cheltenham: Edward Elgar, 2010); Errol Meidinger, *The Administrative Law of Global Private-Public Regulation: The Case of Forestry*, 17 European Journal of International Law 47-87 (2006).

[3] For details and references, see below section 3.

[4] See for example Joshua Daniel Margolis and James P. Walsh, *People and Profits? – The Search for a Link Between A Company's Social and Financial Performance* (Mahwah, New Jersey: Erlbaum 2001); Tom Fox, *Corporate Social Responsibility and Development: In Search of an Agenda*, 47 Development 29-36 (2004); David J. Vogel, *Is There a*

what I have elsewhere[5] introduced as a 'government case' for CSR – the idea that CSR offers a specific interest to governments leading them increasingly to regulate CSR through law, like the 'business case' is argued to justify firms' voluntary use of resources on social responsibility – the reflexive law approach complements the 'business case for CSR' but acts as an independent driver of CSR, informed by public interests and spurred by governmental regulatory efforts.

Application of reflexive law theory in a CSR-context also is not novel. Reflexive law has been applied to CSR-related topics, such as labour rights and environmental law, and non-financial reporting and sustainability certification schemes have been characterised as forms of reflexive law.[6] In those contexts, main focus has been on the self-regulatory aspect for companies, which results from the procedural framework offered by reporting or certification. This article adopts a different perspective. Its primary focus is the public regulation interest, which leads to CSR reporting being approached as a means for implementation of public policy interests rather than as a measure towards transparency. The lens of reflexive law provides an insight into these governmental tactics as a way of softly regulating in a way that is in fact much more connected to legal theory than suggested by the idea of CSR as 'voluntary'. For reasons of space and focus, the article does not discuss the relationship between CSR reporting and the financial reporting system or issues such as lobbying, stakeholder activism or economic interests which may also affect company management and decisions. Nor does it discuss the need to carefully consider institutional design of reflexive law forums in order to counter discursive capture by certain interests or groups. I have dealt with some of these issues elsewhere.[7]

The article is structured as follows: Section 2 provides an overview of the Danish CSR reporting provision. Section 3 contextualises CSR as an issue that is increasingly poised between legal requirements and societal expectations. Section 4 discusses reflexive law and CSR, with a particular

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Market for Virtue? The Business Case for Corporate Social Responsibility, 47 California Management Review 19-45 (2005). For a general literature overview on the 'business case', see Michael L. Barnett, *Stakeholder Influence Capacity and the Variability of Financial Returns to Corporate Social Responsibility*, 32 Academy of Management Review 794-816 (2005).

[5] Karin Buhmann, *Recognising A 'Government Case For CSR': Public Policy Objectives' Impact on Global Governance through Institutionalisation of CSR and Business Access to Rule-Making at Intergovernmental Level*, in Benedetto, S.D. and Marra, S. (eds.) *Legitimacy and Efficiency in Global Economic Governance* (Cambridge Scholars Publishing, forthcoming).

[6] See E.W. Orts, *Reflexive Environmental Law*, 89 Northwestern University Law Review 1227-1339 (1995); E.W. Orts, *A Reflexive Model of Environmental Regulation*, 5 Business Ethics Quarterly 779-794 (1995); David Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness*, 25 Journal of Corporation Law 41-84 (1999). On reflexive law a regulatory model for CSR in a Corporate Governance context, see Gunther Teubner, *Corporate Fiduciary Duties and Their Beneficiaries: A Functional Approach to the Legal Institutionalization of Corporate Responsibility*, in Hopt, Klaus J. and Gunther Teubner (red.) *Corporate Governance and Directors' Liabilities* 149-177 (European University Institute, Berlin and New York: Walter de Gruyt, 1984); and on reflexive law and implementation of EU directives on labour law issues for example Simon Deakin and Richard Hobbs, *False Dawn for CSR? Shifts in Regulatory Policy and the Response of the Corporate and Financial Sectors In Britain* 15 Corporate Governance 68-76 (2007); Catherine Barnard, Simon Deakin and Richard Hobbs, *Reflexive law, Corporate Social Responsibility and the Evolution of Labour Standards: The Case of Working Time*, ESCR Centre for Business Research, University of Cambridge Working Paper No. 294 (2004); Simon Deakin and Colm McLaughlin, *The Regulation of Women's Pay: From Individual Rights to Reflexive Law?* Centre for Business Research, University of Cambridge Working Paper No. 350 (2007), Aristea Koudiadaki, *Information and Consultation Rights of Employees in Britain*, 5 International Journal of Law in Context 393-416 (2009).

[7] Karin Buhmann, *Integrating Human Rights in Emerging Regulation of Corporate Social Responsibility: The EU Case*, 7 International Journal of Law in Context 139-179 (2009); Karin Buhmann, *The Development of the 'UN Framework': A Pragmatic Process Towards a Pragmatic Output*, in Radu Mares (ed.) *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, 85-106 (Martinus Nijhoff Publishers, 2012).

focus on implementation of public legal and policy objectives. Section 5 discusses the Danish CSR reporting provision as reflexive law on the basis if the Danish Government's 2008 Action Plan on CSR, the explanatory comments to the reporting clause, and reporting guidelines prepared by the Government (legislative history and 'afterworks'). Section 6 concludes and draws up perspectives for the use of reflexive law to promote public policy objectives through company action and self-regulation.

2. Overview of the Danish CSR Reporting Provision

The CSR reporting obligation was provided for through an amendment to the Danish Financial Statements Act, adopted by the legislature in late 2008 and introducing section 99a.[8] With effect from financial years beginning January 2009 or later, the reporting obligation applies to large companies in accounting class C, and listed companies and state-owned companies in accounting class D. Large companies in accounting class C comprise companies that exceed at least two of the following three size limits: total assets/liabilities of DKK 143 million (roughly equivalent to Euros 19 million), net revenue of DKK 286 million (around Euros 38 million), and an average of 250 full-time employees.

A similar reporting requirement has been introduced for institutional investors, mutual funds and other listed financial businesses (financial institutions and insurance companies, etc.), not covered by the Financial Statements Act. For these organisations, the CSR reporting requirement has been introduced through executive orders issued by the Danish Financial Supervisory Authority.[9]

With effect from 1 January 2013, explicit reporting on human rights and climate change mitigation will be mandatory for those companies that are subjected to the general reporting requirement and have policies on those two specific issues.[10]

Companies and other organisations to which the reporting requirements apply are required provide information on:

1. The organisation's policies on social responsibility, including information on any standards, guidelines or principles for social responsibility employed.
2. How the organisation implements its social responsibility policies, including what - if any - systems or procedures used.
3. The organisation's evaluation of what has been achieved through social responsibility initiatives during the financial year in question, and expected outcomes of future CSR initiatives.

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[8] Act No. 1403, 27 December 2008.

[9] The reporting provision in the Financial Statements Act was introduced by Act No. 1403 (27 December 2008) amending the Act on Financial Statements. The reporting requirement was introduced for institutional investors etc. by statutory orders issued by the Danish Financial Supervisory Authority (Statutory Order No. 1305 16/12/2008, section 135, Statutory Order No 1043 05/11/2009, section 62, Statutory Order No. 1310 16/12/2008 section 132, Statutory Order No. 1307 16/12/2008, section 24). An unofficial translation of the reporting provision (section 99a) and the explanatory comments is provided at the Danish CSR website at http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf.

[10] Act No. 546, 18 June 2012, section 11, subsection 2, inserting a new subsection 3 into section 99a of the Financial Statement Act. The new human rights and climate change requirement has effect from financial years starting 1 January 2013 and later.

Organisations without a CSR policy are required to provide the information that they do not have such a policy.

The CSR report must be provided either in the management review section of the annual report, as a CSR report provided as a supplement to the annual report, or on the organisation's website. For organisations that have acceded to the United Nations (UN) Global Compact or Principles for Responsible Investment (PRI), section 99a, subsection 8, provides an option to report for the purposes of the Danish Act through the Communication of Progress (CoP) report, which Global Compact and PRI participants are to prepare under these instruments.[11]

Section 99a does not define CSR precisely. Subsection 1 provides an open understanding according to which CSR is business organisations' voluntarily integration of, amongst others, human rights, societal, environmental and climate conditions as well as combating corruption into their business strategy and activities.

