

Radka MacGregor Pelikánová

**CORPORATE SOCIAL RESPONSIBILITY
FOR FAIR COMMERCIAL PRACTICES
AND INTELLECTUAL PROPERTY:
REAL POTENTIAL?**

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Institute of Economic Research

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List of Abbreviations

| | |
|------------|---|
| B2B | business-to-business |
| CSR | Corporate Social Responsibility |
| CSR Europe | European Business Network for Corporate Social Responsibility |
| ECD | Electronic Commerce Directive |
| GDPR | General Data Protection Regulation |
| IP | Intellectual property |
| IS/IT | Information System/Information Technology |
| SDG | Sustainable Development Goal |
| SME | Small and medium sized enterprise |
| TEU | Treaty on EU |
| TFEU | Treaty on the Functioning of EU |
| TLD | Top Level Domain |
| UCPD | Unfair Commercial Practices Directive |
| UN | United Nations |
| UDHR | Universal Declaration of Human Rights |
| WoS | Web of Science |

Table of EU legislative and other measures

EU Treaties

Available at <http://eur-lex.europa.eu/collection/eu-law/treaties.html?locale=en>.

2012/C 326/01 Treaty on European Union (Consolidated version 2012), Official Journal of the European Union C 326, Volume 55, 26 October 2012, ISSN 1977-091X, p. 13–46 (“TEU”).

2012/C 326/01 Treaty on the Functioning of the European Union (Consolidated version 2012), Official Journal of the European Union C 326, Volume 55, 26 October 2012, ISSN 1977-091X, p. 47–200 (“TFEU”).

2012/C 326/01 Protocols, Annexes, Declarations (Consolidated version 2012), Official Journal of the European Union C 326, Volume 5, 26 October 2012, ISSN 1977-091X, p. 201–390.

2012/C 326/02 Charter of Fundamental Rights of the European Union (Consolidated version 2012), Official Journal of the European Union C 326, Volume 55, 26 October 2012, ISSN 1977-091X, p. 391–407 (“Charter”).

EU Regulations and Directives

Available at <http://eur-lex.europa.eu/homepage.html>.

Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (repealed by Directive 2006/114/EC).

- Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (repealed by Regulation (EU) No 1169/2011).
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce" or "ECD").
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive" or "UCPD").
- Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.
- Directive 2013/34/EU of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of certain types of undertakings as amended by Directive 2014/95/EU and Council Directive 2014/102/EU.
- Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation" or "GDPR").
- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the EU trade mark.
- Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law.
- Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply.

EU Communications and Reports

Available at <http://ec.europa.eu>.

EUROPEAN COMMISSION. *COM(2010) 2020 Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth* of 3 March 2010 ("Europe 2020 Strategy").

- EUROPEAN COMMISSION. *COM(2013)138 final. Communication from the Commission On the application of the Unfair Commercial Practices Directive: Achieving a high level of consumer protection Building trust in Internal Market*, Brussels, 14.3.2013 ("Communication"). Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf.
- EUROPEAN COMMISSION. *COM(2013)139 final. Report from the Commission First Report on the application of the Unfair Commercial Practices Directive*, Brussels, 14.3.2013 ("Report"). Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.
- EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 ("New Guidance"). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.
- EUROPEAN COMMISSION. *Database on the Unfair Commercial Practices Directive*, 2017. Available at http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm.

Table of EU member states legislative and other measures

Czech Republic

Act No. 563/1991 Coll., on accounting (“Czech Accounting Act”).

Act No. 513/1991 Coll., Commercial Code (“Czech Commercial Code”).

Act No. 634/1992 Coll., on consumer protection.

Act No. 89/2012 Coll., (New) Civil Code (“Czech Civil Code”).

Act No. 304/2013 Coll., on public registries of legal and natural persons.

Code de Commerce 1807 (“French Commercial Code”).

Germany

BGBI. S. 1 Grundgesetz von 23.5.1949 (“Grundgesetz”).

Gesetz gegen den unlauteren Wettbewerb (“German Act Against Unfair Competition” or “UWG”).

Introduction

The current extremely competitive global society is often described as the post-modern society, or the information society, or the digital society.¹ Often, material resources are diminishing, while demands for goods and services are ever-increasing. Being creative and having knowledge, ideas and mastering information systems and information technologies ("IS/IT"), and at the same time behaving sustainably and fairly, appears as ideal pre-requirements for a successful, effective and efficient operation and functioning in both professional and private life.² Our era is marked by numerous opportunities as well as threats, and following a SWOT analysis wording, our strengths and weaknesses are often dramatically influenced by both our aggressive and altruistic features. Sustainability with CSR, competitiveness with fairness and IP related policy or policies, are inherently linked to spheres of economics, politics and law. These spheres overlap and can both support and contradict each another.³

In the European context, the importance and need for the protection of the competition and IP have strong historic roots and clear milestones occurred during the 19th century.⁴ In contrast, important products of the 20th cen-

¹ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

² MacGREGOR PELIKÁNOVÁ, Radka. *New trends in perception and use of domain names: Critical and Comparative Analysis of the Modern Domain Name Universe*. Ostrava: Key Publishing and Praha: MUP Press, 2015, 144 p. ISBN 978-80-7418-251-8.

³ VIVANT, Michel. Building a common culture IP? *International Review of Intellectual Property and Competition Law*, 2016, 47(3): 259–261. ISSN 0018-9855. DOI: 10.1007/s40319-016-0472-y.

⁴ De VREY, Rogier W. *Towards a European Unfair Competition Law*. Utrecht: Martinus Nijhoff Publishers, 2006, 380 p. ISBN 90-04-15040-4.

ture are sustainability and CSR, as well as the modern European integration process⁵ with its complexity and reach in a multitude of spheres.⁶

Politicians generally are hesitant and are often inconsistent regarding their visions for Europe,⁷ sustainability with CSR, competition and IP with digitalization,⁸ while sociologists quarrel over the meaning of society and markets and the delimitation of mutual expectations in this context.⁹ Despite all these discourses and disputes, divergences of opinions, it is clearly empirically observed, and scientifically approved, that there is a proper way for a smart, sustainable and inclusive growth done in a manner to respect resources and all interested stakeholders and issues.¹⁰ In other words, a sustainable, healthy, competitive and IP respecting and further developing environment,¹¹ employing modern IS/IT including the Internet¹² and related social media,¹³ is a must for the future of Europe. Indeed, the perception and employment of the Internet and its overlap and interaction with the IP rights are, among others, at

⁵ MARINO, Ignazio Maria, LICATA, Giovanni Fabio. The Law of Integration: An Introduction. *Transylvanian Review of Administrative Sciences*, 2009, 28 E SI/2009, 236–248. ISSN 2247-8310.

⁶ VEČEŘA, Miloš. The Process of Europeanization of law in the context of Czech law. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, 2012, 60 (2): 459–464. ISSN 1211-8516.

⁷ MacGREGOR PELIKÁNOVÁ, Radka. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing, 2014, 186 p. ISBN 978-80-7418-226-6.

⁸ MacGREGOR PELIKÁNOVÁ, Radka. European Quartet of Missed Opportunities for Internet Governance In: ROTSCHELD, Jiří, ČERMÁKOVÁ, Klára (Eds.). *Proceedings of 17th International Academic Conference*, June 21–24, 2015, Vienna, AT International Institute of Social and Economic Sciences (IISES), 2015, p. 275–290 of 631. ISBN 978-80-87927-10-6. Available at <http://www.iises.net/proceedings/17th-international-academic-conference-vienna/table-of-content>.

⁹ SHAWN, Martin. *Global Society and International Relations: sociological concepts and political perspectives*. Cambridge, UK Polity Press, 1994, 197 p. ISBN 0745612121.

¹⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹¹ POLCYN, Jan; STĘPIEŃ, Sebastian & CZYŻEWSKI, Bazyli Czyżewski. The Measurement of the Quality of the Environment and its Determinants in Poland and in the Regional Perspective. *Annales Universitatis Apulensis Series Oeconomica*, 2019, 21(2): 11–21. ISSN 2344-4975. DOI: 10.29302/oeconomica.2019.21.2.1.

¹² MacGREGOR PELIKÁNOVÁ, Radka. The Business (In)Significance of the Pre-Dot Domain Name Wording. *Scientific Papers of the University of Pardubice, Series D 3/2013*, 2013, 20(28): 67–79. ISSN 1211-555x (Print), ISSN 1804-8048 (Online). Available at <http://connection.ebscohost.com/c/articles/90444537/business-in-significance-pre-dot-domain-name-wording>.

¹³ MacGREGOR PELIKÁNOVÁ, Radka. Internet My Dearest, What Type of European Integration Is The Clearest? *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2013, 61(7): 2475–2481. ISSN 1211-8516. DOI: 10.11118/actaun201361072475.

the very heart of strategies for value creation¹⁴ as well as the suitable development of our European civilization, which is based on Christianity.¹⁵

Two main factors, the economic situation and accelerating technological developments, have resulted in the fact that the competitive advantage is often linked to, or even accomplished by, new technologies and technological skills and capabilities while using various IP assets.¹⁶ It can be observed that markets are heavily reliant upon goods and services, including or reflecting modern IP assets and that business conduct becomes more and more “electronic”.¹⁷ It isn’t about to go back, either. European businesses, including small and medium sized enterprises (“SMEs”), compete and the competition is both tangible and intangible,¹⁸ fair and unfair, and, most importantly, sustainable and not sustainable.

The EU is an international law subject *sui generis*, with an autonomous legal system reflecting the EU law, which is interpreted by all judges in the EU.¹⁹ The identity of the EU may have normative and other characteristics, and they all point to the conclusion that the EU equals a large single market with significant institutional features and competing interest groups,²⁰ often belonging either to the supranationalists or intergovernmentalists. The concept of economic and political integration, the dominance of technocratic over political institutions,²¹ plus the emergence of the supranational approach and its co-habitation with the slowly evaporating intergovernmental approach (and the original triumph of the realist and graduating attitude) have significantly marked

¹⁴ MUNARI, Federico, ORIANI, Raffaele. *The economic value of Patents: Methods and Applications*. 1st ed. Cheltenham, UK Edward Elgar Publishing Limited, 2011. 392 p. ISBN 978-1-84844-548-2.

¹⁵ MacGREGOR PELIKÁNOVÁ, Radka. Constantine’s Christianity for the (Dis)integrated EU: Déjà vu of Constantine’s Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

¹⁶ TERVONEN, Pekka, HAAPASALO, Harri. A creating business from innovations: Essential mission of intermediate organization. *International Journal of Business and Management*, 2015, III(1): 119–131. ISSN 2321-8916.

¹⁷ MacGREGOR PELIKÁNOVÁ, Radka. *Domain names: Their nature, functions, significance and value*. Saarbrücken, GE Lambert Academic Press, 2014, 273 p. ISBN 978-3-659-62653-1.

¹⁸ BÍLKOVÁ, Renáta, DVOŘÁK, Jiří. Possibilities in advancement of e-shop. In *Scientific Papers of the University of Pardubice. Series D, Faculty of Economics and Administration*, 2012, 25(3): 30–41. ISSN 1211-555X.

¹⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁰ DAMRO, Chad. Market power Europe. *Journal of European Public Policy*, 2012, 19(5): 682–699. ISSN 1350-1763. DOI: 10.1080/13501763.2011.646779

²¹ LIANOS, Ioannis. Shifting Narratives in the European Internal Market: Efficient Restrictions of Trade and the Nature of “Economic” Integration’. *European Business Law Review*, 2010, 21(5): 705–760. ISSN 0959-6941.

and shaped European institutions and the current post-Lisbon EU.²² However, the constant is the pro-integration internal tandem and engine, the Commission and the Court of Justice of EU (“CJ EU”) with their synchronized pro-integration efforts, and not just in the sphere of the EU law.²³

The EU law is not a typical international law but neither is it a typical federal or state law, it is a law challenging both the monist and dualist perceptions of the state, domestic, and national law and it is a law marked by an intergovernmental approach as well as by a supranational approach.²⁴ The EU law expands, intrudes might be a better term, into national laws, almost as an occupying authority on a foreign soil, by making use of a national procedural setting to directly incorporate and enforce its norms within the national jurisdiction of the EU member state.²⁵ Since modern European integration is based upon the doctrine of the famous four freedoms of movement on the single internal market, both aspects of competition are at its heart, i.e. to quantitatively have competition protected by the Public Law and, at the same time, to qualitatively have a well-played, aka fair, competition protected by the Private Law.²⁶

The EU system is a mixed system, shaped by social democratic, liberal and conservative welfare states and neoliberal tendencies, which can be even contradictory within themselves.²⁷ Consequently, the EU is often presented to the world as disunited and confused about its goals²⁸ and the final interpretation authority, the CJ EU, has to strike the correct balance between the principle of effective judicial protection and the principles of separation of powers and competencies and mutual sincere cooperation. To complete such a mission, the CJ uses a set of methodologic approaches and instruments, such as a teleological approach with a dominance of the consideration for the spirit

²² MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Štátná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²³ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Štátná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²⁴ MacGREGOR PELIKÁNOVÁ, R. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing. 2014, 186 p. ISBN 978-80-7418-226-6.

²⁵ AZOLAI, Loïc. The Force and Forms of European Legal Integration, *EUI Working Papers*, 2011/6. Retrieved July 1, 2017 from http://cadmus.eui.eu/bitstream/handle/1814/16894/LAW_2011_06.pdf?sequence=1.

²⁶ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Štátná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²⁷ BLAHOŽ, Josef. The Welfare (Social) State, European union and Globalization. *The Lawyer Quarterly*, 2014, 3, 178–194. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

²⁸ COLLINS, Hugh. Harmonisation by example. European laws against unfair commercial practices. *Modern Law Review*, 2010, 73(1): 89–118. ISSN 1468-2230.

of the instrument and even the entire mechanism. It is important to know the circumstances of the enactment, the historical, legislative and political context and to study the proclamations regarding the purpose of the legislative act, because this is the key to its interpretation and application. This is true for the entire EU legislation, and the legislation on unfair competition is not an exception.²⁹

This monograph attempts to reveal the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations, and proper labelling in the EU. This leads to the ultimate key research question about whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context. This translated into a demand for an academically robust assessment of the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations, and proper labelling in the EU. Consequently, the ultimate goal of this monograph is to consolidate current multi-disciplinary knowledge and to offer leads for further research. Although sustainability with CSR, competition and fair commercial practices and IP are pivotal for success in the 21st century, their foundations are products of our civilization with its Christian roots. The mentioned research question about whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context, and the mentioned ultimate goal to consolidate current multi-disciplinary knowledge and offer leads for further research, are projected in two hypotheses. Firstly, that the potential of the CSR to support fair commercial practices and, in general, the fair competition is underdeveloped (H1). Secondly, that the potential of the CSR to support inventions, innovations and proper labelling and, in general IP, as such is underdeveloped (H2).

Indeed, this research question, goal and two hypotheses are addressed based on a multi-disciplinary and multi-jurisdiction research of primary and secondary data and their processing by a critical and comparative Meta-Analysis while using a holistic approach refreshed by Socratic questioning and open-minded glossing. Since the key studied materials will include various business documents, annual and other reports, businesses' external and internal statements and postings, and legislative texts, the heavily used databases will be various CSR scoring databases, Commercial Registers and other databases with annual reports and managerial reports, e-justice.eu, eur-lex.eu and even internet platforms and pages used by businesses. The interpretation battery of instruments will entail a teleological and purposive approach. A clear preference

²⁹ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

will be given to the content analysis and holistic manual processing via Delphi over often generally used automatic key word scanning.

The resulting monograph starts with the determination of the sustainability and CSR, respectively the development from the sustainability to CSR (Chapter 1) and with the identification of the EU approach to CSR (Chapter 2). It continues by addressing H1 via the analysis of European unfair competition law — protection against unfair commercial practices via Unfair Commercial Practices Directive (Chapter 3) and the assessment of the (potential) impact of the CSR on the fairness of commercial practices in the EU (Chapter 4). It follows by addressing H2 via the analysis of the EU approach to Intellectual Property (Chapter 5) and the assessment of the (potential impact) of the CSR on the Intellectual Property (Chapter 6). Logically the monograph presents on an ongoing basis, semi-conclusions, and culminates with final propositions and recommendations for further research and studies (Conclusion).

In order to increase clarity, practical review tables and quotations with comments are heavily used. The understanding of the target CSR potential to support the commercial practices fairness and IP represents a phenomenal opportunity for the EU and the EU is intuitively, or perhaps analytically, aware about it, see the strategy Europe 2020.³⁰ Hence, the right direction seems to be clear, but for many reasons, it is deeply underdeveloped, at least based on H1 and H2 assumptions. And, if this is true, then some immediate action is needed and academia has to do its best to get involved. Hopefully, this monograph is a pioneering step in this respect. The EU and EU member states really need it and deserve it.

³⁰ EUROPEAN COMMISSION. *COM(2010) 2020 Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth* of 3 March 2010 (“Europe 2020 Strategy”).

Sources and Methods

This monograph is an outcome of a many years long research interest of the Author, and partially continues other research projects that are dealing with the fields of CSR, competition, CSR and IP and that were completed by the Author.¹ This monograph brings forth new data and analysis, and also further develops information, semi-conclusions and conclusions previously proposed by the Author, for which one can see the massive referencing and citation apparatus. It represents a pioneering step into a new field, namely in the mutual support sphere and synergy effects of key policies in Europe today. It entails a deeper understanding through the development of theory and theoretical concepts² and their application. The set key research question is whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context. Namely, this monograph attempts to reveal the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations and proper labelling in the EU. The ultimate goal of this monograph is to consolidate current multi-disciplinary knowledge and offer leads for further research regarding the potential of the CSR to support fairness of commercial practices and IP assets and their transposition on a daily basis. The mentioned research question whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context, and the mentioned ultimate goal to consolidate current multi-disciplinary knowledge and offer leads for further research, are projected in two hypothe-

¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

² SCHMIDT, Frank L., HUNTER, John E. *Methods of Meta-Analysis: Correcting Error and Bias in Research Findings*. 3rd Edition, London, UK: SAGE, 2014, 640 p. ISBN 978-145-228-689-1.

ses. Firstly, that the potential of the CSR to support fair commercial practices and in general the fair competition is underdeveloped (H1). Secondly, the potential of the CSR to support inventions, innovations and proper labelling and, in general IP, as such is underdeveloped (H2).

This research question, goal and the two hypotheses, are individually and separately all addressed, based upon a multi-disciplinary as well as a multi-jurisdiction research of primary and secondary data and the processing of such by methods that are both critical and comparative. The studied materials can be classified in four principal categories: internal business documents generated by businesses themselves (i), comparative scoring documents generated by semi-official reviewers of the CSR and other official and semi-official indexes (ii), political, legislative and semi-legislative documents generated by state authorities (iii) and academic writings (iv). Consequently, the explored documents will predominantly entail various business documents, annual and other reports, businesses external and internal statements and postings, and legislative texts, policies and recommendations. The heavily used resources and databases for the 1st type will be business postings, www pages and, of course, Commercial Registers, e-justice.eu and justice.cz and other databases with annual reports and managerial reports. For the 2nd type, it will be various CSR scoring databases and portals, such as Eurostat. For the 3rd type, the most pivotal sources will be wur-le.eu and curia.eu. For the 4th type, it will be the top academic indexed database, i.e. Web of Science ("WoS") or Scopus. All types will be projected in case studies because the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events.³

The interpretation, methodological processing and assessment of information obtained from the above indicated sources will be determined by the fundamental task in all areas of science — the development of theory and theoretical concepts, the production of cumulative knowledge⁴ and the modelling of a phenomenon at a deeper level.⁵ Simultaneously, knowledge of a field and the relevant processes that are available includes a set of exogenous predictors indicated by theory, as well as the relative spatial positioning of the observations in the given setting.⁶ The common law perspectives with their pragmatic attitudes are matched with continental law perspectives with their theoretical attitude. The 1st type will predominantly employ the content analysis and holistic manual processing via Delphi, i.e. the automatic key word scanning and counting will be merely auxiliary. This reflects the deep convic-

³ YIN, Robert K. *Study Research. Desing Methods*. 4th Edition. Thousand Oaks: Sage, 2008, 240 p. ISBN 978-1412960991.

⁴ SCHMIDT, Frank L., HUNTER, John E. *Methods of Meta-Analysis: Correcting Error and Bias in Research Findings*. 3rd Edition, London, UK: SAGE, 2014, 640 p. ISBN 978-145-228-689-1.

⁵ HECKMAN, James J. The Scientific Model of Causality. *Sociological Methodology*, 2005, 35, 1–98. ISSN 0081-1750.

⁶ BHATI, Avinash Singh. Robust Spatial Analysis of Rare Crimes: An Information-Theoretic Approach. *Sociological Methodology*, 2005, 35, 239–302. ISSN 0081-1750.

tion of the Author that CSR information in particular, as well as its quantity and quality, cannot be reduced to a simple assumption that the mere repetition of certain words means more of a CSR commitment. In contrast, the Delphi method, while using a team of experts going over all documents, reading them, scoring them and comparing their assessment is not only far more academically robust but in addition offers further information and a deeper understanding, or at least clearer insights. The methodology for the 2nd type is given by the selected scoring method of the given authority along with well-established indicators such a GERD index reflecting the co-relation between the R&D investment in co-relation to the GDP and such as DESI composite index summarizing some 30 relevant indicators on Europe's digital performance and competitiveness, will be employed. Regarding the 3rd type, the battery of instruments will entail a teleological and purposive approach. The teleological method of interpretation plays a key role in the interpretation and application of the EU law for multivarious reasons, including the fact that the Treaties involved, such as the TEU and TFEU, are imbued with teleology.⁷ Consequently, without knowing the purpose, there is no interpretation approach that can lead to a satisfactory result, and this is true even for the regulation assigned to the sustainability, CSR, competition and IP.⁸ The 4th type will lead to the engagement with academic texts, their comparison and critical glossing. Therefore, a heterogenous set of sources and information needs to be addressed as appropriate, i.e. quantitative and qualitative aspects will be included. The common denominator will be the holistic approach and Meta-Analysis.

Regarding the dilemma between the qualitative and quantitative approach and analysis, it must be underscored that they are not contradictory and exclusive, rather they are complementary.⁹ For example, the causation is attractive because it constitutes the fundamental topic of all scientific inquiry and, at the same time, it cannot be truly observed due to its variable, hardly predictable and virtual nature.¹⁰ The causal relation describes a relationship that is believed to exist in the real world.¹¹ Indeed, the causality is an intuitive notion, including a set of possible outcomes (counterfactuals) produced by a function

⁷ LENAERTS, Koen, GUTTIÉREZ-FONS, José. A. To Say What the Law of the EU Is? Methods of Interpretation and the European Court of Justice. *Academy of European Law*, 2013, 9, 1–55. ISSN 1831-4066.

⁸ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹⁰ STOLZENBERG, Ross M. Editor's Introduction. *Sociological Methodology*, 2005, 35, xvii. ISSN 0081-1750.

¹¹ SOBEL, Michael. Discussion: The Scientific Model of Causality. *Sociological Methodology*, 2005, 35, 99–134. ISSN 0081-1750.

of factors and determinants and working with their manipulation, such as “if-then”.¹² Quantitative research and analysis relies on mathematically measurable values, and thus has a need for countable data. Quantitative analysis is a statistical technique that is used in order to describe and analyze the amount and variation of the quantitative measures and it operates with the mode, the median, the mean, the range, the variance, and the standard deviation.¹³ Quantitative analysis attempts to deductively determine and assess, based on the data which has been collected, the questions about what, when, how much, and how likely a phenomenon occurs, but not the question of why. Statistics and instruments that are based on statistics’ science are instructive, but often their concentrating upon the effort “to make it as objective as possible” leads to a negative experience and misleading results, and thus the predisposition towards choosing “subjective” qualitative methods comes about.¹⁴ In addition, keep in mind that the majority of statisticians are not trained in science and they are determined to stick to the “numeric” facts.¹⁵ The statistical approach, all things considered, can be very useful, but, all the same, it is undeniably impaired, impacted upon, by many inherent deficiencies.¹⁶ However, this is not to suggest that qualitative methods are intrinsically superior and that quantitative methods should be avoided, not at all.¹⁷ The drive for an objective and neutral assessment and profiling must occur on both levels, qualitative and quantitative and, unlike in other academic fields, the employment of conventional methodology is challenging here and the so called “mathematization” is hardly to be performed in a rigid manner.¹⁸

Both hypotheses are addressed by the Meta-Analysis from various angles and perspectives and upon the deep conviction backed up by scientific and critical open-minded evaluation, contextual systematic review and critical comparison, in particular by logical functional-systematic, holistic and comparatistic approach, employing analogy, induction and, to a restricted extent, even deduc-

¹² HECKMAN, James J. The Scientific Model of Causality. *Sociological Methodology*, 2005, 35, 1–98. ISSN 0081-1750.

¹³ CHAMBLISS, Daniel F, SCHUTT, Russell K. *Making Sense of the Social World Interactive eBook*. SAGE Publications, Inc., 2013, p. 150. ISBN 978-1-4129-9155-1. Available at <http://www.sagepub.com/books/Book237908?q=Elementary+Quantitative+Analysis&prodTypes=any&sortBy=leadAuthorLastName+asc&sortBy=leadAuthorLastName+asc&rows=50&pager.offset=50&fs=1>.

¹⁴ SILVERMAN, David. *Doing Qualitative Research: A Practical Handbook*. 4th edition, London, UK SAGE, 2013, 395 p. ISBN 978-144-626-0-142.

¹⁵ HECKMAN, James J. The Scientific Model of Causality. *Sociological Methodology*, 2005, 35, 1–98. ISSN 0081-1750.

¹⁶ HECKMAN, James J. Rejoinder: Response to Sobel. *Sociological Methodology*, 2005, 35, 135–162. ISSN 0081-1750.

¹⁷ SILVERMAN, David. *Doing Qualitative Research: A Practical Handbook*. 4th edition, London, UK SAGE, 2013, 395 p. ISBN 978-144-626-0-142.

¹⁸ MacGREGOR PELIKÁNOVÁ, Radka. Internet My Dearest, What Type of European Integration Is The Clearest? *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2013, 61(7): 2475–2481. ISSN 1211-8516. DOI: 10.11118/actaun201361072475.

tion. Recognizing the massive potential of Meta-Analysis,¹⁹ as well as to other quantitative sub-methods,²⁰ it needs to underlined that the explanatory part should always (predominantly) be addressed by qualitative analysis, which rather inductively assumes and confronts (with such assumptions) the collected data and explains why and how the original theoretical assumptions should be modified. The Meta-Analysis methods which focus on contrasting, combining and reconciling data and the results from different studies in order to identify patterns, relations, and relationships are undoubtedly very highly relevant for the study of domain names and their significance.²¹ Meta-Analysis is a rigorous alternative to the casual, narrative discussions of research studies which typify efforts to make sense of the swiftly expanding research literature.²² Actually, it attempts to embrace the plenitude and it does not involve itself, go in artificial “adequate” power indexing, such as .80.²³ In other words, it is an analysis of analyses, a statistical analysis of a large collection of results from individual studies with the goal to integrate their findings.²⁴ *Meta-Analysis* is founded upon the conviction that there was discovered more than what was understood, perhaps one couldn’t “See the forest for the trees”, and thus it perfectly matches the domain name study sphere.²⁵ Due to the focus on the economic and legal perspectives, the qualitative analysis prevails over the quantitative but does not eliminate it. Hence, along with the qualitative analyses, such as the qualitative text analysis,²⁶ which are inherently inclined to subjectiveness and needs to be boosted by the Delphi method and refreshed by glossing and Socratic questioning,²⁷ other more quantitative methods are employed.

The selection of sources and methods should not be mechanically predetermined but rather what should happen would be a selection of methods that

¹⁹ GLASS, Gene. Primary, secondary, and meta-analysis of research. *Educational Researcher*, 1976, 5 (10): 3–8. DOI: 10.3102/0013189X005010003. ISSN 1241-5161.

²⁰ MacGREGOR PELIKÁNOVÁ, Radka. *Domain names: Their nature, functions, significance and value*. Saarbrücken, GE Lambert Academic Press, 2014, 273 p. ISBN 978-3-659-62653-1.

²¹ MacGREGOR PELIKÁNOVÁ, Radka. *New trends in perception and use of domain names: Critical and Comparative Analysis of the Modern Domain Name Universe*. Ostrava: Key Publishing and Praha: MUP Press, 2015, 144 p. ISBN 978-80-7418-251-8.

²² GLASS, Gene. Primary, secondary, and meta-analysis of research. *Educational Researcher*, 1976, 5 (10): 3–8. ISSN 1241-5161. DOI: 10.3102/0013189X005010003.

²³ SCHMIDT, Frank L., HUNTER, John E. *Methods of Meta-Analysis: Correcting Error and Bias in Research Findings*. 3rd edition, London, UK SAGE, 2014, 640 p. ISBN 978-145-228-689-1.

²⁴ GLASS, Gene. Primary, secondary, and meta-analysis of research. *Educational Researcher*, 1976, 5 (10): 3–8. ISSN 1241-5161. DOI: 10.3102/0013189X005010003.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka. *Domain names: Their nature, functions, significance and value*. Saarbrücken, GE Lambert Academic Press, 2014, 273 p. ISBN 978-3-659-62653-1.

²⁶ KUCKARTZ, Udo. *Qualitative Text Analysis: A Guide to Methods, Practice and Using Software*. 1st Edition. Sage Publications Ltd. 2014. ISBN 978-1-446-26775-2.

²⁷ AREEDA, Phillip E. The Socratic method. *Harvard Law Review*, 1996, 109(5): 911–922. ISSN 0017-811X.

are appropriate to what we are trying to find out,²⁸ i.e. an *ad hoc* approach instead of a prefixed pattern. Due to the law dimension, one needs to pay attention to both deductive and inductive aspects of legal thinking,²⁹ because legal theoretic orientation reflects the legal science which is argumentative rather than axiomatic.³⁰ The process of what is known as legal thinking relies on the distinction of questions of law from questions of fact, the subsumption of fact findings with respect to a legal norm, mastering of syllogisms, and specific arguing.³¹ The argumentation itself must not only be rational, but also ethical, and it must mirror the concept of scientific modesty,³² which naturally is not in contradiction, at variance, with the requirements of scientific courage and honesty.³³ The solution and resolution of conflicting principles and values should ultimately depend upon the axiological distinction between good and bad, we need to improve our methods for synthesizing and integrating sources and data, especially concerning the research literature.³⁴ Neither research methods nor research problems are neutral, and methods should be our servants, not our rulers — methods are properly used as tools when they are genuinely needed.³⁵

In sum, this multi-disciplinary and multi-jurisdictional monograph is the result of scientific research performed while employing, predominantly, the exogenous and qualitative strategy. Very instrumental methods were the identification, description and content, contextual and narrative analysis with a preference for qualitative methods over quantitative and with emphasizing the *Meta-Analysis*. The concrete research techniques included predominantly working with both highly relevant and current documents of multi-various natures.³⁶ The partial fragmentation was overcome via the fo-

²⁸ SILVERMAN, David. *Doing Qualitative Research: A Practical Handbook*. 4th edition, London, UK SAGE, 2013, 395 p. ISBN 978-144-626-0-142.

²⁹ MATEJKA, Ján. *Internet jako objekt práva: Hledání rovnováhy autonomie a soukromí [Internet as the Object of Law: In Search of a Balance between Autonomy and Privacy]*. Prague, Czech Republic CZ.NIC, 256 p. ISBN 978-80-904248-7-6, p. 51.

³⁰ KNAPP, Viktor. *Teorie práva. [Theory of Law]* 1st edition. Prague, Czech Republic C. H. Beck, 1995, 247 p. ISBN 80-7179-028-1, p. 54.

³¹ KNAPP, Viktor, GERLOCH, Aleš. *Právní propedeutika [Legal Propedeutics]*. 2nd edition. Plzeň, Czech Republic Vydavatelství a nakladatelství Aleš Čeněk, 2012, 156 p. ISBN 978-80-7380-386-5, p. 7.

³² KNAPP, Viktor. *Vědecká propedeutika pro právníky [Scientific Propedeutics for Lawyers]*. Bratislava, SR Eurolex Bohemia, 2003, 233 p. ISBN 80-8643-254-8.

³³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁴ SCHMIDT, Frank L., HUNTER, John E. *Methods of Meta-Analysis: Correcting Error and Bias in Research Findings*. 3rd edition, London, UK SAGE, 2014, 640 p. ISBN 978-145-228-689-1.

³⁵ SILVERMAN, David. *Doing Qualitative Research: A Practical Handbook*. 4th edition, London, UK SAGE, 2013, 395 p. ISBN 978-144-626-0-142.

