

International Research Conference: Management Approaches in CSR

Must Ethics Pay?

Legal Framework for CSR in Germany

Essen, 18 November 2011

Prof. Dr. Olaf Müller-Michaels



- OECD Guidelines for Multinational Enterprises
- Global Compact: The Ten Principles
- EU Strategy for CSR
- Deutscher Nachhaltigkeitskodex
- Global Reporting Initiative (GRI)
- EFFAS KPIs for ESG
- IIRC Discussion Paper: Towards Integrated Reporting

- ISO 26000

Social responsibility: **7** core subjects



* The figures denote the corresponding clause numbers in ISO 26000.

- German Stock Corporation Act and Criminal Code
- The management board has to manage the company in its own responsibility
- A member of the management board does not violate his fiduciary duties if in a management decision he could reasonably assume to act on the basis of adequate information for the company good (*Business Judgement Rule*)
- A person who misuses his power to dispose over assets owned by another person, and by this negatively affects the monetary interests of such other person, is subject to imprisonment of up to five years or penalties

- Shareholder value und stakeholder value embedded in German Corporate Governance and Sustainability Codices

- Pluralism of interests to be considered by management board
 - + Shareholder
 - + Employees
 - + Customers
 - + Other groups related to the company

- Companies should contribute to the enhancement of the public good

- Internal measures
 - + Advantages for employees
 - + Better workplace

- External measures
 - + Donations
 - + Sponsoring
 - + Charity

- Essentials
 - + Voluntary
 - + Altruism

- „Good corporate citizen“: Social acceptance secures economic success
- Social activities and profit are complementary goals
- „Do good and talk about it“
- Good reputation increases profits in the mid- and long term
- Ethics pay

- No empirical proof for profit increase caused by CSR
- Ethics must pay: no true altruism
 - + Unprofitable measures not allowed
 - + Social activities as smart way for maximizing profits
 - + CSR as tool for public relation policy
 - + Ethics as factor of financial analysis
- Ethics should be primary goal, not secondary means for profit

- „SANCT“ concept as legal guideline for management
 - + Long-term **S**tability and rentability
 - + **A**dequacy
 - No one size fits all solution
 - Tax deductibility irrelevant
 - No fixed limit (1% of earnings)
 - Strategy, industry, social and macro-economical role of company
 - Financial situation and capability
 - + **N**o **C**onflicts of interest (no „pet projects“)
 - + **T**ransparency



Professor, FOM 2009
Rechtsanwalt since 1997
Dr. jur., Ruhr-Universität
Bochum 1996

Chambers Europe 2009:
Highly Regarded (Corpo-
rate/M&A)

Professor Dr. Olaf Müller-Michaels

Rechtsanwalt
Orrick Hölters & Elsing

Heinich-Heine-Allee 12, 40213 Düsseldorf
tel +49 (0) 211 36787 211
fax +49 (0) 211 36787 177
omueller-michaels@orrick.eu

Prof. Dr. Olaf Müller-Michaels is attorney in the Düsseldorf office of Orrick. He focusses on corporate transactions and on corporate and capital markets law. Olaf Müller-Michaels advises on strategic measures, privatizations, shareholder disputes as well as on corporate governance and compliance. He is chairman of the supervisory board of Murphy&Spitz Green Capital AG, a listed private equity company focussed on renewable energies. Moreover, he is arbitrator and counsel in national and international arbitration.

Prof. Dr. Olaf Müller-Michaels has published numerous articles in legal books, law journals and newspapers, and operates the legal blog „Verschmelzungsbericht“.

Since 2009, Olaf Müller-Michaels is a regular professor for business law at FOM Hochschule für Oekonomie & Management in Essen. Besides corporate law he teaches European and International Business Law as well as legal drafting and negotiation.