According to the explanatory comments, "corporate social responsibility remains a voluntary matter" despite the reporting provision.[12] The explanatory comments reasons that a company "chooses if and how it wishes to integrate considerations on human rights, social issues, environmental or climate issues, the fight against corruption etc. in its business strategy and activities."[13] In noting that the reporting provision does not compel companies to have (or prepare) a CSR policy or include make requirements on a company's modality for addressing CSR,[14] the explanatory comments suggest that the drafting body within the government (the DCCA and the Ministry of Economics and Commerce) recognised that a dilemma exists between asserting that CSR is 'voluntary' when CSR reporting is mandatory. The explanatory comments further explain that 'voluntary' is understood as referring to activities etc. that are not required by Danish law or applicable law in host countries where the company operates.[15]

CSR reports are subject to professional audits, as part of the audit of the management's overall report. Auditing of the CSR report is limited to a consistency check. The audit must ensure consistency between the management report and other parts of the report subjected to audit requirements, but no audit of consistency between CSR policies and actual practice or performance is required. Company managers who do not comply with the reporting requirement and auditors who do not comply with auditing requirements may be subjected to fines.

Summing up, the Danish government has introduced a CSR reporting provision which requires large companies and institutional investors to report on CSR policies but leaves it up to each of these organisations to decide whether to have such a policy. The provision understands CSR to be organisations' "voluntary" consideration of, "amongst others", human rights, social issues, environment, climate, and anti-corruption. All of these issues correspond to public policy concerns of the government that to varying degrees are regulated by public international law with

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[11] For more detailed overview and discussion of the UN Global Compact or PRI CoP reporting option, see Karin Buhmann, *The Danish CSR Reporting Requirement: Migration of CSR-Related International Norms Into Companies' Self-Regulation through Company Law*? 8 *European Company Law* 65-73 (2011).

[12] Explanatory comments to Bill on amendment of the Financial Statements Act, section 1; quoted from unofficial translation of section 99a available at the Danish Government's CSR website (http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf).

[13] *Ibid.*

[14] *Ibid.*, section 1.

[15] *Ibid.*, section 3.2.

differentiated degrees of effective implementation in host states, including states where adverse social or environmental impact of Danish companies' activities or Danish institutional investors' decisions are felt. The government, thus, has introduced a legal obligation for a number of private organisations to report on voluntary policies but basically makes it clear that these are expected to relate to what are essentially public policy concerns regulated by public international law. The subsequent sections will consider how this mixture of coercion and voluntariness, public law and private self-regulation can be explained from the perspective of law, with a particular emphasis on the procedural theory of reflexive law. Prior to discussion of the reporting provision from the reflexive law perspective and how the reflexive law approach offers a regulatory option for governments to regulate to promote CSR, we shall take a brief look at the roles that societal expectations and compliance with law take in the CSR literature and definitions.

3. CSR: Between Societal Expectations and Law

At an overall level, the concept of CSR refers to an idea that companies on a voluntary basis take responsibility for their impact on society, in particular in relation to environmental degradation and 'social' impact. In terms of societal expectations of companies, the normative aspects of the CSR paradigm that has evolved over the past decades relate strongly although not exclusively to human rights, labour rights, environment and related issues of social and environmental sustainable development, including increasingly climate change. So far, international law obligations on human rights, labour rights, environment and related issues of social and environmental sustainable development address themselves directly to states, not to private non-state actors.[16] Most recently, some developments in terms of international soft law instruments, such as the 2011 revision of the OECD *Guidelines* for Multinational Enterprises[17] and the endorsement by the UN Human Rights Council of the *Guiding Principles* on Business and Human Rights[18] have explicated governmental expectations on companies to pre-empt or mitigate adverse impact on the societies in which they function.

The OECD Guidelines, which were expanded in 2011 by a comprehensive human rights chapter complementing previous chapters on issues such as environment, anti-corruption and tax payment, address themselves only indirectly to companies. The Guidelines may be recommended by a State Party to multinational companies hosted within its jurisdiction, and apply also to actions undertaken by such companies in other jurisdictions, including non-OECD jurisdictions. The Guidelines are not legally enforceable, and although the National Contact Points complaints handling mechanism established with the previous (2000) revision was innovative it has not yet proven to be very effective. The UN Guiding Principles on Business and Human Rights build on the 'UN Framework'

[16] Two exceptions in the environmental field are Art. III of the International Convention on Civil Liability for Oil Pollution Damage (1969) which provides that "(…) the owner [such as a legal person. author's comment] of a ship at the time of an incident (…) shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident"; and art. 137(1) of the UN Convention on the Law of the Sea (1982) which prohibits not only states but also natural or legal persons from appropriating parts of the seabed or minerals.
[17] OECD, *OECD Guidelines for Multinational Enterprises: Update 2011*, Doc. C(2011) at 59, 3 May 2011.
[18] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect, Remedy' Framework*, UN Doc. A/HRC/17/31, 21 March 2011. The Human Rights Council endorsed the Guiding Principles on 16 June 2011 (Resolution 17/4, UN doc. A/HRC/RES/17/4).

on business and human rights[19] developed by Professor John Ruggie as holder of a mandate as a Special Representative of the UN Secretary General. The Guiding Principles provide guidance on company due diligence to avoid or mitigate adverse human rights impact, government obligations to regulate and adjudicate companies for adverse impact on human rights, and judicial and non-judicial remedies. The Guiding Principles recognise the value of companies' CSR reporting in terms of providing transparency and a form of accountability. The Principles note that in meeting their duty to protect against human rights violations by companies, states should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts and that financial reporting requirements should clarify that human rights impacts in some instances may be 'material' or 'significant' to the economic performance of the business enterprise (para. 3(d) and commentary to para. 3). In relation to the business responsibility to respect, the Principles note that companies should be prepared to communicate externally how they address their human rights impacts, and that companies whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address the risks (para. 21). The Principles note that formal reporting is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts (commentary to para. 21).

Preceding those 2011 mile-stones by about a decade, the UN Global Compact, developed under then UN Secretary-General Kofi Annan, enables companies to commit to ten principles on human rights, workers' rights, the environment and anti-corruption. The Global Compact principles are based on the Universal Declaration of Human Rights, ILO's 1998 Declaration 1998 on Fundamental Principles and Rights at Work, the 1992 Rio Declaration, and the 2003 Convention against Corruption.[20] With mixed results, the EU has sought to develop a normative framework for CSR[21] and has introduced regulatory measures to promote social and environmental reporting.[22] Referring back to recommendations made in the UN Guiding Principles, the EU Commission's most recent CSR Communication announced a 'smart-mix' of incentives and conventional law to increase CSR among European organisations.[23] Besides the Denmark, several other national legislatures have introduced measures compelling certain organisations to provide transparency about their social and environmental impact or policies.

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[19] *Protect, respect and remedy: A framework for business and human rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/8/5 (2008).

[20] For details on the Global Compact, see www.unglobalcompact.org. As explained elsewhere, the Global Compact also displays elements on reflexive law as a regulatory strategy (Karin Buhmann, *Regulating Corporate Social and Human Rights Responsibilities At the UN Plane: Institutionalising New Forms of Law and Law-Making Approaches?* 78 Nordic Journal of International Law 1-52 (2009)).

[21] Karin Buhmann, *Reflexive Regulation of CSR to Promote Sustainability: Understanding EU Public-Private Regulation on CSR Through the Case of Human Rights,*8 International and Comparative Corporate Law Journal 38-76 (2011).

[22] The Modernisation Directive (2003/51/EC) prescribes that large companies annually report on non-financial key performance indicators, among others environmental and employee matters relating to their worldwide business activities. The Directive does not specify what is meant by environmental and employee matters. On the Directive and its implementation, see Tineke E. Lambooy and N. Van Vliet, *Transparency on Corporate Social Responsibility in Annual Reports,* 5 European Company Law 127-135 (2008).

[23] European Commission, *A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility,* Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels, 25.10.2011. EU Doc. COM(2011) 681 final: 6 (para. 3.1.).

As discussed elsewhere,[24] tendencies to seek to push company conduct towards integrating tasks or considerations that are normally state obligations closely related to public policy objectives on social and environmental sustainable development express a blurring of boundaries between public and private law and between international law and national law. This suggests that while on the one hand they recognise CSR as voluntary, international organisations (like the OECD and the UN) or governments (like the Danish) resort to national or international hard and soft law to encourage company self-regulation on CSR. While the immediate objective is to make companies internalise social expectations that may be of varied types, ultimately such internalisation may make companies contribute to specific objectives which are, in fact, public policy or legal objectives.

Both in terms of theory and practice, CSR has mainly evolved as an issue of business practice and business ethics, business organisation and communication. Yet CSR was addressed in legal practice and theory already in the early decades of the 20th century[25], and became an issue in especially United States and United Kingdom case law in the latter part of the 20th century.[26] Later years have witnessed a juridification of CSR, both in practice and in the literature. The application of law as a modality to promote CSR is evidenced for example by CSR reporting requirements introduced in Danish and some other national legal systems in Europe and elsewhere.

