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The Role of Corporate Social Responsibility in Remedying Failing Water Policy

To What Extent Can Corporate Social Responsibility be Used
as a Tool for Achieving the Objectives of the Water
Framework Directive?

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Summary

The supply of good quality water is an essential resource for society. It is needed for human consumption, for production processes in the industry, for fishing, etcetera. The fact that the quality of waters within the European Union is continuously deteriorating is therefore of major concern. One example is the Baltic Sea, which is heavily affected by eutrophication.

Eutrophication is caused by discharges and run-offs of nutrients to the sea and the Baltic Sea is particularly vulnerable because it is partly enclosed and thus the water body is very seldom flushed out with oxygen-rich water. The Baltic Sea is also the recipient of discharges from an area of land that is four times bigger than the sea itself.

The eutrophication in the Baltic Sea has caused coastal sea grasses to be replaced by algae. This in turn has had major negative effects on fish populations and has caused disturbance of recreational activities for humans because of toxic blooms of algae. Severe cases of eutrophication can lead to the creation of dead zones, which means that there is no oxygen in the water. Such zones exist in the Baltic Sea and the situation is getting worse. This affects the biodiversity in the sea since large parts of the sea only provide habitat for species that can survive in waters where the oxygen levels are low.

The European Union has attempted to deal with the problem of eutrophication through legislation. Even though this has led to that discharges of nutrients have been reduced, the problem of eutrophication is worsening and further actions need to be taken to deal with this issue. Furthermore, the approach taken to water management must be holistic since water is affected by, and affects, many different activities such as the industry, wastewater treatment and human consumption.

The enactment of the Water Framework Directive (2000/60/EC) was a response to the need for a more holistic water management. By including all water bodies in the European Union, and by including stakeholders in the process of implementing the directive, sustainable and effective regulations were going to be developed. However, due to several reasons, such as a lack of knowledge of what improvements that can be made through different measures as well as a lack of resources, the European Commission holds that the objective of the Water Framework Directive, to achieve good ecological status for the water bodies in the European Union by 2015, will not be met. New ways of achieving the objective should therefore be explored.

The need to address the problem of eutrophication in the Baltic Sea has also been acknowledged by non-governmental organisations that promote corporate social responsibility initiatives. The initiatives taken because of

their work have already reached tangible results regarding eutrophication in the Baltic Sea, showing that corporate social responsibility can be used as a tool for improving the health of the Baltic Sea. However, the effect of corporate social responsibility initiatives must be improved and applied more widely if the objectives of the Water Framework Directive are going to be achieved.

The majority of companies in the European Union are small and medium-sized enterprises. Their environmental performance therefore needs to be improved if the eutrophication in the Baltic Sea is going to be reduced over the long-term. The legislator has the ability to provide small and medium-sized enterprises with the support they need to improve their environmental performance, such as financial support and knowledge about why and how they can improve their environmental performance. However, multinational enterprises must also improve their environmental performance. The legislator has various possibilities of enhancing the use and effects of corporate social responsibility. The legislator can also influence all enterprises within its jurisdiction.

By enhancing the results achieved through corporate social responsibility initiatives, the legislator can use them as tools for achieving the objective of the Water Framework Directive.

Sammanfattning

Tillgång till tillräckliga mängder vatten av god kvalitet är en väsentlig resurs för samhället. Det behövs för mänsklig konsumtion, för produktion i industrin, för fisket, etcetera. Det är därför mycket oroande att vattenkvaliteten i Europeiska unionen successivt försämras. Östersjön som är mycket påverkad av övergödning kan nämnas som ett exempel.

Övergödning orsakas av utsläpp av näringsämnen i havet. Östersjön är särskilt känslig för övergödning eftersom den är delvis omgärdad av land vilket innebär att havet sällan tillsätts syresatt vatten. Östersjön är vidare mottagare av utsläpp från en landareal som är fyra gånger så stor som havet.

Övergödningen i Östersjön har lett till att sjögräs har ersatts av alger. Detta har i sin tur haft mycket negativa effekter på fiskebeståndet och har orsakat negativa konsekvenser för rekreativitet för människor på grund av giftiga algbloomingar. I allvarliga fall kan övergödning leda till att döda zoner skapas, vilket innebär att det inte finns något syre i vattnet. Sådana områden finns redan i Östersjön och situationen försämras med tiden. Detta påverkar den biologiska mångfalden i havet eftersom endast de organismer som kan överleva i syrefattiga vatten kan leva där.