³⁶ MacGREGOR PELIKÁNOVÁ, Radka. *Domain names: Their nature, functions, significance and value*. Saarbrücken, GE Lambert Academic Press, 2014, 273 p. ISBN 978-3-659-62653-1.

cus on the leitmotif and two mutually supporting hypotheses. All of this leads to a number of conclusions reflecting the set key research question whether the current perception and setting of the CSR can or cannot help in the fight for fair competition (H1) and IP (H2) in the European context. The ultimate goal is met, since the current multi-disciplinary knowledge is consolidated and recommendations are offered for further research regarding the potential of the CSR to support fairness of commercial practices and IP assets and their transposition on a daily basis.

Chapter 1

From Sustainability to Corporate Social Responsibility

The interaction of economic, environmental, social, legal, and moral obligations with regard to business conduct, is full of challenges and contradictions.¹ The economic globalization has led to a dramatic increase of productivity linked to negative externalities, such as social and ecologic damages.² Around 1970, the modern concept of sustainability with a focus on the ratio between available resources and the increasing world population emerged in the USA.³ Top concerns entailed the balance of the sustainable development, available resources and increased population needs.⁴ The sustainability concept is the outcome of the reconciliation of the needs of the current generation and the ability of future generations to meet their needs and is conventionally represented as a three pillars project unifying economic (profit), environmental (planet) and social (people) dimensions.

Originally, the concept of sustainability had been associated with a wide range of human activities related to the use of resources, including natural, human and financial, implying long-term continuity and ability to carry on with

¹ VIVANT, Michel. Building a common culture IP? *International Review of Intellectual Property and Competition Law*, 2016, 47(3): 259–261. ISSN 0018-9855. DOI: 10.1007/s40319-016-0472-y.

² SCHÜZ, Mathias. Sustainable Corporate Responsibility: The Foundation of successful Business in the New Millennium. *Central European Business Review*, 2012, 1(2): 7–15. ISSN 1805-4854.

³ MEADOWS, Donella H., MEADOWS, Denis L., RANDERS, Jørgen, BEHRENS, William W. (1972), *The limits to growth*, Universe Books: New York, USA, 1972, 199 p. ISBN 0-87663-165-0.

⁴ JINDŘICHOVSKÁ, Irena & PURCAREA, Irina. CSR and Environmental Reporting in the Czech Republic and Romania: Country Comparison of Rules and Practices, *Journal of Accounting and Management Information Systems*, 2011, 10(2): 202–227. ISSN 1583-4387.

these activities indefinitely.⁵ The initial focus on sustainability has been progressively paralleled by corporate responsibility concerns,⁶ while trying to support certain types of social behavior, such as altruistic behavior, i.e. behavior defined as sacrificing one's resources to benefit others without expecting an external reward⁷ and supporting humanity's collective corporation and social development.⁸ Namely, the sustainability concept as a systematic and visionary tool governed predominantly by soft law has co-existed with the corporate responsibility concept as rather a normative and moral tool regulated by hard law, until they merged into CSR.⁹ CSR consists of many types of social responsibility: economic, legal, ethical, etc., i.e. it is a set of duties to adhere to in a certain manner because it is either morally or legally right or at least expected. Responsibility as such has Latin roots, see "respondere", and means that someone has to answer for effects caused by him to an authority and this authority evaluates it.¹⁰ If this regime is incorporated into the legal system and this is authority is a judge, we deal with a special time of responsibility called liability. Indeed, CSR means that businesses competing in the marketplace are accountable to a very large spectrum of stakeholders, i.e. to society,¹¹ and this accountability is not fully enforceable by the law (otherwise we would speak about corporate social liability). Indeed, the CSR emerged originally rather as a "ethical responsibility" than "legal liability" and represented virtue ethics, utilitarian ethics and deontological ethics.¹² Naturally, over time, some aspects have been moved into the sphere of the law. Therefore, the CSR goes through a process of progression from facultative to mandatory regime.

CSR means the responsibility towards all stakeholders aka the entire society, including owners and investors, and so the word "social" does not mean that CSR is reduced only to one sustainability pillar, i.e. social dimension, but instead that CSR is about the all-encompassing responsibility towards the so-

⁵ MARINOVA, Dora & RAVEN, Margaret. Indigenous Knowledge and Intellectual Property: A Sustainable Agenda. *Journal of Economic Surveys*, 2006, 20(4): 587–605. ISSN 1467-6419.

⁶ MacGREGOR PELIKÁNOVÁ, Radka. Corporate Social Responsibility Information in Annual Reports in the EU: Czech Case Study. *Sustainability*, 2019, 11, 237. ISSN 2071-1050. DOI: 10.3390/su11010237.

⁷ BAR-TAL, Daniel. Altruistic motivation to help: Definition, utility and operationalization. *Humboldt Journal of Social Relations*, 1986, 13(1/2): 3–14. ISSN 0160-4341.

⁸ FEHR, Ernst & FISCHBACHER, Urs. Human altruism-proximate patterns and evolutionary origins. *Analyse & Kritik*, 2016, 27(1): 6–47, ISSN 0171-5860, DOI: 10.1515/auk-2005-0101.

⁹ BANSAL, Pratima & SONG, Hee-Chan. Similar But Not the Same: Differentiating Corporate Sustainability from Corporate Responsibility. *Academy of Management Annals*, 2017, 11(1): 105–149. ISSN 1941-6520. DOI: 10.5465/annals.2015.0095.

¹⁰ SCHÜZ, Mathias. Sustainable Corporate Responsibility: The Foundation of successful Business in the New Millennium. *Central European Business Review*, 2012, 1(2): 7–15. ISSN 1805-4854.

¹¹ JINDŘICHOVSKÁ, Irena & PURCAREA, Irina. CSR and Environmental Reporting in the Czech Republic and Romania: Country Comparison of Rules and Practices. *Journal of Accounting and Management Information Systems*, 2011 10(2): 202–227. ISSN 1583-4387.

¹² SCHÜZ, Mathias. Sustainable Corporate Responsibility: The Foundation of successful Business in the New Millennium. *Central European Business Review*, 2012, 1(2): 7–15. ISSN 1805-4854.

ciety, i.e. addressing all three sustainability pillars.¹³ Arguably, the essential goals of CSR are to protect human rights, to respect human rights, and to remedy human rights violations.¹⁴ Basically, CSR protects social interests to redistribute to the society, i.e. to share in the long term. As a matter of fact, CSR vis-à-vis employees and employment is a perfect example of the overlapping three pillars of sustainability, because it can reduce unemployment,¹⁵ improve economic performance¹⁶ and profit the entire society.

Both the sustainability and CSR concepts have grown with globalization and the apparently unrestricted growth in the power of corporations leading to the proposition that global companies, as powerful economic, social and political actors, must increasingly be brought within the law's domain.¹⁷ At the same time, it must be underlined that the sustainability and CSR concerns have been confronted with positive as well as negative influences. Indeed, a myriad of meta-analytic, horizontal and vertical studies had shown that human's concern for others has rather decreased during the period 1980–2010¹⁸ and that sustainability and CSR could hardly be left to the free consideration of all stakeholders. In addition, several studies have demonstrated that more altruism and sustainability awareness and commitment is exhibited by responsible people, i.e. the positive attitude towards CSR often co-relates with the positive attitude to responsibility.¹⁹ Indeed, the increasing interest in sustainability, in particular in CSR, has been growing in this context, on various levels and ultimately started to be accompanied by various soft and hard law incentives, i.e. regulatory efforts attempting to set minimal standards

¹³ OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

¹⁴ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

¹⁵ TVRDOŇ, Michal. Decomposition of Unemployment: The Case of the Visegrad Group Countries. *E&M Ekonomie a Management*, 2016, 19(1): 4–16. ISSN 1212-3609.

¹⁶ TVRDOŇ, Michal & TULEJA, Pavel, VERNER, Tomáš. Economic Performance and Labour Market in the Context of the Economic Crisis: Experience from the Visegrad Four Countries. *E&M Ekonomie a Management*, 2012, 15(3): 16–31. ISSN 1212-3609.

¹⁷ BUNN, Isabella D. Global Advocacy for Corporate Accountability: Transatlantic Perspectives from the NGO Community. *American University International Law Review*, 2004, 19(6): 1265–1306. ISSN 1520-460X.

¹⁸ KONRATH, Sara H. Changes in dispositional empathy in American college students over time: A meta-analysis. *Personality and Social Psychology Review*, 2011, 15(2): 180–198. ISSN 1088-8683. DOI: 10.1177/1088868310377395.

¹⁹ PETERSON, Lizette. Influence of age, task competence, and responsibility focus on children's altruism. *Developmental Psychology*, 1983, 19(1): 141. ISSN 0012-1649. DOI: 10.1037/0012-1649.19.1.141.

and the publication duty.²⁰ Indeed, there is well established the need for both competitiveness and sustainability with CSR.²¹

On the international level, this has led to a recognition that there is a conflict between the commitment to the promotion of globalized economic growth and the issue of increasing world population needs, along with the degrading ecological situation.²² The way to it started with the foundation of the United Nations (“UN”), as an international organization, in 1945. The Universal Declaration of Human Rights (“UDHR”) was proclaimed by the UN General Assembly in Paris in 1948. The UDHR is accepted as customary international law which deals with human rights principles, such as the duty to the community, the right to material and moral interests in one’s creative work, the right to freedom of expression, the right to participate in cultural life and the right to health. Around 1975, the sustainability concept became linked to value judgments about justice in the distribution and use of resources.²³ The pendulum of balance has importantly moved and led to the burning question posed, among others, to and by the UN, namely how to achieve global prosperity without environmental deterioration in the world,²⁴ in both developed and developing countries.²⁵ Indeed, the moving force regarding world sustainability and CSR was, at least to a certain extent, the UN. As a matter of fact, the UN was definitely behind the first critical documents becoming milestones on the sustainability pathway and pointing towards the engagement of all stakeholders, including businesses with their CSR. The 1st milestone was a product of the Brundtland Commission, which prepared a heavily influential proclamation *Our Common Future — A global Agenda for Change* aka the Brundtland Report. In 1987, the Brundtland Report was officially published as the United Nations (UN) Annex to document A/42/427.²⁶ The Brundtland Commission was as well the author of the most cited definition of sustainability, i.e. “Sustainable development is development

²⁰ ALBU, Nadia, ALBU Catalin Nicolae, DUMITRU, Madalina, DUMITRU Valentin Florentin. Plurality or convergence in sustainable reporting standards? *Amfiteatru Economic: Business and Sustainable Development*, 2013, 15(7): 729–742. ISSN 1582-9146.

²¹ MacGREGOR PELIKÁNOVÁ, Radka. Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries. *Oeconomia Copernicana*, 2019, 10(2), 239–252. ISSN 2083-1277. DOI: 10.24136/oc.2019.012.

²² MEADOWS, Donnella H., MEADOWS, Denis L., RANDERS, Jørgen, BEHRENS, William W. *The limits to growth*, Universe Books: New York, USA, 1972, 199 p. ISBN 0-87663-165-0.

²³ MARINOVA, Dora & RAVEN, Margaret. Indigenous Knowledge and Intellectual Property: A Sustainable Agenda. *Journal of Economic Surveys*, 2006, 20(4): 587–605. ISSN 1467-6419.

²⁴ JINDŘICHOVSKÁ, Irena & PURCAREA, Irina. CSR and Environmental Reporting in the Czech Republic and Romania: Country Comparison of Rules and Practices, *Journal of Accounting and Management Information Systems*, 2011, 10(2): 202–227. ISSN 1583-4387.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka. Corporate Social Responsibility Information in Annual Reports in the EU: Czech Case Study. *Sustainability*, 2019, 11, 237. ISSN 2071-1050. DOI: 10.3390/su11010237.

²⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Similarly, it is proposed that the concept of sustainability is analogous to the concept of *usufructus*, i.e. the right to use another’s property without changing its substance, extended beyond the economic realm to cover social and environmental aspects of human activities.²⁷

The UN further developed the sustainability agenda by the UN Agenda 21 and UN Resolution A/RES/60/1 from 2005 (Resolution 2005),²⁸ which were paralleled by the EU strategy Agenda 2000 aka Lisbon Agenda 2000 and later on the strategy Europe 2020.²⁹ In 2015, during a historic UN Summit in September 2015, the Resolution entitled Transforming our world: the 2030 Agenda for Sustainable development (“UN Agenda 2030”) with its 17 Sustainable Development Goals (“SDGs”) and 169 associated targets was adopted by world leaders.³⁰

Importantly, the SDG 9 deals with decent work and economic growth, SDG 9 means to build resilient infrastructures, promote inclusive and sustainable industrialization and foster innovation, including the increase of the IS/IT and affordable access to the Internet,³¹ and SDG 12 wants to ensure sustainable consumption and production patterns.³² Clearly, the UN Agenda 2030 with the SDG 9 reacts to this pragmatic economic fear regarding the decrease of the global competitiveness of the EU as well as the sustainability and social dimension.³³ In January 2016, these SDGs became universally applicable in order to mobilize efforts and to stimulate action towards them for the next 15

²⁷ ANAND, Sudhir & SEN, Amartya. Human development and economic sustainability. *World Development*, 2000, 28(12): 2029–2049. ISSN 0305-750X.

²⁸ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

²⁹ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

³⁰ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

³¹ TUREČKOVÁ, Kamila. Sectoral specialization as a source of competitiveness: case study on ICT sector in V4+ countries. In: *Proceedings of the 3rd International Conference on European Integration 2016*. Ostrava: VŠB-TU Ostrava, pp. 1023–1029.

³² OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies’ Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

³³ PAKŠIOVÁ, Renáta. Understanding of corporate social responsibility in large companies in Slovakia within the context of a sustainable development. In *Economic policy in the European union member countries. International scientific conference*. Karviná: School of Business Administration in Karvina, SU in Opava, 2016, pp. 516–525.

years, i.e. until 2030.³⁴ However, it must be emphasized that SDGs are the outcome of the International Law and are not *per se* enforceable.³⁵ Therefore, it is up to states whether they embody them in their legal systems or not.³⁶

States demonstrate various approaches to sustainability and accordingly “delegate” some tasks and duties to stakeholders, including businesses.³⁷ In general, CSR reporting is only slowly becoming mandatory, i.e. so far still in the majority of jurisdictions CSR reporting is voluntary for businesses.³⁸ At their end, businesses do not exhibit a unified trend, i.e. for some, their commitment to the sustainability via CSR is a mere imposed duty and negative burden, while for other businesses the CSR is a vehicle for improvement in all three spheres of the sustainability (economic, environmental and social) and an instrument to improve their own financial performance.³⁹ Allegedly, for some businesses, the CSR is just a developed form of charity or adherence to theories of business ethics, while for other businesses, it is rather a voluntary engagement in best global practices. In all cases, it needs to be emphasized that businesses are not directly obligated to protect human rights, but, in contrast, states have the legal obligation under international law to protect human rights.⁴⁰ However, a critical aspect of CSR is that it asks businesses to respect human rights and to engage in socially responsible behaviour patterns regardless of what the law does or does not require.⁴¹ The ability to address economic, environmental and social issues (sustainability of the global society turned

³⁴ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

³⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁷ MacGREGOR PELIKÁNOVÁ, Radka. Corporate Social Responsibility Information in Annual Reports in the EU: Czech Case Study. *Sustainability*, 2019, 11, 237. ISSN 2071-1050. DOI: 10.3390/su11010237.

³⁸ STROUHAL, Jiří et al. Finding th Link Between CSR Reporting and Corporate Financial Performance: Evidence on Czech and Estonian Listed Companies. *Central European Business Review*, 2015, 4(3): 48–59. ISSN 1805-4854.

³⁹ RODRIGUEZ-FERNANDEZ, Mercedes. Social responsibility and financial performance. The role of good corporate governance. *BRQ Business Research Quarterly*, 2016, 19, 137–151. ISSN 2340-9436. DOI: 10.1016/j.brq.2015.08.001.

⁴⁰ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

⁴¹ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

into CSR of a business)⁴² while contributing to profit maximization represents the recognition of shared value policies and principles and aims to “a more sophisticated form of the capitalism.”⁴³ Consequently, the originally simplistic CSR becomes strategic CSR and the evolution phases are: CSR cultural reluctance, CSR cultural grasp and CSR cultural embedment.⁴⁴

A prevailing modern trend suggests that businesses are involved in the integration of economic, environmental,⁴⁵ and social objectives in various functional areas⁴⁶ and often advertise their CSR endeavours and publish reports about their CSR accomplishments.⁴⁷ Nevertheless, this involvement, or better to say the commitment to this involvement, has limitations due to possible agency conflicts between managers, shareholders, environment activists, etc.⁴⁸ Certain theoretical models on the CSR point to the co-relations of the involved objectives and suggest that the satisfaction of expectations of various stakeholders may increase financial performance.⁴⁹ Interestingly, stakeholder theory proposes that the business engagement with the CSR implies (at least indi-

⁴² KŘEČKOVÁ KROUPOVÁ, Zuzana. The Latest Trends in the Corporate Sustainability and its Implications for Czech Businesses. *Central European Business Review*, 2015, 4(2): 12–20. ISSN 1805-4862.

⁴³ PORTER, Michael E. & KRAMER, Mark R. Creating shared value. *Harvard business review*, 2011, 89(1/2): 62–67. ISSN 0017-8012.

⁴⁴ OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

⁴⁵ POLCYN, Jan; STĘPIEŃ, Sebastian & CZYŻEWSKI, Bazyli Czyżewski. The Measurement of the Quality of the Environment and its Determinants in Poland and in the Regional Perspective. *Annales Universitatis Apulensis Series Oeconomica*, 2019, 21(2): 11–21. ISSN 2344-4975. DOI: 10.29302/oeconomica.2019.21.2.1.

⁴⁶ TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

⁴⁷ ZHAO, Changhong et al. ESG and Corporate Financial Performance: Empirical Evidence From China's Listed Power Generation Companies. *Sustainability*, 2018, 10, 2607. ISSN 2071-1050. DOI: 10.3390/su10082607.

⁴⁸ STROUHAL, Jiří et al. Finding the Link Between CSR Reporting and Corporate Financial Performance: Evidence on Czech and Estonian Listed Companies. *Central European Business Review*, 2015, 4(3): 48–59. ISSN 1805-4854.

⁴⁹ PRESTON, Lee E. & O'BANNON, Douglas, P. The corporate social-financial performance relationship. A typology and analysis. *Business & Society*, 1997, 36, 419–429. ISSN 0007-6503. DOI: 10.1177/000765039703600406.

rectly) the value creation, improvement of the business reputation⁵⁰ and branding⁵¹ and ultimately the increase of market share.⁵²

The current management literature proposes as major factors influencing the extent of CSR reporting profitability, size, financial leverage, market-to-book value, liquidity and ownership structure.⁵³ Indeed, it has been already established that there is a trend among a growing number of, not only, multinational companies to integrate socially and environmentally responsible practices in their operations and into their supply chain operations⁵⁴ and to report about that. However, in contrast to that, the traditional theory indicates that resource allocation due to the CSR, especially for social goals, may add to the costs and consequently prevents profit maximization,⁵⁵ and consequently businesses should not automatically jump to the conclusion that more CSR and more CSR reporting has to lead to the ultimate and global success. Several studies documented the negative impact of CSR activities and spending by indicating that CSR practices can generate unnecessary costs, cripple financial results⁵⁶ and thus undermine the competitive advantage.⁵⁷

Despite the ongoing discussion, it seems obvious that modern businesses need to reconcile the profitability, growth and social relationships, i.e. CSR cannot be avoided and, according to the prevailing opinion stream, positively impacts financial performance.⁵⁸ CSR can be a tool bridging the public concern

⁵⁰ GALLARDO-VÁZQUEZ, Dolores et al. Corporate Social Responsibility as an Antecedent of innovation, Reputation, and Competitiveness Success: A Multiple Mediation Analysis. *Sustainability*, 2019, 11(20): 5614. ISSN 2071-1050. DOI: 10.3390/su11205614.

⁵¹ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

⁵² TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

⁵³ ANDRIKOPOULOS, Andreas et al. Corporate social responsibility reporting in financial institutions: Evidence from Euronext. *Research in International Business and Finance*, 2014, 32, 27–35. ISSN 0275-5319.

⁵⁴ GILLAI, Barchi et al. Managing Supply Chain Sustainability and Intellectual Property: Are They More Similar than Different? *Stanford Initiative for the Study of Supply Chain Responsibility*, March 2014.

⁵⁵ FRIEDMAN, Milton. The Social Responsibility of business is to Increase its Profits. In: Zimmerli W.C., Holzinger M., Richter K. (eds) *Corporate Ethics and Corporate Governance*. Springer, Berlin, Heidelberg, 173–178. ISBN 978-3-540-70817-9. DOI: 10.1007.

⁵⁶ BARNETT, Michael L. Stakeholder influence capacity and the variability of financial return to corporate social responsibility. *Academy of Management Review*, 2007, 32(3): 794–816. ISSN 0363-742. DOI: 10.5465/amr.2007.25275520.

⁵⁷ SCHERER, Andreas G. & PALAZZO, Guido. 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. *Journal of Management Studies*, 2011, 48, 899–931. ISSN 1467-6486. DOI: 10.1111/j.1467-6486.2010.00950.x.

⁵⁸ TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

and the corporate worlds, and providing a business with a theoretical and practical legitimacy tool to follow treaties, standards or norms which may not be applicable or enforceable in respect of them.⁵⁹ CSR reporting may decrease information asymmetry and arguably even lead to a reduction of the cost of debt.⁶⁰

Consequently, the CSR principles are a demonstration of moral obligations of the given business towards the entire society and this goes way beyond the mere concept of profit maximization.⁶¹ CSR is the business's commitment to maximize long-term (!) economic, social and environmental well-being through business practices, policies and resources.⁶² Ultimately, the CSR should serve all stakeholder's interests and even enhance financial performance⁶³ and so businesses should proudly publish their financial and non-financial reports and enjoy their mutual support. However, the verb "should" must so far be used, i.e. a firm direct link between CSR reporting and business financial performance has not yet been fully established.⁶⁴ Nevertheless, as the society becomes more and more concerned about ethical, social⁶⁵ and environmental⁶⁶ issues, appropriate, reasonable and well oriented CSR "expenses" should be compensated, offset, by the advertising effect of an improved brand image, stable revenues from loyal clients, improved employee productivity,⁶⁷ de-

⁵⁹ BUNN, Isabella D. Global Advocacy or Corporate Accountability: Transatlantic Perspectives from the NGO Community. *American University International Law Review*, 2004, 19(6): 1265–1306. ISSN 1520-460X.

⁶⁰ GOSS, Allen & ROBERTS, Gordon. The Impact of Corporate Social Responsibility on the Cost of Bank Loans. *Journal of Banking and Finance*, 2011, 35(7): 1794–1810. ISSN 0378-4266.

⁶¹ BERMAN, Shawn L. et al. Does stakeholder orientation matter? The relationship between stakeholder management models and firm financial performance. *The Academy of Management Journal*, 1999, 42, 488–506. ISSN 0001-4273.

⁶² OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

⁶³ ROWLEY, Tim & BERMAN, Shawn. A brand new brand of corporate social performance. *Business & Society*, 2000, 39(4): 397–418. ISSN 0007-6503. DOI: 10.1177/000765030003900404.

⁶⁴ STROUHAL, Jiří et al. Finding the Link Between CSR Reporting and Corporate Financial Performance: Evidence on Czech and Estonian Listed Companies. *Central European Business Review*, 2015, 4(3): 48–59. ISSN 1805-4854.

⁶⁵ MALLIN, Christine. *Corporate Governance*. 6th Edition. Oxford, UK: Oxford University Press, 2018, 440 p. ISBN 9780198806769.

⁶⁶ KRAUSE, Josef. The Potential of Environmentally Friendly Business Strategy: Research from the Czech Republic. *International Journal of Engineering Business Management*, 2015, 7(6): 1–6. ISSN 1847-9790. DOI: 10.5772/60064.

⁶⁷ IKRAM, Atif, Li, Zhichuan Frank & MINOR, Dylan. CSR-contingent executive compensation contracts. *Journal of Banking & Finance*, 2019. ISSN 0378-4266. DOI: 10.1016/j.jbankfin.2019.105655.

creased risks⁶⁸ and reduced capital costs.⁶⁹ It might be proposed that this fine balance mechanism needs to be set and operated effectively and efficiently, i.e. the public-at-large needs to learn about the correctly set and applied CSR of the given business. Indeed, businesses might find CSR practices to be cost effective.⁷⁰

This can be achieved only if businesses select CSR activities matching the expectations and/or active approval of other stakeholders and these stakeholders learn about it, e.g. via reportage linked to all three pillars of the sustainability and translated into CSR categories, such as environment protection,⁷¹ employee matters, social matters and community concerns, respect for human rights, anti-corruption and bribery matters and R&D activities. This proposition is supported by the evidence that CSR reporting significantly impacts a firm's value⁷² and that especially R&D spending has a noticeable potential to boost the productivity and ultimately lead to product differentiation and entry barriers.⁷³ Arguably such a correlation could be established, at least to a certain extent, as well with respect to other, more social, CSR categories. Social relations could bring many advantages for a business, such as the employee stability aka human resources retention, improvement of local community relationships and even the attraction of social and ethical investors and customers.⁷⁴

The most critical determinant of sustainability and ultimately of (any category of) CSR is the genuine quality of business 'relationship, engagement

⁶⁸ SHARFMAN, Mark P. & FERNANDO, Chitru S. Environmental risk management and the cost of capital. *Strategic Management Journal*, 2008, 29, 569–592. ISSN 1097-0266. DOI: 10.1002/smj.678.

⁶⁹ GALBREATH, Jeremy. ESG in focus: The Australian evidence. *Journal of Business Ethics*, 2013, 118(3): 529–541. ISSN 0167-4544. DOI: 10.1007/s10551-012-1607-9.

⁷⁰ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

⁷¹ POLCYN, Jan; STĘPIEŃ, Sebastian & CZYŻEWSKI, Bazyli Czyżewski. The Measurement of the Quality of the Environment and its Determinants in Poland and in the Regional Perspective. *Annales Universitatis Apulensis Series Oeconomica*, 2019, 21(2): 11–21. ISSN 2344-4975. DOI: 10.29302/oeconomica.2019.21.2.1

⁷² EL GHOUL, Sadok et al. Does corporate social responsibility affect the cost of capital? *Journal of Banking & Finance*, 2011,35(9): 2388–2406. ISSN 0378-4266.

⁷³ McWILLIAMS, Abigail & SIEGEL, Donald. Corporate social responsibility and financial performance: Correlation or misspecification? *Strategic Management Journal*, 2000, 21(5): 603–609. ISSN 1097-0266. DOI: 10.1002/(SICI)1097-0266(200005)21:5<603::AID-SMJ101>3.0.CO;2-3.

⁷⁴ BHATTACHARYA, Chitra B. & SEN, Sankar. Doing better at doing good: When, why, and how consumers respond to corporate social initiatives. *California Management Review*, 2004, 47, 9–24. ISSN 0008-1256.

with all stakeholders⁷⁵ and effective and efficient reporting about that.⁷⁶ The study based on the Forbes list of *100 best CSR companies in the world* documented the positive interaction and mutual support of the economic (business performance) pillar and environmental and social pillar,⁷⁷ i.e. businesses recognizing all three sustainability pillars and engaging in a genuine CSR are more likely to have positive earnings than firms with bad social and environmental performance.⁷⁸ Ambassadors of businesses are their employees, especially employees in direct interaction with other stakeholders, such as business partners and customers, and it is well argued that just motivated and retained employees become one of the most important business's assets and a substantial point of difference from competition,⁷⁹ i.e. they can be its competitive advantage as well as CSR carriers. Only motivated and committed employees lead to satisfied business partners and customers⁸⁰ and ultimately actively participate in the advancement of CSR and information about it. Therefore, it can be argued that the pre-requirement of an effective and efficient CSR with ultimately positive impact on financial results, is the enhancement of awareness and engagement of employees. Put it different, CSR efforts seem futile if employees are not interested or do not want to share, if stakeholders are not informed about CSR of the business or if CSR initiatives and expenses do not meet the CSR expectations or preferences of stakeholders. In such a situation, there is no way to move away from the CSR cultural reluctance phase toward CSR cultural grasp and CSR cultural embedment phases.⁸¹

⁷⁵ TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

⁷⁶ MacGREGOR PELIKÁNOVÁ, Radka. Corporate Social Responsibility Information in Annual Reports in the EU: Czech Case Study. *Sustainability*, 2019, 11, 237. ISSN 2071-1050. DOI: 10.3390/su11010237.

⁷⁷ TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

⁷⁸ LI, Zhichuan et al. A learning curve of the market. Chasing alpha of socially responsible firms. *Journal of Economic Dynamics and Control*, 2019, 109, 103772. ISSN 0165-1889.

⁷⁹ NĚMEČKOVÁ, Iveta. The Roles of Salary in Employee Motivation and Retention in the Financial Sector of the Czech Republic in Relation to Herzberg's Two Factor Theory of Work Motivation. *Politická ekonomie*, 2013, 61(3): 373–392. ISSN 0032-3233.

⁸⁰ KŘEČKOVÁ KROUPOVÁ, Zuzana. The Latest Trends in the Corporate Sustainability and its Implications for Czech Businesses. *Central European Business Review*, 2015, 4(2): 12–20. ISSN 1805-4862.

⁸¹ OLŠANOVÁ, Květa; GOOK, Gina & ZLATIĆ, Marija. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

Chapter 2

EU approach to Corporate Social Responsibility

The concept of economic and political integration with the dominance of technocratic over political institutions¹ combined with the intensification of the supranational approach over the intergovernmental approach have come together to form, to shape both the current EU, EU law and EU decade-long strategies. Despite the omnipresent blurred distinction between historical truth and reality² and contradictions implied by the challenging overlap of law, business and IP,³ the modern European integration⁴ is linked to the concept of the famous four freedoms of movement,⁵ and competition in the single internal market.⁶ Conventional economic studies and searches point to the rational drive

¹ LIANOS, Ioannis. Shifting Narratives in the European Internal Market: Efficient Restrictions of Trade and the Nature of “Economic” Integration’. *European Business Law Review*, 2010, 21(5): 705–760. ISSN 0959-6941.

² CHIRITA, Anca D. A legal-historical review of the EU competition rules. *International and comparative law quarterly*, 2014, 63(2): 281–316. ISSN: 0020-5893 (Print), 1471-6895 (Online).

³ VIVANT, Michel. Building a common culture IP? *International Review of Intellectual Property and Competition Law*, 2016, 47(3): 259–261. ISSN 0018-9855. DOI: 10.1007/s40319-016-0472-y.

⁴ MARINO, Ignazio Maria, LICATA, Giovanni Fabio. The Law of Integration: An Introduction. *Transylvanian Review of Administrative Sciences*, 2009, 28 E SI/2009, 236–248. ISSN 2247-8310.

⁵ MacGREGOR PELIKÁNOVÁ, Radka, CÍSAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁶ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

of humans to go for utility maximization, while psychological and social studies and searches suggest that humans, and their behavior as well, are socially⁷ and sustainably oriented.⁸

Modern European integration was launched by the Schuman Declaration⁹ and three treaties creating three European Communities in the 1950's,¹⁰ when the priorities were to prevent any future military conflict, to integrate markets to increase competitiveness and to avoid hunger due to the insufficient agricultural production. These original communities as well as the later European Union have been heterogeneous units with significant disparities between its Member States and particularly among their regions in many areas of the modern economy.¹¹ One of the institutions established, and recognized by all three Communities, the European Court of Justice ("ECJ", newly CJ EU), managed to transform the Treaty of Rome establishing the EEC into a constitution *sui generis* and laid down the legal foundation for European integration, especially in the economic field.¹² Relying on the literal approach, working with the very wording of the primary and secondary sources of the EU law,¹³ would be superficial and dramatically misleading. Indeed, the spirit of the EU law is ephemerally reflected in the written outcome of these sources and the CJ EU has enthusiastically accepted the challenge to interpret it in an almost revolutionary manner,¹⁴ as *Costa Enel*, *Van Gend en Loos* and *Les Verts*, along with academic and scientific presentations, demonstrate¹⁵. The CJ EU does, and per-

⁷ DIEKHOF, Esther K., WITTMER, Susanne, REIMERS, Luise. Does competition really bring out the worst? *Plos One*, 2014, 9(7). ISSN 1932-6203. DOI: 10.1371/journal.pone.0098977.

⁸ HOCHMAN, Guy, SHAHAR, Ayal, ARIELY, Dan. Fairness requires deliberation. The primacy of economic over social considerations. *Frontiers in Psychology*, 2015, 6. ISSN 1664-1078. DOI: 10.3389/fpsyg.2015.00747.