With later years' increase of public intervention to direct firms' 'voluntary' activities under the overall CSR approach, organisational scholars are grappling with what to make of emerging public regulation of CSR. Some organisational scholars recognise that public organisations and objectives directly or indirectly CSR.[27] Yet organisational analysis of CSR generally remains focused on the business perspective rather than, as the current article, the public regulation perspective. Human rights law scholars, by contrast, have been giving increased attention to emerging public and public-private regulation of CSR as modalities to implement human rights law in terms of public law and policy in a world increasingly affected by the economic and political power of companies and their impact on sustainable global development and the conditions of individual human beings.[28]

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[24] Karin Buhmann, *The Danish CSR Reporting Requirement: Migration of CSR-Related International Norms into Companies' Self-Regulation through Company Law?* 8 European' Company Law 65-73 (2011).

[25] *Dodge v. Ford Motor Co.*, Ruling by the Michigan Supreme Court, 170 N W. 668, 684 (1919); see also A. Berle Jr., *Corporate Powers as Powers in Trust*, 44 Harvard Law Review 1049-1074 (1931); E. Merrick Dodd Jr., *For Whom are Corporate Managers Trustees?*, 45 Harvard Law Review 1145-1163 (1932).

[26] See for example Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006).

[27] For example, Andreas Georg Scherer and Guido Palazzo, *The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance and Democracy*, 48 Journal of Management Studies 899-931 (2011); Dirk Matten and Jeremy Moon, *'Implicit' and 'Explicit' CSR: A Conceptual Framework for A Comparative Understanding of Corporate Social Responsibility*, 33 Academy of Management Review 404-424 (2008); Marin Gjølberg, *Varieties of Corporate Social Responsibility (CSR): CSR Meets the "Nordic Model"*, 4 Regulation & Governance 203-229 (2010); Atle Midttun, *Policy Making and the Role of Government: Realigning Business, Government and Civil Society*, 5 Corporate Governance 159-174 (2005).

[28] For example, Nicola Jägers, *Regulating the Private Security Industry: Connecting the Public and the Private through Transnational Private Regulation*, 6 Human Rights and International Legal Discourse 56-91 (2012); Radu Mares, *Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress*, in Radu Mares (ed), *The UN Guiding Principles on Business and Human Rights*, 1-50 (Brill, 2012); John H. Knox, *The Ruggie Rules: Applying Human Rights Law to Corporations*, in Radu Mares (ed), *The UN Guiding Principles on Business and Human Rights*, 51-83 (Brill, 2012); Doreen McBarnet, *Corporate Social Responsibility Beyond Law, through Law, for Law: The New Corporate Accountability*, in McBarnet, Voiculescu and Campbell (eds.) , *The New corporate accountability: Corporate Social Responsibility and the law*, 9-58 (Cambridge 2008); Radu Mares, *Institutionalisation of Corporate Social Responsibilities – Synergies between the Practices of Leading Multinational*

A 2001 EU's Green Paper on CSR recognised "fulfilling legal expectations" as part of CSR. The 2001 Green Paper described CSR as

> a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis (…) not only fulfilling legal expectation, but also going beyond compliance and investing 'more' into human capital, the environment and the relations with stakeholders.[29]

The 2002 Commission Communication went a significant step further in de-linking CSR from legal compliance. Presenting CSR mainly as action beyond legal requirements, it stated that

> there is large consensus [that] CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest. [30]

The Commission's third and most recent Communication on CSR released in October 2011 revised the definition of CSR to "the responsibility of enterprises for their impacts on society". While the revised definition is intended to provide coherence between CSR understandings applied by the EU and those of the OECD and the UN based on 2011 developments described above, the revised definition's non-reference to law does not fundamentally bring clarity about the relationship between CSR and law from the EU perspective.

Yet, a direct relation between CSR and law was suggested by a CSR understanding developed already in 1979 by American organisational scholar Archie B. Carroll. In an article considered a cornerstone in organisational CSR literature, Carroll characterises a company's compliance with public, coercive law (as in contrast to private law) as part of CSR. According to the understanding of CSR presented by Carroll, "[the] social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time".[31] As discussed elsewhere,[32] Carroll's 1979 definition of CSR appears to assume that social responsibilities of business include compliance with law in the narrow sense of directly applicable law. Carroll's definition neither addresses nor, for that reason, refutes a wider role for law in CSR, such as through legal theory based regulatory strategies or for legal instruments that do not apply directly to the pertinent business to affect CSR normatively. Carroll treats 'law' simply as coercive (typically statutory) requirements and not as broader regulatory science or technique. In a 1991

Enterprises and Human Rights Law/Policy (Lund University 2008); Nicola Jägers, *Corporate Human Rights Obligations: In Search of Accountability* (Intersentia 2002).

[29] European Commission: *Promoting a European Framework for Corporate Social Responsibility'*. EU Doc. COM(2001)366, paras. 20 and 21. Compare also Beate K. Sjåfjell, *Internalizing Externalities in EU Law: Why Neither Corporate Governance Nor Corporate Social Responsibility Provides the Answers*, 40 The George Washington International Law Review 977-1024, 983 (2009) noting that "The Commission has, apparently without reservation, accepted the corporate definition of social responsibility as voluntary (…)".

[30] Commission of the European Communities, *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*. EU Doc. COM(2002) 347, 5.

[31]Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Performance*, 4 The Academy of Management Review 497-505, 500 (1979).

[32] Karin Buhmann, *Corporate Social Responsibility and Human Rights Responsibilities of Business*, 4 Nordic Journal on Human Rights 331-352 (2007).

article Carroll presented a 'CSR Pyramid' that also includes legal responsibility understood as compliance.[33] In that article Carroll summarizes his view of CSR to mean that "[t]he CSR firm should strive to make a profit, obey the law, be ethical, and be a good corporate citizen".[34] In a 1999 article based on an extensive review of mainly US literature, Carroll identifies what he refers to as an evolving and solidifying social contract between business and society, with society increasingly expecting business to take social responsibility for tasks beyond immediate business profit-seeking practices. He finds that CSR definitions typically consider CSR to be about more than compliance with minimal requirements in national law.[35] This corresponds to a societal expectation that companies not only comply with law, but also go beyond legal requirements to contribute to society.

In a 2003 article with Mark S. Schwartz, Carroll introduced a three-domain approach developed partly in response to critique of the 1979 and 1991 articles.[36] One of the major points of the 2003 article is an elaboration of the "legal domain" to go beyond simple compliance and to include also action undertaken in order to avoid civil litigation or in anticipation of (new) law,[37] that is, a sort of pre-emptive compliance or strategic application of CSR in order to avoid positive legal requirements. Compliance is discussed as comprising three forms: "passive" (the idea that a company does what it wants and just happens to be acting within the boundaries of the law, i.e. no specific intention to comply with the law), "restrictive" (the idea that the legal system limits, constrains or modifies otherwise intended behavior in a restrictive fashion, in order for the actor to stay within the boundaries of legal compliance), and "opportunistic" (when a company takes advantage of loopholes in legislation, in many cases complying with the letter of the law but not the spirit of the law; or chooses to place operations in a particular jurisdiction because its weaker legal standards are found favourable for the company's objectives).[38]

In sum, according to Carroll's understanding as it has evolved, CSR is to observe the letter of the law, perhaps also its 'spirit', and to do 'something additional' not required by law. This 'something additional' is part of the external reality of social expectations on companies. In a market in which CSR as action additional to compliance may be employed as a marketing parameter, engaging in action beyond requirements of applicable national law may present companies with economic benefits. However, it is also in these markets that environmental, human rights, labour rights and corruption issues tend to emerge. Consumers and investors have come to demand social responsibility from companies.[39] 'Critical' consumers or investors tend to react to insight into

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[33] Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholder*, Business Horizons July/August, 39-48 (1991).
[34] *Ibid*., at 43.
[35] Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 39 Business & Society Review 264-295 (1999). It should be noted that the article is based mainly on Unites States literature on CSR. Another basic uniting feature emerging from Carroll's 1999 overview of CSR definitions is the idea that CSR need not conflict with a firm's economic (profit-oriented) considerations.
[36] Mark S. Schwartz and Archie B. Carroll, *Corporate Social Responsibility: A Three-Domain Approach*, 13 Business Ethics Quarterly 503-530 (2003).
[37] Compare Jacob D. Rendtorff, *Virksomhedsetik: En grundbog i organisation og ansvar*, 114 (Forlaget Samfundslitteratur 2007), who based on a reading of Carroll's articles states that the legal aspect of CSR goes beyond immediate compliance to include 'the spirit of the law'.
[38] Mark S. Schwartz and Archie B. Carroll, *Corporate Social Responsibility: A Three-Domain Approach*, 13 Business Ethics Quarterly 503-530 (2003).
[39] See for example Kevin Jackson, *Global Corporate Governance: Soft Law and Reputational Accountability*, 35 Brooklyn Journal of International Law 41-106 (2010); M. Todd Henderson and Anup Malani, *Corporate Philanthropy*

discrepancy between the action that a company presents as CSR because it exceeds the requirements of applicable national law in a host country, and standards in international law, for example international labour standards on working hours or overtime remuneration. CSR concerned 'critical' consumers and investors in practice typically expect a company to observe international law standards that from the doctrinal international law perspective formally apply only to states. For example, if international standards provide a higher level of protection of host country workers, societal expectations are likely to demand the company to meet those higher standards, even if the relevant international instrument has not been ratified by the host country.