Europeiska unionen har försökt åtgärda problemet med övergödning genom lagstiftning. Trots att utsläpp av näringsämnen har minskat blir problemet med övergödning dock fortsatt värre och fler åtgärder krävs för att komma till rätta med problemet. Vattenförvaltningen måste vidare göras övergripande eftersom vatten både påverkar och påverkas av flera olika aktiviteter så som industri, hantering av avfallsvatten och mänsklig konsumtion.

Antagandet av ramdirektivet för vatten (2000/60/EG) var ett svar på behovet av en övergripande vattenförvaltning. Europeiska kommissionen framhåller dock att direktivets mål, att alla vatten inom Europeiska unionen ska uppnå god status 2015, inte kommer att nås. Detta beror bland annat på brist på kunskap om vilka förbättringar som kan åstadkommas genom olika åtgärder samt på bristande resurser. Nya metoder för att nå direktivets mål bör följaktligen utforskas.

Behovet av att åtgärda problemet med övergödning i Östersjön har även uppmärksamats av ideella organisationer som uppmuntrar företag att ta samhällsansvar. De initiativ som tagits inom ramen för deras verksamhet har redan nått påtagliga resultat och företagens samhällsansvar kan därför ses som ett verktyg för att förbättra Östersjöns hälsa. De resultat som nås genom företagens samhällsansvar måste dock förbättras och tillämpas över ett vidare geografiskt område om ramdirektivets mål ska uppnås.

Majoriteten av bolagen i Europeiska unionen är små och medelstora företag. Deras miljöarbete måste därför förbättras om övergödningen i Östersjön ska minskas med ett långvarigt resultat. Lagstiftaren kan påverka små och medelstora företag genom att exempelvis erbjuda dem det stöd de behöver för att förbättra deras miljövänliga prestationer, till exempel ekonomiskt stöd och kunskap om varför och hur de kan förbättra sitt miljöarbete. Även multinationella företag måste dock förbättra sitt miljöarbete. Lagstiftaren har möjlighet att öka användningen och effekterna av företagets samhällsansvar. Lagstiftaren har även möjlighet att påverka alla företag inom sin jurisdiktion.

Genom att förbättra de resultat som nås genom företagets samhällsansvar kan lagstiftaren använda dem som verktyg för att nå ramdirektivet för vattens mål.

Preface

There are many people I would like to thank for helping me, in different ways, with writing this thesis and only a few are mentioned here.

I was fortunate to have Sanja Bogojević as my supervisor. Her interest in the subject of this thesis and her constructive feedback was very helpful. Her colleague Radu Mares also gave me many useful inputs.

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Abbreviations

BSAG	The Baltic Sea Action Group
BSAP	HELCOM Baltic Sea Action Plan
CSR	Corporate Social Responsibility
EU	European Union
HELCOM	Baltic Marine Environment Protection Commission – Helsinki Commission
MNE	Multinational enterprise
NGO	Non-governmental organisation
SME	Small and medium-sized enterprise
WFD	Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy
WSSD	The World Summit on Sustainable Development
RBMP	River basin management plan

1 Introduction

1.1 Background

Water plays a vital role in society. It is necessary for there to be life,¹ and it is a necessary resource contributing to and ensuring wealth in society by enabling developments in industry, agriculture, and other important aspects of society.² Furthermore, the demand for good quality water in the EU is continuously growing.³ As the world's population increases, larger quantities of water are needed for drinking, sanitation, agriculture, electricity, etcetera.⁴ At the same time, all parts of society have impacts on the water resources in the EU.⁵ One example that deserves to be mentioned is discharges of nutrients from agriculture, industry and wastewater treatment plants. Such discharges contribute to a large extent to eutrophication.⁶

The WFD was enacted in order to ensure a sustainable use of water.⁷ The directive states that 'Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.'⁸ The directive also states that the demand for sufficient quantities of good quality water is growing, meaning that the waters in the EU are under increasing pressure.⁹

Two major issues relating to water are water quality deterioration caused by pollution, and over-exploitation of water resources.¹⁰ These problems have

¹ Elizabeth Fisher, Bettina Lange and Eloise Scotford, *Environmental Law: Text, Cases and*

² Keimpe Wieringa (ed), *Environment in the European Union 1995: Report for the Review of the Fifth Environmental Action Programme* (European Environment Agency 1995) 79; European Commission, 'Water is Life: Water Framework Directive' (Office for Official Publications of the European Communities 2002).