⁹ http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm. The Schuman Declaration was presented by French foreign minister Robert Schuman on 9 May 1950. It proposed the creation of a European Coal and Steel Community, whose members would pool coal and steel production.

¹⁰ http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_euratom_en.htm. Initially created to coordinate the Member States' research programmes for the peaceful use of nuclear energy, the Euratom Treaty today helps to pool knowledge, infrastructure and funding of nuclear energy. It ensures the security of the atomic energy supply within the framework of a centralised monitoring system.

¹¹ CVIK, Eva Daniela & MacGREGOR PELIKÁNOVÁ, Radka. The (Mis)compliance of objectives of new CAP Legislative, Academic and General Public Perspectives. *European Countryside*, 2019, 11(1): 143–161. ISSN 1803-8417. DOI: 10.2478/euco-2019-0009.

¹² BURLEY, Anne-Marie, MATTLI, Walter. Europe Before the Court: A Political Theory of Legal Integration. *International Organization*, 1993, 47(1): 41–76.

¹³ SVOBODOVÁ, Magdaléna. On the Concept of Legislative Acts in the European Union Law. *The Lawyer Quarterly*, 2016, 4, 256–267. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

¹⁴ MacGREGOR PELIKÁNOVÁ, R. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing, 2014, 186 p. ISBN 978-80-7418-226-6.

¹⁵ LENAERTS, Koen, GUTTIÉREZ-FONS, José. A. To Say What the Law of the EU Is? Methods of Interpretation and the European Court of Justice. *Academy of European Law*, 2013, 9, 1–55. ISSN 1831-4066.

haps even must, in so far as possible, interpret the law with a view towards filling any normative lacunae, either in primary or secondary EU law, whose persistence would “lead to a result contrary both to the spirit of the Treaty ... and to its system.”¹⁶ Indeed, this was critical considering that an important reason for European integration was the reinforcement of economic cooperation between Germany and France,¹⁷ two countries not sharing identical visions of the state and social and other policies, in order to avoid future conflicts in Europe.¹⁸ A number of further treaties followed¹⁹ and culminated in the 1986 Single European Act reforming Treaties by extending the qualified majority voting and also by increasing the power of the European Parliament via co-operation procedures.²⁰

In 1992, the Maastricht treaty created the EU as the Economic and Monetary Union, with a single internal market, and which considers not only economic aspects. The Maastricht treaty was revised in 1997 by the Treaty of Amsterdam, which abolished physical barriers inside of the internal market by incorporating the Schenghen Agreement and Schenghen Area, further revised by the Treaty of Nice and then ultimately reformed by the Treaty of Lisbon in 2007, which established the current EU constitutional, primary law, triad²¹ — the Treaty on EU (“TEU”), Treaty on the Functioning of the EU (“TFEU”) and Charter of fundamental rights (“Charter”).²² Within this triad, provisions indicating the EU approach to CSR can be detected. For example, Art. 11 TFEU provides that “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with

¹⁶ C-294/83 *Les Verts v. Parliament*.

¹⁷ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

¹⁸ MacGREGOR PELIKÁNOVÁ, Radka, PAČLÍK, Miroslav. European Integration Odyssey: the Ship Sails on ... but Where? *Journal on Legal and Economic Issues of Central Europe*, 2013, 4(1): 40–48. ISSN 2043-085X.

¹⁹ 1965 Treaty of Brussels merging institutions of Communities; 1970 Treaty amending Certain Budgetary Provisions, which replaced the system whereby the Communities were funded by contributions from Member States with that of own resources and which put in place a single budget for the Communities; 1975 Treaty amending Certain Financial Provisions gave the European Parliament the right to reject the budget and to grant a discharge to the Commission for the implementation of the budget.

²⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²¹ SVOBODA, Pavel. The Lisbon Treaty: From a Legal and Therefore Politically Incorrect Perspective. *The Lawyer Quarterly*, 2011, 1(2): 138–141. ISSN 1805-840X.

²² BENEŠ, Marek, MacGREGOR PELIKÁNOVÁ, Radka, VOJČÍK, Peter. The (in)compliance of the Directive on Electronic commerce and its purpose with the Europe 2020 approach to IP. In Filipová, L., Adánek, E., Lasotová, V. (eds.). *Proceedings of the 15th International Scientific Conference on Economic policy in the European Union Member Countries*, 2018, 194–210 of 323. ISBN 978-80-248-4155-7.

a view to promoting sustainable development”, Art. 12 TFEU provides that “Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities”, and Art. 168 TFEU provides “1. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities. Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health...”

The situation of the current EU is complex. On one hand, the EU and Europeans want to succeed in the global marketplace and consequently they are motivated towards utility maximization.²³ On the other hand, this drive has certain limits such as those set by the EU law and its primary, secondary and supplementary sources. The primary EU law sources are intergovernmental, while secondary EU law sources are supranational and, along with the case law of the CJEU, being a supplementary EU law source.²⁴ However, even more interestingly, it suggests that, surprisingly, supranational actors from low level politics (such as legal rulings, jurisprudence, etc.) rather than intergovernmental actors via high level politics (such as international treaties, parliamentary business) have pressured for changes and their institutionalization.²⁵

Regarding the primary sources, the EU constitutional, aka foundation, triad, i.e. TEU, TFEU and Charter underline the social and environmental dimensions,²⁶ along with the economic dimension.²⁷ Secondary sources, such as Regulations and Directives, and supplementary sources, such as the case law, further underline humans concerns regarding sustainability²⁸ and the need to not prevent and protect regarding destructive selfish behavior in the sin-

²³ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

²⁴ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²⁵ FAVELL, Adrian, GEDDES, Andrew. *European Integration, Immigration and the Nation State: Institutionalising Transnational Political Action?* San Domenico: European University Institute: EUI Working Papers RSC No. 99/32, 1999, 7. Retrieved July 1, 2017 from http://www.eui.eu/RSCAS/WP-Texts/99_32.pdf

²⁶ POLCYN, Jan; STĘPIEŃ, Sebastian & CZYŻEWSKI, Bazyli Czyżewski. The Measurement of the Quality of the Environment and its Determinants in Poland and in the Regional Perspective. *Annales Universitatis Apulensis Series Oeconomica*, 2019, 21(2): 11–21. ISSN 2344-4975. DOI: 10.29302/oconomica.2019.21.2.1

²⁷ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁸ HOCHMAN, Guy, SHAHAR, Ayal, ARIELY, Dan. Fairness requires deliberation. The primacy of economic over social considerations. *Frontiers in Psychology*, 2015, 6. ISSN 1664-1078. DOI: 10.3389/fpsyg.2015.00747.

gle internal market²⁹ and even beyond.³⁰ The content and especially the interpretation and application of these sources, are heavily marked by the work of the top internal pro-integration European tandem,³¹ the European Commission and the Court of Justice of the EU (“CJ EU”).³² Indeed, the European Commission and the CJ EU have often done their reasoning more based upon the goals and spirit of the founding treaties rather than upon the positive wording of these provisions’ primary or secondary legislation.³³

The EU strategy for 2000 to 2010, aka Agenda 2000, aka Lisbon Agenda 2000 has for its goal to make the EU “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth by 2010”. This overly ambitious goal was set by EU political and economic elites³⁴ to try to catch up with, and maybe even pass, the high rate of economic growth in the US³⁵ and it totally failed. The reasons for this failure were numerous and heterogenous. They basically touched and concerned all three pillars of sustainability, indeed some of these reasons touched all three at the same time. For example, external factors such as the crises of 2007 and 2008³⁶ and internal factors such as insufficiencies in financial regulations and management responsibilities in corporate governance,³⁷ especially due to the split

²⁹ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

³⁰ PIEKARCZYK, Anna. Contemporary organization and a perspective on integration and development. *Oeconomia Copernicana*, 2016, 7(3): 467–483. ISSN 2083-1277. DOI: 10.12775/OeC.2016.027.

³¹ BURLEY, Anne-Marie, MATTLI, Walter. Europe Before the Court: A Political Theory of Legal Integration. *International Organization*, 1993, 47(1): 41–76. ISSN 0020-8183.

³² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³³ BURLEY, Anne-Marie, MATTLI, Walter. Europe Before the Court: A Political Theory of Legal Integration. *International Organization*, 1993, 47(1): 41–76. ISSN 0020-8183.

³⁴ BALCERZAK, Adam P. Europe 2020 Strategy and Structural Diversity Between Old and New Member States. Application of Zero Unitarization Method for Dynamic Analysis in the Years 2004–2013. *Economics & Sociology*, 2015, 8(2): 190–210. ISSN 2306-3459. DOI: 10.14254/2071-789X.2015/8-2/14.

³⁵ BALCERZAK, Adam P. Europe 2020 Strategy and Structural Diversity Between Old and New Member States. Application of Zero Unitarization Method for Dynamic Analysis in the Years 2004–2013. *Economics & Sociology*, 2015, 8(2): 190–210. ISSN 2306-3459. DOI: 10.14254/2071-789X.2015/8-2/14.

³⁶ BALCERZAK, Adam P. Fiscal Burden in the European Union Member States. *Economic Annals*, XXI, 2016, 161(9–10): 4–6. ISSN 1728-6220.

³⁷ BAVOSO, Vincenzo. *Explaining Financial Scandals: Corporate Governance, Structured Finance and the Enlightened Sovereign Control Paradigm*. Cambridge Scholars Publishing, Cambridge, 2012, 342 p. ISBN 978-1-4438-4281-5.

between the centralized corporate governance, managed by executives³⁸ from “equity owners” — associates and shareholders³⁹, which negatively impacted economic, environmental and even social spheres. Sadly, certain EU representatives and member states blamed, for this failure, the newly accessing EU members.⁴⁰ Such an explanation is neither fully correct nor in compliance with the EU’s fundamental principles.⁴¹

The EU motto is “united in diversity” and the strategy Europe 2020 backbone idea is “Europe can succeed if it acts collectively, as a Union”. Since the internal single market with the famous four freedoms is a strategic priority, competition and competitiveness have always been at the very heart of the EU,⁴² which now is strongly marked by digitalization and other mature society factors.⁴³ The economic and monetary union, the Eurozone and even the single internal market were shaken to their core, and the situation remained deplorable even in 2010, when the European Commission decided to ‘take the wheel’ and issued on March 3, 2010 a new strategy, the Com(2010) 2020 final Communication Europe 2020 — A strategy for smart, sustainable, and inclusive growth (“strategy Europe 2020”).⁴⁴ It is a strategy for smart, sustainable and inclusive growth and it has five main targets — (i) to raise the employment rate to 75%, (ii) to invest 3% of the GDP in R&D, (iii) to reduce greenhouse gas emission by 20%, (iv) to increase the share of the population with the tertiary education to 40% and (v) to reduce the number of Europeans who are living at or below the poverty level by 25%.⁴⁵ These five targets translate into seven flagship ini-

³⁸ CVIK, Eva Daniela & MacGREGOR PELIKÁNOVÁ, Radka. A comparative study of the legal liability of executives in LLC in the Czech Republic & some of other EU member states, *Scientific Papers of the University of Pardubice, Series D: Faculty of Economics and Administration*, 2016, 23(36): 54–65. ISSN 1804-8048.

³⁹ CVIK, Eva Daniela & MacGREGOR PELIKÁNOVÁ, Radka. The Volatively Subjective Nature and Value of Stock: Czech Case Study, *Ad Alta: Interdisciplinary Research*, 2017, 7(2): 40–45. ISSN 1804-7890. DOI: 10.1007/s40319-016-0472-y.

⁴⁰ WANILIN, A. *The Lisbon Scorecard IV: Will Europe’s Economy Rise Again?* London: Center for European Reform, 2006.

⁴¹ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁴² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁴³ FLORIDI, Luciano. Mature information societies: a matter of expectations, *Philosophy and Technology*, 2016, 29, 1–4. ISSN 2210-5433. DOI: 10.1007/s13347-016-0214-6.

⁴⁴ EUROPEAN COMMISSION. *COM (2010) 2020 Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth* of 3 March 2010 (“Europe 2020 Strategy”).

⁴⁵ TUREČKOVÁ, Kamila & NEVIMA, Jan. The perils of drawing from European funds in public education. In: *Public Administration 2016: Proceedings of the 11th International Scientific Conference*. Pardubice: University of Pardubice, 2016, 273–283.

tiatives of which at least five are related to the CSR — (i) Innovation Union, (ii) Digital agenda for Europe with the high speed Internet and the Digital single market, (iii) Resource efficient Europe, (iv) Industrial policy for the globalization era and (v) Agenda for new skills and jobs.⁴⁶ The mentioned five main targets and seven flagship initiatives require significant resources and investments, of both public and private provenience. Indeed, a substantial part of the public investment in the EU for this purpose is done by public procurement and it needs to be emphasized that the total amount spent via public procurement exceeds EUR 2 trillion, i.e. oscillates around 15% of EU GDP.⁴⁷

The strategy Europe 2020 is a product of the time when the European economy faced crises and post-crisis issues, the economic indicators were back to levels that took place in the 1990's⁴⁸, and there was the will to use the innovation and IS/IT even for the European Cohesion Policy.⁴⁹ The strategy Europe 2020 attempts to correct it and deals directly with the sustainability. Instead of the directive and imposing from above approach, it opts for a multi-stakeholder model and engages all stakeholders in the sustainability concept.⁵⁰ This is logical, because the top factors considered during the preparation of strategy Europe 2020 were digitalization, competitiveness, transparency, sustainability and inclusion. The resulting strategy Europe 2020 has three priorities, five targets and seven flagship initiatives, of which at least five are related to sustainability and CSR — (i) Innovation Union, (ii) Digital agenda for Europe with the high speed Internet and the Digital single market, (iii) Resource efficient Europe, (iv) Industrial policy for the globalization era and (v) Agenda for new skills and jobs.⁵¹ These priorities, targets and flagship initiatives are intra-related and arguably support the awareness and commitment with re-

⁴⁶ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

⁴⁷ MacGREGOR PELIKÁNOVÁ, Radka & CVIK, Eva Daniela. Awareness and Perception of Modernized Electronic Public Procurement: Czech Case Study. *Ad Alta: Journal of Interdisciplinary Research*, 2019, 9(1): 34–40. ISSN 1804-7890.

⁴⁸ ÇOLAK, Mehmet Selman & EGE, Aylin. An Assessment of EU 2020 Strategy: Too Far to Reach? *Social Indicators Research*, 2013, 110(2): 659–680. ISSN 0303-8300.

⁴⁹ BILLON, Margarita, MARCO, Rocio, LERA-LOPEZ, Fernando. Innovation and ICT use in the EU: an analysis of regional drivers. *Empirical Economics*, 2017, 53(3): 1083–1108. ISSN 0377-7332. DOI: 10.1007/s00181-016-1153-x.

⁵⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵¹ TUREČKOVÁ, Kamila & NEVIMA, Jan. The perils of drawing from European funds in public education. In: *Public Administration 2016: Proceedings of the 11th International Scientific Conference*. Pardubice: University of Pardubice, 2016, 273–283.

spect to the CSR⁵² and ephemeral philosophical-economical categories of ethics and fairness.⁵³

Two decades ago, the global society, including the EU and EU member states, faced a set of economic, financial, real estate, employment and other crises.^{54,55,56} This prompted the EU to introduce a myriad of measures, general and specific, mandatory and facultative.⁵⁷ As the general umbrella for the majority of these endeavors, the EU launched the strategy Europe 2020 as the pivotal policy instrument for 2010–2020 regarding competition, sustainability and even e.g. corporate governance issues in the EU.⁵⁸

The strategy Europe 2020 carries an embedded complexity and determination to change the model of development in order to overcome the structural weaknesses and to improve its competitiveness and productivity and underpin a sustainable social market economy.⁵⁹ On one hand, the Europe 2020 Strategy is impaired by the competence deficit,⁶⁰ by setting goals which have very little to do with increasing competitiveness⁶¹ and by lacking a common denominator

⁵² MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

⁵³ SROKA, Włodzimierz & LŐRINCZY, Marketa. The perception of ethics in business: Analysis of research results. *Procedia Economics and Finance*, 2015, 34, 156–163. ISSN 2212-567. DOI: 10.1016/S2212-5671(15)01614-7.

⁵⁴ THALASSINOS, Eleftherios & THALASSINOS, Yannis. *Financial Crises and e-Commerce: How Are They Related* (October 29, 2018). DOI: 10.2139/ssrn.3330169.

⁵⁵ TVRDOŇ, Michal. Decomposition of Unemployment: The Case of the Visegrad Group Countries. *E&M Ekonomie a Management*, 2016, 19(1): 4–16. ISSN 1212-3609.

⁵⁶ TVRDOŇ, Michal & TULEJA, Pavel, VERNER, Tomáš. Economic Performance and Labour Market in the Context of the Economic Crisis: Experience from the Visegrad Four Countries. *E&M Ekonomie a Management*, 2012, 15(3): 16–31. ISSN 1212-3609.

⁵⁷ JEDRZEJOWSKA-SCHIFFAUER, Izabela, SCHIFFAUER, Peter, THALASSINOS, Eleftherios. EU Regulatory Measures Following the Crises: What Impact on Corporate Governance of Financial Institutions? *European Research Studies Journal*, 2019, 22(3), 432–456. ISSN 1108-2976. DOI: 10.35808/ersj/1488.

⁵⁸ MacGREGOR, Robert K. & MacGREGOR PELIKÁNOVÁ, Radka. Shareholder Engagement for Corporate Governance in the Light of the Harmonization and Transposition. *International Journal of Economics and Business Administration*, 2019, VII(4): 22–34. ISSN 2241-4754.

⁵⁹ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

⁶⁰ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

⁶¹ ERIXON, Fredrik. The Europe 2020 strategy: time for Europe to think again. *European view*, 2010, 9(1): 29–37. ISSN 1781-6858. DOI: 10.1007/s12290-010-0120-8.

for the competition quality, i.e. its fairness.⁶² On the other hand, the strategy Europe 2020 seems to have a legitimacy power to deal with digital aspects, technological potentials⁶³ and the sustainability and to be determined to go for it. Further, the strategy Europe 2020 attempts to address the dynamics between old and new EU member states⁶⁴ and SMEs.⁶⁵

Nevertheless, pursuant to the strategy Europe 2020, the CSR is a dialogue and interaction between businesses, corporations and their stakeholders,⁶⁶ one which enjoys a full EU endorsement via policy support.⁶⁷ Various policies magnify it, see e.g. demands for more transparency and shared information via public corporate reporting with both financial and non-financial information aka CSR reporting.⁶⁸

With respect to shareholder companies and their sustainable corporate governance, and due to the competence spheres of the EU law, employed EU legislative instruments have included and include predominantly general and special Directives.⁶⁹ These demands for more CSR and more transparency on the market and in competition led to the issuance of two EU directives expressly dealing with CSR reporting — (i) Directive 2013/34/EU of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of certain types of undertakings as amended by Directive 2014/95/EU and also Council Directive 2014/102/EU (“Directive 2013/34”) and (ii) Direc-

⁶² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶³ BALCERZAK, Adam.P. Technological Potential of European Economy. Proposition of Measurement with Application of Multiple Criteria Decision Analysis. *Montenegrin Journal of Economics*, 2016, 12(3): 7–17. ISSN 1800-5845. DOI: 10.14254/18005845.2016/12-3/1.

⁶⁴ BALCERZAK, Adam P. Europe 2020 Strategy and Structural Diversity Between Old and New Member States. Application of Zero Unitarization Method for Dynamic Analysis in the Years 2004–2013. *Economics & Sociology*, 2015, 8(2): 190–210. ISSN 2306-3459. DOI: 10.14254/2071-789X.2015/8-2/14.

⁶⁵ VOKOUN, Marek. (2017). Characteristic of the innovation activities of firms in Europe: a critical review of international differences. *Review of Economic Perspectives: Národohospodářský obzor*, 2017, 17(3): 239–262. ISSN 1804-1663. DOI: 10.1515/revcep-2017-0013.

⁶⁶ MAŁECKA, Joanna et al. Economic Activity and Social Determinants Versus Entrepreneurship in SMEs: Selected Aspects. *Copernican Journal of Finance & Accounting*, 2017, 6(3): 47–61. ISSN 2300-3065. DOI: 10.12775/CJFA.2017.016.

⁶⁷ ŠEBESTOVÁ, Jarmila et al. “Be or Not to Be”: A Dilemma of Business Policy Support on a Regional Level. *Central European Business Review*, 2018, 7(1): 3–13. ISSN 1805-4862. DOI: 10.18267/j.cebr.192.

⁶⁸ MATUSZAK, Łukasz & RÓŻAŃSKA, Ewa. CSR Disclosure in Polish-Listed Companies in the Light of Directive 2014/95/EU Requirements: Empirical Evidence. *Sustainability*, 2017, 9, 2304. ISSN 2071-1050. DOI: 10.3390/su9122304.

⁶⁹ MacGREGOR, Robert K. & MacGREGOR PELIKÁNOVÁ, Radka. Shareholder Engagement for Corporate Governance in the Light of the Harmonization and Transposition. *International Journal of Economics and Business Administration*, 2019, VII(4): 22–34. ISSN 2241-4754.

tive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law (“Directive 2017/1132”).⁷⁰

The first mentioned, Directive 2013/34, determines the subject of the reporting duty and the minimum extent of this reporting duty, i.e. it provides that public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year, shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity, relating to, at a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (Article 19a),⁷¹ see Table 1.

However, the Directive 2013/34 is a directive and needs to be transposed in national laws. For example, in the Czech Republic, the Act No. 89/2012, Coll., new Civil Code as substantive *lex generalis* provides for the registration of legal entities into a public register (Article 120) and also regulates annual reports and the structure of financial statements (Article 416). Regarding procedural and formal aspects, there needs to be explored *lex specialis*, Act No. 304/2013 Coll., on public registries of legal and natural persons, which provides that the public registries are maintained electronically (Article 1) by courts (Article 2), that all companies and corporations need to be registered in the Commercial register (Article 42) and that the e-publication of annual reports occurs via a so-called Collection of documents. (Article 66 et foll.). The Commercial Registry, along with the Collection of documents, is maintained by the Regional court of the seat of the business (Article 75 et foll.). Another *lex specialis*, Act No. 563/1991 Coll., on accounting (“Czech Accounting Act”), provides legal and technical requirements regarding the format and content of these financial statements. The Czech Accounting Act has been amended 12 times and it implements, among other items, Directive 2013/34 and uses almost all options for simplifications or exemptions allowed by this Directive to reduce the administrative burden for SMEs.⁷²

⁷⁰ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

⁷¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷² BUŠOVÁ, Anna et al. Will the Czech accounting entities benefit from the Directive 2013/34/EU? *Procedia Social and Behavioral Sciences*, 2016, 220, 79–84. ISSN 1877-0428. DOI: 10.1016/j.sbspro.2016.05.471.

Table 1.
Selected key provisions CSR reporting: Directive 2013/34 (consolidated version)

| | |
|--|---|
| Article 1 Scope | <p><i>1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of undertakings listed: (a) in Annex I</i></p> |
| Article 2 Definitions | <p><i>For the purposes of this Directive, the following definitions shall apply:</i></p> <p><i>(1) 'public-interest entities' means undertakings within the scope of Article 1 which are:</i></p> <p><i>(a) governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member ...;</i></p> <p><i>(b) credit institutions as defined in point (1) of Article 4 of Directive 2006/48/EC ...;</i></p> <p><i>(c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC ...; or</i></p> <p><i>(d) designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;</i></p> |
| Article 19 Management report | <p><i>1. The management report shall include a fair review of the development and performance of the undertaking's business and of its position, together with a description of the principal risks and uncertainties that it faces.</i></p> |
| Article 19a Non-financial statement | <p><i>1. Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:</i></p> <p><i>(a) a brief description of the undertaking's business model;</i></p> <p><i>(b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;</i></p> <p><i>(c) the outcome of those policies;</i></p> <p><i>(d) the principal risks related to those matters linked to the undertaking's...;</i></p> <p><i>(e) non-financial key performance indicators relevant to the particular business.</i></p> |
| Annex I Types of undertaking... | <p>– <i>the Czech Republic: společnost s ručením omezeným, akciová společnost;</i></p> <p>– <i>Germany: die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;</i></p> |

Source: Own processing by the Author.

The Czech Accounting Act today regulates the compulsory content of final accounts, i.e. financial statements, in the largest sense (Article 18 et foll.), which, except for micro accounting units, needs to be verified by a public auditor and includes annual reports (Article 21). In addition, it provides for the compulsory publication of these documents (Article 21a) for all entities

that are registered in public registries. However, the definition of the compulsory content of the annual report mentions the CSR very briefly, namely about R&D, environmental protection and employment relationship, without going into further details (Article 21). Consequently, basically all Czech companies, regardless whether listed or not listed, big or SMEs (except micro accounting units with activities under CZK 40 mil., annual turnover under CZK 80 mil. and less than 50 employees), have the duty to file their annual reports with the Commercial Registry for the e-publication which is materialized by uploading the pdf in the subsection of the domain justice.cz and possibly migrated to eJustice and BRIS.

Table 2.

Comparison of CSR reporting categories: Directive 2013/34 v. Czech Accounting Act

| Article 19a Non-financial statement Directive 2013/34 | Article 21 Czech Accounting Act |
|---|--|
| <p>1. Large undertakings shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.</p> | <p>(2) An annual report must include At least financial and non-financial information about ... c) R&D activities, ... e) activities in the field of environment protection and employment relationship....</p> |

Source: Own processing by the Author.

Therefore, it might be proposed that the combined list of the CSR categories is as follows:

- environment protection;
- employee matters;
- social matters and community concerns;
- respect for human rights;
- anti-corruption and bribery matters;
- R&D activities.

Naturally these six CSR categories are reflections of the three pillars sustainability structure, and thus, based on the previous studies⁷³, along with the Dow Jones Sustainability World Index, a preliminary comparative table can be structured as indicated in the following table 3. The common denominator for all

⁷³ TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

pillars and categories, except the financial performance, is that businesses do not have sufficient inherent and direct incentives to go for them.⁷⁴

Table 3.
Sustainability v. CSR

| Sustainability: pillars with key indices | CSR: categories with the highest relevancy |
|---|--|
| economic | – environment protection |
| – financial performance | – employee matters |
| – firm’s value | – social matters |
| – productivity | – ... |
| – product differentiation | – ... |
| – investors’ attraction | – R&D activities |
| – cost of capital | |
| environmental | – environment protection |
| – resource use | – ... |
| – emission and pollution reduction | – social matters and communities’ concerns |
| – innovations | – ... |
| | – ... |
| | – R&D activities |
| social | – ... |
| – social performance | – employee matters |
| – relationship and engagement with stakeholders | – social matters and community concerns |
| – retention of human resources | – respect for human rights |
| – workforce score | – anti-corruption and bribery matters |
| – human right score | – |
| – product responsibility score | |

Source: Own processing by the Author.

The second mentioned Directive 2017 determines the form with which to satisfy the reporting duty, i.e. it specifies that reporting needs to be published electronically and that these digital reports are to be made available via the system of the interconnection of national business registers and the access fees must not exceed administrative costs. The manner of this digital publication via the EU platform, BRIS eJustice.eu, is set by the Commission Implementing Regulation (EU) 2015/884 of 8 June 2015 establishing technical specifications and procedures required for the system of interconnection of registers established by Directive 2009/101/EC of the European Parliament and of the Councils. Consequently, the CSR reports are perceived almost as information

⁷⁴ GILLAI, Barchi et al. Managing Supply Chain Sustainability and Intellectual Property: Are They More Similar than Different? *Stanford Initiative for the Study of Supply Chain Responsibility*, March 2014.

in the public sphere, i.e. public good, which leads neither to rivalry nor to excludability.⁷⁵ Theoretically, they should support and reward business ethics⁷⁶ and ultimately increase the fairness of the competition.⁷⁷ However, the practice reveals dramatic differences between jurisdictions and industries in their satisfaction of this reporting duty.⁷⁸ This leads ultimately to an information asymmetry, see the perfectly free, open and complete data search regarding the UK, Danish and Czech businesses and the byzantine, complicated and often impossible data search regarding Spanish or Greek businesses.⁷⁹

The CSR is an area where tensions and paradoxes are paramount and where various sustainable objectives, such as environmental protection and social well-being, conflict.⁸⁰ This leads to the information asymmetry, especially vis-à-vis consumers open to having their purchasing choices influenced by CSR data.⁸¹ Several studies, including German, French and Czech ones, have already established that subjects, including businesses and their employees,⁸² are very sensitive regarding the asymmetry of information in this respect⁸³ and demand freely available CSR information in an appropriate quantity and quality, i.e. about all CSR categories — about social, environmental, human resources, R&D,

⁷⁵ CZYŻEWSKI, Bazyli, POLCYN, Jan, HNATYSZYN-DZIKOWSKA, Anna. Concept for Measuring the Efficiency of Public Goods Provision Based on the Education Sector in Poland, *Ekonomický časopis*, 2016, 64(10): 973–993. ISSN 0013-3035.

⁷⁶ SROKA, Włodzimierz & SZÁNTÓ, Richard. Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results. *Journal of Entrepreneurship, Management and Innovation*, 2018, 14, 111–126. ISSN 2299-7075. DOI: 10.7341/20181435.

⁷⁷ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷⁸ PAKŠIOVÁ, Renáta. CSR reporting in Slovakia. In: *Proceedings of the 3rd international conference on european integration 2016*. Ostrava: VŠB Technical University of Ostrava, pp. 698–707. ISBN 978-80-248-3911-0.

⁷⁹ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. European e-Justice Portal: Reality of Electronic One-Stop-Shop for Publication of Financial Statements in the EU. In: Jindřichovská, Irena; Kubičková, Dana. *Conference: 5th International Scientific Conference on IFRS: Global Rules and Local Use*. Anglo Amer Univ, Prague, 2017, pp. 98–111.

⁸⁰ HAHN, Tobias, FIGGE, Frank, PINKSE, Jonatan, PREUSS, Lutz. A Paradox Perspective on Corporate Sustainability: Descriptive, Instrumental, and Normative Aspects. *Journal of Business Ethics*, 2018 148(2): 235–248. ISSN 0167-4544. DOI: 10.1007/s10551-017-3587-2.

⁸¹ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. Corporate Social Responsibility e-Reporting as a tool for (Un)fair competition in the EU. In LÖSTER, Tomáš, PAVELKA, Tomáš (Eds.). *Conference Proceedings. The 12th International Days of Statistics and Economics*, September 6–8, 2018, Prague, CZ, pp. 1112–1122 of 2063. ISBN 978-80-87990-14-8.

⁸² BODE, Christiane & SINGH, Jasjit. Taking a hit to save the world? Employee participation in a corporate social initiative. *Strategic Management Journal*, 2018, 39(4): 1003–1030. ISSN 0143-2095. DOI: 10.1002/smj.2762.

⁸³ ŠPETLÍK, Václav. Economic Impact of the European Union and its Perception by Society in the Czech Republic. In: *The 11th International Days of Statistics and Economics (MSED 2017)* [online]. Prague, 14.09.2017–16.09.2017, pp. 1644–1652.

etc. aspects.⁸⁴ This needs to be further appreciated in the light of the General Data Protection Regulation (EU) 2016/679 (“GDPR”), which came to clarify existing rights and obligations while introducing changes to improve compliance and enforcement and which must be interpreted in the light of the EU constitutional triad, especially the Charter rights to privacy and data protection.⁸⁵

Consequently, CSR reports and reporting are critical if businesses want to be successful in all three pillars, i.e. environmental and social spendings needs to be done in a proper manner and the information about it needs to be transparent and public. As stated above, businesses need to select CSR activities matching expectations and/or active approval of other stakeholders, involve their employees⁸⁶ and these stakeholders must learn about it, e.g. via reporting. CSR principles are demonstrations of moral obligations of the given business towards the entire society and this goes way beyond the mere concept of profit maximization.⁸⁷ The selection of CSR categories for each business needs to be done ad hoc while keeping in mind all stakeholder’s interests and to be conveyed to them, so the financial performance is not crippled⁸⁸ or undermined by activities and efforts perceived by stakeholders as waste. Spending more on CSR and reporting more about it does not imply automatically that the financial performance is improving.⁸⁹ Indeed, several studies especially involving businesses from Central Europe, has revealed that there is a very little, if any, influence between financial indicators and sustainable development indicators.⁹⁰ An effective and efficient reporting about effective and efficient CSR is pivotal for both the competitive advantage of the given business as well as the sustainability in general.

Finally, it must be underlined that the UN Agenda 2030 with its 17 SDGs and 169 associated targets has been welcomed by the EU and that the EU

⁸⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁸⁵ COSTA-CABRAL, Francisco & LYSNSKEY, Orla. Family ties: the intersection between data protection and competition in EU Law. *Common Market Law Review*, 2017, 54(1): 11–50. ISSN 0165-0750.