The sanctions employed by 'critical' consumers or investors are typically economic: consumers shift to other products, investors divest. Increasingly, legislators – like the Danish – add their influence to that of economic actors such as consumers and investors: In addition to requirements on CSR in public procurement contracts by introducing CSR reporting requirements to provide for transparency, legislators can strengthen the potential economic impact of economic actors. Providing transparency increases the market's opportunities to obtain knowledge on which market actors may react to company conduct through economic means. Drawing on the potential effect of market sanctions by creating transparency on organisations' impact on issues like human rights, labour rights, environment, climate or anti-corruption, legislators may softly induce self-regulation among companies or institutional investors on those very public policy concerns.

The United Nations Special Representative on Business and Human Rights, Professor John Ruggie, has indicated that companies are subjected not only to the courts of law but also to 'the courts of public opinion'.[40] The impact of the 'courts of public opinion' is significant for the economic bottom line for many companies. In Denmark and beyond, this has come to affect decisions of institutional investors on investment and divestment.[41] The 'courts of public opinion' express social expectations of companies. Specifically addressing human rights, the Special Representative in his 2008 report to the UN Human Rights Council stated, *inter alia:*

> In addition to compliance with national laws, the baseline responsibility of companies is to respect human rights. Failure to meet this responsibility can subject companies to the courts of public opinion - comprising employees, communities, consumers, civil society, as well as investors - and occasionally to charges in actual courts. Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations - as part of what is sometimes called a company's social licence to operate.[42]

Underscoring that CSR is constantly relative to social expectations of companies, in several reports to the UN Human Rights Council, the Special Representative has indicated that 'social expectations' are key in relation to the ongoing development of business responsibilities for human

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and the Market for Altruism, 109 Columbia Law Review 571-627 (2009); Edelman Goodpurpose, *Citizens Engage!*, http://www.edelman.com/insights/special/GoodPurpose2010globalPPT_WEBversion.pdf), accessed 31 August 2012.

[40] *Business and Human Rights, Mapping International Standards of Responsibility and Accountability for Corporate Acts*, UN Doc. A/HRC/4/35, paras. 83-84 (2007); *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 paras. 54-55 (2008).

[41] On the Norwegian Sovereign Wealth Fund, see Anita Halvorssen, *Using the Norwegian Sovereign Wealth Fund's Ethical Guidelines as a Model for Investors***,** 8 European Company Law 88-93 (2011).

[42] *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 paras. 54-55 (2008).

rights.[43] Arguably, related dynamics have made the concept of CSR open to incorporating social needs and expectations for companies to self-regulate in other areas. Whereas social expectations of companies were particularly strong in relation to human and labour rights in the two recent decades, in later years, expectations on companies to self-regulate have become strong in relation to climate concerns.[44]

The 'voluntary' aspect of CSR is constantly and potentially limited by the public interest in companies observing certain norms, even beyond the reach of the national jurisdictional sphere. In line with Schwartz' and Carroll's 2003 article, research suggests that companies may act in a particular way to preempt new or amended legal requirements and therefore to uphold the idea of voluntary action.[45] Historically, at least in some parts of Europe, much CSR has in fact been motivated by efforts by company managers to demonstrate social responsibility as viable alternatives to emerging or increased welfare-state law prescribing duties for managers.[46]

Somewhat contrasting with the EU Commission's practical de-linking of CSR and compliance in its 2002 Communication, a link between CSR and compliance with law has increasingly emerged in some other understandings of CSR proposed by scholars. Organisational scholars Michael Blowfield and Jedrzej G. Frynas have described CSR as an "umbrella term for a variety of theories and practices all of which recognise" that companies have a responsibility for their impact on society and the natural environment, sometimes beyond legal compliance and the liability of individuals.[47] Jennifer Zerk who has a background in commercial and international law integrates a compliance element into her understanding of CSR. To Zerk,

> CSR refers to the notion that each business enterprise, as a member of society, has a responsibility to operate ethically and in accordance with its legal obligation and to strive to minimise any adverse effects of its operations and activities on the environment, society and human health.[48]

As the overview above shows, compliance with law has been recognised, at least by parts of CSR theory, as an element of CSR for decades. But going beyond what is required by directly applicable law is also part of CSR. Indeed, international organisations with very diverse objectives, such as the UN, OECD and EU have engaged in efforts to define CSR and have very

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[43] *Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, UN Doc. E/CN.4/2006/97, para. 45 (2007); *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 paras. 54-55 (2008).
[44] For example, this is mirrored in the UN Global Compact's 'Caring for Climate' initiative and, perhaps somewhat perversely in that it pushes economic costs on to consumers, by airlines' CO2 reduction schemes that allow customers to 'off-set' their CO2 footprints through a voluntary payment upon purchasing tickets.
[45] See for example, David Hess and Danielle E. Warren, *The Meaning and Meaningfulness of Corporate Social Initiatives*, 113 Business and Society Review 163-197 with references (2008); Carol A. Adams, *Internal Organisational Factors Influencing Corporate Social and Ethical Reporting Beyond Current Theorising*, 15 Accounting Auditing & Accountability Journal 223-250 (2002); D.P. Angel and M.T. Rock, *Global Standards and the Environmental Performance of Industry* WPG 04-13, 19-24, (Oxford: Oxford University, School of Geography and the Environment 2004).
[46] Anne Roepstorff, *CSR: Virksomheders sociale ansvar som begreb og praksis*, 41-42 (Copenhagen, Hans Reitzels Forlag 2010).
[47] Michael Blowfield and Jedrzej George Frynas, *Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World*, 81 International Affairs 499-513, 503 (2005).
[48] Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge: Cambridge University Press 2006).

recently (since 2008 and onwards) stepped up activities to provide guidance for CSR conduct. Much of this guidance is normatively closely linked to existing international human rights and labour law. Despite recent years' tendency with these international organisations to stimulate CSR through international soft law (the OECD Guidelines, the UN Framework and UN Guiding Principles) and despite the transnational effects of international business, political will to regulate the social and environmental impact of business on society through hard law adopted at the international level remains limited. National level regulation, some of which may have extraterritorial effects, offers an option for governments to seek to cover the gap between policy and law, by introducing incentives and other measures to stimulate firms' self-regulation beyond what is required by applicable national law.

Already from this perspective, there is clearly a role for law and legal scholarship in relation to CSR: without knowledge of what is required by the law, it is hard to go beyond it in a conscious way, let alone a strategic manner. At the same time, the basic idea in CSR is clearly normative, in particular in the perception that CSR activities should contribute to solving problems facing local or global society. This, too, calls for a role for law in CSR: legal theory or regulatory strategies or techniques may provide insight on how to develop and institutionalise CSR normativity towards societal needs and expectations. More specifically, it may provide insight on how to establish links between the normative expectations and needs of some actors related to the conduct of others in order to induce a change in conduct of the latter. On this basis, the subsequent section will discuss reflexive law in the context of CSR.

For the purposes of the remainder of this article in relation to the Danish reporting provision, CSR is understood in accordance with section 99a of the Financial Statements Act to be the integration by companies of human rights, labour rights, environment and climate considerations, as well as anti-corruption activities into their business strategy and business activities beyond what is required by obligations in applicable law addressed to companies. This means that companies' integration of international law standards, such as international labour law standards formally addressed to states, may be characterized as CSR.