³ European Parliament and Council Directive 2000/60/EC of the of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L327/1, preamble 4.

⁴ United Nations World Water Assessment Programme, 'WWDR4 – Background Information Brief: Global Water Resources under Increasing Pressure from Rapidly Growing Demands and Climate Change, According to New UN World Water Development Report' (United Nations Educational Scientific and Cultural Organization) <unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/WWDR4%20Background%20Briefing%20Note_ENG.pdf> accessed 12 September 2013.

⁵ Dir 2000/60/EC (n 3) para 4; Wieringa, *Environment in the European Union 1995* (n 2) 79.

⁶ European Environment Agency, *The European Environment: State and Outlook 2010 Synthesis* (European Environment Agency 2010) 60-61.

⁷ Dir 2000/60/EC (n 3) art 1.

⁸ Dir 2000/60/EC (n 3) preamble 1.

⁹ Dir 2000/60/EC (n 3) preamble 4.

¹⁰ Wieringa, *Environment in the European Union 1995* (n 2) 79; European Commission, 'Report from the Commission to the European Parliament and the Council on the

to be solved and it is clear that even though some work has already been done through the enactment of legislation,¹¹ further actions must be taken in order to ensure the supply of water within the EU, in qualitative as well as in quantitative terms.¹² Legislation should form the basis for such actions but, as will be presented in this thesis, it is possible that further improvements can be made if CSR is used as a tool for implementing water policy.¹³

1.1.1 The Baltic Sea

The Baltic Sea suffers, and has suffered, from major issues relating to water quality, such as pollution and eutrophication.¹⁴ When the coastal states around the Baltic Sea became member states of the EU (Member States), the possibilities for the EU to contribute to improving the water quality in the Baltic Sea increased.¹⁵ For example, Sweden and Finland became Member States in 1995, and in 2004, Latvia, Lithuania and Estonia became members of the EU.¹⁶ These enlargements of the EU meant that the EU could enact legislation on the use and protection of waters that would be binding on the majority of the coastal states around the Baltic Sea.¹⁷

Achieving the objective of good status is necessary for the long-term availability of sufficient quantities of good quality water.¹⁸ Deadline for the implementation of the WFD is 22 December 2015.¹⁹ However, reasons attributable to the design of the WFD, such as vagueness and objectives that

Implementation of the Water Framework Directive (2000/60/EC): River Basin Management Plans' COM (2012) 670 final, 6.

¹¹ For example the enactment of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment [1991] OJ L135/40, Council Directive 91/676/EEC of 12 Decemer 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1991] OJ L375/1 and Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the member states [1975] OJ L194/26.

¹² Wieringa, *Environment in the European Union 1995* (n 2) 3-79; European Environment Agency, *European Waters — Assessment of Status and Pressures* (European Environment Agency 2012) 12; Maria Holffe and others, 'Turning Adversity into Opportunity: A Business Plan for the Baltic Sea' (The Boston Consulting Group 2013) 5.

¹³ See primarily chapter 5.

¹⁴ Wieringa, *Environment in the European Union 1995* (n 2) 89; European Environment Agency, *The European Environment: State and Outlook 2005* (European Environment Agency 2005) 134; Beate Werner and others, *European Waters – Current Status and Future Challenges: Synthesis* (Publications Office of the European Union, 2012) 12.

¹⁵ Wieringa, *Environment in the European Union 1995* (n 2) 93.

¹⁶ European Union, 'Countries' (European Union) <<http://europa.eu/about-eu/countries>> accessed 13 September 2013.

¹⁷ The Treaty on the Functioning of the European Union [2008] OJ C115/47, arts 1, 2.2, 4.2(e); European Environment Agency, *State and Outlook 2005* (n 14) 135; European Union, 'Countries' (n 16).

¹⁸ COM (2012) 670 final (n 10) 5.