⁸⁶ KŘEČKOVÁ KROUPOVÁ, Zuzana. The Latest Trends in the Corporate Sustainability and its Implications for Czech Businesses. *Central European Business Review*, 2015, 4(2): 12–20. ISSN 1805-4862.

⁸⁷ BERMAN, Shawn L. et al. Does stakeholder orientation matter? The relationship between stakeholder management models and firm financial performance. *The Academy of Management Journal*, 1999, 42, 488–506. ISSN 0001-4273.

⁸⁸ ROWLEY, Tim & BERMAN, Shawn. A brand new brand of corporate social performance. *Business & Society*, 2000, 39(4): 397–418. ISSN 0007-6503. DOI: 10.1177/000765030003900404.

⁸⁹ STROUHAL, Jiří et al. Finding th Link Between CSR Reporting and Corporate Financial Performance: Evidence on Czech and Estonian Listed Companies. *Central European Business Review*, 2015, 4(3): 48–59. ISSN 1805-4854.

⁹⁰ MOLDOVAN (GAVRIL), Ioana Andrada. Does the Financial System Promote Sustainable Development? Evidence from Eastern European Countries. *Central European Business Review*, 2015, 4(2): 40–47. ISSN 1805-4854.

has committed to implement these SDGs both in its internal and external policies, see the European Consensus on Development presented in June 2016 by the High Representative and the 2017/C 210/01 Joint Statement by the Council and the representative of governments of the Member States meeting with the Council, the European Parliament and the Commission as of 30 June 2017 (“European Consensus”). Pursuant to the European Consensus “The EU and its Member States are committed to a life of dignity for all that reconciles economic prosperity and efficiency, peaceful societies, social inclusion and environmental responsibility. In doing so, efforts will be targeted towards eradicating poverty, reducing vulnerabilities and addressing inequalities to ensure that no-one is left behind. By contributing to the achievement of the 2030 Agenda, the EU and its Member States will also foster a stronger and more sustainable, inclusive, secure and prosperous Europe.” In 2019, the new president of the European Commission, Ursula von der Leyen, issued a declaration “A Union that strives for more: My agenda for Europe — Political Guidelines for the next European Commission 2019–2024” which includes six truly sustainability and CSR inspiring headline ambitions for Europe over the next five years and well beyond: A European Green Deal, An economy that works for people, A Europe fit for the digital age, Protecting our European way of life, A stronger Europe in the world, and A new push for European democracy.⁹¹ This enthusiastic tenor from above will have to deal with a less positive CSR attitude from the bottom, i.e. the European Business Network for Corporate Social Responsibility (“CSR Europe”) informs that the full integration of SDGs into business planning has a long way to go.⁹² High expectations are logically on those able “to afford” CSR and at the same time desperately needing a good (brand) image, i.e. on the financial⁹³ and luxury⁹⁴ industry. Financial industry deals with monetary and other financial instruments with generally a high functionality while luxury industry deals with rare aesthetics and/or sophisticated heritage products⁹⁵ marked by top brands and often having a low functionality. Indeed,

⁹¹ LEYEN, Ursula von der. *Union that strives for more: My agenda for Europe: Political Guidelines for the next European Commission 2019–2024*. 19 July 2019. Available at https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

⁹² OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies’ Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

⁹³ MOLDOVAN (GAVRIL), Ioana Andrada. Does the Financial System Promote Sustainable Development? Evidence from Eastern European Countries. *Central European Business Review*, 2015, 4(2): 40–47. ISSN 1805-4854.

⁹⁴ OLŠANOVÁ, Květa; GOOK, Gina & ZLATIC, Marija. Influence of Luxury Companies’ Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

⁹⁵ DUBOIS, Bernard & PATERNAULT, Claire. Observations: understanding the world of international luxury brands. *Journal of Advertising Research*, 1995, 35(4): 69–76. ISSN 0021-8499.

in this segment, it might be expected at least a CSR grasp, or even CSR cultural embedment.⁹⁶

⁹⁶ OLŠANOVÁ, Květa; GOOK, Gina & ZLATIĆ, Marija. Influence of Luxury Companies' Corporate Social Responsibility Activities on Consumer Purchase Intention: Development of Theoretical Framework. *Central European Business Review*, 2018, 7(3): 1–25. ISSN 1805-4862.

Chapter 3

European unfair competition law: protection against unfair commercial practices via UCPD

Competition is one of Western Christian civilization's sacred words, where, already in Ancient Greece and Rome, competition was considered to be a part of the culture and legal tradition.¹ Competition in the context of capitalism, and capitalism is a uniquely Christian creation.² Begun as a business model by Catholic monks at the start of the ninth century to ensure not just the economic security, but as well the growth of their monastic properties, its idea of funds having the capacity to return income tremendously influenced those around them, particularly in the relatively open Italian city states.³ Since the turn of the 20th century the existence of competition became the object *per se* of a special law branch, the antimonopoly and antitrust law, while the way how competition was played-out became the object of other law branches, such as the unfair competition law or even the intellectual property law. Later on, consumer protection law, torts, etc., entered into the picture. The modern competition law in the large term consists of two key branches — (i) the antimonopoly law and antitrust law classified as the Public Law and (ii) the law against unfair competition, which is classified as the Private Law. The categorization of the former branch, the antimonopoly and antitrust law, in the public law category is founded due to many reasons, including the public interest in the existence

¹ De VREY, Rogier W. *Towards a European Unfair Competition Law*. Utrecht: Martinus Nijhoff Publishers, 2006, 380 p. ISBN 90-04-15040-4.

² STARK, Rodney. *The Victory of Reason*. New York: Random House. 2005. ISBN 0-8129-7233-3.

³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

of economic competition and the constitutional dimension of economic freedoms.⁴ Although all European states and jurisdictions have followed this basic legal categorization, they maintain their national particularities, often linked to the be belonging to the continental or common law tradition.⁵

The modern European integration is inseparably linked to the single internal market and competition in it. Quantitatively, this competition needs to be protected as such by a battery of various policies and Public law provisions from the antimonopoly and anticartel law. Qualitatively, the interplay of this competition is to be protected by Private law instruments against unfair competition and especially against unfair commercial practices. The competitiveness is fundamental and should not be deformed by selfishness and various attempts to destroy it or to make it unfair. The competitiveness and the existence of a fair played competition should mutually support the modern European integration and prevent crises.⁶ The EU and EU law with its doctrines are aware about it, passed the Rubicon and decided to protect competition on both levels,⁷ i.e. the existence of the competition by Regulations and the fairness by Directives. In addition, all EU member states are historically members of the Paris Union and, consequently Article10bis of the Paris Convention for the Protection of Industrial Property about the protection against unfair competition applies to them.⁸

Both levels were covered by the original foundation treaties, but of course the protection of the existence of the competition, as expressed by the EU competition policy, as such was more at the center of the attention and the just planted seeds of EU unfair competition law were closely related to the prohibition.⁹ Already, the original European communities were aware that abusive monopoly dominance and cartels are omnipresent, destructive, that they are only seldom legitimate, barely detectable, that they end up increasing prices by anywhere from 15–25%, driving away competitors, meanwhile reducing the number of jobs, true competitiveness, the GDP and the income in the state/

⁴ CHIRITA, Anca D. A legal historic review of the EU competition rules. *International and comparative law Quarterly*, 2014, 63(2): 281–316. ISSN 0020-5893.

⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷ MacGREGOR PELIKÁNOVÁ, Radka, MacGREGOR, Robert. General doctrines and principles of EU law and their impact on domain names. *AA Law Forum*, 2015, 6, 29–45. ISSN 1804-1094.

⁸ THÜNKEN, Alexander. Multi-State Advertising over the Internet and the Private International Law of Unfair Competition. *The International and Comparative Law Quarterly*, 2002, 51(4): 909–942. ISSN 0020-58-93.

⁹ CHIRITA, Anca D. A legal-historical review of the EU competition rules. *International and comparative law quarterly*, 2014, 63(2): 281–316. ISSN: 0020-5893 (Print), 1471-6895 (Online).

European budget.¹⁰ Hence the focus became centered more upon the Public Law branch of the competition law, the antimonopoly and antitrust law, than the private law and thus the post-war transfer of competition law from the USA to Europe led to a European acceptance of bureaucratic interventions regarding antimonopoly and antitrust issues into the marketplace to promote social welfare,¹¹ along with integration objectives.¹² During several decades, the Private law branch of the competition law cannot be said to have been at the center, a focus, of the European attention and thus neither the transferring of the American tort law¹³ nor other full harmonization in regard to unfair competition occurred. In sum, traditionally, the monopolistic abuse of the dominance and of cartels fitting in the *object box*¹⁴ has been considered much more pernicious and the battle against behaviors having for the object the restriction of competition,¹⁵ i.e. antimonopoly and antitrust law, has remained at the very heart of the EU competition law.¹⁶

In addition to these Public Law concerns related to monopolist, cartelist practices, and state aids practices, there are very strong concerns regarding the daily competing and its fairness opening the venue to the technological potential of EU member states¹⁷ and European businesses, and the possibility of incremental and radical innovation openness. Indeed, the internal operation of the single internal market and competitiveness are to be protected by both the Public law and Private Law tools and methods. Competitiveness should be promoted and generated by the European single market, and European businesses should have a strong drive to be more successful than others and to outperform their competitors, and this not only on the EU level but as

¹⁰ MacGREGOR PELIKÁNOVÁ, Radka. Divergence of antitrust enforcements: where, and where not, to collude. *Antitrust: Revue of Competition Law*, 2014, 2, i–viii. ISSN 1804-1183.

¹¹ FREYER, Tony A. *Antitrust and Global Capitalism, 1930–2004*. Cambridge, UK: Cambridge University Press, 2006, 437 p. ISBN 13-978-0-521-81788-2, p. 245.

¹² MacGREGOR PELIKÁNOVÁ, Radka. The unbearable lightness of imposing e-commerce in a vertical agreement setting. *Antitrust: Revue of Competition Law*, 2015, 3, 68–76. ISSN 1804-1183.

¹³ FRANKLIN, Marc A., CARDI, Jonathan W., GREEN, Michael D. *Torts: Gilbert Law Summaries*. 24th Edition. Chicago, IL, US: West, Thomson, 2008, 546 p. ISBN 978-0314181145 and KIONKA, Edward J. *Torts in a nutshell*. 6th Edition. St. Paul, MN, US: West Publishing Co., 2015, 625 p. ISBN 978-1628105513.

¹⁴ KING, Saskia. The Object Box: Law, Policy or Myth? *European Competition Journal*, 2011, 7(2): 269–296. ISSN 1757-8396.

¹⁵ WHISH, Richard. *Competition Law*, 6th Edition, Oxford, UK: Oxford University Press, 2009, 1006 p. ISBN 978-0-19-928938-7.

¹⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹⁷ BALCERZAK, Adam P. Technological potential of European Economy. Proposition of measurement with application of multiple criteria decision analysis. *Montenegrin Journal of Economics*, 2016, 12(3): 7–17. ISSN 1800-5845. DOI: 10.14254/1800-5845.2016/123/1.

well on the global level.¹⁸ The roots of the (un)fair competition challenges go at least back to the decade of the 1980's, when the European Economic Community began to lag, in economic, IP and other matters, behind the US and other developed countries. The rebel and now leaving EU member state, the UK, realized the importance of the issue and wanted to address it. The famous no-no prime minister, Margaret Thatcher, sent Arthur Cockfield to Jacques Delors and his Commission to relaunch the, at the time fading, common market. Sir Cockfield prepared a White Paper proposing hundreds of measures to complete a single market and this became the foundation for the Single European Act in 1986, which set a deadline of 1992 for the completion of a single market. The integration was to be both positive (approximation of national laws) and negative (prohibiting discrimination) and in either case to be not over-much, rather minimum than exhaustive.¹⁹ The milestones on this journey were the Maastricht Treaty, Lisbon Treaty and of course the two top strategies for the last two decades²⁰ expecting the EU to be a top global player and pursuant to the Lisbon Agenda 2000 to have the "most competitive and dynamic knowledge-based economy in the world" (Lisbon Agenda 2000) and to have an illustrious "smart, sustainable and inclusive growth" and to achieve the world leadership position (Europe 2020). These strategies and goals were not approached by the EU in the "Constantine-like" manner,²¹ i.e. the post-Lisbon EU proceeds without recognizing that Christianity is the glue of Europe. Indeed, Christianity is the most common denominator of Europeans and their institutions. Colleges, Universities, for instance, are uniquely a Catholic invention, the first two, in Paris and Bologna, being founded early in the 1100's.²² Therefore, the current drive of the EU for competition and its fairness has arguably more positive law features than natural law features.²³

¹⁸ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

¹⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁰ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²¹ MacGREGOR PELIKÁNOVÁ, Radka. Constantine's Christianity for the (Dis)integrated EU: Déjà vu of Constantine's Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

²² STARK, Rodney. *The Rise of Christianity*. San Francisco: Harper Publishing, 1997, ISBN 0-06-067701-5.

²³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

The competition concerns go explicitly across the EU primary law, EU secondary law, EU supplementary law, and EU policies and strategies. Regarding the EU primary law, it is especially in the TEU and TFEU, while regarding the EU secondary law, competition existence concerns are covered chiefly by Regulations and fairness of the competition concerns are covered predominantly by Directives. The Public Law aspect of the competition, the protection of its existence, benefits by a unique foundation provided by the famous legislative trio from the USA, the Sherman Anti-Trust Act, the Clayton and FTC Act, but the Private Law aspect of the competition, the protection against unfair competition, has many foundations and demonstrates strong national particularities. Well, after decades of an (allegedly) excessive focus on competition (antimonopoly and antitrust) law, the EU turned its eye and attention to the fine-tuning of the protection of the daily operation of competition in the single internal market while keeping in mind consumers.²⁴

Each European jurisdiction has been dealing with unfair commercial practices, but each has followed different approaches and ultimately the resulting unfair competition law is very diverse.²⁵ Certain jurisdictions went for the protection against all unfair practices for all, while other jurisdictions provided protection only for business-to-consumer practices.

The common law tradition does not focus on the term unfair competition. Common law systems have been traditionally rather liberal, vis-à-vis a regulation and protection against unfair commercial practices, due to their rather skeptical approach to the involvement of the state power in these matters, i.e. they have not generated special rules against unfair competition and let subjects deal with it based on the closest general law provisions.²⁶ Indeed, the common law approach toward the problem of deceptive, misleading, parasitical and other similar behaviors was originally the choice between the tolerance of softer forms and criminal law punishment of harder forms.²⁷ Naturally, the grey zone between was the sphere of torts.²⁸ Typically, both intellectual property and unfair competition infringements, including e.g. false advertise-

²⁴ TESAURO, Claudio & RUSSO, Francesco. Unfair commercial practices and misleading and comparative advertising: an analysis of the harmonization of EU legislation in view of the Italian implementation of the rules. *Competition Policy International*, 2008, 4(1): 193–222. ISSN 1554-0189.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

²⁶ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

²⁷ THÜNKEN, Alexander. Multi-State Advertising over the Internet and the Private International Law of Unfair Competition. *The International and Comparative Law Quarterly*, 2002, 51(4): 909–942. ISSN 0020-58-93.

²⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

ments, were torts.²⁹ Modern common law jurisdictions generally extracted various types of the IP and IP assets from the tort category and created for them new, often statutory, categories such as trademark law and patent law, but they have not done so for problematic commercial practices. Commercial practices which are unfair and/or trespassing the private rights of other competitors are still perceived as torts and possibly as well violations of certain special IP law categories,³⁰ i.e. they go above and beyond the free riding theory. The unfair trading wrongs are covered by the general tort law and in particular of its “most protean” subpart, the law of passing off,³¹ and consequently it is hard to distinguish and speak about a special unfair competition law branch. Rules against unfair trading actions are not included in a statute, but instead they are, as is typical for torts, products of a massive case law based on the operation of the doctrine of the binding precedent. In contrast, in continental law jurisdictions, this is achieved via a legislatively set general clause with a broad invitation extended to judges to “create judiciary unfair competition essences.”³²

The continental law tradition desires to specifically protect against certain types of behavior which are considered to contravene the “honest usage” or the “*bonnos mores*” (aka *gute Sitten*) of trade.³³ They work with the term unfair competition and do recognize a special law branch called either unfair competition law or law protecting against unfair competition and do have explicit legislation about it via statutes — either general via Codes or special via *lex specialis*. Generally, these statutes prohibit unfair commercial practices if they are likely to significantly affect the interests of competition stakeholders, i.e. competitors, consumers and other participants.³⁴ Therefore, provisions regarding unfair competition are included in France in its *Code de Commerce* (“French Commercial Code”), in Germany its *Gesetz gegen den unlauteren Wettbewerb* (“German Act Against Unfair Competition”), in the Czech Republic in the Czech Commercial Code, which later on were transferred with a few rather modifi-

²⁹ JANIS, Mark D. *Trademark and Unfair Competition Law*. St. Paul: West Academic Publishing, 2013, 399 p. ISBN 978-0-314-16341-7.

³⁰ STECHER, Matthias W. *Webvertising: Unfair Competition and Trademarks on the Internet*. The Hague, NL: Kluwer law International, 1999. 267 p. ISBN 90-411-9709-9.

³¹ NG, Catherine W. The law of passing off: goodwill beyond goods. *International Review of Intellectual Property and Competition Law*, 2016, 47(7): 817–842. ISSN: 0018-9855. DOI: 10.1007/s40319-016-0510-9.

³² MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

³³ THÜNKEN, Alexander. Multi-State Advertising over the Internet and the Private International Law of Unfair Competition. *The International and Comparative Law Quarterly*, 2002, 51(4): 909–942. ISSN 0020-58-93.

³⁴ HENNING-BODEWIG, Frauke. *Unfair competition law European Union and member states*. The Hague: Kluwer Law International, 2006, 251 p. ISBN 9789041123299.

cations in the new Czech Civil Code.³⁵ Nevertheless, exceptionally there are continental law jurisdictions, such as in the Netherlands, without a specific law regulating unfair competition.³⁶ Hence, in the majority of continental law jurisdictions, there is no need to use general provisions about extra-contractual liability (continental equivalent to common law torts).³⁷ At the same time and due to the many shapes and shades of unfair competition infringement, even here judges have a certain law shaping power, see the judicial foundations of unfair competition acts and omissions,³⁸ and of course IP law provisions are relevant.³⁹ Typically, the statutes include a general clause and a demonstrative list of prohibited unfair commercial behaviors and judges do not decline this invitation to make a case law with a general applicability. Their decisions often refer not only to these statutes but as well to general principles of law,⁴⁰ values,⁴¹ and concepts at the edge between the law, philosophy and ethics, while struggling to find the ultimate answers to what is and what is not fair.⁴²

In sum, each and every EU member state's law's deal with it and provide some protection, or at least methodological and legal tools. However, this similar motivation and drive to deal with the identical problem is materialized in dramatically different manners. Common law jurisdictions took a general tort case law approach, while continental law jurisdictions oscillate between Codes and special acts to provide a foundation for their commercial practices specific case laws. On one hand, some jurisdictions (UK, IR) have systematically refused any interference of the law, regarding whether via legislation or cases, into the sphere of play on the market, unless criminal acts occur. On the other hand, there are jurisdictions with a more than 100 years long uninterrupted history of special legislation against unfair competition (GE with UWG from

³⁵ POKORNÁ, Jarmila, VEČERKOVÁ, Eva, PEKÁREK, Milan. Meritum. *Obchodní korporace a nekalá soutěž [Business Corporations and Unfair Competition]*. 1st edition. Prague. Wolters Kluwer, 2015, 636 p. ISBN 978-80-7478-4.

³⁶ GIELEN, Charles et al. *Kort begrip van het intellectuele eigendom*. Deventer: Kluwer, 2007. ISBN 9789013141351.

³⁷ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁸ HAJN, Petr. *Právníkovy Fejetony aneb PF [Lawyer's Feuilletons aka PF]*. Prague, Czech Republic: C. H. Beck, 2007, 262 p. ISBN 978-80-7179-660-2.

³⁹ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁴⁰ MacGREGOR PELIKÁNOVÁ, Radka. Co mohou o základních zásadách občanského zákoníku naznačovat dva judikáty o průmyslovém vlastnictví? [Two Decisions on Industrial Property: What Can They Tell Us about the Fundamental Principles of the Civil Code?] *Rekodifikace & Praxe*, 2015, III(11): 23–26. ISSN 1805-6822.

⁴¹ MÁLOVICS, Éva. Appearance of entrepreneurial values and strategic orientations in the basic values. *International Journal of Business and Management*, 2013, III(1): 18–35. ISSN 1833-3850.

⁴² MacGREGOR PELIKÁNOVÁ, Radka & ČISAŘOVÁ, Jarmila. An overview of the concept of good morals in Czech Codices. *AA Law Forum*, 2014, 3–12. ISSN 1804-1094.

1896). Hence the general principle of fair trading, especially fair trading in business-to-consumer relations, has not been fully established in 20th century Europe.⁴³

The EU decided to harmonize the unfair competition law across the EU but without engaging in a deeper discussion about such strategies and without recognizing probably the only common tradition point, Christianity and its integration potential.⁴⁴ In particular, the European Commission does not fully appreciate the existing differences⁴⁵ and wants to bridge different perceptions and approaches to “evil” commercial practices and uses for it a directive labeled “Unfair Commercial Practice Unfair Commercial Practices Directive” or “UCPD”, while ironically (but fully logically due to the legal historical context) the concept of (un)fair competition and (un)fair practices is unknown to common law jurisdictions.⁴⁶ Legal scientists, especially from the continental law family, IP and other experts do not approve such mixing of IP, consumer protection, competition and unfair competition regimes.⁴⁷ However, their disapproval cannot change the obvious fact that the EU, by the operation of the UCPD, basically replaced previously existing diverse national regimes with one set of rules based on the principle of the full aka maximum harmonization and that the EU has not made the same move regarding the other part of the consumer law, i.e. the EU left the consumer contract law rather non-harmonized.⁴⁸

The journey to the UCPD and the current regime of EU unfair competition law, in particular the EU law against unfair commercial practices, started almost a half century ago and was paved by three milestones — three fundamental Directives: Council Directive 84/450/EEC on approximation laws of the Member States concerning misleading advertising (“Directive 84/450”), Directive 2006/114/EC concerning misleading and comparative advertising (“Directive 2006/114”) and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“Directive 2005/29” aka “UCPD”). Hence, in order to understand and appreciate the purpose(s)

⁴³ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁴⁴ MacGREGOR PELIKÁNOVÁ, Radka. Constantine’s Christianity for the (Dis)integrated EU: Déjà vu of Constantine’s Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

⁴⁵ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁴⁶ MacGREGOR PELIKÁNOVÁ, Radka. Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries. *Oeconomia Copernicana*, 2019, 10(2), 239–252. ISSN 2083-1277. DOI: 10.24136/oc.2019.012.

⁴⁷ CHRONOPOULOS, Apostolos. Legal and economic arguments for the protection of advertising value through trade mark law. *Queen Mary Journal of Intellectual Property*, 2014, 4(4): 256–276. ISSN 2045-9815. DOI: 10.4337/qmjip.2014.04.01.

⁴⁸ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

of the UCPD, its precursor Directive 84/450/ECC and its parallel Directive 2006/14 needs to be analyzed.

The Directive 84/450 was a piece of secondary EU law reflecting primary EU law, established by EU member states, *masters of the treaties*, and was strongly shaped by events and issues in the 1980s. Its fundamentals and wording reflected the internal pro-integration drive of the Commission enjoying the support of the ECJ. Oil, energy and other crises in the 1970s were extremely challenging for the European integration and the prosperity parabola drawn by the Welfare State in the European countries had begun its declining phase. The Commission of Gaston Thorn desperately tried in 1981–1985 to overcome this crisis period and was ultimately replaced by the Commission of Jacques Delors.⁴⁹ Certainly, Thorn's Commission faced crises and issues, including British vetoing power over the Community budget, but still managed to prepare the Single European Act and, among else, the Directive 84/450. Indeed, the Directive 84/450 was an outcome of a Commission fighting for integration in difficult times and that the pragmatism and political will superseded strict legal theories and perfect delimitation of competencies and branches. This logical and can-do approach may seem *prima facie* positive, but at the same time it brings seeds of imperfection and confusion which over time have grown to be unclear, if not misleading, rules on misleading advertising in the EU.⁵⁰ It can be argued that the goal and leitmotif of the Directive 84/450 consists of a protection triad — (i) protecting consumers, (ii) business and trade persons, and (iii) the interests of the public. The burning question emerges immediately — is this possible? Or to put it more precisely — are these interests and protections reconcilable?⁵¹ Conceptually as well as regarding the key criterion, the Directive 84/450 appears as a step into the unknown. Naturally, the future was to indicate if this step was done in the right direction.⁵² As a matter of fact, Directive 84/450 was a special harmonization endeavor done in parallel to the development of the general EU unfair competition law. Consequently, Directive 84/450 has a limited scope (misleading advertising), establishes merely a narrow law

⁴⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁰ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁵¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵² MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

framework and functions as an instrument of minimal harmonization.⁵³ At the same time, it must be underlined that the *prima facie* humble looking Directive 84/450 is a pioneering EU legislative outcome, because it introduces for the very first time the universal idea of the ephemeral philosophical concept, the fairness, in the EU context of the competition.⁵⁴ This needs to be appreciated while taking into account that exactly in the same time, the influential and partially controversial teaching about the Justice as Fairness emerged proposing that the justice covers the principles of liberty and equality, including fair equality of opportunity and the difference principle.⁵⁵ It can be argued that in this respect, we return to the Aristotle's discourse about fairness in distribution and rectification. Public law goes rather with the distributive justice with an arithmetical form assuming that all law subjects are equal and consequently should get and hold equal shares, while private law goes rather with corrective justice with a geometric form accepting that law subjects are different, i.e. persons are unequal and receive unequal shares.⁵⁶ The sphere of the protection against unfair competition, specifically against unfair commercial practices is at their intersection. The Directive 84/450 launched the process of balancing and compromising between these two lines and this ongoing process has been continuing until now, having for its milestone Directive 97/55/EC on comparative advertising amending the Directive 84/450, UCPD, and the Directive 2006/114.

Directive 2006/114 came after twenty years and it was again during difficult times for modern European integration. It unifies Directive 84/450 and Directive 97/55/EC while considering UCPD. As a matter of fact, it was the era of constitutional crisis due to the aborted attempt to ratify the already signed Treaty establishing a Constitution for Europe by referenda in the Netherlands and even in France. The Prodi Commission was replaced by the Barroso Commission which brought Bolkestein Directive, the REACH directive, and also Directive 2006/114/EC and UCPD. Although the Directive 2006/114 expressly repealed Directive 84/450, no dramatic change occurred. Indeed, the used term "repeal" is rather misleading, because a comparison of the wording of Directive 84/450 and Directive 2006/114/EC reveals strong similarities and the preamble differs only in the use of "internal market" instead of "within common market". Both Article 7 of Directive 84/450 and Article 8 of Directive 2006/114 stipulate in favor of the optional national stronger protection,

⁵³ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁵⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁵ RAWLS, John. *Justice as Fairness: Political not Metaphysical*. *Philosophy and Public Affairs*, 1985, 14, 223–51.

⁵⁶ WARD, Ann. *Justice as Economics in Aristotle's Nicomachean Ethics*. *Canadian Political Science Review*, 2010, 4, 1–11.

naturally along with the differently stated objectives, i.e. purposes (protection of consumers, traders, general public v. protection of traders and competitors). Consequently, the transposition exceeding the minimal requirements and consequently increasing regulatory burdens is permissible.⁵⁷ In addition, it needs to be emphasized that, today, Directive 2006/114 applies exclusively to business-to-business relations and is a legal instrument to protect traders against misleading advertising orchestrated and/or beneficial for other traders.⁵⁸ Further, it appears that Directive 2006/114 represents a shift from the consumer protection law branch to the unfair competition law, which left the definition of the consumer, perhaps average consumer, to judiciaries, i.e. pushed it into the case law sphere.⁵⁹

Directive 2005/29 aka UCPD is a product of complicated political and legislative processes and procedures between 2000 and 2005 which necessarily overlapped with endeavors leading to the Directive 2006/114. Preparatory works from that era revealed massive differences between EU member states approaches to (un)fair commercial practices and culminated in the division of all EU jurisdictions in three groups. The first group consisted of common law jurisdictions (UK, IR) rejecting the unfair competition law as a branch of law per se and reducing the protection against unfair commercial practices to torts. The second group consisted of continental law jurisdictions recognizing the general principle of fair trading and the need to protect it via provisions included in general private codes, such as the Civil Code (FR, IT, NL). The third group consisted of continental law jurisdictions having directly a *lex specialis* providing protection against unfair competition (AT, EE, GE).⁶⁰ Logically, the Green Paper, proposal of the UCPD and the resulting UCPD were and are compromising solutions inevitably planting seeds of objections and resistance regarding certain aspects and provisions of the UCPD by certain jurisdictions.⁶¹ Clearly, the UCPD is marked by a myriad of hardly reconcilable objectives and by some not fully clear concepts, such as the average consumer test. Indeed, the notion of “average consumer” remains controversial and partially absurd, because in the reality there is no average consumer, just individual consumers each with his or

⁵⁷ KRÁL, Richard. On the Gold-Plating in the Czech Transposition Context. *The Lawyer Quarterly*, 2015, 4: 300–307. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁵⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁹ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁶⁰ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁶¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

her preferences, attention capacity, awareness readiness, information reach, etc. In addition, using averages requires a clear definition of the population or variable range from which the average (or whatever other statistical concept) is drawn⁶²... and UCPD does not provide a clear answer to that.

The transposition deadline for the UCPD was in 2007, i.e. the Czech law had to be brought to compliance by then. Already way before the UCPD, the Czech national law had developed a co-existence of several law regimes addressing unfair commercial practices. In addition to the consumer protection law, consumers are participants in the market, benefit by the law protecting against unfair competition and even have the active legitimacy for the protection against unfair competition.⁶³ The protection against unfair competition was traditionally included in Act. 513/1991 Coll., Czech Commercial Code (“Czech Commercial Code”),⁶⁴ but the massive Czech private law re-codification led to the abolishment of the Czech Commercial Code and issuance of a new big Czech Act No. 89/2012 Coll., Civil Code (“Czech Civil Code”)⁶⁵ which includes as well norms on the protection against unfair competition. The general provision of Article 2976 of the Czech Civil Code sets a trio of conditions to classify a certain behavior as unfair practice — (i) behavior of competitors, (ii) in breach of *bonnes mores*, AKA good morals, of competition and (iii) capable to cause damage to other competitors or consumers. Hence, the protection against unfair competition is the first possibility for private protection against misleading advertising performed via spam⁶⁶ and other types and methods as suitable.⁶⁷ Interestingly, Act. 2976 of the Czech Civil Code, which defines the common features of unfair competition behavior and provides a demonstrative list of the unfair competition practices, has basically taken over the regulation previously included in the Czech Commercial Code. The only exceptions are the provision regarding misleading and comparative advertising and the pro-

⁶² GOMÉZ POMAR, Fernando. The Unfair Commercial Practices Directive: A Law and Economics Perspective. *InDret*, 2006, 330.

⁶³ TELEČEK, Ivo. Duševní vlastnictví a ochrana spotřebitele. *Právní rozhledy*, 2012, 18, 619.

⁶⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶⁵ MacGREGOR PELIKÁNOVÁ, Radka, ČÍSAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁶⁶ MATEJKA, Ján. Anti-Spam Legislation in Consideration of Personal Data Protection and Other Legal Instruments. *The Lawyer Quarterly*, 2016, 2, 90–114. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁶⁷ MacGREGOR PELIKÁNOVÁ, Radka, ČÍSAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

vision regarding inadequate annoyance.⁶⁸ Regarding comparative advertising, it needs to be emphasized that the Czech national law traditionally prohibited it, but, due to the full harmonization by Directive 2006/114, has dramatically changed and a comparative advertising satisfying strict criteria and meeting set conditions is admissible. Consequently, a comparative advertising comparing fundamental, significant, verifiable and character features without being misleading is perceived as a legitimate instrument for the information of a consumer and thus rightly serves the consumer's interest.⁶⁹ Interestingly, despite conceptual similarities, the UCPD has been referred to by over seventy Czech national legislative novelization measures. Perhaps the most important of them were legislative measures updating Czech Act No. 634/1992 Coll., on consumer protection ("Czech Consumer Protection Act") and of course the Czech Civil Code. It is worthy to be mentioned that the UCPD is founded upon the concept of the average consumer and the behavior of the "average consumer," while the Czech Consumer Protection Act omits the word "average" and mentions merely "consumer." Specifically, Article 4 of the Czech Consumer Protection Act states "...the commercial practice is unfair, if it is in contradiction of the requirement of the professional care and fundamentally disturbs and is able to disturb the economic behavior of a consumer, to whom is designated or who is exposed to its effect, in relation to a product or service. If this commercial practice is aimed at a certain group of consumers, then it is assessed according to an average member of that group." Skipping the word "average" in relation to a consumer plants the seeds of uncertainty and it is unclear what is the intent of the Czech legislature and ultimately the legal meaning of the Czech Consumer Protection Act.⁷⁰ Indeed, it is ambiguous whether the Czech Consumer Protection Act perceives each individual consumer as the average consumer or not.⁷¹ The Explanatory Report to this Act describes "the consumer as an on average reasonable person, who has sufficient information and is to a reasonable extent attentive and vigilant considering social, cultural and language fac-

⁶⁸ ELIÁŠ, Karel et al. *Nový občanský zákoník s aktualizovanou důvodovou zprávou*. Ostrava: Sagit, 2012, 1053 s. ISBN: 978-80-7208-922-2.