4. Reflexive law and CSR

Reflexive law theory addresses regulation of societal concerns, such as environmental problems or inclusive employment, whose solutions require action by individuals or organisations (typically companies). The theory was formulated by German legal scholar Gunther Teubner as a response to regulatory dilemmas related to environmental area, employment and inequality that constituted severe social concerns in Europe's welfare states in the 1980s.[49] Today, the term reflexive law is employed both as a theory on how to 'regulate self-regulation' in order to address public policy needs or concerns, and as a regulatory strategy that explicitly or often implicitly builds on the ideas embodied in the theory. Reflexive law does not purport to supplant direct, substantive law but to complement it. The *theory* of reflexive law posits that authorities may create a procedural framework which allows societal actors to interact and formulate norms based on learning about needs and expectations held by other actors. As a regulatory *strategy*, reflexive law may be employed to promote the internalisation of externalities within organisations. Reflexive law as

[49] See especially Gunther Teubner, *Substantive and Reflective Elements in Modern Law*, 17 Law and Society Review 239-285 (1983); Gunther Teubner, *Autopoiesis in Law and Society: A Rejoinder to Blankenburg*, 18 Law and Society Review 291-301 (1984); Gunther Teubner, *After Legal Instrumentalism?*, in Gunther Teubner (ed.), *Dilemmas of Law in the Welfare State* 299-325 (Berlin & New York: Walter de Gruyter 1986).

regulation *in practice* is the establishment of procedural frameworks and the self-regulatory processes that take place as a result of resulting exchanges, for example between employers, employees and consumers, or between company managers and stakeholders. Such forums for exchange and learning may be virtual (IT communication based) or real. They are referred to in this article as a reflexive law forum.

Reflexive law builds processes of reflection at one or all of three levels. At the first level, public authorities reflect upon their own regulatory capacity with regard to the concern at hand. The capacity may be limited for formal jurisdictional or practical political reasons, or because intended regulation is so specific that it can best be developed in detail by those closer to its implementation and impact. Such reflection may lead authorities to establish procedures (reflexive law forums) to induce a second level of reflection, this time among social actors such as companies, civil society, and authorities representing specific interests. Reflexive law forums enable an exchange among actors, resulting in mutual learning on expectations, needs and demands. This is intended to assist participants in the process to consider (reflect upon) impact of their activities on the interests of other actors and how to internalise such externalities. These considerations may be turned into normativity, typically correctives or self-regulation among specific types of actors in the reflexive law process, such as companies. Such self-regulation then reflects societal needs, demands and expectations.

Reflexive law theory seeks to combine habermasian ideas on law-making with systems theory and the theory of autopoiesis in law and social systems formulated by Niklas Luhmann.[50] Luhmann based the latter on inspiration from biology and knowledge of the neural system's self-reproduction and interaction with the body. The theory of autopoiesis in social systems was received with considerable scepticism at its presentation, and Teubner later downplayed this part of reflexive law. Nevertheless, the theory of autopoiesis is interesting for an understanding of how CSR reporting may promote self-regulation among companies. According to Teubners' theory, autopoiesis allows parts of the social system, that is, social sub-systems such as the political, the economic and the legal system, to adapt based on 'irritants' from other social sub-systems. These 'irritants' function as perturbance which sets in motion internal processes of change. The reflexive law forum allows social sub-systems to exchange information which causes perturbance inside another social sub-system. In the process of 'digesting' the perturbance, internal reflection on the sub-system's impact on the environment is strengthened. This may lead to self-regulation to change that impact and, by implication, meet the concerns and needs of other social sub-systems.

Reflexive law is a point of departure for understanding CSR as a form of indirect public regulation and governmentally induced business self-regulation. Many states already apply reflexive law type regulatory strategies – CSR reporting requirements, governmentally funded or certified labelling schemes, etc. – in order to promote business self-regulation on CSR issues. Reflexive law also provides an explanatory framework for the processes which take place in public-private regulation on CSR, and regulatory objectives of CSR-reporting requirements.[51]

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[50] Gunther Teubner, *Introduction to Autopoietic Law*, in Gunther Teubner (ed.), *Autopoeitic Law: A New Approach to Law and Society* 1-11 (Berlin & New York: Walter de Gruyter 1988); Gunther Teubner, *Social Order from Legislative Noise*, in *European Yearbook in the Sociology of Law: State, Law and Economy as Autopoietic Systems: Regulation and Autonomy in a New Perspective* 609-649 (Milano, Guiffre 1992); see also Niklas Luhmann, *The Self-Reproduction of Law and Its Limits*, in Gunther Teubner (ed.), *Dilemmas of Law in the Welfare State* 111-127 (Berlin & New York: Walter de Gruyter 1986).

[51] In particular, Simon Deakin with others have applied and discussed reflexive law from this perspective. See Simon Deakin and Richard Hobbs, *False Dawn for CSR? Shifts in Regulatory Policy and the Response of the Corporate and*

Reflexive law forums may be physical or take a more virtual form. CSR-reporting and processes related to the reporting, such as consultations and communication with stakeholders, may function as a reflexive forum.[52] The reporting and related processes allow for insight into concerns, needs etc. of their environment and therefore for internalisation of these into norms of conduct, such as a company' policies.

Many of the environmental and social concerns that Teubner's theory sought to address when it was launched have since shifted from the national to the international level. As a general rule, international organisations have limited legal or political powers to create obligations for companies. The regulatory interest and the initiative to regulate therefore fall back on national authorities. For such authorities, for example those in Denmark, CSR is one means among others to address national and perhaps particularly international public policy concerns and contribute to implementation of related objectives, including the implementation of legal obligations within the state's jurisdiction or policy objectives related to sustainability related international law objectives beyond the national boundaries. That is particularly so when the public policy concern in question, such as labour conditions in low-wage supplier states either are outside the jurisdictional powers of the government. The subsequent section will consider how the Danish government seeks to employ CSR for these purposes through the reporting requirement.

5. The Public Policy Objectives of the CSR Reporting Provision: Section 99a as Reflexive Law

5.1. The Government Action Plan on CSR

The Danish Government's intention to introduce mandatory CSR reporting was announced in May 2008 when the Government published its first Action Plan on CSR.[53] The Action Plan comprises 30 initiatives, targeting four Action Areas. CSR reporting is not a main theme but figures under three of the four key action areas. Key action area 1, *Propagating business-driven Social Responsibility* aims to strengthen large companies' reporting and provide companies insight on CSR. The Action Plan emphasises that such insight and tools should be based on 'internationally recognised principles' for CSR. Under action area 2, *Promoting companies' Social Responsibility through government activities*, the Government indicated that attention would be paid to social responsibility in public procurement, investments and in state-owned public limited companies. Specific initiatives include a reporting requirement for state-owned public limited companies. The objective of key action area 3, *The corporate sector's climate responsibility*, is to promote companies' active contributions to global climate challenges by decreasing energy consumption and emission of greenhouse gases. This action area also has the objective of promoting companies' dissemination of global climate solutions. The means to these ends include companies' preparation of 'climate reports' and of climate mitigation strategies, and the inclusion of climate in companies' CSR reports. These are also seen as instrumental in promoting companies' contributions towards

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Financial Sectors in Britain 15 Corporate Governance 68-76 (2007); Catherine Barnard, Simon Deakin and Richard Hobbs, *Reflexive Law, Corporate Social Responsibility and the Evolution of Labour Standards: The Case of Working Time*, ESCR Centre for Business Research, University of Cambridge Working Paper No. 294 (2004); Simon Deakin and Colm McLaughlin, *The Regulation of Women's Pay: From Individual Rights to Reflexive Law?* Centre for Business Research, University of Cambridge Working Paper No. 350 (2007).

[52] Compare David Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness* 25 Journal of Corporation Law 41-84 (1999).

[53] The Danish Government (2008) *Action Plan for Corporate Social Responsibility*. English version, http://www.eogs.dk/graphics/Samfundsansvar.dk/Dokumenter/Action_plan_CSR.pdf (visited 3 September 2011).

the mitigation of global climate challenges through climate friendly technology and a reduction of energy consumption and the emission of greenhouse gases. Key action area 4: *Marketing Denmark for responsible growth*, does not include or address reporting requirements.

5.2. Promoting a public policy objective of increasing participation in the Global Compact and PRI
While the Danish Government was not a first-mover in introducing mandatory CSR reporting, the Danish CSR reporting model is innovative by creating a direct connection to two international CSR instruments through opening the alternative CoP reporting option. The UN Global Compact and the PRI both of which are global CSR instruments initiated respectively supported by the UN, are both noted directly in the reporting provision. The 2008 CSR Plan of Action had as an objective to encourage Danish companies to employ CSR-'standards' which are based on "an internationally recognised reference framework". One of the means to this end was for more Danish companies to participate in the UN Global Compact or PRI.[54] The opportunity to make the CoP double as the Danish report was intended to make the participation in the Global Compact or PRI attractive to companies. This provision has the effect of limiting reporting requirements for companies which participate in the UN Global Compact or PRI. At the same time and as described elsewhere,[55] it provides input to organisations' development of CSR self-regulation and promotes a governmental objective of increasing the number of Danish companies and institutional investors that participate in the Global Compact or PRI.