¹⁹ Dir 2000/60/EC (n 3) arts 4.1, 25-26.

are too ambitious,²⁰ have meant that the implementation of the WFD has not progressed in a successful way.²¹ For example, in some water bodies the ecological status is unknown, there are significant gaps in the development and application of assessment methods, the objectives of the WFD have not been sufficiently integrated into policy decisions in Member States and it is clear that many water bodies will not be in good status by 2015. Conclusively, the European Commission reports that the goal of achieving good status in European waters by 2015 will not be met.²²

Limiting the problem of eutrophication in the Baltic Sea requires cross-sector and cross-governmental co-operation.²³ CSR is one such kind of action taken to improve the water quality in the Baltic Sea. Through voluntary actions, corporations have made commitments to, for example, reduce eutrophication in the Baltic Sea.²⁴ In light of the difficulties of achieving good water quality only through the WFD,²⁵ it is likely that the goal²⁶ of a sustainable use of water can be reached sooner if corporations affecting the Baltic Sea are encouraged to implement CSR initiatives to reduce their negative impacts on the water quality.²⁷ This is also in line with the goal of the EU to create a sustainable development.²⁸ In this process, CSR is considered a ‘necessary and natural counterpart’²⁹ because it is seen as making the EU more competitive and competitiveness and sustainability are considered to be mutually reinforcing concepts.³⁰

1.2 Aim and Purpose

The broad aim and purpose of this thesis is to investigate what measures Member States can take to encourage enterprises to improve their environmental performance in a way that will help Member States respect their obligations under the WFD. This study focuses on two questions. The

²⁰ Henrik Josefsson and Lasse Baaner, ‘The Water Framework Directive – A Directive for the Twenty-First Century?’ (2011) 23 *Journal of Environmental Law* 467, 484-485; Fisher, Lange and Scotford (n 1) 562.

²¹ Josefsson and Baaner (n 20) 485.

²² COM (2012) 670 final (n 10) 3-8.

²³ Holfve and others (n 12) 3.

²⁴ Fazer, ‘Fazer has made a Commitment for the Baltic Sea’ (Fazer, 4 April 2014) <fazer.com/NEWS_CONTAINER/INTERNATIONAL-CORPORATE/Fazer-har-gjort-ett-atagande-for-Ostersjon-/> accessed 16 September 2013; Baltic Sea Action Group, ‘Commitment Cases’ (Baltic Sea Action Group) <bsag.fi/en/commitments/Commitment-Cases/Pages/default.aspx>, accessed 17 September 2013.

²⁵ COM (2012) 670 final (n 10) 6-8.

²⁶ Dir 2000/60/EC (n 3) art 1(b).

²⁷ Holfve and others (n 12) 24.

²⁸ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01, art 1.4; European Commission, ‘Sustainable and Responsible Business’ (European Commission, 5 February 2013) <http://ec.europa.eu/enterprise/policies/sustainable-business/index_en.htm> accessed 17 September 2013.

²⁹ European Commission, ‘Sustainable and Responsible Business’ (n 28).

³⁰ European Commission, ‘Sustainable and Responsible Business’ (n 28).

first and main question is whether CSR can be used as a tool to achieve the objectives set out in the WFD regarding the eutrophication in the Baltic Sea. The second question is how Member States can enhance the effects of CSR initiatives in order to achieve results that comply with the WFD.

The possible effects of CSR have been frequently discussed over the last decades.³¹ Many corporations have a large impact on the environment. For example, discharges of nutrients cause eutrophication that leads to dead zones.³² Enterprises' efforts to make their businesses more environmentally friendly therefore play a major role in the work towards improving environmental conditions such as water quality.³³ For example, corporations can affect the level of eutrophication in the Baltic Sea in a positive way by changing their production methods so that the amount of nutrients that is emitted into the sea is reduced.³⁴

Water management in Sweden affects the Baltic Sea and this study focuses on how the WFD, in relation to the southern part of the Baltic Sea, has been implemented in Sweden.³⁵ To improve water management, the Swedish government has co-operated with water users for many years. Legislation and other governance mechanisms have formed a basis and the industry, municipalities, agriculture and forestry have taken responsibility by for example rebuilding purification plants.³⁶ This thesis will therefore explore whether and how the potential benefits of developing water management through co-operation between public authorities and corporations are considered in the process of implementing the WFD in Sweden.

However, CSR initiatives taken in other parts of the world, and in relation to other issues than water quality, will also be assessed to provide a broader perspective and examples of what results can be achieved through CSR and the promotion of CSR initiatives.

³¹ David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Paperback edn, Brookings Institution Press 2006) 6.

³² Stefan Scheuer and Joeri Naus, '10 Years of the Water Framework Directive: A Toothless Tiger? A Snapshot Assessment of EU Environmental Ambitions' (European Environmental Bureau, 2010) 6; European Environment Agency, *State and Outlook 2005* (n 14) 135-152.

³³ European Environment Agency, *State and Outlook 2005* (n 14) 152; European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' COM (2011) 681 final, 3; Baltic Sea Action Group, 'Eutrophication' (Baltic Sea Action Group) <bsag.fi/en/focus_areas/eutrophication/Pages/default.aspx> accessed 17 September 2013.