⁶⁹ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁷⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷¹ ČECH, Petr. Nedotažená revoluce v právní úpravě nekalých obchodních praktik. *Právní zpravodaj*, 2008, 3, 1. ISSN 1212-8694.

tors.”⁷² Nevertheless, the legal regulation of unfair competition is considered to be a relatively stable part of the Czech Private Law.⁷³

Indeed, until the arrival of the UCPD which prohibits (only!) unfair business-to-consumer commercial practices (Article 3 and 5), no general harmonization or reconciliation of the laws against unfair competition, except certain advertisements and marketing rules, were in the EU. Indeed, the level and object of protection against unfair competition has varied and still varies significantly across the EU and is inclined to be autonomous.⁷⁴ Therefore, the UCPD came in the picture as the overlap of the EU competition and EU consumer protection law, i.e. the competition law consists of antimonopoly/antitrust law and unfair competition law and the consumer law consists of the law on unfair commercial practices and consumer contract law,⁷⁵ which has been consistently done and approached differently by EU jurisdictions. To put it more clearly, the UCPD is the most Private Law part of the EU competition law and the most Public Law part of the EU consumer law which is understood in a very diverse manner across the EU.⁷⁶ It is an ambitious legislative instrument, addressing unfair commercial practices under the auspices of the consumer protection law branch,⁷⁷ while attempting to achieve objectives of consumer protection as well as competition protection in the sense of the protection of the European integration, based on the single internal market.⁷⁸ Well, the EU law goes here for the full harmonization and since *iura novit curia*, judges must interpret and apply the UCPD and judges from the CJ EU have to be the top experts and authorities in this respect.⁷⁹ And these experts, along with a number of preliminary rulings, moved as well to issuance of sanctions based on direct actions, such as in *C-421/12 European Commission v. Belgium*, where the CJ EU stated that

⁷² CZECH GOVERNMENT. Důvodová zpráva k zákonu č. 634/1992 Sb., o ochraně spotřebitele [Explanatory Report to the Act. No. 634/1992 Coll., on consumer protection].

⁷³ SEHNÁLEK, D. Vliv práva Evropské unie na interpretaci občanského zákoníku a ustanovení o nekalé soutěži. *Obchodněprávní revue*, 2016, 11–12, p. 318.

⁷⁴ MARGONI, Thomas. The protection of sports event in the EU: property, intellectual property, unfair competition and special forms of protection. *International Review of Intellectual Property and Competition Law*, 2016, 47(4). ISSN 0018-9855. DOI: 10.1007/s40319016-0475-8.

⁷⁵ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁷⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷⁷ TESAURO, Claudio & RUSSO, Francesco. Unfair commercial practices and misleading and comparative advertising: an analysis of the harmonization of EU legislation in view of the Italian implementation of the rules. *Competition Policy International*, 2008, 4(1): 193–222. ISSN 1554-0189.

⁷⁸ MacGREGOR PELIKÁNOVÁ, Radka. The Fair Analysis of the Case law of the Court of Justice of EU on the Unfair Commercial Practices. *Acta Academica Karviniensia*, 2019 (1): 47–58. ISSN 1212-415X.

⁷⁹ MacGREGOR PELIKÁNOVÁ, Radka. The Fair Analysis of the Case law of the Court of Justice of EU on the Unfair Commercial Practices. *Acta Academica Karviniensia*, 2019 (1): 47–58. ISSN 1212-415X.

by excluding members of a profession and dentists and physiotherapists from the scope of the Law of 14 July 1991 on commercial practices, consumer information and consumer protection, as amended by the Law of 5 June 2007, transposing in national law UCPD the Belgium has failed to fulfil its obligations under Art.2–4 UCPD.

Chapter 4

Corporate Social Responsibility for the fairness of commercial practices in the EU

The CSR and CSR principles have both legal and ethical roots,¹ they are a demonstration of moral obligations of the given business towards the entire society² and this goes way beyond the mere concept of profit maximization.³ Since the fairness is intimately linked to the ephemeral concept of justice and other moral categories, it seems plausible to discuss whether the potential of the CSR to support fair commercial practices and in general the fair competition is underdeveloped (H1).

In 2005, the EU crossed the Rubicon, and decided to fight in a “united” and “collective” manner, not only for the existence of competition, but as well for its fairness, ... and for many other purposes and goals.⁴ After a long period of an excessive focus on competition (antimonopoly and antitrust) law, the EU appears to start to truly care about the daily operation of the single internal

¹ SCHÜZ, Mathias. Sustainable Corporate Responsibility: The Foundation of successful Business in the New Millennium. *Central European Business Review*, 2012, 1(2): 7–15. ISSN 1805-4854.

² TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

³ BERMAN, Shawn L. et al. Does stakeholder orientation matter? The relationship between stakeholder management models and firm financial performance. *The Academy of Management Journal*, 1999, 42, 488–506. ISSN 0001-4273.

⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

market while keeping consumers in mind.⁵ The EU legislative process managed to overcome, at least to some extent, the above mentioned challenges by (arguably) suppressing EU member states high level of divergences in their approaches to the law on unfair commercial practices.⁶ It culminated in 2005 with the enactment of the UCPD while bringing a general clause prohibiting B2C unfair commercial practices and offering a demonstrative list of concrete examples. The move from minimal to full harmonization, from B2B to B2C protection, from legality concerns to fairness concerns, along with the controversial average consumer test, etc. represents a battery of challenges for the UCPD.⁷

Pursuant to the UCPD, commercial practices, such as marketing and advertising, play a fundamental role in a market economy.⁸ Thus, the scope of the UCPD is much more general and the UCPD operates along with other more special Directives, like those dealing exclusively with misleading and comparative advertising, labeling, etc., and fully fits in the Europe 2020 Strategy.⁹ Nevertheless, since the UCPD does not harmonize enforcement systems and the New Guidance¹⁰ and other Commission instructions have no formal binding status,¹¹ the European Commission needs to work with EU member states and they all should engage in a common effort.¹² However, jurisdictions across the EU differ dramatically in their national regimes protection against misleading commercial practices and mix public and private enforcement elements, the reconciliation of these rules and of their interpretation appears extremely challenging.¹³

⁵ TESAURO, Claudio & RUSSO, Francesco. Unfair commercial practices and misleading and comparative advertising: an analysis of the harmonization of EU legislation in view of the Italian implementation of the rules. *Competition Policy International*, 2008, 4(1): 193–222. ISSN 1554-0189.

⁶ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁷ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers' Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

⁸ TRZASKOWSKI, Jan. Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive. *Journal of Consumer Policy*, 2011, 34, 377–392. ISSN 0168-7034.

⁹ EUROPEAN COMMISSION. *COM(2010) 2020 Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth* of 3 March 2010 ("Europe 2020 Strategy").

¹⁰ EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 ("New Guidance"). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.

¹¹ TRZASKOWSKI, Jan. Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive. *Journal of Consumer Policy*, 2011, 34, 377–392. ISSN 0168-7034.

¹² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹³ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

Well, is there still space and potential to use the UCPD for more than integration, competition and consumer protection issues? Despite all these challenges, can the UCPD be an impulse or even an instrument for the sustainability and ideally CSR of targeted businesses and vice versa? Has the UCPD the potential to boost CSR and has the CSR potential to support the fairness of commercial practices as predicated by the UCPD? Is it correct, the hypothesis that the potential of the CSR to support fair commercial practices and in general the fair competition is underdeveloped (H1)?

In order to address these burning questions along with H1, our study cannot be reduced to a discussion regarding the wording of the UCPD and its application. Instead, we need to consider roots, in particular strategies, concerns and issues which have emerged immediately after the beginning of the set of crises in 2007. Significant changes occurred in EU meta-governance in order to resolve these crises and support competitiveness¹⁴ and the Barroso Commission brought out the strategy Europe 2020 for smart, sustainable and inclusive growth and to avert Europe's gradual decline to the second rank of the new global order,¹⁵ i.e. to make it more competitive in the global environment.¹⁶ Sadly, the following years have shown that the resulting effectiveness, efficiency and sustainability of the set priorities, goals and flagship initiatives remain behind expectations.¹⁷ A myriad of indices demonstrate that many EU member states barely make an average progress¹⁸ and that the strategy Europe 2020 goals will not be accomplished as planned in 2020.¹⁹ Arguably, this is due to its breach of competencies crippling the effectiveness, its inherent complexity crippling its effectiveness and its not proper way of reconciling economic, environmental and social matters crippling its sustainability. The strategy Europe 2020 is an umbrella supranational (!) strategy for targeting sustainability with CSR and (fair) competitiveness, without perfectly observ-

¹⁴ NUNN, Alex & BEECKAMS, Paul. The Political Economy of Competitiveness and Continuous Adjustment in EU Meta-Governance. *International Journal of Public Administration*, 2015, 38(12): 926–939. ISSN 0190-0692. DOI: 10.1080/01900692.2015.1028645.

¹⁵ WALBURN, David. Europe 2020. *Local Economy*, 2010, 25(8): 699–702. ISSN 0269-0942.

¹⁶ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Štátná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

¹⁷ STANIČKOVÁ, Michaela. Can the implementation of the Europe 2020 Strategy goals be efficient? The challenge for achieving social equality in the European Union. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 2017, 12(3): 383–398. ISSN 1689-765X.

¹⁸ THALASSINOS, Eleftherios & THALASSINOS, Yannis. *Financial Crises and e-Commerce: How Are They Related* (October 29, 2018). DOI: 10.2139/ssrn.3330169.

¹⁹ STEC, Małgorzata & GRZEBY, Mariola. The implementation of the Strategy Europe 2020 objectives in European Union countries: the concept analysis and statistical evaluation. *Quality & Quantity*, 2017, 52(1): 119–133. ISSN 0033-5177.

ing the scope of EU's legal competence,²⁰ feasibility, and the level of general awareness and commitment, see the split of the conferred, shared and exclusive competences pursuant to the TEU and TFEU in the context of the Charter. The drive to increase the EU's global competitiveness appears partially vain.²¹ Perhaps, it focuses extensively on areas at the edge or even beyond the EU's legal competence and ultimately departs from the EU constitutional trio, i.e. from the EU primary law.²² Indeed, the protection of the internal single market and consumer protection should not translate into a power of a Commission to re-structure and re-organize the business environment, re-set national fairness standards and to restructure sectors, and even less in ordering EU member states to shape national business environments according to the uniform and universal template of the EU.²³

At the same time, the concept of the sustainability and CSR enjoy recognition and support across the current EU and it is definitely worthwhile to see selected UCPD provisions and to check if they are linked or at least could be linked to the CSR. To put it another way, there might a potential that the CSR could contribute to the legitimization of the UCPD and to its effectiveness, efficiency and sustainability. And as is obvious from the above mentioned, this is highly needed. Businesses select their partners and suppliers, consumers make their choices, municipalities do their public procurement, etc., while considering directly or indirectly, often *prima facie* contradictorily looking, various sustainable objectives, such as environmental protection and social well-being which may conflict.²⁴ An information symmetry is desirable in order to allow all these stakeholders to have CSR data²⁵ and to make educated decisions backed by the knowledge about not just the product *per se*. Several studies, including German, French and Czech ones, have already established that subjects, including

²⁰ PASIMENI, Francesco & PASIMENI, Paolo. An Institutional Analysis of the Europe 2020 Strategy. *Social Indicators Reserach*, 2016, 127: 1021–1038. ISSN 0303-8300. DOI: 10.1007/s11205-015-1013-7.

²¹ ERIXON, Fredrik. The Europe 2020 strategy: time for Europe to think again. *European view*, 2010, 9(1): 29–37. ISSN 1781-6858. DOI: 10.1007/s12290-010-0120-8.

²² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²³ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Štátná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

²⁴ HAHN, Tobias, FIGGE, Frank, PINKSE, Jonatan, PREUSS, Lutz. A Paradox Perspective on Corporate Sustainability: Descriptive, Instrumental, and Normative Aspects. *Journal of Business Ethics*, 2018 148(2): 235–248. ISSN 0167-4544. DOI: 10.1007/s10551-017-3587-2.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. Corporate Social Responsibility e-Reporting as a tool for (Un)fair competition in the EU. In LÖSTER, Tomáš, PAVELKA, Tomáš (Eds.). *Conference Proceedings. The 12th International Days of Statistics and Economics*, September 6–8, 2018, Prague, CZ, pp. 1112–1122 of 2063. ISBN 978-80-87990-14-8.

businesses and their employees,²⁶ are very sensitive regarding the asymmetry of information in this respect²⁷ and demand freely available CSR information in an appropriate quantity and quality, i.e. about all CSR categories — about social, environmental, human resources, R&D, etc. aspects. In addition, the majority of consumers, and perhaps even businesses and their employees, do not engage in intensive information gathering on CSR data²⁸ and this magnifies the impact of the freely provided information. The linear hierarchical multiple regression analysis of cross-section samples from EU member states, especially French SMEs, indicates that known personal sustainable behaviors of owners and managers positively influence the CSR and CSR e-reporting of the given company.²⁹ This is logical and demonstrates that the separate legal personality of companies is a legal fiction intimately linked to the corporate veil-lifting doctrine.³⁰ Nevertheless, the impact of the GDPR has to be regarded as well in this arena. They can both support and fight against many forms of the unfair competition phenomena, such as business secrets, denigration, misleading information, etc. as stated by the UCPD.³¹ In sum, the CSR e-reporting pursuant to the Directive 2013/34/EU, especially about nonfinancial key performance indicators, can lead to and/or fight against both types of unfair commercial practices pursuant to the UCPD — misleading commercial practices or aggressive commercial practices.³² The following normative parts of the UCPD are worthy to be reviewed in the light of the CSR potential: ultimate purpose (Preamble and Article 1 UCPD), full harmonization (Article 1 and Article 4 UCPD),

²⁶ BODE, Christiane & SINGH, Jasjit. Taking a hit to save the world? Employee participation in a corporate social initiative. *Strategic Management Journal*, 2018, 39(4): 1003–1030. ISSN 0143-2095. DOI: 10.1002/smj.2762.

²⁷ ŠPETLÍK, Václav. Economic Impact of the European Union and its Perception by Society in the Czech Republic. In: *The 11th International Days of Statistics and Economics (MSED 2017)* [online]. Prague, 14.09.2017–16.09.2017, pp. 1644–1652.

²⁸ PLANK, Andreas & TEICHMANN, Karin. A facts panel on corporate social and environmental behavior: Decreasing information asymmetries between producers and consumers through product labeling. *Journal of Cleaner Production*, 2018, 177, 868–877. ISSN 0959-6526. DOI: 10.1016/j.jclepro.2017.12.195.

²⁹ CHASSÉ, Sonia & COURRENT, Jean-Marie. Linking owner-managers' personal sustainability behaviors and corporate practices in SMEs: The moderating roles of perceived advantages and environmental hostility. *Business Ethics: A European Review*, 2018, 27(2): 127–173. ISSN 1467-8608. DOI: 10.1111/beer.12176.

³⁰ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. Corporate Social Responsibility e-Reporting as a tool for (Un)fair competition in the EU. In LÖSTER, Tomáš, PAVELKA, Tomáš (Eds.). *Conference Proceedings. The 12th International Days of Statistics and Economics*, September 6–8, 2018, Prague, CZ, pp. 1112–1122 of 2063. ISBN 978-80-87990-14-8.

³¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³² MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. Corporate Social Responsibility e-Reporting as a tool for (Un)fair competition in the EU. In LÖSTER, Tomáš, PAVELKA, Tomáš (Eds.). *Conference Proceedings. The 12th International Days of Statistics and Economics*, September 6–8, 2018, Prague, CZ, pp. 1112–1122 of 2063. ISBN 978-80-87990-14-8.

the target of the UCPD — B2C unfair commercial practices (Article 3 to Article 8 UCPD, Annex I UCPD), the “eternal evilness” posted in the black list (Annex I UCPD), and the protégée of the UCPD — the (average) consumer (Article 5 UCPD).

The review of the UCPD provisions which might benefit by the CSR concerns has definitely started with the Preamble and Article 1 UCPD shedding light on the questions what is, or what are the ultimate purpose(s) of the UCPD. Indeed, the evolution of the UCPD wording and regimes, both on the EU and national levels, along with the case law of the CJ EU suggests a mixture of inconsistency and priority shifting as well as a lack of clarity about the ultimate purpose of the UCPD.³³ Not only the political and legal context, but as well the economic context needs to be considered.³⁴ The UCPD came just before the emergence of the financial crisis³⁵ which was connected to the irresponsible behavior of states³⁶ and market participants,³⁷ both businesses and consumers,³⁸ across the entire EU.^{39,40} Its drafts were results of basic legal conceptual compromises which were progressively changed due to political concerns, i.e. political reasons led to modifications of original drafts and resulted in such a wording of the UCPD, that the original drafters often cannot easily interpret it.^{41,42} The resulting UCPD brought an aggressive approach toward harmoni-

³³ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

³⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁵ PAČLÍK, Miroslav, MacGREGOR, Robert, MacGREGOR PELIKÁNOVÁ, Radka. Eurocrisis. *AAU Law Forum*. 2012–2013, 4, 2–10. ISSN 1804-1094.

³⁶ MacGREGOR, Robert. Eurocrisis from German and French Perspectives in 2013. *ACC Liberec, Issue B Science of Economics*, 2013, XIXB (2): 29–39. ISSN 1803-9782.

³⁷ MUNIR, Kamal A. Financial Crisis 2008–2009: What Does the Silence of Institutional Theorists Tell Us? *Journal of Management Inquiry*, 2011, 20(2): 114–117. ISSN 1056-4926.

³⁸ CVIK, Eva Daniela, MacGREGOR PELIKÁNOVÁ, Radka. Implementation of Directive 2014/17/EU and its Impact on EU and Member States Markets, from not only a Czech Perspective. *Procedia: Social and Behavioral Sciences. 19th International Conference Enterprise and Competitive Environment 2016*, ECE 2016, 10–11 March, Brno, Czech Republic. 2016, 220(85): 85–94. ISSN 1877-0.

³⁹ EGEDY, Tamás. The effects of global economic crisis in Hungary. *Hungarian Geographical Bulletin*, 2012, 61(2): 155–173. ISSN 2064-5031.

⁴⁰ LAJTKEOVÁ, Eva. Differences and Similarities in the Indebtedness of EU Member States after Last Financial Crisis. *Oeconomia Copernicana*, 2016, 7(4): 551–563. ISSN 2083-1277.

⁴¹ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁴² MacGREGOR PELIKÁNOVÁ, Radka. The (Dis)harmony of Opinions Regarding Domain Names in the Czech Republic. *Scientific Papers of the University of Pardubice, Series D 3/2014*, 2014, 32, 73–84. ISSN 1211-555x (Print), ISSN 1804-8048 (Online).

zation⁴³ entailing both a maximum harmonization character and horizontal effect approach,⁴⁴ i.e. truly full harmonization, the average-consumer test⁴⁵ and two proclaimed goals — to increase and protect consumer confidence, and to make it easier for businesses, especially SMEs, to do cross-border transactions and trade.⁴⁶ The wording of Article 1 of the UCPD expresses the need to ban misleading and aggressive commercial practices by stating “to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws ... of Member States on unfair commercial practices harming consumers’ economic interests.” Consequently, a single and clearly expressed key interest and *raison d’être* of UCPD is neither explicitly expressed nor implied by the preamble.⁴⁷ Instead the preamble of UCPD offers a heterogeneous conglomerate, of (alleged) priorities from various legal branches and following diverse regimes.⁴⁸ Based on the EU law interpretation methodology, the special purposive approaches⁴⁹ taking the shape of *sui generis* contextual and teleological method,⁵⁰ strictly requires both the awareness and appreciation of the purpose and spirit, as many times confirmed by the CJ EU. Consequently, the purposes indicated by the Preamble and Article 1 of the UCPD should be the key for the employment of the mentioned contextual and teleological method and so they are pivotal in order

⁴³ COLLINS, Hugh. Harmonisation by Example: European Law against Unfair Commercial Practices. *Modern Law Review*, 2010, 73(1): 89–118. ISSN 1468-2230.

⁴⁴ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁴⁵ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁴⁶ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁴⁷ MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁴⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁴⁹ HOLLAND, James, WEBB, Julian. *Learning Legal Rules*. 9th Edition. Oxford, UK: Oxford University Press, 2016, 423 p. ISBN 978-0-19-872843-6.

⁵⁰ LENAERTS, Koen, GUTTIÉREZ-FONS, José. A. To Say What the Law of the EU Is? Methods of Interpretation and the European Court of Justice. *Academy of European Law*, 2013, 9, 1–55. ISSN 1831-4066.

to go above and beyond the literate and golden rule approach.⁵¹ Nevertheless, it is already *prima facie* obvious that these UCPD purposes are not homogeneous and that their reconciliation and mutual, perhaps synergetic, employment can be to some extent a mission impossible. This leads to the burning Sophy's choice — which of these purposes is the most important and consequently the most decisive for the UCPD interpretation and application? Well, a myriad of academic, professional and even laic opinions regarding the main purpose of the UCPD has been presented and published and they often state that consumer protection is the leitmotif of the UCPD.⁵²

The European Commission adds to it via its Communication⁵³ "The benefits of the Directive mainly stem from two of its specific features, namely, its horizontal "safety net" character and its combination of principle-based rules with a "Black List" of specific prohibitions of certain unfair practices."⁵⁴ Further, it can be argued that since the strategy Europe 2020 chiefly addresses the "structural weaknesses in Europe's economy" and its 2nd priority is the sustainable (!) growth, it requires a "more competitive economy"⁵⁵ in the largest sense, i.e. not only profit maximizing businesses and materially fully satisfying consumers. Some authors engaged in a deeper study and concluded that the main goal of the UCPD is linked more to the competition and market than to competitors or consumers. According to their rather convincing opinion based on a moderately literate approach, the fundamental and most important purpose of the UCPD is embedded in the pro-integration command and means the creation of better conditions for all four freedoms on the internal single market, while one of the pre-requirements of such movements is the trust of consumers in the fairness of commercial practices.⁵⁶ Boldly, the protection of the single internal market is the principal purpose and consumer protection

⁵¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵² MacGREGOR PELIKÁNOVÁ, Radka, ČISAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁵³ EUROPEAN COMMISSION. *COM(2013)138 final. Communication from the Commission On the application of the Unfair Commercial Practices Directive: Achieving a high level of consumer protection Building trust in Internal Market*, Brussels, 14.3.2013 ("Communication"). Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf.

⁵⁴ EUROPEAN COMMISSION. *COM(2013)138 final. Communication from the Commission On the application of the Unfair Commercial Practices Directive: Achieving a high level of consumer protection Building trust in Internal Market*, Brussels, 14.3.2013. Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf.

⁵⁵ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers' Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

⁵⁶ ČECH, Petr. Nedotažená revoluce v právní úpravě nekalých obchodních praktik. *Právní zpravodaj*, 2008, 3, 1. ISSN 1212-8694.

is just auxiliary and arguably the link between them can be the sustainability and CSR. Naturally, this opinion is not unanimously accepted and so the discussion about the identification and prioritization of purposes of the UCPD continues.⁵⁷ At its heart should be the discussion about (the feasibility of) the EU (alleged) desire to combine the consumer protection and unfair competition protection in order to synergistically support, or even protect, the European integration, based on the single internal market.⁵⁸ In sum, the post-Lisbon EU needs to be more responsive,⁵⁹ consistent, transparent and sustainable in order to regain its legitimacy.⁶⁰

The review of the UCPD provisions which might benefit by the CSR concerns has to continue with Article 1 and Article 4 UCPD bringing the full harmonization effect of the UCPD and its regime against misleading and aggressive commercial practices. Since EU member states had differed dramatically in their approaches to unfair commercial practices, the CJ EU reacted by launching a case law addressing this potential obstacle for the development of cross border trade, see *C-120/78 Rewe Zentral v Budnesmonopolverwaltung für Branntwein (Cassis de Dijon)*, *C-126/91 Schutzverband gegen Unwesen in der Wirtschaft e.V. v Yves Rocher GmbH*, *C-405/98 Konsumentombudsmannen (KO) v Gourmet International Products AB*, etc.⁶¹ Pursuant to the CJ EU opinion, the free movement of goods and services should prevail over national rules and so protect both market and consumers, i.e. the CJ EU has pushed the market oriented approach to consumer protection.⁶² Unsurprisingly, the European Commission embraced this approach as well and consequently the resulting UCPD heavily rests on the case law of CJ EU and the choice of the full harmonization is boosted by the three decades of judiciary practice. Specifically, the UCPD was enacted to contribute to the proper functioning of the internal single market and to achieve a high level of consumer protection by approximating laws (Article 1 UCPD) and this should be achieved by a full harmonization (Article 4 UCPD). Consequently, the EU opted for the very strongly unifying

⁵⁷ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁸ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁵⁹ ŠMEJKAL, Václav. Social or Highly Competitive Europe? EU Law Solution to Conflict of Social Security and Competition Law. *The Lawyer Quarterly*, 2016, 1, 18–27. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

⁶⁰ MUNIR, Kamal A. Financial Crisis 2008–2009: What Does the Silence of Institutional Theorists Tell Us? *Journal of Management Inquiry*, 2011, 20(2): 114–117. ISSN 1056-4926.

⁶¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶² DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

harmonization, the full harmonization, despite strong conceptual disparities in EU member state laws.⁶³ Since the EU antimonopoly and antitrust law is regulated and the EU contract law is only weakly and fragmentally harmonized, the UCPD is exactly halfway between them — less regulated than other branches of the competition law and more harmonized than other branches of consumer law.⁶⁴ Therefore, the UCPD is one of many strongly pro-integration tools employed by the EU within its policies towards fair digital business,⁶⁵ going much further than contract and general consumer protection mechanisms. The ambitious, perhaps excessively ambitious, choice of the complete aka full harmonization by the Internal Market clause (Article 4 UCPD) prohibits any deviations by the EU member states and their national laws and consequently demands no more and no less protection against unfair commercial practices.⁶⁶ The UCPD demands a certain type of protection against a certain type of behavior and exactly this is to be transposed, implemented and applied in all EU member states.⁶⁷ No less, but as well no more protection is permissible, and this even if consumers benefit,⁶⁸ sustainability or other public reasons would be present. Indeed, the first UCPD case decided by the CJ EU was *C-261/07* and *C-299/07 Total Belgium*, which stated that the Internal Market clause from the Article 4 of the UCPD generates the full harmonization effect and prohibits any EU member state to deviate in either direction.⁶⁹ Plainly, no EU member is allowed to adopt stricter rules than in UCPD and this even if such a stricter rule would benefit consumer protection, see *C-261/07* and *C-299/07*

⁶³ OSUJI, Onyeka. K. Business-to-consumer harassment, unfair commercial practices directive and the UK: a distorted picture of uniform harmonisation? *Journal of Consumer Policy*, 2011, 34. ISSN 0168-7034. DOI: 10.1007/s10603-011-9175-4.

⁶⁴ DUROVIC, Mateja. *European Law on Unfair Commercial Practices and Contract Law*. Oregon: Hart Publishing, 2016, 214 p. ISBN 978-1-78225-811-7.

⁶⁵ MacGREGOR PELIKÁNOVÁ, Radka. European Integration and Top Level Domain in 2013. *The Lawyer Quarterly*, 2013, 4, 311–323. ISSN 1805-8396.

⁶⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶⁷ EUROPEAN COMMISSION. *COM(2013)139 final. Report from the Commission First Report on the application of the Unfair Commercial Practices Directive*, Brussels, 14.3.2013. Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.

⁶⁸ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁶⁹ EUROPEAN COMMISSION. *COM(2013)139 final. Report from the Commission First Report on the application of the Unfair Commercial Practices Directive*, Brussels, 14.3.2013. Available from http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.

Total Belgium.⁷⁰ Indeed, the CJ EU has demonstrated a large resourcefulness in supporting the full harmonization, see *C-261/07 Total Belgium NV*, *C-304/08 Zentrale zur Bekämpfung unlauteren Wettbewerb eV v. Plus Warehousegesellschaft mbH*, etc.⁷¹ It underlined it further by *C-544/13* and *C545/13 Abcur AB* in which the CJ EU emphasized the duty of the uniform interpretation across the EU and the direct reference to the teleological approach. Limits to this pro-full harmonization approach are based only on the competence distributions — conferred exclusive v. conferred share v. non-conferred as stated in TEU and TFEU, i.e. competences not explicitly conferred to the EU remain with the EU member states (Article 4 and Article 5 TEU) and are out of the reach of the EU law. In contrast, when the fundamental treaties confer on the Union exclusive competence in a specific area, only the EU may legislate and adopt legally binding acts (Article 2 TFEU). When the fundamental treaties conferred on the EU a competence shared with the Member States in a specific area, the EU and the Member States may legislate and adopt legally binding acts in that area (Article 2 TFEU).⁷² This implies that, regarding the functioning of the internal single market, the EU has conferred exclusive competence for the establishment of competition rules and conferred shared competence for other issues, such as internal market and consumer protection (Article 114 and Article 169 TFEU). Therefore, only where harmonization is intended to contribute to the completion of the internal market, the EU is free to choose between minimum and full harmonization.⁷³

⁷⁰ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁷¹ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁷² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷³ LOOS, Marco B.M.. Full Harmonisation as a Regulatory Concept and its Consequences for the National Legal Orders: The Example of the Consumer Rights Directive. *SSRN Electronic Journal*. 2010. DOI: 10.2139/ssrn.1639436.

Table 4.

Conferred exclusive and shared competences: Article 3 and Article 4 TFEU

| Article 3 areas of the EU conferred exclusive competences | Article 4 areas of the EU conferred shared competence |
|--|---|
| <ul style="list-style-type: none"> – <i>customs union;</i> – <i>the establishing of the competition rules necessary for the functioning of the internal market;</i> – <i>monetary policy for the Member States whose currency is the euro;</i> – <i>the conservation of marine biological resources under the common fisheries policy;</i> – <i>common commercial policy.</i> | <ul style="list-style-type: none"> – <i>internal market;</i> – <i>social policy, for the aspects defined in this Treaty;</i> – <i>economic, social and territorial cohesion;</i> – <i>agriculture and fisheries, excluding the conservation of marine biological resources;</i> – <i>environment;</i> – <i>consumer protection;</i> – <i>transport;</i> – <i>trans-European networks;</i> – <i>energy;</i> – <i>area of freedom, security and justice;</i> – <i>common safety concerns in public health matters, for the aspects defined in this Treaty.</i> |

Source: Own processing by the Author.

Consequently, the CJ EU stated in *C-559/11 Pelckmans* that the UCPD and its ‘neither more nor less protection’ does not apply regarding national provisions prohibiting traders from opening their shop seven days a week by requiring them to choose a weekly closing day, i.e. the scope of the UCPD does not extend to national legislations preventing a business to be open on Sunday, because such national provisions do not pursue objectives related to consumer protection.⁷⁴ Even more importantly, the CJ EU stated in *C-183/00 González Sánchez/ Medicina Asturiana SA* that the requirement of minimum harmonization only pertains to measures not taken in the context of the internal market. The move to the full harmonization is justified not so much by the consumer protection *per se*, but rather by the objectives of the internal single market and its operation. Hence, regardless of the European Commission’s statements, it is not so much the interests of consumers that are being protected, but rather those of competitors.⁷⁵ The experience suggests that often the competitors and competition stakeholders have made more use of the UCPD, than have

⁷⁴ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁷⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

consumers and consumer protection organizations.⁷⁶ This is rather surprising because the UCPD declares that it is applicable to unfair business-to-consumer commercial practices (Article 2 UCPD). Certainly, the complete harmonization aka full harmonization demands the clarity of concepts, definitions and sanctions.⁷⁷ It looks slightly bizarre that the EU imposes the full harmonization via a new regime different from the majority of regimes existing based on a long evolution in EU member states without any further explanation. The Commission decided to legislatively regulate something that, basically all over in the EU, has been shaped by decades of case law upon the teleological approach and the “spirit of treaties.” It appears that the European Commission with its UCPD and the New Guidance,⁷⁸ perhaps unintentionally, created a big challenge for the CJ EU.⁷⁹ The resistance of EU member states used to different national regimes,⁸⁰ the absence of the smallest common denominator (such as the Christian values, principles and traditions,⁸¹ ambiguity regarding the digital dimension of competition⁸² and the employment of Internet domains,⁸³) and the lack of references to the sustainability and CSR make the full harmonization of the UCPD highly problematic. It is even argued that the UCPD is a way too ambitious project entailing a number of transposition legislative approaches and resulting in a system without robust coherence in the light of case law. This cripples its capacity to be a general opportunity for smart, sustainable and inclusive growth, i.e. boosting competitiveness and innovation along with consumer welfare, and it is proposed that the full harmonization

⁷⁶ LOOS, Marco B.M.. Full Harmonisation as a Regulatory Concept and its Consequences for the National Legal Orders: The Example of the Consumer Rights Directive. *SSRN Electronic Journal*. 2010. DOI: 0.2139/ssrn.1639436.