The Global Compact[56] is based on an initiative launched by then Secretary General Kofi Annan and is established under the UN. Companies that participate in the Global Compact commit to ten Principles. The principles build on the Universal Declaration on Human Rights (Principles 1-2), the 1998 ILO Declaration on Fundamental Principles and Rights at Work (Principles 3-6), the Rio Declaration on Environment and Development (Principles 7-9) and the UN Convention against Corruption (Principle 10), and for the labour rights and environmental principles on specific standards on the four core labour rights, respectively the Precautionary Principle. The Global Compact is primarily an internet based tool, and provides links not only to the Declarations and one Convention (international soft respectively hard law) informing the ten Principles, but also to more detailed international law instruments. The international law instruments which inform the ten Principles address themselves to states. In the Global Compact context, however, the instruments serve as a normative foundation for the ten Principles and consequently for participating companies' self-regulation based on their commitment to the Global Compact.

A company becomes a Global Compact participant by sending a letter from the management to the UN Secretary General.[57] Participating companies are expected to submit an annual Communication on Progress (CoP) explaining how it implements the ten Principles. Publicly accessible, this report functions as the main monitoring and 'integrity' measure. The Global Compact is not a legally binding instrument. Non-submission of the CoP, however, is sanctioned by 'de-listing' from the Global Compact. 'Delisting' effectively means expulsion from the Global Compact.[58]

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[54] *Ibid*., especially Chapter 2.
[55] Karin Buhmann, *The Danish CSR Reporting Requirement: Migration of CSR-Related International Norms Into Companies' Self-Regulation through Company Law*? 8 *European Company Law* 65-73 (2011).
[56] Details on the Global Compact are available at www.globalcompact.org.
[57] See Global Compact, *How to participate, Business Participation*, http://www.unglobalcompact.org/HowToParticipate/Business_Participation/How_To_Join_the_Global_Compact.html.
[58] United Nations Global Compact, *Annual Review 2010* (New York City: United Nations Global Compact Office, 2010).

PRI was established by a range of institutional investors.[59] It enjoys support from the UN Global Compact and UNEP Finance Initiative (UNEP FI), but unlike the Global Compact does not have a formal link to the UN in terms of organisation or other key features. The PRI Principles are intended to provide a framework for taking social, environmental corporate governance issues into account. Incorporating a specific reference to the Global Compact, participants commit, amongst others, to ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives, such as the UN Global Compact. PRI contains no specific reference to international law instruments, such as the Global Compact does with regard to human rights, labour rights, environment and anti-corruption but through reference to the Global Compact contains an indirect reference. Through PRI's reference to the Global Compact, the Global Compact principles also come to inform the PRI principles. The PRI Principles are voluntary and based on commitment from the top-level leadership of the investment business. An annual progress report has to be submitted.

The explanatory comments to section 99a state that the objective of encouraging companies to base their CSR work "in an internationally recognised frame of reference" is intended to contribute to delivering the Government's objective of making Denmark internationally recognised for responsible growth. The idea of inviting companies and institutional investors to base CSR policies and their implementation on Global Compact and PRI is made as an element towards fulfilling this objective.[60] The invitation is repeated in a set of Guidelines issued by the implementing Government agency to assist the preparation of CSR reports. The Guidelines encourage companies "to base the work and the report [as far as possible] on internationally accepted standards and guidelines such as the UN Global Compact and [the] Principles for Responsible Investment".[61]

Partner states' development in accordance with the UN Charter and the UN's goals and fundamental principles is an objective of Danish official development cooperation.[62] Promotion of human rights and by implication those labour rights which are also human rights is part of the UN's goals (UN Charter art. 1). Policy debate and other comments to the Bill submitted by the Government to Parliament to introduce section 99a indicate that an objective of improving relations for workers and the natural environment in developing countries which supply to Danish consumers.[63] The aim of inducing Danish companies and institutional investors to apply the Global Compact principles (whether or not they participate in the Global Compact or PRI) therefore travels in tandem with the public policy objective of promoting international development in accordance with the UN goals.

5.3. Promoting Broader 'Societal Concerns' Beyond the Reach of National Danish Law

[59] Details on PRI are available at www.unpri.org.
[60] Explanatory comments, Explanatory comments to Bill on amendment of the Financial Statements Act, section 1; unofficial translation of section 99a available at the Danish Government's CSR website, http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf (visited 3 September 2012).
[61] CSRgov.dk/Danish Agency for Commerce and Companies, *Reporting on Corporate Social Responsibility: An Introduction for Supervisory and Executive Boards*, 8 (2009).
[62] Act on International Development Cooperation, (lbk No. 541 10.07.1998, section 1). An amendment to this Act was adopted in 2012. It further strengthens emphasis on human rights with reference to the UN Charter, the Universal Declaration on Human Rights, and UN Human Rights Conventions (Act No. 555, 18.06.2012, section 1).
[63] *White Paper on Bill on Amendment of the Financial Statements Act*, 27 November 2008 (Betænkning til L 5/2008 om ændring af årsregnskabsloven afgivet af Erhvervsudvalget den 27. november 2008).

According to the explanatory comments to the Bill, the CSR reporting requirement was introduced in order to encourage large Danish companies, listed companies and state-owned public limited companies "to actively consider how to contribute to addressing societal concerns". More specifically, the comments state that the reporting requirement aims to involve companies in actively addressing challenges caused by globalisation,

> for example in relation to social conditions, working conditions, environment and climate, which require active collaboration between states and between various social actors.[64]

That wording was a softening of what had been stated in a draft which in September 2008 had been submitted to consultation among Danish stakeholders. In the September 2008 draft, the section which corresponds to the section quoted above notes with even greater clarity the policy objective of involving companies in addressing

> a number of challenges in relation to, for example, social conditions, working conditions, environment and climate, for which may not be sufficiently addressed by national or even international rules. (…) These challenges are not sufficiently addressed by governments on their own. They require collaboration between different social actors. Companies in particular play a key part with regard to contributing to addressing societal challenges.[65]

This underscores that the reporting requirement emanates from a governmental interest in companies' contributing through self-regulation to addressing societal problems. This strategy is employed where conventional national or international law is not perceived to be effective for the solution of the pertinent problems. The wording suggests that the Danish authorities have reflected upon their regulatory capacity in relation to the specific challenges and societal concerns. This corresponds to the first level of the reflexive law strategy based on the theory, as described above.

A comparison between the September 2008 draft for consultation and the explanatory comments which accompanied the final Bill indicates more examples of wording in which an intention to involve companies in the implementation of governmental tasks has been downplayed in the final text. Some of this wording was changed in the final explanatory comments. Yet this effectively underscores the public policy objective that drew much of the drafting of the Bill. For example, in continuation of the quote above, the draft for consultation notes that companies may be able to identify solutions to national and global challenges not only due to their market knowledge, flexibility and innovation capacity but also that they may

> contribute to filling out the space where rules are not (yet) in place, or where these are not efficiently enforced in practice. This may, for instance, happen through making demands on a foreign supplier to the effect that the supplier observes fundamental environmental requirements or workers' or human rights.[66]

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[64] *Explanatory comments to Bill on Amendment of the Financial Statements Act*, section 2.1; unofficial translation of section 99a, http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf (visited 3 September 2012).
[65] *Draft for Consultation – Bill on Amendment of Annual Accounts Act, September 2008* (consultation deadline 23 September 2008) section 2.1 (author's translation).
[66] *Ibid.*

Thus, the objective of the CSR reporting requirement exceeds the objective of providing for transparency. The objective is to affect the activities of companies in order for these to contribute to handling societal challenges and policy objectives in relation to environment, human rights and workers' rights. The latter in particular are issues of concern to European (including Danish) authorities and politicians but outside of the jurisdictional sphere of the Danish legislator. The reporting provision seeks to engage companies in addressing Danish foreign and development policy objectives. These objectives complement consumer and investment interests. The objective, at the same time, is to make companies internalise social expectations into their self-regulation, again specifically with regard to environment and human and labour rights.