⁷⁷ OSUJI, Onyeka. K. Business-to-consumer harassment, unfair commercial practices directive and the UK: a distorted picture of uniform harmonisation? *Journal of Consumer Policy*, 2011, 34. ISSN 0168-7034. DOI: 10.1007/s10603-011-9175-4.

⁷⁸ EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 (“New Guidance”). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.

⁷⁹ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁸⁰ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers’ Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

⁸¹ MacGREGOR PELIKÁNOVÁ, Radka. Constantine’s Christianity for the (Dis)integrated EU: Déjà vu of Constantine’s Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

⁸² MacGREGOR PELIKÁNOVÁ, Radka. The (in)significance of domain names for e-commerce. *ACC Liberec*, Issue B Science of Economics, 2013, XIXB (2): 40–52. ISSN 1803-9782.

⁸³ MacGREGOR PELIKÁNOVÁ, Radka. The Business (In)Significance of the Pre-Dot Domain Name Wording. *Scientific Papers of the University of Pardubice*, Series D 3/2013, 2013, 20(28): 67–79. ISSN 1211-555x (Print), ISSN 1804-8048 (Online).

should be either readjusted or relaxed.⁸⁴ Hence, here more than someplace else, the use of the CSR potential could be critical and could lead to the increase of the effectiveness, efficiency and legitimacy. Nevertheless, so far, the CSR is not used at all to support fair commercial practices and generally the strong features of the UCPD.

The review of the UCPD provisions which might benefit by the CSR concerns has to continue with Article 3 to Article 8 UCPD addressing the target of the UCPD — B2C unfair commercial practices. The private law concern behind the unfair competition law is to protect the fairness of the already existing and working market by prohibiting certain behavior which is perceived as contradicting the “honest usages” or the “*bonos mores*” (aka *gute Sitten*) of trade.⁸⁵ However, despite Article 10bis of the Paris Convention for the Protection of Industrial Property, in common law jurisdictions, in particular the United Kingdom, there is a strong legislative and judiciary reluctance to “draw a line between fair and unfair competition, between what is reasonable and unreasonable” as stated in the precedential case *Mogul v. McGregor*.⁸⁶ Well, the UCPD is pretty clear about its target and defines the evil against which the protection is granted on a conceptual level (Preamble, Article 1), on a general level (Article 3), on a detailed descriptive manner (Articles 5–9) and even on a casuistic level (Annex I). Namely, the UCP prohibits business-to-consumer (B2C) (Article 3) unfair commercial practices (Article 5) which can take either the form of misleading practices by action (Article 6) or omission (Article 7) or the form of aggressive commercial practices (Article 8). Annex I of UCPD includes a black list of commercial practices which are in all circumstances considered unfair.⁸⁷ Misleading practices, regardless whether by action or omission, deform the truth and its perception while aggressive practices impair a consumer’s freedom by harassment, coercion and undue influence. It is rather surprising that the UCPD addresses them in a similar manner, because in the common law universe various torts⁸⁸ (defamation, fraudulent misrepresentation, wrong-

⁸⁴ MacGREGOR PELIKÁNOVÁ, Radka. Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries. *Oeconomia Copernicana*, 2019, 10(2), 239–252. ISSN 2083-1277. DOI: 10.24136/oc.2019.012.

⁸⁵ THÜNKEN, Alexander. Multi-State Advertising over the Internet and the Private International Law of Unfair Competition. *The International and Comparative Law Quarterly*, 2002, 51(4): 909–942. ISSN 0020-58-93.

⁸⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁸⁷ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁸⁸ FRANKLIN, Marc A., CARDI, Jonathan W., GREEN, Michael D. *Torts: Gilbert Law Summaries*. 24th Edition. Chicago, IL, US: West, Thomson, 2008, 546 p. ISBN 978-0314181145.

ful invasion of privacy, nuisance, trespass, and even battery!)⁸⁹ are employed and in the continental (civil code) universe different Acts are used and the dynamic of the inexistence, absolute nullity and relative nullity is employed.⁹⁰ It has to be emphasized that, according to the strategy Europe 2020, the principal focus generally should go to competitions and not consumers, i.e. with a touch of exaggeration, it can be suggested that Europe 2020 Strategy deals rather peripherally with consumers, and in its perspective the UCPD should be rather B2B than B2C.⁹¹ However, the UCPD expressly targets B2C unfair commercial practices and so inevitably the ephemeral concept of the fairness for consumers from different jurisdictions emerges. The European Commission is well aware about it and attempts to consolidate the praxis by keeping a Database on the Unfair Commercial Practices Directives Database,⁹² which should be integrated into the e-Justice Portal, and by issuing various interpretation and explanations instruments, such as Communication, Report and New Guidance about the UCPD.⁹³ Namely, in 2013, the European Commission issued COM (2013) 138 Communication on the application of UCPD (“Communication”)⁹⁴ and COM (2013) 139 Report (“Report”)⁹⁵ in order to explain and enforce efforts to guarantee a high level of consumer protection in a national context, and particularly in the context of the cross-border travel and transport industry.⁹⁶ In 2016, the European Commission adopted a new explanatory document, COM(2016) 163 Guidance on the implementation/application of UCPD

⁸⁹ KIONKA, Edward. *J. Torts in a nutshell*. 6th Edition. St. Paul, MN, US: West Publishing Co., 2015, 625 p. ISBN 978-1628105513.

⁹⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁹¹ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers’ Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

⁹² EUROPEAN COMMISSION. *Database on the Unfair Commercial Practices Directive*, 2017. Available at http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices/index_en.htm.

⁹³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁹⁴ EUROPEAN COMMISSION. *COM(2013)138 final. Communication from the Commission On the application of the Unfair Commercial Practices Directive: Achieving a high level of consumer protection Building trust in Internal Market*, Brussels, 14.3.2013 (“Communication”). Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf.

⁹⁵ EUROPEAN COMMISSION. *COM(2013)139 final. Report from the Commission First Report on the application of the Unfair Commercial Practices Directive*, Brussels, 14.3.2013 (“Report”). Available at http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.

⁹⁶ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

("New Guidance")⁹⁷ and it appears that finally the Commission is readjusting and embracing a more informed and modest approach to the understanding of unfair commercial practices as the target of the UCPD, see the confirmation of the *C-559/11 Pelckmans* and its case-by-case approach to the finding of unfair commercial practices indicated in the Black List of the Annex I.⁹⁸ New Guidance proclaims a broad reach to all commercial practices before, during and after the B2C transaction and emphasizes "The Directive is horizontal in nature and protects the economic interests of consumers. Its principle-based provisions address a wide range of practices and are sufficiently broad to catch fast-evolving products, services and sales methods." Regarding the limits, the UCPD specifies that "UCPD does not cover national rules intended to protect interests which are not of an economic nature. Therefore, the UCPD does not affect the possibility of Member States to set rules regulating commercial practices for reasons of health, safety or environmental protection. Also existing national rules on marketing and advertising, based on 'taste and decency' are not covered by the UCPD. According to Recital 7, 'This Directive [...] does not address legal requirements related to taste and decency which vary widely among the Member States. [...] Member States should accordingly be able to continue to ban commercial practices in their territory, in conformity with Community law, for reasons of taste and decency even where such practices do not limit consumers' freedom of choice. [...] Therefore, in the context of commercial practices, the UCPD does not cover national rules on protecting human dignity, preventing sexual, racial and religious discrimination or on the depiction of nudity, violence and antisocial behavior. Conversely, national rules that aim to protect the economic interest of consumers, in conjunction with other interests, do fall within its scope..." Well, this sounds almost as a total abandonment of the environmental and social pillar on the EU law level. This could be understood either as negative for the CSR, i.e. the EU "giving up", or as positive for the CSR, i.e. the EU leaves it to the EU member states so they can go even above and beyond and do not need to be restricted by the UCPD.

The review of the UCPD provisions which might benefit by the CSR concerns has to include as well the "eternal evilness" posted in the black list (Annex I UCPD, i.e. practices which are always considered unfair and prohibited. A cursory overview of this black list reveals that at least the following four practices are not reconcilable from the CSR perspective and consequently the concept of the sustainability and CSR could be, but unfortunately so far is not, used to support fair commercial practices and in general the fair competition is underdeveloped (H1). Firstly, "1. Claiming to be a signatory to a code of conduct

⁹⁷ EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 ("New Guidance"). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.

⁹⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

when the trader is not” represents an intentionally wrong behavior motivated by the will to appear “better” especially in the perspective of the environment and social pillars. Secondly, “Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item” represents an intentional IP breach motivated by the will to piggy back and parasite on a fairly built reputation incorporating definitely more than only economic pillar. Thirdly, “22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer” is a primitive lie which is totally against proper CSR reporting. Hence, these three always misleading commercial practices are clearly not reconcilable with CSR and CSR reporting. Fourthly, “26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation” is an always aggressive commercial practice which can be done in a manner directly harming the environment, see e.g. the waste of resources. The 2nd item on this list is “Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization” and the 13th item on the list is “Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not.” Already a *prima facie* study shows that these definitions are pretty open and general.⁹⁹ Their conceptual interpretation needs to be done in the light of pivotal IP cases of the CJ EU, which might look *prima facie* as hardly reconcilable — *C-252/07 Intel* and *C-487/07 L’Oréal*.¹⁰⁰ Indeed, the general definition about what constitutes an unfair advantage is to be drawn from *C-487/07 L’Oréal*.¹⁰¹ The New Guidance¹⁰² confirmed the case-by-case approach of the *C-559/11 Pelckmans*, including the interpretation and application of the Black List by stating “The list in Annex I was drawn up to enable enforcers, traders, marketing professionals and customers to identify certain practices and give a more immediate enforcement response to them.

⁹⁹ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

¹⁰⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹⁰¹ SEVILLE, Catherine. Intellectual property. *The International Comparative Law Quarterly*, 2011, 60(4): 1039–1055. ISSN 0020-5893.

¹⁰² EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 (“New Guidance”). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.

It therefore leads to greater legal certainty. If it can be proved that the trader has carried out a blacklisted commercial practice, national enforcers can take action to sanction the trader without having to apply a case-by-case test (i.e. assessing the likely impact of the practice on the average consumer's economic behavior)...The assessment of whether a commercial practice is unfair under the UCPD must, except in the case of the practices listed in Annex I to the Directive, be performed on a case-by-case basis. The power to make this assessment rests with the Member states."(!)¹⁰³ The fairness concerns and their application could easily by the justice concept bridge to the CSR/sustainability and vice versa. Indeed, in between the lines, this could be implied from the UCPD policies and cases, see above.

Finally, the review of the UCPD provisions which might benefit by the CSR concerns has to mention Article 5 et foll. Focusing on a protégée of the UCPD — the (average consumer). The UCPD prohibits unfair commercial practices, and even refers to the heavily discussed concept of the average consumer,¹⁰⁴ by stating: "1. Unfair commercial practices shall be prohibited. 2. A commercial practice shall be unfair if: (a) it is contrary to the requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers." (Article 5 UCPD). Manifestly, the UCPD codifies the pre-existing case law of the CJ EU and embodies in its fundamentals the concept of the average consumer.¹⁰⁵ The wording of point 18 of the preamble of the UCPD is clear: "It is appropriate to protect all consumers from unfair commercial practices; however the Court of Justice has found it necessary in adjudicating on advertising cases since the enactment of Directive 84/450/EEC to examine the effect on a notional, typical consumer. In line with the principle of proportionality, and to permit the effective application of the protections contained in it, this Directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice, but also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commer-

¹⁰³ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

¹⁰⁴ MacGREGOR PELIKÁNOVÁ, Radka, ČÍSAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

¹⁰⁵ MacGREGOR PELIKÁNOVÁ, Radka, ČÍSAŘOVÁ, Jarmila, BENEŠ, Marek. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*, 2017, 7(3): 145–161. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

cial practices. Where a commercial practice is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the commercial practice be assessed from the perspective of the average member of that group. It is therefore appropriate to include in the list of practices which are in all circumstances unfair a provision which, without imposing an outright ban on advertising directed at children, protects them from direct exhortations to purchase. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case....” Hence, the UCPD uses as the benchmark the average consumer test, which is by operation of the full harmonization feature becoming a heel of Achilles of the UCPD, or maybe even one of more heels of Achilles of the UCPD.¹⁰⁶ This is further magnified by the European Commission’s push for the “*Homo Economicus*”,¹⁰⁷ regardless of strong extrinsic and even intrinsic criticism.¹⁰⁸ This does not fully respect the digital reality, Internet governance¹⁰⁹ and the e-shopping by the majority of a large number of European consumers.¹¹⁰ Nevertheless, the CJ EU has already admitted that a competition-driven solution is not the best one for absolutely every competition solution.¹¹¹ Although the cases decided based on the application of the “average consumer” or even “average internet consumer” are mushrooming and interesting trends are to be observed,¹¹² references to the sustainability and CSR are omitted. The literate and teleological interpretation of Europe 2020 offers clear indices of endorsements of the full harmonization of the UCPD and of the recognition of the average consumer standard estab-

¹⁰⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹⁰⁷ TRZASKOWSKI, Jan. Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive. *Journal of Consumer Policy*, 2011, 34, 377–392. ISSN 0168-7034.

¹⁰⁸ TRZASKOWSKI, Jan. Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive. *Journal of Consumer Policy*, 2011, 34, 377–392. ISSN 0168-7034.

¹⁰⁹ MacGREGOR PELIKÁNOVÁ, Radka, MacGREGOR Robert. Internet Governance and its Legitimacy: From Rhetoric to Facts and Even Beyond. *International Journal of Business and Management*, 2015, III(4): 77–102. ISSN 2336-2197.

¹¹⁰ TRZASKOWSKI, Jan. User-generated marketing: legal implications when word-of-mouth goes viral. *International Journal of Law and Information Technology*, 2011, 19(4): 348–380. ISSN 0967-0769.

¹¹¹ ŠMEJKAL, V. Social or Highly Competitive Europe? EU Law Solution to Conflict of Social Security and Competition Law. *The Lawyer Quarterly*, 2016, 1, 18–27. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

¹¹² GONGOL, Tomáš. The Preliminary Ruling Decision in the Case of Google vs. Louis Vuitton Concerning the AdWord Service and its Impact on the Community Law. *Amfiteatru Economic*, 2013, 15(33): 246–260. ISSN 2247-9104.

lished by the CJ EU,¹¹³ i.e. a reasonably well-informed, observant and circumspect consumer, see *C-210/96 Gut Springenheide and Tusky*.¹¹⁴ Does such an (average) consumer care about the sustainability and is CSR a consideration for him/her? In *C-210/96 Gut Springenheide and Tusky*, the CJ EU addressed the labelling of eggs “6-Korn 10 frische Eier” (six-grain, 10 eggs). The Gut Springenheide company stated that the label provides the correct information that the six-grains are the majority of food for their hens (60 %), but German courts found that this label violates trademarks and in addition implies “falsely that the feed given to the hens is made up exclusively of the six cereals indicated and that the eggs have particular characteristics.” The CJ EU ruled that “In order to determine whether a statement intended to promote sales of eggs is liable to mislead the purchaser, ... the national court must take into account the presumed expectations which it evokes in an average consumer who is reasonably well-informed and reasonably observant and circumspect. However, Community law does not preclude the possibility that, where the national court has particular difficulty in assessing the misleading nature of the statement or description in question, it may have recourse, under the conditions laid down by its own national law, to a consumer research poll or an expert’s report as guidance for its judgment.” In this context, the European Commission stated in the New Guidance¹¹⁵ that “The average consumer under the UCPD is in any event not somebody who needs only a low level of protection because he/she is always in a position to acquire available information and act wisely on it. On the contrary, as underlined in Recital 18, the test is based on the principle of proportionality. The UCPD adopted this notion to strike the right balance between the need to protect consumers and the promotion of free trade in an openly competitive market. Therefore, the average consumer concept under the UCPD should always be interpreted having in mind Article 114 of the Treaty, which provides for a high level of consumer protection. At the same time, the UCPD is based on the idea that, for instance, a national measure prohibiting claims that might deceive only a very credulous, naive or cursory consumer (e.g. ‘puffery’) would be disproportionate and create an unjustified barrier to trade. As explicitly mentioned by Recital 18, the average consumer test is not a statistical test. This means that national authorities and courts should be able to determine whether a practice is liable to mislead the average consumer exercising their own judgment by taking into account the general presumed consumers’ expectations, without having to commission an expert’s report

¹¹³ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers’ Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

¹¹⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹¹⁵ EUROPEAN COMMISSION. *COM(2016) 163 Guidance on the implementation/application of UCPD*, Brussels 25.5.2016 (“New Guidance”). Available at <https://ec.europa.eu/info/sites/info/files/ucp-guidance-en.pdf>.

or a consumer research poll.” The permanent focus of the EU on the proper functioning of the internal market in the belief that this is ultimately the best for the integration, market, traders, and consumers suggests that perhaps for the UCPD regime is pivotal neither the average consumer nor consumer.¹¹⁶ So the UCPD consumer protection is rather ephemeral and the consumer benchmarking and related case law maybe do not address the primary issue, but just the secondary. At the same time, it needs to underlined that the CJ EU approach to the (average) consumer is more qualitative than quantitative and consequently, the CJ EU rejected based on the UCPD in *C-388/15 Nemzeti v. UPC* commercial misleading practices even if only one single consumer victim exists.¹¹⁷ The wording of the CJ EU in *C-388/15 Nemzeti v. UPC* is self-explanatory, i.e. “the communication, by a professional to a consumer, of erroneous information, such as that at issue in the main proceedings, must be classified as a ‘misleading commercial practice’, within the meaning of that directive, even though that information concerned only one single consumer.”

The UCPD full harmonization system of “united” and “collective” protection against unfair commercial practices in B2C setting is not easily reconcilable with Europe 2020 Strategy and even less with national EU member states laws.¹¹⁸ The European Commission and the CJ EU do not have the courage to state clearly that the UCPD is here for the modern integration, for well-functioning competition where the consumer protection and welfare are relevant, but they are not the top priority, and where the average consumer needs a “high level protection”, see New Guidance. Well-functioning competition is made by competitors, including the Europe 2020 protégées — SMEs, and consumers are only stakeholders, not project shareholders!¹¹⁹ Unfair commercial practices are B2B at least as much as B2C and the primary victims are honest competitors¹²⁰ and consumers perhaps should not get a super assistance via general provisions against unfair commercial practices. This should be rather addressed by

¹¹⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹¹⁷ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

¹¹⁸ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers’ Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

¹¹⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹²⁰ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek. Does the Full Harmonization of the Consumers’ Protection Against Unfair Commercial Practices Via UCPD Fit in Europe 2020? *Czech Yearbook of International Law*, 2017, 8, 223–231. ISSN 1805-0565.

specific consumer protection measures. Naturally, unless sustainability and CSR concerns emerge and recast the expectations of the average consumer.

Table 5.

Review table: UCPD potential overlap with Sustainability/CSR

| UCPD | Sustainability/CSR potential | Status |
|---|---|---------------------------------------|
| ultimate purpose (Preamble and Article 1 UCPD) | Via Europe 2020 possibility to use CSR/sustainability to determine the ultimate purpose of the UCPD | not used at all |
| full harmonization (Article 1 and Article 4 UCPD) | sustainability/CSR could boost the problematic legitimacy of the full harmonization, see TEU and TFEU | used marginally |
| the target of the UCPD — B2C unfair commercial practices (Article 3 to Article 8 UCPD, Annex I UCPD) | sustainability/CSR are linked to the concept of justice and fairness, and vice versa — so they could help with the determination of the target of the UCPD. | used marginally |
| the “eternal evilness” — the black list (Annex I UCPD) | sustainability/CSR are linked to the concept of justice and fairness, and vice versa — so they could help with the determination of the target of the UCPD | used marginally |
| the protégée of the UCPD — the (average) consumer (Article 5 UCPD) | sustainability concerns are an integral part of the marketing and consumer product selection | TBD, the case law is unclear about it |

Source: Own processing by the Author.

It can be argued that the EU is well aware about the importance of the sustainability and its reflection by Europeans, i.e. CSR¹²¹ and that, although openness-oriented policies are to be associated with growth,¹²² human rights and freedom deserve serious consideration and protection vis-à-vis predatory,¹²³ over liberal and advantage taking practices.¹²⁴ Since there is a clear potential of various UCPD sections and concepts to be improved and made more

¹²¹ PAKŠIOVÁ, Renata. Understanding of corporate social responsibility in large companies in Slovakia within the context of a sustainable development. In *Economic policy in the European union member countries. International scientific conference*. Karvina: School of Business Administration in Karvina, SU in Opava, 2016, 516–525.

¹²² IYKE, B. Njindan. Does Trade Openness Matter for Economic Growth in the CEE Countries? *Review of Economic Perspectives: Národohospodárský obzor*, 2017, 17(1): 324. ISSN 1804-1663. DOI: 10.1515/revecp-2017-0001.

¹²³ MACGREGOR PELIKÁNOVÁ, Radka & CVIK, Eva Daniela. Impact of GDPR Security Measures on the Intellectual Property and Unfair Competition. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2018, 66(6): 1535–1542. ISSN 2464-8310. DOI: 10.11118 / act-aun201866061535.

¹²⁴ CVIK, Eva Daniela, MacGREGOR PELIKÁNOVÁ, Radka, MALÝ, Michal. Selected Issues from the Dark Side of the General Data Protection Regulation. *Review of Economic Perspectives: Národohospodárský obzor*, 2018, 18(4): 387–407. ISSN 1804-1663. DOI: 10.2478/revecp-2018-0020.

effective, efficient and legitimate by the sustainability/CSR, see Table 4, it is highly desirable to check more deeply and analyse which CSR categories could be employed to support the UCPD and its regime. One line of thought should definitely include employees, as a key asset of a businesses,¹²⁵ which are ambassadors to business values and the CSR concept vis-à-vis customers, i.e. without satisfied and CSR committed employees there can hardly be satisfied and fair practices appreciating customers.¹²⁶

Table 6.
Review table: CSR categories to support UCPD

| CSR category | UCPD | Significance |
|-----------------------------|--|--------------|
| environment protection | the entire UCPD and each and every provision of the UCPD could benefit by the environment concerns, especially the concept of "fairness" and of the (average) consumer should be linked to the environment protection considerations | high |
| employee matters | the use of employee matters to support the UCPD is rather marginal because the UCPD goes for the outside B2C and not for the inside matters of the B (business) | low |
| social matters, communities | the entire UCPD and each and every provision of the UCPD could benefit by the environment concerns, especially the concept of "fairness" and of the (average) consumer should be linked to the environment protection considerations | high |
| respect for human rights | the respect for Human Rights could at least indirectly contribute to the "fairness" interpretation and application | medium |
| anti-corruption, bribery | the entire UCPD and each and every provision of the UCPD could benefit by the Anti-corruption, Bribery concerns, especially the concept of "fairness" and the focus on B2C should be linked to the public policies against criminal behavior | high |
| R&D activities | R&D is pivotal for the effectiveness, efficiency and legitimacy in all spheres of human activities, in addition they can significantly save resources and so improve the market supplies and ultimate higher consumer benefits at lower cost | high |

Source: Own processing by the Author.

The eternal dilemma between the neoclassical equalization of levels of development between jurisdictions of the EU and the process of EU member

¹²⁵ NĚMEČKOVÁ, Iveta. The Roles of Salary in Employee Motivation and Retention in the Financial Sector of the Czech Republic in Relation to Herzberg's Two Factor Theory of Work Motivation. *Politická ekonomie*, 2013, 61(3): 373–392. ISSN 0032-3233.

¹²⁶ KŘEČKOVÁ KROUPOVÁ, Zuzana. The Latest Trends in the Corporate Sustainability and its Implications for Czech Businesses. *Central European Business Review*, 2015, 4(2): 12–20. ISSN 1805-4862.

state's internal divergences re-emerged.¹²⁷ The appreciation of these burning issues requires a scientific and academic scrutiny of static aspects of the definition and frameworks, and also dynamic aspects of their daily function, especially from the perspective of the ultimate stakeholders and beneficiaries, EU subjects.¹²⁸ Nevertheless, the provided analyses and reviews indicate clearly that, if the EU is serious about the UCPD and its regime, including enforcement, then the CSR has a significant potential to boost the effectiveness, efficiency and legitimacy of the UCPD regime and its enforcement. Arguably the most pivotal are the environmental, social, Anti-corruption and R&D categories. Consequently, it can be proposed that H1 should be confirmed, i.e. that the potential of the CSR to support fair commercial practices and in general the fair competition is underdeveloped (H1). The recent emergence of the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain does not change this H1 confirmation, indeed the unfairness in agricultural supply chains and the need for a proper enforcement are not directly linked to the CSR, although this would be feasible and highly likely effective and efficient, see the issue of the delivery and payment of perishable agricultural or food products, etc.

¹²⁷ CZYŻEWSKI, Bazyli & POLCYN, Jan. Education Quality and its Drivers in Rural Areas of Poland, *Eastern European Countryside*, 2016, 22, 197–227. ISSN 1232-8855. DOI: 10.1515/eec-20160010.

¹²⁸ MELECKÝ, Lukáš & STANIČKOVÁ, Michaela. Regional Efficiency Evaluation by DEA Approach: Comparison of Selected EU15 and EU13 Countries. In: Honová, I. et al. *Proceedings of the 2nd International Conference on European Integration 2014*. Location: VŠB Technical University of Ostrava, Ostrava, Czech Republic. Date: May 15–16, 2014. Ostrava: VŠB Technical University of Ostrava, pp. 465–475.

Chapter 5

EU approach to Intellectual Property

Arguably, the true virtue of a market economy lies in its ability to stimulate innovation¹ and IP assets in general. IP, as a utilitarian and instrumentalist construct, guarantees private ownership over creations of the human mind while encouraging inventiveness and innovation.² The protection of IP is one of the pillars of capitalism and the market economy.³ Indeed, IP assets typically refer to creations of the human mind, either representing a solution, an original work or a designation, which can (and should) be commercially used.⁴ Human knowledge, skills and creativity span beyond the time and geographic boundaries⁵ and their outcomes can be omnipresent and capable of parallel use without being consumed. The theoretical justifications for IP rights include the utilitarian theory of Jeremy Bentham, which combines the incentive and reward aspect, the labor theory of John Locke, the individual idealism philosophy

¹ SCHUMPETER, Joseph. *Theorie der wirtschaftlichen Entwicklung* (1911), translated into English (1934) as *The Theory of Economic Development*. Cambridge, MA: Harvard University Press.

² CARLAW, Kenneth et al. Beyond the hype. Intellectual property and the knowledge society/ knowledge economy. *Journal of Economic Surveys*, 2006, 20(4): 633–690. ISSN 1467-6419.

³ MARINOVA, Dora & RAVEN, Margaret. Indigenous Knowledge and Intellectual Property: A Sustainable Agenda. *Journal of Economic Surveys*, 2006, 20(4): 587–605. ISSN 1467-6419.

⁴ GILLAI, Barchi et al. Managing Supply Chain Sustainability and Intellectual Property: Are They More Similar than Different? *Stanford Initiative for the Study of Supply Chain Responsibility*, March 2014.

⁵ MARINOVA, Dora & RAVEN, Margaret. Indigenous Knowledge and Intellectual Property: A Sustainable Agenda. *Journal of Economic Surveys*, 2006, 20(4): 587–605. ISSN 1467-6419.

theory of Immanuel Kant and Georg Wilhelm Hegel, and the social planning theory.⁶

There always has been an interplay, perhaps even a tension, between the competition law, unfair competition law and consumer protection law,⁷ and undoubtedly their reconciliation, while reflecting as well among other items, the intellectual property, is challenging.⁸ However, this is not an excuse to give up, and the EU legislature, along with the CJ EU, and even with EU member states as ultimate “Masters of the Treaties”⁹ and addressees of this legislature, should work more towards their reconciliation without being paralyzed by the fear if this is best for the economic integration. The protection of the competition, consumers, sustainability and of the IP belongs to the priorities of the EU and EU member states which are directly linked to fundamental values recognized by Western civilization, based on Christianity.¹⁰

Although EU member states follow different legal traditions, and the dichotomy of the common law and continental (civil code) law family enter into the picture, the uninterrupted international harmonization process regarding the IP since 1883 for industrial property (Paris Convention) and 1886 for copyright (Bern Convention) has been bringing its fruits. In addition, our post-modern global society is dependent on the utilization of information system(s) and information technologies (“IS/IT”), is marked by virtualization,¹¹ aggressive competition and economic and other crises.¹² Intangible assets, especially IP assets, have become increasingly important in our knowledge based, digital and globalized society and have gained a high relevance for the economic success and value creations of businesses.¹³

⁶ NORMAN, Helen. *Intellectual Property Law*. Oxford, UK: Oxford University Press, 2014, 542 p. ISBN 9780199688104.

⁷ STUYCK, J. Réflexions sur une meilleure intégration du droit de la concurrence et du droit- des pratiques commerciales déloyales. *Revue internationale de droit économique*, 2011, 4, 455–479. ISSN 1010-8831.

⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁹ SVOBODOVÁ, M. On the Concept of Legislative Acts in the European Union Law. *The Lawyer Quarterly*, 2016, 4, 256–267. ISSN 1805-8396 (Print), ISSN 1805-840X (Online).

¹⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹¹ MacGREGOR PELIKÁNOVÁ, Radka. And the best top level domain for European enterprises is ... *International and Comparative Law Review*, 2012, 12(2): 41–57. ISSN 1213-8770.

¹² MacGREGOR PELIKÁNOVÁ, Radka. Internet My Dearest, What Type of European Integration Is The Clearest? *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2013, 61(7): 2475–2481. ISSN 1211-8516. DOI: 10.11118/actaun201361072475.

¹³ GILLAI, Barchi et al. Managing Supply Chain Sustainability and Intellectual Property: Are They More Similar than Different? *Stanford Initiative for the Study of Supply Chain Responsibility*, March 2014.

Recent decades were challenging for the modern European integration and a set of policies with different levels of effectiveness and efficiency has been prepared and performed.¹⁴ The common denominators were (i) integration, (ii) internal single market and (iii) IP concerns in the digitalized era with the exponential growth of e-business.¹⁵ Consequently, IP assets have become an integral part of policies to promote growth.¹⁶ Indeed, intangible assets are foundations of the competitive advantage in the 21st century and they need both creative and investment activities, i.e. there is not competitiveness without digital identification, inventions and innovations¹⁷ and there are not inventions and innovations without R&D investments.¹⁸ Indeed, the identity in the digital space, especially on the Internet, and its verification is critical for the operation of the global society,¹⁹ especially with respect to public services and business operations.²⁰ The EU's manufacturing sector keeps decreasing in importance in comparison with the services sector, i.e. IS/IT has transformed not only the economic environment.²¹

However, the European Commission and CJ EU have consistently adhered to the top command that the integration must be achieved at basically any cost, and that the protection of the IP²² by the establishment of a framework sup-

¹⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

¹⁵ MacGREGOR PELIKÁNOVÁ, Radka. The nebulous effectiveness, efficiency and fairness of the European e-Justice Portal vis-à-vis Corporate Social Responsibility. *Progress in Economic Sciences*, 2018, 5, 127–141. 2018. ISSN 2391-5951. DOI: 10.14595/PES/05/008.

¹⁶ MacGREGOR PELIKÁNOVÁ, Radka. Internet My Dearest, What Type of European Integration Is The Clearest? *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2013, 61(7): 2475–2481. ISSN 1211-8516. DOI: 10.11118/actaun201361072475.

¹⁷ POHULAK-ŽOLEDOVSKA, Elzbieta. Innovation in Contemporary Economies. *Oeconomia Copernicana*, 2016, 7(3), 451–466. ISSN 2083-1277, 2353-1827. DOI: 10.12775/OeC.2016.026.

¹⁸ BOČKOVÁ, Nina & MELUZÍN, Tomáš. Electronics Industry: R&D Investments as Possible Factors of Firms Competitiveness. *Procedia: Social and Behavioral Sciences*, 2016, 220, 51–61.

¹⁹ MacGREGOR PELIKÁNOVÁ, CVIK, Eva Daniela & MacGREGOR Robert. Qualified Electronic Signature: eIDAS Striking Czech public Sector Bodies. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 2019, 67(6): 1551–1560. ISSN 2464-8310, 1211-8516. DOI: 10.11118/actaun201967061551.

²⁰ POHULAK-ŽOLEDOVSKA, Elzbieta. Innovation in Contemporary Economies. *Oeconomia Copernicana*, 2016, 7(3): 451–466. ISSN 2083-1277, 2353-1827. DOI: 10.12775/OeC.2016.026.

²¹ SEVILLE, Catherine. Intellectual property. *The International Comparative Law Quarterly*, 2011, 60(4): 1039–1055. ISSN 0020-5893.

²² MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading commercial practices: the last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

porting fairness and stimulating innovations and inventions,²³ and by building a common culture of IP²⁴, have been just secondary. In addition, the pro-integration tandem has been often embracing a rather authoritarian approach to IP, neglecting particularities and priorities of EU member states and without taking advantage of the, probably, only common point, the Christian tradition.²⁵ European civilization is based on Christianity which endorses commonly accepted principles supporting the IP, such as the recognition and protection of personal and property rights and duties of individuals or the concept of sharing without expropriating or individual responsibility and the drive for creative solutions.²⁶ Further, the public financial support for (private) R&D is constrained by limited public budgets and other public factors.²⁷ Empirical studies find that innovation activities leading to practical results often have come from the private sector and tend to increase with the size of the firm,²⁸ a similar trend applies to the standards in CSR.²⁹ At the same time, these innovation activities deserve a well balanced protection addressing both the need to avoid an unnecessary monopoly and the need to fight against unfair practices, such as reverse engineering.³⁰ This is deplorable because IP leads to extremely valuable intangible assets due to the knowledge and creative activities of Europeans and offers an entirely new dimension of employment opportunities³¹ and of business effec-

²³ ŽELAZNY, Rafał & PIETRUCHA, Jacek. Measuring innovation and institution: the creative economy index. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 2017, 12(1): 43–62. ISSN 1689-765X. DOI: 10.24136/eq.v12i1.3.

²⁴ VIVANT, Michel. Building a common culture IP? *International Review of Intellectual Property and Competition Law*, 2016, 47(3): 259–261. ISSN 0018-9855. DOI: 10.1007/s40319-016-0472-y.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka. Constantine's Christianity for the (Dis)integrated EU: Déjà vu of Constantine's Roman governance reflecting of the mistrial of Jesus for EU? *Dialoga*, 2017, 4(1): 81–98. ISSN 2393-1744.

²⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁷ BLIND, Knut, PETERSEN, Sören, RILLO, Ceasare, A.F. The impact of standards and regulation on innovation in uncertain markets. *Research Policy*, 2017, 46, 249–264. ISSN 0048-7333. DOI: 10.1016/j.respol.2016.11.003.

²⁸ DAMIJAN, Jože, KOSTEVC, Črt, ROJEC, Matija. Exporting status and success in innovation: evidence from CIS micro data for EU countries. *The Journal of International Trade & Economic Development*, 2017, 26(5): 585–611. ISSN 0963-8199. DOI: 10.1080/09638199.2016.1271819.

²⁹ ADÁMEK, Pavel. Consequences of Corporate Social Responsibility Approach in Voluntary European and Global "Responsible" Initiatives. In *International Conference on European Integration*. Ostrava: VŠB–TU Ostrava, Faculty of Economics, 2016, pp. 19–27.

³⁰ OSTRASZEWSKA, Zuzanna, TYLEC, Agnieszka. Reverse Innovation: How it works. *International Journal of Business and Management*, 2015, III(1): 57–74.

³¹ TVRDOŇ, Michal. Decomposition of Unemployment: The Case of the Visegrad Group Countries. *E&M Ekonomie a Management*, 2016, 19(1): 4–16. ISSN 1212-3609.

tiveness and efficiency.³² However, this is hardly feasible if no, or insufficient, funding and incentives for the creation process, and no protection for the results, are provided.

Indeed, the EU has been obliged to reconcile IP interests vis-à-vis other objectives such as the elimination of internal restrictions on the import and export of goods, a common commercial policy, an internal market without obstacles to the famous four freedoms of movement, strengthening of consumer protection, etc.³³ Nevertheless, after decades of efforts towards a unified internal market without price differences and differences in national tastes, the total victory is not on the horizon, and even the CJEU recognizes (at least indirectly) national autonomy toward IP regimes, see *C-78/70 Deutsche Grammophon*, provided the trademark “fortress Europe” is defended, see e.g. *C-306/96 Javico v. YSL*, *C-355/96 Silhouette*, *C-414/99 Davidoff*.

The EU IP regime is inherently linked to the Digital single market. In 2000, the European Council launched the Lisbon Agenda 2000 and the European Commission prepared the Directive 2000/31/EC on electronic commerce (“ECD”), they both dealt with the still incomplete Digital single market, to be built based on innovations and IP in order to improve e-commerce and make the EU the most competitive in the entire world.³⁴ Since they did not succeed in this,³⁵ the European Commission of José Manuel Barroso issued the Europe 2020 Strategy, aka the Strategy for smart, sustainable and inclusive growth. Europe 2020 attempts to address two methods of economic growth through innovation — technological competitiveness and growth accumulated by cost competitiveness.³⁶ The 1st priority of Europe 2020, smart growth, is quantified by the target demanding that 3% of the EU’s GDP be invested in R&D and is translated in the Digital Single Market flagship initiative, which is directly related to the information society and its services, including e-commerce, i.e. to the ECD. In 2010, the R&D spending in the EU reached only 2% of GDP, while the rate in the US was 2.6% and in Japan 3.4%, so the European Com-

³² TVRDOŇ, Michal & TULEJA, Pavel, VERNER, Tomáš. Economic Performance and Labour Market in the Context of the Economic Crisis: Experience from the Visegrad Four Countries. *E&M Ekonomika a Management*, 2012, 15(3): 16–31. ISSN 1212-3609.

³³ CORNISH, William et al. *Intellectual Property: Patents, Copyright, Trademarks & Allied Rights*. 9th Edition. Sweet & Maxwell, 2019. ISBN: 9780414065826.

³⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁵ BENEŠ, Marek, MacGREGOR PELIKÁNOVÁ, Radka, VOJČÍK, Peter. The (in)compliance of the Directive on Electronic commerce and its purpose with the Europe 2020 approach to IP. In Filipová, L., Adámek, E., Lasotová, V. (eds.). *Proceedings of the 15th International Scientific Conference on Economic policy in the European Union Member Countries*, 2018, 194–210 of 323. ISBN 978-80-248-4155-7.

³⁶ TERZIČ, Lejla. The Role of Innovation in Fostering Competitiveness and Economic Growth: Evidence from Developing Economies. *Comparative Economic Research*, 2017, 20(4): 65–81. ISSN 2082-6737. DOI: 10.1515/cer-2017-0028.

mission implied that, without an increase in this respect, the EU would hardly be likely to succeed with its Digital Single Market, instead the EU would rather sink to the second, or even lower, rank of the global order.³⁷ Indeed, the impersonality feature of the Digital Single Market weakens, to a certain extent, the relationship between businesses and consumers, magnifies the information asymmetry and increases consumer, and even market, vulnerability.³⁸ Consequently, IP concerns have become an integral part of competition policies and of other policies to promote growth.³⁹ In economic terminology, the protection of intellectual property assets, especially innovations, may increase the number of researchers who innovate, as described by the Romer model, and the cost of acquiring technology, as described by the Solow model.⁴⁰

The above mentioned UCPD is a good example of the incorporation of competition, sustainability, IP and other concerns in one single EU law instrument. This is welcome by one academic stream, while others reject any attempts to mix IP, consumer protection, competition and unfair competition regimes.⁴¹

The technological progress and innovation implemented into new technologies should be outputs of an effective synergy about how Europe 2020 can act as a symbiotic parallel along with the EU Competition policy.⁴² The EU and the EU law should support the development of the technological potential of EU member states, especially those with a low synthetic index of technological potential.⁴³ In addition, the European Commission issued in May 2011 a so-called “blueprint” for IP rights with the aim of boosting creation and innovation⁴⁴ under the name COM(2011)287 A Single Market for IP Rights.⁴⁵ Fur-

³⁷ WALBURN, David. Europe 2020. *Local Economy*, 2010, 25(8): 699–702. ISSN 0269-0942.

³⁸ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. The Impact of the New EU Trademark Regime on Entrepreneurial Competitiveness. *Forum Scientiae Oeconomia*, 2019, 7(2): 59–70. ISSN 2300-5947. DOI: 10.23762/FSO_VOL7_NO2_4.

³⁹ BILLON, Margarita, MARCO, Rocio & LERA-LOPEZ, Fernando. Innovation and ICT use in the EU: An analysis of regional drivers, *Empirical Economics*, 2017, 53(3): 1083–1108. ISSN 0377-7332. DOI: 10.1007/s00181-016-1153-x.

⁴⁰ YUEH, Linda Y. Global intellectual property rights and economic growth, *Northwestern Journal of Technology and Intellectual Property*, 2007, 5(3): 436–448. ISSN 1549-8271.

⁴¹ CHRONOPOULOS, Apostolos. Legal and economic arguments for the protection of advertising value through trade mark law. *Queen Mary Journal of Intellectual Property*, 2014, 4(4): 256–276. ISSN 2045-9815. DOI: 10.4337/qmjip.2014.04.01.

⁴² KORDOŠ, Marcel. Effects of the EU Competition Policy and Strategy Symbiosis. In *International Conference on European Integration*. Ostrava: VŠB–TU Ostrava, Faculty of Economics, 2016, pp. 472–479.

⁴³ BALCERZAK, Adam P. Technological potential of European Economy. Proposition of measurement with application of multiple criteria decision analysis. *Montenegrin Journal of Economics*, 2016, 12(3): 7–17. ISSN 1800-5845. DOI: 10.14254/1800-5845.2016/123/1.

⁴⁴ SEVILLE, Catherine. Intellectual property. *The International Comparative Law Quarterly*, 2011, 60(4): 1039–1055. ISSN 0020-5893.

⁴⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

ther, the European Commission took care not only of the ECD, but the entire trademark law reform, both on the regulatory level for the EU trademark and on the harmonization level for EU national trademarks,⁴⁶ see Directive (EU) 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trademarks and the Regulation (EU) 2017/1001 of the European Parliament and of the Council on the EU trade mark. Despite all these legislative efforts, it must be emphasized that the EU was and still is composed of 28, resp. 27, individual digital markets divided largely due to non-harmonized, partially approximated and diversely developed systems,⁴⁷ and that the spending on R&D and digitalization is perceived very differently across the EU. Similarly, their overlap with the competition concerns varies dramatically in the perspectives of EU member states.

The basic measurable indicator to monitor and assess the spending on R&D is the GERD index, which reflects the investment's commitment to the R&D in co-relation to the GDP.⁴⁸ In 2015, i.e. half way through the reign of the Europe 2020 Strategy, the GERD of the USA was 2.79%, of Japan 3.4% and of South Korea 4.29%, while the GERD of the EU was 2.04%, i.e. there was a minimal growth since 2010 when it was 1.97% and there is basically no chance that the 3% target will be hit.⁴⁹ Unless the EU rejects the indicative value of GERD for fostering innovation, the semi-conclusion emerges that innovation fostering in the EU, while considering the investment aspect, is a myth. Even, it can be argued, that this myth is caused by a misunderstanding of the EU competencies and capacities, i.e. Europe 2020 endeavours towards SDG 9 are not succeeding due to the lack of the de iure and de facto power of the EU and EU institutions powers⁵⁰ and generally legality in this respect.⁵¹ Based on the GERD dynamics, Europe 2020 aims vainly to increase the EU's innovation drive and global competitiveness.⁵²

⁴⁶ Directive (EU) 2015/2436 to approximate the laws of the Member states relating trade marks, Regulation, Council Regulation (EC) 207/2009 on the EU TM (codified version), etc.

⁴⁷ POLANSKI, Paul Przemysław. Towards the single digital market for e-identification and trust services. *Computer Law & Security Review*, 2015, 31(6): 773–781. ISSN 0267-3649. DOI: 10.1016/j.clsr.2015.09.001.

⁴⁸ MacGREGOR PELIKÁNOVÁ, Radka. R&D expenditure and innovation in the EU and selected member states. *JEMI*, 2019, 15(1): 13–33. ISSN 2299-7326. DOI: doi.org/10.7341/20191511.

⁴⁹ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁵⁰ PASIMENI, Francesco & PASIMENI, Paolo. An Institutional Analysis of the Europe 2020 Strategy. *Social Indicators Reserach*, 2016, 127: 1021–1038. ISSN 0303-8300. DOI: 10.1007/s11205-015-1013-7.

⁵¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵² ERIXON, Fredrik. The Europe 2020 strategy: time for Europe to think again. *European view*, 2010, 9(1): 29–37. ISSN 1781-6858. DOI: 10.1007/s12290-010-0120-8.

However, the public and private R&D investments are complementary rather than substituting⁵³ and the total resulting expenditure on R&D cannot be treated mechanically as a guaranty of building and fostering innovation.⁵⁴ There is a competence deficit and the GERD 3% issues are merely arbitrary and incidental indicators and that instead the fostering innovation reality of the EU should be measured based on true outcomes, and not on the money invested and spent pursuant to the EU command, namely on digitalization and IP protected assets.⁵⁵

The basic measurable indicator to monitor and assess the digital status, especially the digital economic status, is the Digital Economy and Society Index (“DESI”) which is a composite index summarizing some 30 relevant indicators on Europe’s digital performance and competitiveness. Nordic countries along with the Netherlands and the UK, stay on the top, Slovakia and Slovenia have managed the biggest growth — by 4 points as opposed to the EU average — by 2–3 points and even less by e.g. Germany.⁵⁶

The differences between EU member states show no signs of diminishing and the indexes and data about the fostering invention, innovation, labelling and copyright trends are not unanimously going up.⁵⁷ Proclamations and declarations of the EU are rather mere wishes for the setting and imposing, but they lack both the competence and capacity.⁵⁸ Fostering innovation was and remains in the hands of the EU member states or more specifically in the hands of Europeans.

This cannot be reversed by the endeavor of the CJ EU and its case law, such as *C-252/07 Intel*, *C-487/07 L’Oréal*. It is worth of mentioning that *C-252/07 Intel* is presented as quite tough on superbrands, while *C-487/07 L’Oréal* is

⁵³ HAMMADOU, Hakim, PATY, Sonia., SAVONA, Maria. Strategic interactions in public R&D across European countries: A spatial econometric analysis. *Research Policy*, 2014, 43, 1217–1226. ISSN 0048-7333. DOI: 10.1016/j.respol.2014.01.011.

⁵⁴ BALCERZAK, Adam P. Europe 2020 Strategy and Structural Diversity Between Old and New Member States. Application of Zero Unitarization Method for Dynamic Analysis in the Years 2004–2013. *Economics & Sociology*, 2015, 8(2): 190–210. ISSN 2306-3459. DOI: 10.14254/2071-789X.2015/8-2/14.

⁵⁵ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁵⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁷ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁸ MacGREGOR PELIKÁNOVÁ, Radka. R&D expenditure and innovation in the EU and selected member states. *JEMI*, 2019, 15(1): 13–33. ISSN 2299-7326. DOI: doi.org/10.7341/20191511.

presented as a proponent of a very broad concept of unfair advantage.⁵⁹ Indeed, in *C-487/07 L'Oréal* it was held that taking unfair advantage of a mark does not require that there be a likelihood of confusion or a likelihood of a detriment to the distinctive character or the repute of the mark.⁶⁰ However, basically during the same time, a set of CJ EU cases dealing with Advertising Words aka AdWords emerged, see *C-236 to C-238/08 Google*, pursuant to which "The fact of creating the technical conditions necessary for the use of a sign and being paid for that service does not mean that the party offering the service itself uses the sign."⁶¹ Is this the way to modern digitalized advertising and trading⁶² on the single internal digital market? However, it needs to be recognized with respect to the CJ EU that its case law addresses the need of the IP protection.⁶³

Nevertheless, this trend is undermined by the lack of the full appreciation of several key aspects by the CJ EU, such as the Internet governance⁶⁴ and the e-business matters.⁶⁵ Indeed, often the CJ EU leaves it up to EU member states judges, i.e. to national courts, supported by experts to decide about the IP issues, such as whether the use of a trademark or its imitation or reference to it should be qualified as a misleading commercial practice or not,⁶⁶ see *C-201/96 Gut Springenheide* or *C-313/94 Elli Graffione*. Nevertheless, this exception is to be understood narrowly and this the CJ EU made clear in a recent *copycat* case, *C-195/14 Bundesverband v. Teekannee* the CJ EU by stating, "precluding the labelling of a foodstuff and methods used for the labelling from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that ingredient is present,

⁵⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶⁰ SEVILLE, Catherine. Intellectual property. *The International Comparative Law Quarterly*, 2011, 60(4): 1039–1055. ISSN 0020-5893

⁶¹ GONGOL, Tomáš. The Preliminary Ruling Decision in the Case of Google vs. Louis Vuitton Concerning the AdWord Service and its Impact on the Community Law. *Amfiteatru Economic*, 2013, 15(33): 246–260. ISSN 2247-9104.

⁶² THÜNKEN, Alexander. Multi-State Advertising over the Internet and the Private International Law of Unfair Competition. *The International and Comparative Law Quarterly*, 2002, 51(4): 909–942. ISSN 0020-58-93.

⁶³ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁶⁴ MacGREGOR PELIKÁNOVÁ, Radka, MacGREGOR Robert. Internet Governance and its Legitimacy: From Rhetoric to Facts and Even Beyond. *International Journal of Business and Management*, 2015, III(4): 77–102. ISSN 2336-2197.

⁶⁵ TRZASKOWSKI, Jan. User-generated marketing: legal implications when word-of-mouth goes viral. *International Journal of Law and Information Technology*, 2011, 19(4): 348–380. ISSN 0967-0769.

⁶⁶ TRZASKOWSKI, Jan. Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive. *Journal of Consumer Policy*, 2011, 34, 377–392. ISSN 0168-7034.

even though it is not in fact present and this is apparent solely from the list of ingredients on the foodstuff's packaging."⁶⁷ Further, the CJ EU in *C-544/13* and *545/13 Abcur AB* dealt with the confusing marketing by stating that "a commercial practice is to be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. Information requirements established by EU law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, are, in accordance with Article 7(5) of Directive 2005/29, to be regarded as material." This approach is as well embedded in further cases, such as in the cloth shop case *C-288/10 Wamo* and the e-commerce case *C-13/15 Cdiscount SA*.⁶⁸

All stakeholders, including the EU, EU key institutions and EU leaders, have to humbly accept that even the best intended requirements and targets set by the EU are at least partly futile vis-à-vis the much-needed fostering of innovation, that the endorsed indexes are merely indicative and that fostering innovation is a complex process needed to be done while taking an open-minded and bottom-up approach.⁶⁹ The EU should implement policies on organizational and institutional improvements and incentives for stimulating inter-organizational collaborations, i.e. promote open-minded institutional efficiency, reduction of institutional barriers,⁷⁰ industry 4.0 trend and the involvement of businesses, including SMEs. Regarding fostering innovation (and not only about that), the EU should be the facilitator, not the directive organizer.⁷¹ So far, fostering innovation in the EU and the related discussions are oscillating between chimerical myths of the all-knowing and ordering EU and pragmatic

⁶⁷ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁶⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁶⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁷⁰ De NONI, Ivan, ORSI, Luigi, BELUSSI, Fiorenza. The role of collaborative networks in supporting the innovation performances of lagging-behind European regions. *Research Policy*, 2018, 47, 1–13. ISSN 0048-7333. DOI: 10.1016/j.respol.2017.09.006.

⁷¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

reality and this is hardly reconcilable with the Europe 2020 proclaimed smart, sustainable and inclusive growth.⁷²

⁷² MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

Chapter 6

Corporate Social Responsibility for Intellectual Property

The success of modern European integration and the feasibility of the smart, sustainable and inclusive growth, proclaimed by the Europe 2020 Strategy, requires a symbiotic relationship between the EU and EU member states, especially their institutions, policies and law,¹ while paying particular attention to the sustainability, CSR, development of highly educated human capital² along with smart and digital assets and infrastructure,³ including the increase of IS/IT and affordable access to the Internet.⁴ This leads to the question, or better to say the hypothesis to be confirmed or rejected, i.e. whether the potential of the CSR to support inventions, innovations and proper labelling and in general IP as such is underdeveloped (H2).

¹ BENEŠ, Marek, MacGREGOR PELIKÁNOVÁ, Radka, VOJČÍK, Peter. The (in)compliance of the Directive on Electronic commerce and its purpose with the Europe 2020 approach to IP. In Filipová, L., Adámek, E., Lasotová, V. (eds.). *Proceedings of the 15th International Scientific Conference on Economic policy in the European Union Member Countries*, 2018, 194–210 of 323. ISBN 978-80-248-4155-7.

² POLCYN, Jan. Human development level as a modifier of education efficiency. *Management–Poland*, 2018, 22(2): 171–186. ISSN 1429-9321.

³ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁴ TUREČKOVÁ, Kamila. Sectoral specialization as a source of competitiveness: case study on ICT sector in V4+ countries. In: *Proceedings of the 3rd International Conference on European Integration 2016*. Ostrava: VŠB–TU Ostrava, pp. 1023–1029.

As explained above, the CSR is linked to the altruism and the general responsibility attitude⁵ and the IP recognition and protections is justified by a set of theories dealing with the concept of ownership, providing of reward for labor, offering incentives for creativity and efforts, etc. CSR within an IP framework should place some (additional) obligation on businesses, especially large corporations, that own IP.⁶ Hence, arguably, the CSR and IP concerns could easily overlap and enjoy a mutual synergetic interaction, which could be pictured e.g. by a responsible, creative and hardworking inventor trying to find a solution for more sustainable production and leading to a competitive advantage.⁷ It is obvious that IP rights can have an important impact on human well-being, including human flourishing and creativity and as such CSR is closely related to human development and human rights.⁸ Arguably, both CSR principles and the IP drive are a demonstration of moral obligations to bring benefits to the entire society by being responsible, creative and pro-active. The CSR should serve all stakeholder's interests⁹ and even enhance financial performance.¹⁰ Appropriate, reasonable, well oriented, well promoted and well published CSR "expenses", especially in the R&D category, should be compensated for by the advertising effect of an improved brand image, stable revenues from a loyal clientele, improved employee productivity,¹¹ decreased risk¹² and reduced capital cost.¹³ This proposition is supported by the evidence that CSR reporting significantly impacts a firm's value¹⁴ and that R&D spending in par-

⁵ PETERSON, Lizette. Influence of age, task competence, and responsibility focus on children's altruism. *Developmental Psychology*, 1983, 19(1): 141. ISSN 0012-1649. DOI: 10.1037/0012-1649.19.1.141.

⁶ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19-01, 2019.

⁷ GALLARDO-VÁZQUEZ, Dolores et al. Corporate Social Responsibility as an Antecedent of Innovation, Reputation, and Competitiveness Success: A Multiple Mediation Analysis. *Sustainability*, 2019, 11(20): 5614. ISSN 2071-1050. DOI: 10.3390/su11205614.

⁸ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19-01, 2019.

⁹ BERMAN, Shawn L. et al. Does stakeholder orientation matter? The relationship between stakeholder management models and firm financial performance. *The Academy of Management Journal*, 1999, 42, 488-506. ISSN 0001-4273.

¹⁰ ROWLEY, Tim & BERMAN, Shawn. A brand new brand of corporate social performance. *Business & Society*, 2000, 39(4): 397-418. ISSN 0007-6503. DOI: 10.1177/000765030003900404.

¹¹ IKRAM, Atif, LI, Zhichuan Frank & MINOR, Dylan. CSR-contingent executive compensation contracts. *Journal of Banking & Finance*, 2019. ISSN 0378-4266. DOI: 10.1016/j.jbankfin.2019.105655.

¹² SHARFMAN, Mark P. & FERNANDO, Chitru S. Environmental risk management and the cost of capital. *Strategic Management Journal*, 2008, 29, 569-592. ISSN 1097-0266. DOI: 10.1002/smj.678.

¹³ GALBREATH, Jeremy. ESG in focus: The Australian evidence. *Journal of Business Ethics*, 2013, 118(3): 529-541. ISSN 0167-4544. DOI: 10.1007/s10551-012-1607-9.

¹⁴ EL GHOUL, Sadok et al. Does corporate social responsibility affect the cost of capital? *Journal of Banking & Finance*, 2011,35(9): 2388-2406. ISSN 0378-4266.

ticular has a noticeable potential to boost the innovation and reputation,¹⁵ as well as productivity and ultimately lead to product differentiation and entry barriers.¹⁶ Hence, the potential of the CSR to support inventions, innovations and proper labelling and in general IP is present and should be developed, i.e. the EU, EU member states and EU businesses should take full advantage of it. Naturally, the strategy Europe 2020 should address that and if appropriate, it should take advantage of the possibility to use the CSR to boost IP and vice-versa. This especially, since IP often does not receive too much attention in the press and in CSR reports.¹⁷ Indeed, as mentioned above, the 6th CSR category, R&D, is even legislatively not considered as a required CSR category.

The priorities, targets and flagship initiatives of Europe 2020 reflect the belief that the internal market requires a certain degree of homogeneity in the economic development of countries, which is not necessarily an automatic outcome of the European integration process but eventually has to be assisted by active policy interventions,¹⁸ especially regarding the existence of competition and fairness,¹⁹ consumer protection, IP²⁰ and the enhancement of general awareness²¹ and ethics concerns.^{22,23} Indeed, the impersonality of e-business weakens the relationship between businesses and consumers,

¹⁵ GALLARDO-VÁZQUEZ, Dolores et al. Corporate Social Responsibility as an Antecedent of Innovation, Reputation, and Competitiveness Success: A Multiple Mediation Analysis. *Sustainability*, 2019, 11(20): 5614. ISSN 2071-1050. DOI: 10.3390/su11205614.

¹⁶ McWILLIAMS, Abigail & SIEGEL, Donald. Corporate social responsibility and financial performance: Correlation or misspecification? *Strategic Management Journal*, 2000, 21(5): 603–609. ISSN 1097-0266. DOI: 10.1002/(SICI)1097-0266(200005)21:5<603::AID-SMJ101>3.0.CO;2-3.

¹⁷ GILLAI, Barchi et al. Managing Supply Chain Sustainability and Intellectual Property: Are They More Similar than Different? *Stanford Initiative for the Study of Supply Chain Responsibility*, March 2014.

¹⁸ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. The Impact of the New EU Trademark Regime on Entrepreneurial Competitiveness. *Forum Scientiae Oeconomia*, 2019, 7(2): 59–70. ISSN 2300-5947. DOI: 10.23762/FSO_VOL7_NO2_4.

¹⁹ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. Corporate Social Responsibility e-Reporting as a tool for (Un)fair competition in the EU. In LÖSTER, Tomáš, PAVELKA, Tomáš (Eds.). *Conference Proceedings. The 12th International Days of Statistics and Economics*, September 6–8, 2018, Prague, CZ, pp. 1112–1122 of 2063. ISBN 978-80-87990-14-8.

²⁰ MacGREGOR PELIKÁNOVÁ, Radka. The Fair Analysis of the Case law of the Court of Justice of EU on the Unfair Commercial Practices. *Acta Academica Karviensia*, 2019 (1): 47–58. ISSN 1212-415X.

²¹ CZYŻEWSKI, Bazyli, POLCYN, Jan & HNATYSZYN-DZIKOWSKA, Anna. Concept for Measuring the Efficiency of Public Goods Provision Based on the Education Sector in Poland, *Ekonomický časopis*, 2016, 64(10): 973–993. ISSN 0013-3035.

²² SROKA, Włodzimierz & LÖRINCZY, Marketa. The perception of ethics in business: Analysis of research results. *Procedia Economics and Finance*, 2015, 34, 156–163. ISSN 2212-567. DOI: 10.1016/S2212-5671(15)01614-7.

²³ SROKA, Włodzimierz & SZÁNTÓ, Richard. Corporate Social Responsibility and Business Ethics in Controversial Sectors: Analysis of Research Results. *Journal of Entrepreneurship, Management and Innovation*, 2018, 14, 111–126. ISSN 2299-7075. DOI: 10.7341/20181435.

magnifies information asymmetry and increases consumer, and even market, vulnerability.²⁴

Pursuant to Europe 2020, UN Agenda 2030 and other strong strategic and/or legal documents, the EU rhetoric takes SDG 9 seriously, and hence has taken, since 2010, a very strong commitment to support the effective and efficient fostering of inventions, innovation, labelling, copyrights, etc.²⁵ Indeed, the virtue of a market economy lies in its ability to stimulate innovation²⁶ and the IP in general and this should work in a synergetic symbiosis. In addition, although CSR does not typically evoke thoughts of IP rights, the effects of IP rights on human well-being have become a global issue.²⁷

However, the official data provided by the EU, such as the GERD index, DESI index and EPO application and patent numbers show a very different picture, i.e. plans and goals set by the EU and its top institutions in this respect do not lead to such a result. The differences between EU member states remain and EU member states appearing as champions of fostering innovation have reached such results rather thanks to the long ongoing bottom-up, multi-stakeholder and national approach. The traditionally more sustainability oriented and more CSR committed Germany and the Northern states do better in all accounts vis-à-vis fostering innovation than do the other EU member states.²⁸

As mentioned above, the basic measurable indicator to monitor and assess the spending on R&D is the GERD index which reflects the investment's commitment to the R&D in co-relation to the GDP. In 2015, i.e. at the half-way point in the era of the Europe 2020 Strategy, the GERD of the USA was 2.79%, of Japan 3.4% and of South Korea 4.29%, while the GERD of the EU was 2.04%, i.e. there was a minimal growth since 2010 when it was 1.97% and there is basically no chance that the 3% target will be hit.²⁹ Interestingly, EU members states reaching this target, or at least getting close to it, are as well economies focusing on the effective and efficient use of the IP assets and sharing rather

²⁴ MacGREGOR PELIKÁNOVÁ, Radka & MacGREGOR, Robert. The Impact of the New EU Trademark Regime on Entrepreneurial Competitiveness. *Forum Scientiae Oeconomia*, 2019, 7(2): 59–70. ISSN 2300-5947. DOI: 10.23762/FSO_VOL7_NO2_4.

²⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁶ SCHUMPETER, Joseph. *Theorie der wirtschaftlichen Entwicklung* (1911), translated into English (1934) as *The Theory of Economic Development*. Cambridge, MA: Harvard University Press.

²⁷ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19–01, 2019.

²⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

²⁹ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

similar trends with respect to the attitude to the fairness of competition.³⁰ These EU member states and their 2015 GERDs are: Denmark (2.96%), Germany (2.92%), Finland (2.90%) and of course Sweden (3.27%). In this group definitely does not belong France (2.27%), Italy (1.34%) or Spain (1.22%). As expected, the worst result from the “old” 15 EU member states was held by Greece (0.97%). By the way, the Czech Republic had GERD 1.56% in 2011 and 1.93% in 2015 and so belongs to the middle group such as France. In the light of sustainability and inclusion, it is of great concern that basically each EU member state slowly oscillates around its amount of GERD and there is neither a generally increasing trend nor a unification trend.³¹ Unless the EU rejects the indicative value of GERD for the innovation fostering, the semi-conclusion emerges that innovation fostering in the EU, while considering the investment aspect, is a myth. Even, it can be argued, that this myth is caused by a misunderstanding of the EU competencies and capacities, i.e. Europe 2020 endeavours towards SDG 9 are not succeeding due to the lack of the *de iure* and *de facto* power of the EU and EU institutions powers³² and generally legality in this respect.³³ Based on the GERD dynamics, Europe 2020 aims vainly to increase the EU’s innovation drive and global competitiveness.³⁴ However, the public and private R&D investments are complementary rather than substituting³⁵ and the total resulting expenditure on R&D cannot be treated mechanically as a guaranty of building and fostering innovation.³⁶ There is a competence deficit and the GERD 3% issues are merely arbitrary and incidental indicators and that instead the fostering innovation reality of the EU should be measured based

³⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³¹ MacGREGOR PELIKÁNOVÁ, Radka. R&D expenditure and innovation in the EU and selected member states. *JEMI*, 2019, 15(1): 13–33. ISSN 2299-7326. DOI: doi.org/10.7341/20191511.

³² PASIMENI, Francesco & PASIMENI, Paolo. An Institutional Analysis of the Europe 2020 Strategy. *Social Indicators Reserach*, 2016, 127: 1021–1038. ISSN 0303-8300. DOI: 10.1007/s11205-015-1013-7.