Direct reference to companies' action to fill legal gaps has been in omitted the final version of the explanatory comments. Instead, the comments state that

> Intensified international competition, global societal and environmental challenges and continuously more open and global information means businesses and investors need to consider the international agenda actively. Thus, businesses wishing to play a prominent role in global markets must be open about their social responsibility. Such responsibility could take the form of requiring a foreign supplier to observe basic environmental requirements and comply with workers' and human rights.[67]

Statements such as these demonstrate the aim to make companies contribute to the implementation of governmental objectives through measures to support their internalisation of externalities, effectively constituting a reflexive law strategy. The Government's intention to engage companies' in delivering on public policy objectives beyond the reach of national law comes out particularly clear in the consultation draft statement that "[a] company's conduct and insight into social responsibility may add much, which cannot be achieved through statutory law and rules by themselves",[68] read in combination with the consultation draft noted that through the reporting requirement the Government intended to "support and strengthen Danish companies' continued active CSR work and their contributions through this to improving conditions in countries with which they conduct business or where they have set up."[69]

The final version of the explanatory comments retained an argument that companies serve their own market interests through CSR. In the comments, this serves to inform the reporting requirement as useful for companies. This 'business case' argument, however, is closely linked to the intention to engage companies in the implementation public policy objectives. For example, the explanatory comments state that

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[67] *Explanatory Comments to Bill on amendment of the Financial Statements Act,* section 2.1; quoted from unofficial translation of section 99a, http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf (visited 3 September 2012).

[68] *Draft for Consultation – Bill on Amendment of Annual Accounts Act, September 2008* (consultation deadline 23 September 2008) section 2.1., author's translation.

[69] *Ibid.*

> Businesses may contribute to solving social challenges through their business-driven social responsibilities, and at the same time, create better business opportunities for themselves.[70]

As indicated, reflexive law theory emerged on a backdrop of a societal need for a regulatory strategy that would contribute to handling problems on employment, inequality and environment. Apart from the Danish foreign policy objective on promotion of human and labour rights in developing countries, the explanatory comments to the Bill refer to national environmental and employment objectives in its explanation of the understanding of CSR. The comments state:

> Societal concerns may consist in work on helping foreign suppliers observe workers' and human rights. Societal concerns may also be about health and safety at work, employee satisfaction and development, or consist of businesses making special efforts to retain or integrate people who are disabled, seniors, persons with reduced capacity or persons with other ethnic background in the labour market.
>
> Environmental and climate concerns may be about preventing pollution, reducing consumption of energy and other resources, developing or using environmentally efficient technologies or eco-labelling products.[71]

The Guidelines prepared by the Commerce and Companies Agency explain in some detail the aim and ideas behind the reporting requirement in order to assist the reporting process by setting out what its expected purpose is and providing example. They address an audience of company managers, reporting staff and auditors. The Guidelines, too, indicate a reflexive law approach to the CSR reporting provision. A short version of the Guidelines (also available in English) has been prepared for the company board and management. A longer version targets the division(s) and employee(s) who prepare the CSR report. On the objective of the reporting provision, the shorter version of the Guidelines states that the provision "aims at stimulating businesses to address corporate social responsibility actively so new possibilities are examined and developed for the benefit of businesses and society alike."[72] The CSR report is characterised as a "management tool for steering the business internally".[73] With wording that more than suggests the governmental interest in engaging companies in addressing public legal and policy objectives, the longer version of the Guidelines explain that

> The objective of the reporting requirement is (…) to motivate Danish companies and investors to relate actively to how they may contribute to the solution of societal challenges through application of their key competences.[74]

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[70] *Explanatory Comments to Bill on Amendment of the Financial Statements Act*, section 2.2; quoted from unofficial translation of section 99a, http://www.csrgov.dk/graphics/Samfundsansvar.dk/Dokumenter/Proposal_Report_On_Social_Resp.pdf (visited 3 September 2012).

[71] *Ibid.*

[72] CSRgov.dk/Danish Agency for Commerce and Companies, *Reporting on Corporate Social Responsibility: An Introduction for Supervisory And Executive Boards*, 7 (2009).

[73] *Ibid.*, 8.

[74] Erhvervs- og Selskabsstyrelsen/Samfundsansvar.dk, *Redegørelse for samfundsansvar – praktisk vejledning og inspiration* (2009) (hereinafter 'Praktisk vejledning'), 45, author's translation, http://www.samfundsansvar.dk/graphics/publikationer/CSR/Redeg%F8relse_for_samfundsansvar.pdf (visited 3 September 2012).

Here too, "societal challenges" are qualified through reference to the reporting provision's and the Guidelines' specific explanations on environment, climate, human rights, labour rights, etc.

The longer version of the Guidelines adds an additional aspect that constitutes another example of application of the reflexive law approach. This relates to systems theory and particularly reflexive law theory elements on the provision of 'irritants' to induce for reflexive learning through systems' relative openness. The Guidelines emphasise the significance of transparency as part of the learning process. According to the Guidelines, the reporting requirement "is intended to ensure that Danish companies become more transparent vis-à-vis [their environment], so that they may gain optimal benefit from their CSR activities. This will ensure Danish companies international recognition for their activities in this area."[75]

Like the theory of reflexive law, the Guidelines emphasise the process aspect and its significance for the company's understanding of social expectations as well as the internalisation of these expectations and their impact on self-regulation. This leads the reflexive law approach of the background and regulation of the reporting provision to the third level of reflexive law as described above. The English language edition of the shorter version of the Guidelines states:

> The process of preparing a report can be just as important to a business as the actual report. Management and staff typically focus more on, say, energy consumption, greenhouse gas emissions, waste and absence when problems, actions and results are made easier for the surrounding world to understand via a report.[76]

Reference to "the surrounding world" is interesting in this context. The Danish text employs the term "the environment". "The environment" in the sense of the 'surrounding world' is a key concept in the reflexive law theory's application of autopoiesis, with regard to the environment's impact on (sub-)systems through the provision of 'irritants' which cause perturbance and lead to self-regulation. In order to promote companies' interaction with stakeholders as part of their preparation of the CSR report, the Guidelines include several recommendations for the identification of stakeholders and on stakeholder dialogue.[77]

The longer version of the Guidelines contains other examples of application in practice of reflexive law terminology and lines of thought in relation to societal needs and expectations. For example, it states:

> Business clients and investors make demands on the way in which companies' [affect and address] human rights, environmental protection, climate responsibility and corruption. (…) A range of stakeholders also make demands on companies. Through the forces of the market, companies are compelled to actively take a stance on CSR.[78]

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[75] *Ibid.*, 4, author's translation.
[76] CSRgov.dk/Danish Agency for Commerce and Companies, *Reporting on Corporate Social Responsibility: An Introduction for Supervisory and Executive Boards*, 8 (2009).
[77] *Ibid.*, 8, compare Erhvervs- og Selskabsstyrelsen/Samfundsansvar.dk, *Redegørelse for samfundsansvar – praktisk vejledning og inspiration*, E 38 (2009) on the verification standard AA1000AS and strengthening of stakeholder interaction in order to allow companies to respond to stakeholder needs and interests.
[78] Erhvervs- og Selskabsstyrelsen/Samfundsansvar.dk, *Redegørelse for samfundsansvar – praktisk vejledning og inspiration*, 5 (2009) author's translation.

Yet another reflexive law feature may be observed in the Guidelines' section on how CSR supplements conventional law (command-control law). As indicated, reflexive law theory does not claim to supplant conventional law, but seeks to supplement this where conventional command-control/top-down regulation is not sufficient or feasible. As a telling example, which also indicates the reflection process which has taken place within the pertinent authorities on their own regulatory capacities, the Guidelines state:

> [T]he voluntary contribution of the private sector may be a useful – and in many cases necessary – supplement to statutory law. The reason is that statutory law is not necessarily the right answer to complex challenges in our society. There is an increasing need for the development of [innovative] solutions to societal challenges – this is where there is a need for companies' involvement, competences and innovative capacity. For example, this could be through the development of energy saving technologies or by promoting human rights and working conditions.[79]

In sum, the background to section 99a as stated in the Government's Plan of Action, the explanatory comments and reporting Guidelines all indicate that the objective of the reporting provision is to engage companies in addressing social concerns corresponding to public legal and policy objectives. The texts also demonstrate that this aim is sought to be achieved by inducing self-regulation in companies. The provision of transparency through reporting is an instrument towards this, not an end in itself.

5.4. Summing up on the CSR Reporting Provision as Reflexive Law

The preparatory works for section 99a as well as reporting guidelines demonstrate that the CSR reporting requirement has been introduced as a regulatory strategy in accordance with reflexive law theory. The introduction of the reporting requirement seeks to promote particular public law and policy objectives and to supplement conventional regulatory law in this respect. In particular, the reporting provision seeks to promote companies' involvement in the pertinent activities through self-regulation rather than through establishing specific obligations of conduct. Section 99a demonstrates the application of reflexive law theory at all three levels. The explanatory comments indicate that authorities have engaged in internal reflection on their regulatory capacity both in formality and in practice. Formal issues of competence include foreign and development policy objectives on the promotion of human rights, labour rights, and to some extent also environmental sustainability and anti-corruption in third (world) states where due to jurisdictional limits (and limited extraterritorial application of Danish law), command-control law addressed to Danish companies is not necessarily the most effective approach.