³³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁴ ERIXON, Fredrik. The Europe 2020 strategy: time for Europe to think again. *European view*, 2010, 9(1): 29–37. ISSN 1781-6858. DOI: 10.1007/s12290-010-0120-8.

³⁵ HAMDADOU, Hakim, PATY, Sonia., SAVONA, Maria. Strategic interactions in public R&D across European countries: A spatial econometric analysis. *Research Policy*, 2014, 43, 1217–1226. ISSN 0048-7333. DOI: 10.1016/j.respol.2014.01.011.

³⁶ BALCERZAK, Adam P. Europe 2020 Strategy and Structural Diversity Between Old and New Member States. Application of Zero Unitarization Method for Dynamic Analysis in the Years 2004–2013. *Economics & Sociology*, 2015, 8(2): 190–210. ISSN 2306-3459. DOI: 10.14254/2071-789X.2015/8-2/14.

on true outcomes, and not on the money invested and spent pursuant to the EU command, namely on digitalization and IP protected assets.³⁷

As mentioned above, the basic measurable indicator to monitor and assess the digital status, especially the digital economic status, is the Digital Economy and Society Index (“DESI”) which is a composite index summarizing some 30 relevant indicators on Europe’s digital performance and competitiveness. DESI tracks the evolution of EU Member States, across five main dimensions: Connectivity (25%), Human Capital (25%), Use of Internet (15%), Integration of Digital Technology (20%), and Digital Public Services (15%) and uses the scale is 0–100.³⁸ Nordic countries with the Netherlands and UK stay on the top, Slovakia and Slovenia have managed the biggest growth — by 4 points as opposed to the EU average — by 2–3 points and even less by e.g. Germany. Against common expectations, DESI makes Austria beat Germany, while both are still above the EU average. However, this is not true for France, which stays 1–3 points behind the EU average! Well, the very good pulling EU tandem of Germany–France is heavily puffing far behind after the very lightly running, integration cold, Scandinavia, integration criticising Netherlands and against integration rebelling UK.³⁹ Regarding the digitalization and marketing, it would be remiss to skip e-business and the online comparison.⁴⁰ For example, over one half of Czech consumers do e-commerce mostly searching through price comparing pages and media and 92% of Czech consumers at least sometimes use them. Czech consumers seem to care little as to what domain under what name they finally land on to make a purchase. This is an extreme example within the EU consumer basis, since the rate of consumers from the entire EU using the price comparing search engines is only 27%.⁴¹

The GERD index investment commitment and the DESI index digitalization need to be appreciated while considering innovations reaching the per-

³⁷ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

³⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

³⁹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁴⁰ MacGREGOR PELIKÁNOVÁ, Radka. The (in)significance of domain names for e-commerce. *ACC Liberec, Issue B Science of Economics*, 2013, XIXB (2): 40–52. ISSN 1803-9782.

⁴¹ BÍLKOVÁ, Renáta, DVOŘÁK, Jiří. Possibilities in advancement of e-shop. In *Scientific Papers of the University of Pardubice. Series D, Faculty of Economics and Administration*, 2012, 25(3): 30–41. ISSN 1211-555X.

haps highest protection monopolist status — patents.⁴² Well, even here, we can observe that for the last decade the number of both national and regional applications has not grown dramatically and the differences between EU member states remain.⁴³ The multiannual financial frameworks 2007–2013⁴⁴ and 2014–2020⁴⁵ along with structural and other types of (re)financement do not significantly change this landscape.⁴⁶ The only dramatic change occurred regarding the ratio of application v. granted patent,⁴⁷ but this change is due to an internal administrative change by the European Patent Office.⁴⁸

EU member states which spend more on R&D, as witnessed by the GERD index, generally benefit by a more developed and wider spread digitalization, as witnessed by the DESI index, and have subjects which generate more EPO applications and even granted patents. However, some limitations need to be presented. First, the eagerness to file an application with the EPO does not always mirror the well supported and fostered innovation drive. It is more reliable to consider only the successful applications, i.e. patents granted by the EPO.⁴⁹ Second, a patent is not always the preferred method and instrument for IP protection and SMEs often use business secrets, contracts, unfair competition and other regimes.⁵⁰ Third, patented innovations which do not manage to pass the Rubicon and become employed in praxis could hardly be considered as a demonstration of effective and efficient innovation fostering. Fourth, there

⁴² MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁴³ TUREČKOVÁ, Kamila & NEVIMA, Jan. European funds: risk management by public colleges [Evropské fondy: management rizik v oblasti veřejného školství]. *Scientific Papers of the University of Pardubice, Series D*, 2017, 24(41): 206–216. ISSN 1804-8048.

⁴⁴ MELECKÝ, Lukáš. The main achievements of the EU structural funds 2007–2013 in the EU member states: efficiency analysis of transport sector. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 2018, 13(2): 285–306. ISSN 1689-765X.

⁴⁵ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁴⁶ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁴⁷ MacGREGOR PELIKÁNOVÁ, Radka. R&D expenditure and innovation in the EU and selected member states. *JEMI*, 2019, 15(1): 13–33. ISSN 2299-7326. DOI: doi.org/10.7341/20191511.

⁴⁸ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁴⁹ MacGREGOR PELIKÁNOVÁ, Radka. R&D expenditure and innovation in the EU and selected member states. *JEMI*, 2019, 15(1): 13–33. ISSN 2299-7326. DOI: doi.org/10.7341/20191511.

⁵⁰ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

are as well other patents to be obtained, i.e. there is a choice between national, regional and international patents and so the EPO is not the only institution granting valuable patents with a possible scope of use in the EU. Last, and perhaps most importantly, the IS/IT sphere is very different and distant from traditional industrialization. Computer programs, software and other instruments and platforms to be used by a post-modern society in the global environment are excluded from patent protections and instead are a subject matter of copyright and other law mechanisms.⁵¹

The labelling leads to brands and often a brand is considered to be 'a good' and/or "property" by itself that is demanded by consumers as a complement to the product.⁵² The economic value consists of both the product and its label, which does not need to be a trademark protected by the IP law, and each of them deserves a strong protection which needs to be reflected by a legal evaluation and law setting.⁵³ Some EU jurisdictions have already established systems of various interrelated Acts specifically addressing selected IP, IPRs and IP assets along with the unfair competition, consumer protection and sustainability matters. For example, in compliance with *BGBI. S. 1 Grundgesetz von 23.5.1949* ("Grundgesetz"), the German Act Against Unfair Competition specifically deals with the misappropriation of goods and services in Sec. 4(9) and targets in particular the confusion as to the source and taking unfair advantage or damaging a competitor's goodwill or related confidence. It reduces the protection against parasitic commercial practices by the concept "freedom to imitate".⁵⁴ The Czech Civil Code covers the parasitic commercial practices not only via the general clause but as well by the special prohibition of misleading labelling, inducing the risk of confusion and parasitizing on a good reputation.⁵⁵ The Czech protection based on the unfair competition is perceived as a typical plan B, or even the last resort. Even in France, provisions for protection against unfair competition are included in a Code, it is the French Commercial Code, Code de Commerce, but in a kind of atypical manner in the continental law environment, these provisions (L.440 et foll. French Commercial Code) are

⁵¹ MacGREGOR PELIKÁNOVÁ, Radka. Fostering Innovation: a Myth or Reality of the EU in 2018 In: Staničková, M., Melecký, L., Kovářová, E., Dvoroková, K. (Eds.). *Proceedings of the 4th International Conference on European Integration 2018*, May 17–18, 2018, Ostrava, 965–973 of 1121. ISBN 978-80-248-4169-4.

⁵² CHRONOPOULOS, Apostolos. Legal and economic arguments for the protection of advertising value through trade mark law. *Queen Mary Journal of Intellectual Property*, 2014, 4(4): 256–276. ISSN 2045-9815. DOI: 10.4337/qmjip.2014.04.01.

⁵³ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁵⁴ OHLY, Ansgar, The Freedom of Imitation and Its Limits: A European Perspective. *International Review of Intellectual Property and Competition Law*, 2010, 41, 506–524. ISSN 0018-9855.

⁵⁵ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

preceded by provisions dealing with another branch of the competition law, i.e. the Public law antimonopoly and anti-cartel provisions (L.420 et foll. French Commercial Code)⁵⁶

The CJ EU teleological and purposive approach, magnified by the drive to go for an expansive interpretation in order to support the integration, is visible even in the spheres of the overlap of the sustainability and IP. Indeed, the CJ EU via its case law, such as *C-59/12 BKK v. Zentrale*, rejected confusing marketing and *copycat* techniques, i.e. considers them as prohibited vis-à-vis basically everybody able to do so or reach such an effect.⁵⁷ This can be exhibited by a quasi-copycat case *C-195/14 Bundesverband v. Teekanne* in which the CJ EU employed the synergy of the Directive 2000/13/EC and other directives and pushed for an honest and truthful labelling in the largest sense,⁵⁸ “precluding the labelling of a foodstuff and methods used for the labelling from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that ingredient is present, even though it is not in fact present and this is apparent solely from the list of ingredients on the foodstuff’s packaging.” Well, this case law about labelling needs to be appreciated in the context of especially trademark regulation and national practices while keeping in mind that modern trademarks perform many functions⁵⁹ and are leads for customers.⁶⁰ Nevertheless for other IP matters, the scenery is less clear, see e.g. the CJ EU ruling in *C-403/08 Football Association Premier League v. QC*. Indeed, since sports events do not qualify as works for the EU copyright protection, the unfair competition rules, with the misappropriation doctrine, become instrumental to provide the needed protection.⁶¹ In this casuistic setting, it can be suggested that, despite the absence of a dedicated special and mono-conceptual regime, the current EU legal framework is flexible and well equipped to provide protection to sporting events and invest-

⁵⁶ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁵⁷ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade’s crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference “Economic policy in the European Union Member Countries”*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

⁵⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵⁹ LONG, Doris Estelle. Resolving Trademark Duality in the Twenty-first Century: Making Trademarks Internet-Ready. *Acta MUP*, 2013, 4(1): 31–42. ISSN 1804-6932.

⁶⁰ DĚDKOVÁ, Jaroslava. Trademarks for Quality, for Origin, and Their Significance for Customers on the Czech-German Borderland. *ACC Journal: Issue B*, 2012, 18(2): 34–41. ISSN 1803-9782.

⁶¹ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

ments⁶² against various undesirable behaviors, including parasitic practices of both a commercial and non-commercial nature.⁶³ However, so far, despite few judgments, *C-667/15 Loterie Nationale — Nationale Loterij NV van publiek recht C-562/15 Carrefour Hypermarchés SAS*, etc., a stable case law has not yet been established, but considering the large amount of UCPD applications filed (approximation cases to be decided), there is a strong potential, see *C-357/16 Gelvora*, *C-356/16 Wamo and Van Mol*, *C-295/16 Europamur Alimentación*, *C-269/16 Barbara Giménez*, *C-146/16 Verband Sozialer Wettbewerb*, etc.⁶⁴

The smart, sustainable and inclusive growth of the strategy Europe 2020 along with the single internal digital market are very far from being in compliance with each other and, even more importantly, with reality.⁶⁵ Further, voices about the abuse of powers of both officials and certain states over others, about the lack of legitimacy,⁶⁶ about self-indulgence and self-centrism, about problematic access to justice, about the delay and costs of getting justice, etc. are growing.⁶⁷ Meanwhile, the economic and innovation gap between the EU and other developed countries is widening and it seems impossible that the EU will beat the US in the macro-economic, micro-economic and innovation criteria and factors in 2020. The EU will probably never reach the federalist integration of the US and the EU idea of the integrated economic and social Europe is becoming a castle in the clouds.⁶⁸ The less Christian EU is becoming less integrated, less effectively and efficiently governed and administered and less acceptable even for nations which are not models of an over-eager Christian

⁶² MARGONI, Thomas. The protection of sports event in the EU: property, intellectual property, unfair competition and special forms of protection. *International Review of Intellectual Property and Competition Law*, 2016, 47(4). ISSN 0018-9855. DOI: 10.1007/s40319016-0475-8.

⁶³ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁶⁴ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁶⁵ BENEŠ, Marek, MacGREGOR PELIKÁNOVÁ, Radka, VOJČÍK, Peter. The (in)compliance of the Directive on Electronic commerce and its purpose with the Europe 2020 approach to IP. In Filipová, L., Adámek, E., Lasotová, V. (eds.). *Proceedings of the 15th International Scientific Conference on Economic policy in the European Union Member Countries*, 2018, 194–210 of 323. ISBN 978-80-248-4155-7.

⁶⁶ MacGREGOR PELIKÁNOVÁ, Radka. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing, 2014, 186 p. ISBN 978-80-7418-226-6.

⁶⁷ MacGREGOR PELIKÁNOVÁ, Radka. Constantine's Christianity for the (Dis)integrated EU: Déjà vu of Constantine's Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

⁶⁸ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

proclamation (see the UK and Brexit).⁶⁹ These aborted opportunities mean that no advantage is taken of the IP's overlap with the sustainability and CSR.

Table 7.

Review table: IP potential overlap with Sustainability/CSR

| IP assets and rights | Sustainability/CSR potential | Status |
|----------------------|--|---|
| work — copyright | see DESI, i.e. digitalization can significantly save material resources | used partially, see Digital single market |
| label — trademark | trademarks, collective trademarks and certification trademarks are critical for conveying the message about sustainability and CSR | used more and more, see TM reform and certification TMs |
| inventions — patent | patented inventions are monopolist rewards for new and industrially significant solutions | used partially, see EPO statistics |

Source: Own processing by the Author.

It can be argued that the EU is well aware about the importance of sustainability and its reflection by Europeans, i.e. CSR,⁷⁰ and that the EU is much more aware about the overlap between IP and sustainability/CSR than about the overlap between UCPD and sustainability/CSR, see Table 4 and Table 6. Hence the IP can support the sustainability/CSR. However, the positive effect applies as well vice versa, i.e. the sustainability/CSR can help IP and Table 7 summarizes it by considering CSR categories.

⁶⁹ MacGREGOR PELIKÁNOVÁ, Radka. Constantine's Christianity for the (Dis)integrated EU: Déjà vu of Constantine's Roman governance reflecting of the mistrial of Jesus for EU? *Dialogo*, 2017, 4(1): 81–98. ISSN 2393-1744.

⁷⁰ PAKŠIOVÁ, Renata. Understanding of corporate social responsibility in large companies in Slovakia within the context of a sustainable development. In *Economic policy in the European union member countries. International scientific conference*. Karviná: School of Business Administration in Karvina, SU in Opava, 2016, 516–525.

Table 8.
Review table: CSR categories to support IP

| CSR category | IP | Significance |
|-----------------------------|--|----------------|
| environment protection | the entire IP and in particular the sphere of patented inventions and trademarks focus and pay attention to environment concerns. Indeed, both the patent and TM registration process has been recently digitalized. Further public policies and reasons are considered and entail environment concerns. | high |
| employee matters | there is not sufficient data to state whether employee matters (can) support IP | TBD |
| social matters, communities | the social matters and communities' concerns are argued in the registration process of various industrial property assets and rights | medium |
| respect for human rights | there is not sufficient data to state whether respect for Human Rights (can) support IP | TBD |
| anti-corruption, bribery | there is not sufficient data to state whether respect for Anti-corruption, bribery (can) support IP. However, highly likely the IP needs a stable legal setting | TBD |
| R&D activities | R&D is pivotal for the IP, see GERD and DESI!!! | extremely high |

Source: Own processing by the Author.

The provided analyses and reviews indicate clearly that the sustainability/ CSR and IP are strongly interrelated and that CSR has a significant potential to boost the IP. Arguably, a CSR model for IP offers an additional strategy to support ongoing efforts to make IP more sensitive to human needs and human rights⁷¹. Manifestly, GERD and DESI point strongly and vehemently to the R&D category. However, there are some shortcomings regarding employees matters, respect for Human rights and Anti-corruption bribery categories. Indeed, the most critical determinant of sustainability and ultimately of (any category of) CSR is the genuine quality of business 'relationship and engagement with all stakeholders.'⁷² Regarding IP, in the theory, patent and copyright laws promote progress and innovation and trademark law encourages businesses to maintain certain standards and allows consumers to make efficient choices. However, IP should promote as well human progress, which could (and should) be encouraged by CSR practices.⁷³ Hence, it can be well argued that the H2 is to be confirmed, i.e. that the potential of the CSR to support inventions, innovations and proper labelling and in general IP as such is underdeveloped (H2).

⁷¹ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19-01, 2019.

⁷² TING, Irene Wei Kiong et al. Corporate Social Performance and Firm Performance: Comparative Study among Developed and Emerging Market Firms. *Sustainability*, 2019, 12, 26. ISSN 2071-1050. DOI: 10.3390/su12010026.

⁷³ OSEI-TUTU, Janewa J. Socially Responsible Corporate IP. *FIU Legal Studies Research Paper Series*. Research Paper No. 19-01, 2019.

Conclusion

The post-Lisbon EU with its Europe 2020 strategy proclaims as its priority a smart, sustainable and inclusive growth which inherently entails the sustainability, fair competition and IP concerns. However, despite plans, proclamations and various policies, as well as legislative and other actions, the current EU has not become the most competitive and knowledge-based economy in the world.¹ There are many reasons and causes for that, but certainly the drive for the engagement of all stakeholders with the sustainability concept, i.e. CSR, and for fair commercial practices and IP are correctly selected instruments. It is worthy of exploration whether they can synergistically support each other and help overcome various obstacles and assist the EU on its way to the mentioned status.

The performed comparative and critical Meta-Analysis explored information yielded by a multi-disciplinary and multi-jurisdiction research of primary and secondary data while using a holistic approach refreshed by Socratic questioning and open-minded glossing. The studied materials represented four principal categories: internal business documents generated by businesses themselves (i), comparative scoring documents generated by semi-official reviewers of the CSR and other official and semi-official indexes (ii), political, legislative and semi-legislative documents generated by state authorities (iii) and academic writings (iv). Such a Meta-Analysis reveals the legitimacy of this exploration and indicates the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations, and proper

¹ MacGREGOR PELIKÁNOVÁ, Radka. Supranational Europe 2020 Competitiveness: Questionable Effectiveness, Efficiency and Value Compliance. In Nálepková, V., Šťastná, J. *Conference Proceedings: International Scientific Conference: Economic policy in the Global Environment*. Havířov: Vysoká škola sociálně správní, 2017, 241–256 of 332. ISBN 978-80-87291-20-7.

labelling in the EU. The ultimate key research question about whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context is to be answered by affirmation. Interestingly, there are significant differences between the recognition and employment of various CSR categories reflecting the three sustainability pillars. The Author in this monograph proposes six CSR categories 1. environment protection, 2. employee matters, 3. social matters and community concerns, 4. respect for human rights, 5. anti-corruption and bribery matters, 6. R&D activities.

Further, the Author points out that some of them can play a pivotal role for the fairness of the commercial practices (see environment protection and social matters and community categories) and for the development of the IP assets, in particular inventions, innovations, digitalization and proper labelling in the EU (see R&D category).

The ultimate goal to consolidate the current multi-disciplinary knowledge is satisfied and the way is open for further research and endeavors focusing basically on all CSR categories and making sure that their potential is fully developed to support fair commercial practices, IP and the smart, sustainable and inclusive growth in the EU. The CSR, fair competition and IP are not only inherently interrelated, but in addition they all are, at least to a certain extent, products of our civilization with its Christian roots.

The mentioned research question about whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context, and the mentioned ultimate goal to consolidate current multi-disciplinary knowledge and offer leads for further research, are projected in two confirmed hypotheses.

Firstly, the CSR has the potential to support fair commercial practices and, in general, the fair competition, but this potential is basically not recognized so it is consecutively underdeveloped (H1). The confirmation of the first hypothesis (H1) has been achieved by the performed Meta-Analysis which paid a particular attention to the UCPD and its principal features which partially clash with national particularities as well as law traditions and economic-social situations. Indeed, both the current setting of the CSR and CSR reporting via Directive 2013/34/EU and Directive 2017/1132 and the current setting of the protection against unfair commercial practices via UCPD are political compromises which are embraced with a varying level of enthusiasm and commitment.² This issue is magnified by the multitude of purposes, imposed full harmonization, B2C unfair commercial practices as the target, the eternal evilness of the Black list and the (average) consumer test regarding the (alleged) ultimate protégée. European academic literature seems hesitant and contradictory even regarding

² MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

the very fundamentals, i.e. conceptual perceptions and classification of the law of unfair competition. Certain authors are deeply convinced that the law of unfair competition covers all rules about the functioning of the free market as a whole and their purpose is to ensure that both free and fair competition is maintained.³ Other authors strictly distinguish between the antimonopoly/antitrust law and law of unfair competition.⁴ The European Commission and CJ EU work very hard to boost the UCPD regime and achieve its broad and unified application, but they used just marginally, if at all, the CSR to boost the legitimacy, effectiveness and efficiency of such a regime. Since national measures protecting against unfair competition, especially unfair commercial practices, are not in symbiosis,⁵ there is a strong call for a common denominator. This call could target the Christian roots and CSR, both are still shared (or at least silently recognized) by the majority of Europeans. Indeed, Europeans recognize the importance, or at least are aware, about the environmental, social and economic sustainability as well as fairness. So far, the strongest potential to support the UCPD seems to belong to the environment protection, social matters and communities, Anti-corruption and R&D categories.

Secondly, the CSR has the potential to support inventions, innovations and proper labelling and, in general, IP and there is a partial awareness about it, see R&D category and its correlation with GERD and DESI, but still considering all CSR categories this potential is only partially developed (H2). The confirmation of the second hypothesis (H2) has been achieved by working more on economic than legislative aspects, by considering rather judicial casuistic than legislative positivism. Due to the international harmonization process launched already in the 19th century and the global intangible, omnipresent and non-consumable nature of IP assets, European jurisdictions do not generally differ so much regarding their approaches to inventions, innovations, digitalization and labelling as they do regarding unfair competition. Europeans do not worship divergences and national particularities at any price, they are open-minded and ready to discuss and accept moderate and well explained rational changes.⁶ Surprisingly, the dichotomy between the common law uni-

³ KAMPERMAN Sanders, A. Chapter 15 Unfair competition: complementary or alternative to intellectual property in the EU? In: Geiger, Ch. *Constructing European Intellectual Property*, Edward Elgar Publishing, 2013, 496 p. ISBN 978-1-78100-163-9.

⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁵ MacGREGOR PELIKÁNOVÁ, Radka. European Myriad of Approaches to Parasitic Commercial Practices. *Oeconomia Copernicana*, 2017, 8(2): 167–180, ISSN 2083-1277. DOI: 10.24136/oc.v8i2.11.

⁶ MacGREGOR PELIKÁNOVÁ, Radka, BENEŠ, Marek, MacGREGOR, Robert. European (mis)reconciliation of rules against misleading Commercial practices: the Last decade's crusade of the Commission and CJ EU. In Majerová, I., Kotlánová, E. (eds.). *Proceedings of the 14th International Conference "Economic policy in the European Union Member Countries"*, 2016, 389–398 of 424. ISBN 978-80-7510-210-2.

verse and continental universe does not seem to directly lead to these differences. A deeper and closer harmonization in this sphere is definitely needed and desirable, see e.g. the single internal digital market issue and TM reform. However, again the EU should listen better and more carefully look for policies and instruments supporting the creation and protection of IP assets and the legitimization of the entire IP law, which is under several current attacks, see e.g. copyright issues on the Internet. Hence again, the CSR could play a vital role to boost the IP regime in the EU, its legitimacy, effectiveness and efficiency. Compared to H1, here the situation is slightly better, because it has been already established that one CSR category is pivotal for IP — the R&D category. Naturally, the examination and employment of other appropriate CSR categories should follow.

Yes, we want and need sustainable, fair and IP advanced practices and we should put the CSR to work in this respect! The EU should use its drive for sustainability as a leverage in its fight for fair commercial practices in the internal single market and for stronger IP. The synergy effect and mutual support should be definitely taken advantage of if the EU seriously wants to become the most competitive and knowledge-based economy in the world.

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Abstract

This monograph is the result of an ambitious, innovative, multi-disciplinary and scientific research project conducted at the Metropolitan University Prague and supported by the Grant Agency of the Czech Republic, namely GA ČR No. 17-11867S. It presents and codifies an abundance of fresh information about the perception of sustainability, corporate social responsibility (“CSR”), (un)fair commercial practices and intellectual property (“IP”) and their mutual support and possible synergy effects. This naturally involves both primary and secondary data and their processing by a battery of appropriate methods. The pertinent data was obtained and selected via complex investigative and open-minded research activities throughout a number of fields and branches, while directly and indirectly drawing from prior publications of the author of this monograph (“Author”), especially books¹ and articles that were published in 2017 and 2018. Following this, the yielded data was subjected to an investigative Meta-analysis while employing a comparative and holistic approach. Particular attention has been paid to the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations, and proper

¹ MacGREGOR PELIKÁNOVÁ, Radka. *Ekonomické, právní a technické aspekty doménových jmen v globální perspektivě* [Economic, Legal and Technical Aspects of Domain Names in the Global Perspective]. Ostrava, Czech Republic: Key Publishing, 2012. 245 p. ISBN 978-80-7418-165-8. MacGREGOR PELIKÁNOVÁ, Radka. *Domain names: Their nature, functions, significance and value*. Saarbrücken, GE Lambert Academic Press, 2014, 273 p. ISBN 978-3-659-62653-1. MacGREGOR PELIKÁNOVÁ, Radka. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing, 2014, 186 p. ISBN 978-80-7418-226-6. MacGREGOR PELIKÁNOVÁ, Radka. *New trends in perception and use of domain names: Critical and Comparative Analysis of the Modern Domain Name Universe*. Ostrava: Key Publishing and Praha: MUP Press, 2015, 144 p. ISBN 978-80-7418-251-8. MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

labelling in the EU. This leads to the ultimate key research question whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context. Naturally, the global context is considered, nevertheless the top focus aims at the situation in the EU and in EU member states. Policies regarding CSR, unfair competition and IP are highly important for both EU and EU member states, and regarding all these three overlapping fields, the EU has engaged in harmonization efforts.²

Globalization, virtualization with the Internet as its flagship, the past crises coupled with the fear of future crises, the modern European integration and its leading strategy Europe 2020, all these provide the background. The background where an eager, often even aggressive, competition takes place, where the key assets and instruments are IP assets and where the sustainability concerns have been growing. The Author has been studying and extensively publishing on the topic of CSR, competition and IP for two decades. She has, during this time, observed various approaches, purposes and goals of the law creating and protecting the IP and of the law fighting against unfair commercial practices in various jurisdictions.³ In sum, the EU harmonization attempts, under the umbrella of the strategy Europe 2020 for the smart, sustainable and inclusive growth, should lead to a multi-stakeholder model and mutual support, i.e. that the sustainability motivates businesses to go for CSR which will make the competition more fair and IP assets more prominent. Well, there are several challenges and perhaps even flaws targeting the feasibility and legality of this entire mechanism. Last but not least, the European nations and European jurisdictions share different traditions and conceptual founding. For example, common law jurisdictions are more inclined to have a liberal approach to commercial practices and a less formal approach to IP, while continental law jurisdictions go for a special unfair competition law and are reluctant to provide a robust protection for unregistered industrial property assets. However, due to the modern European integration, the EU law stepped into it in a radical manner and brought forth a set of instruments, including the one-decade strategy Europe 2020 and the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ("Unfair Commercial Practices Directive" or "UCPD").⁴

The Author is well aware of the overwhelming extent entailing such an ambitious research question as whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the Eu-

² MacGREGOR PELIKÁNOVÁ, Radka. *Selected current aspects and issues of European integration*. Ostrava, CZ: Key Publishing, 2014, 186 p. ISBN 978-80-7418-226-6.

³ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

⁴ MacGREGOR PELIKÁNOVÁ, Radka. *European drive for fair competition: nature and impact of the harmonized protection against unfair commercial practices*. Ostrava: Key Publishing and Praha: MUP Press, 2018. ISBN 978-80-7638-001-1.

ropean context. Indeed, an academically robust assessment of the feasibility, effectiveness and efficiency of the potential of CSR to support the fairness of the commercial practices and the development of the IP assets, in particular inventions, innovations, and proper labelling in the EU can hardly be achieved in a full extent by this pioneering monograph. Instead, this monograph is one of the first steps in a long journey which needs to be done.

The ultimate goal of this monograph is to consolidate current multi-disciplinary knowledge and offer leads for further research. Although sustainability with CSR, competition and fair commercial practices and IP are pivotal for one's success in 21st century, their foundations are products of our civilization with its roots firmly embedded in Christianity. These point to arithmetic and geometric justice, recognition of talents and commanding us to develop them, prohibition of recklessness and waste, recognition of the love as charity, etc. Ultimately, these concepts lead to the respect for all three sustainability pillars (economic, environmental and social, aka people, planet and profit), determination for creativity, both collective and individual responsibility and ownership and knowledge — *Scientia potentia est*⁵ and *Faber est suae quisque fortunae*.⁶ Consequently, the monograph is split into a set of related but not strictly dependent chapters addressing these issues. They follow a logical path, but can also be understood and used individually and without the need to study the content of other chapters, if so desired. The work culminates in semi-conclusions in each individual chapter and in the final conclusion.

The mentioned research question whether the current perception and setting of the CSR can or cannot help in the fight for fair competition and IP in the European context, and the mentioned ultimate goal to consolidate current multi-disciplinary knowledge and offer leads for further research, are projected in two hypotheses. Firstly, that the potential of the CSR to support fair commercial practices and in general the fair competition is underdeveloped (H1). Secondly, that the potential of the CSR to support inventions, innovations and proper labelling and, in general IP, as such is underdeveloped (H2).

The understanding of the sustainability, CSR, fair competition and IP and their potential for mutual support and synergy, along with the EU harmonization saga and national particularities concerns, is pivotal not only for economic, environmental and social aspects, but in addition testifies a lot about many highly relevant aspects of the modern European integration. The potential of the CSR to support fair commercial practices and IP must be properly understood and fully explored. The way to it leads over the enhancement of awareness and commitment.

Key words: *Commercial practices, Competitiveness, Corporate Social Responsibility (CSR), Intellectual property (IP), Sustainability, Unfair Commercial Practices Directive (UCPD), Unfair competition.*

⁵ BACON, Francis or HOBBS Thomas in *Leviathan* (1668). *Knowledge is power.*

⁶ CAECUS, Appius Claudius. *Every man is the artisan of his own fortune.*

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Reviews

The monograph studies the problems of corporate social responsibility in commercial practices and especially in the context of intellectual property. It systematically examines sustainability and corporate social responsibility, EU approach to corporate social responsibility, EU approach to Intellectual Property and, finally, corporate social responsibility for intellectual property. The problem is whether the current perception and setting of the corporate social responsibility can or cannot help in the endeavor for fair competition and intellectual property in the European context. The goal of the study is to consolidate current multi-disciplinary knowledge and offer leads for further research. The results of the study are formulated in two confirmed hypotheses: (1) the corporate social responsibility has the potential to support fair commercial practices and, in general, the fair competition, but this potential is basically not recognized and remains underdeveloped; (2) the corporate social responsibility has the potential to support inventions, innovations and proper labelling and, in general, intellectual property.

The monograph is a meaningful addition to the current problem of corporate social responsibility in the area of fair commercial practices.

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The monograph addresses the synthesis of the results and their relation to the CSR and IP fields. It indicates how the discussion could be further developed not only on the law level, but as well regarding the spillover effect of the CSR concept, i.e. for the corporation management in the context of achieving a competitive advantage while at the same time protection of IP. The used literature is relevant and entails as well prior works of the Author. The extent of the used literature reflects the scope of the monograph and the main topic. I appreciate the employment of foreign resources as well as the quantity of ongoing references and the interrelation of law and economic perspectives regarding the selected topic.

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This monograph is a scholarly work done by a researcher who has visited many different aspects of EU legislation and practices in previously published works. The work itself is quite densely written, so the reader should be aware that it is not a quick read. The issues addressed are well laid out at the start, taking the reader through well-referenced passages to historically set the context for discussion of CSR in the corporate and European context, both commercially and legally. Many concurrent issues are carefully parsed (e.g. Common vs Continental law, Christian forbears to the legal and social framework, harmonization) as the text leads us to the conclusion regarding CSR as a commercially competitive tool in an increasingly digitalized context. The issues raised and explored are many, and at the end, one can only appreciate the scholarly contribution this work provides to serious researchers in domains such as EU Law, competition, CSR and digitalization, just to name a few.

David Muir, M.Sc., MBA

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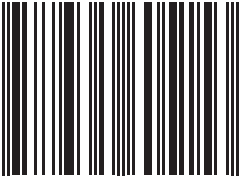
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