For practical reasons, national public legal and policy objectives on equal treatment, integration, occupational health and safety and retention of employees do not lend themselves only to implementation by command-control law.[80] Where such law exists, it may be supplemented by incitements which may encourage some companies to go beyond minimum requirements imposed by command-control law. This authority-internal reflection has lead to the establishment of reflexive forums for companies, for example through stakeholder dialogue and the reporting exercise which provides 'learning' to company management about the company's impact on society

[79] *Ibid.*, 49.

[80] Rolf Rogowski and Ton Wilthagen, *Reflexive Labour Law: An Introduction*, in Rolf Rogowski and Ton Wilthagen (eds.), *Reflexive Labour Law: Studies in Industrial Relations and Employment Regulation* 1-19 (Deventer and Boston: Kluwer Law and Taxation Publishers 1994).

and stakeholder expectations. Such a reflexive forum promotes companies' interaction with their environment, providing insight into expectations, demands and needs, that is, social expectations and public legal and policy objectives. Reporting affects the internal normativity of companies through self-regulation.

By counting on the reporting exercise to promote companies' internalisation of externalities, the strategy chosen by the Danish government builds on prospective (or ex-ante) accountability at least as much as it draws on retrospective (ex-post) legal accountability through legal enforcement and fining. Providing for prospective accountability means inducing decision-making organisation to 'take into account' the interests and concerns of the society in which it functions. It emphasises responsiveness of the decision-making process and organisation to the concerns of external actors.[81] The prospective and responsive approach has a potential and distinctly different effect on a decision-making process, such as that in which a company management's engages, compared to the ex-ante control or 'holding to account' inherent in retrospective accountability.

5.5. Excursion: Impact of the Reporting Requirement

Only limited studies of the effect of the reporting requirement have been undertaken so far. These studies mainly look at quantitative aspects, that is, the proportion of companies reporting on each of the reporting requirement's three elements (CSR policies, implementation, and results). Obviously, detailed assessment of longer term qualitative effects in terms of companies' actual internalisation of may not be possible until a longer period of time has elapsed.

A study undertaken by Copenhagen Business School for the Centre for Social Responsibility of the 2010 reporting round indicates a rise in reporting on all three elements from the first reporting round in 2009. The study of 2010 reporting shows an increase in reporting on policies from 69 % in 2009 to 71 % in 2010, on implementation from 60 to 66 %, and on results from 37 to 49 %.[82] The studies indicate that in terms of substantive issues, companies report significantly more often on environment and company-internal working issues than on human rights and company-external social concerns. The study indicated that the reporting requirement had had the effect of making several companies with no previous experience in CSR engage in CSR. It also indicated that the reporting provision had led to increased awareness and focused work on CSR, and had lent direction to CSR work with companies with previous CSR experience. A study on reports submitted in 2011 for the financial year 2010[83] confirm the tendencies noted during the former study. That report also noted an increase in companies complying with section 99a' requirement to report on all three issues noted in the reporting provision (CSR policies, implementation, and evaluation/expected outcomes).

A study undertaken by a Danish NGO on the effects of the reporting requirement in terms of impact on reporting issues also indicates that the largest impact has been on environmental and climate

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[81] On the distinction between prospective and retrospective accountability, see Nicolas Hachez and Jan Wouters, *A Glimpse at the Democratic Legitimacy of Private Standards: Democratic Legitimacy as Public Accountability* (Katholieke Universiteit Leuven – Leuven Centre for Global Governance Studies, Working Paper March 2011) at 12, 19, 22.

[82] Center for Social Responsibility, *Samfundsansvar og rapportering i Danmark - effekten af rapporteringskrav i årsregnskabsloven* (Copenhagen 2010).

[83] Ministry of Business and Growth, *Corporate Social Responsibility and Reporting in Denmark,* report prepared by Peter Neergaard/Copenhagen Business School (2011).

reporting.[84] The overall observation that CSR reporting appears to be more effective with respect to making companies report on environment and climate is an interesting observation for these aspects of CSR, but also cause for less optimism with regard to the effect that a general CSR reporting provision has with regard to stimulating self-regulation on human rights and labour rights issues which are typically more complex and deliver economic bottom-line impact less quickly than, for example, more effective usage of energy resources or reduced emissions of water or green house gases.

None of the studies assess actual impact on firm's practices or impact on society. Future analysis of the actual impact that CSR reporting has in those respects – not least following the new requirement of explicit human rights and climate change mitigation reporting – may bring important insight into the effectiveness of mandatory reporting as a regulatory strategy to address public policy objectives through reflexive law type 'regulated self-regulation'.

6. Conclusion and Perspectives

The Danish model for CSR reporting may be considered a prototype of how public policy objectives, societal expectations and business action may be combined through reflexive law. The reporting modality adopted is a way for the government to regulate companies' contributions to society by drawing on the CSR paradigm in a way that does not conflict with the idea that CSR is 'voluntary', at least at the surface.

By not requiring particular types of action except for reporting on CSR policies, results and expected outcomes, the Government has introduced transparency but leaves it to potential readers – consumers, buyers or even suppliers, media and perhaps most of all, institutional investors – to monitor the degree to which a company fulfils social expectations. The effectiveness of this monitoring remains to be seen, but media reactions to the study of the 2010 reporting did cause the responsible authority to announce strengthened enforcement of the reporting vis-à-vis both managers and auditors. Obviously, through their auditing and interaction with companies auditors too may contribute to the learning and to 'monitoring' (as a sort of 'monitoring-in-the-process'). Bearing in mind that auditing requirements are limited to consistency checks, the likelihood that an auditor will engage in detailed monitoring is, however, limited.

In addition to legal sanctions (fines), which the government may administer to management and auditors that do not comply with the reporting provision, the regulatory strategy counts on consumers, investors and others to meter economic sanctions to companies whose prospective accountability ('ex-ante' taking account of externalities) does not correspond to societal expectations. These sanctions of an economic nature are administered by stakeholders that correspond to what the Special Representative on Business and Human Rights has referred to as 'the courts of public opinion'. Reactions may take the form of shift of buying habits, change of supplier or buyer, reputation damage, divestment or other economic reactions. For a company, however, they may be as significant as a financial legal sanction meted by a governmental authority or a court of law. The regulatory strategy is to make companies adapt based on real or expected positive or negative reactions by their environment, including but also going beyond legal institutions.

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[84] Danwatch, *The Impact of the Danish Law on CSR Reporting*, report prepared for the European Coalition for Corporate Justice (Copenhagen 2011).

The CSR reporting requirement expresses an approach within public regulation of CSR to focus on inducing self-regulation by setting up procedures to stimulate companies' internalisation of externalities rather than establishing of legal liability of companies, for example for companies not acting in accordance with CSR policies. The approach such as the one taken by the Danish legislature is not primarily built on legal accountability (in that the CSR report is subject only to consistency checking by an auditor) but to promote prospective accountability through processes that allow companies to learn about and internalise external needs and expectations. The objective of the Danish reporting requirement is to induce self-regulation within companies to promote CSR, with the aim of enhanced implementation of public legal and policy objectives through company action. The reporting provision explicitly seeks to engage companies in implementation of such objectives, specifically related to human rights, labour issues, environment, climate and anti-corruption. It demonstrates that the Government considers CSR an avenue towards the implementation of such public legal and policy concerns.

From this perspective, the regulatory strategy adopted by the Danish government demonstrates an application of reflexive law theory in practice as a modality to address societal concerns through inducing reflection among particular organisations with the aim of their internalisation of social needs. This raises interesting perspectives for the future application of reflexive law in order to implement governmental interests or public policy objectives that are not easily fulfilled through conventional national or even international law. In this context too, it should be remembered that reflexive law does not intend to supplant conventional law. By inducing reflection and promoting self-regulation, a strategy of reflexive law may, however, both complement and pave the way for conventional regulation.

Implicitly, the Government's suggested CSR understanding contributes to filling the gap in term of the 'something additional' which is expected by (socially responsible) companies. For companies, honouring these expectations may be a strategy towards pre-emption of hard law requiring similar or related types of action. At the same time, section 99a and the legislative history as well as the reporting Guidelines suggest that the 'voluntary' element in CSR is shifting towards an expectation of self-regulation within a legal framework provided by policy objectives and broader social expectations. The Danish reporting requirement is an example of public law which, by application of reflexive law as a regulatory strategy, pushes companies' self-regulation on CSR in a particular direction. This direction is defined by public law instruments and standards, *in casu* existing and emerging public international law standards and instruments on environment, human rights, labour rights and anti-corruption, and climate change mitigation.