³⁴ Baltic Sea Action Group, 'Commitment Cases' (Baltic Sea Action Group) <bsag.fi/en/commitments/Commitment-Cases/Pages/default.aspx> accessed 17 September 2013.

³⁵ Cecilia Näslund, Valdas Langas and Magdalena Kinga Skuza, 'Water Management in Lithuania, Poland and Sweden – Comparisons of the EU Water Framework Directive in Practice' (Länsstyrelsen Blekinge Län 2012) 6-15.

³⁶ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan för Södra Östersjön 2009-2015' (Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 2010) 173.

1.3 Methodology

There is a lot of literature on the subject of environmental protection in the EU. One frequent discussion in environmental law scholarship regards the difficulties of improving the health of the environment in the EU through regulation, and what reasons these difficulties stem from. One argument, as put forward by Elli Louka, is that the objectives of water policy in the EU have been too ambitious and that the deadlines have been set too soon.³⁷ In relation to the WFD, Elizabeth Fisher and others hold that the objectives are not clear enough for Member States to be able to determine what they should aim to achieve.³⁸ Fisher and others also point out that water management is important and need to be sustainable. In order to achieve that, water management has to be holistic.³⁹

The issue of failing water policy can potentially be avoided if the legislator to a larger extent co-operates with water users. The legislator could then gain knowledge of what changes that can be made in a specific period of time and what actions the legislator can take to ensure that water users act in a manner that is in line with new environmental objectives. Radu Mares and David Vogel assess the possibilities of improving the health of the environment through CSR. Vogel presents the view that CSR has contributed to improvements in the environment, but that regulation would achieve even better results.⁴⁰ Mares argues that CSR and regulation should not be seen as mutually exclusive concepts and that legislators can enhance the benefits of CSR by taking measures that strengthen CSR initiatives and make such initiatives more accountable.⁴¹

Even though a lot has been written about the relationship between environmental protection, environmental law and CSR, there are few detailed studies on the possibilities of achieving better results regarding the implementation of the WFD, in relation to the water quality in the Baltic Sea, by enhancing the effects of CSR. Since the problem of eutrophication in the Baltic Sea has not been solved through the measures taken to implement the WFD so far, and since there are numerous CSR initiatives addressing the issue, it is interesting to investigate whether Member States can enhance the effects of such CSR initiatives and use them as tools in the process of achieving the objective of good status as set out in the WFD. The subject of this study is further motivated by the fact that sustainable development is an overarching goal in the EU. According to the European Commission, sustainability and competitiveness are two mutually reinforcing concepts and CSR is considered a ‘necessary and natural

³⁷ Elli Louka, *Conflicting Integration: The Environmental Law of the European Union* (Intersentia Publishers 2004) 166-175.

³⁸ Fisher, Lange and Scotford (n 1) 561-563.

³⁹ Fisher, Lange and Scotford (n 1) 552-554.

⁴⁰ Vogel (n 31) 163.

⁴¹ Radu Mares, *The Dynamics of Corporate Social Responsibilities* (Martinus Nijhoff Publishers 2008) 20-22.

counterpart' of making the EU more competitive.⁴² CSR can improve risk management, reduce costs, increase access to capital, etcetera.⁴³

Apart from literature on environmental and water policy and CSR, such as the works by Fisher and others, Vogel and Mares, this thesis has been performed by assessing the WFD and other policy documents from the EU, river basin management reports from Sweden, reports from the European Environmental Agency and the European Commission, as well as articles and reports from NGOs and various corporations that have taken CSR initiatives aimed to improve the environment in the Baltic region. CSR initiatives taken to improve the environment in other areas have also been assessed. The study can therefore provide conclusions based on primary sources and information from different stakeholders.

Literature and articles used in the process of writing this thesis have provided information about different views on the possibilities of using CSR as a tool to improve the environment, as well as examples of CSR initiatives and what effects they have had. Reports and articles from NGOs and corporations have provided more examples of CSR initiatives and information about how these can be improved.

Combined with policy documents from the EU, literature has been assessed to present information on how EU water policy has developed. Reports from the European Commission and the European Environment Agency have provided information about the view on CSR within the EU, information about the status of water bodies within the EU and information about what issues related to water that exist within the EU.

Swedish government bills, official reports and legislation have been assessed to explore if and to what extent the potential benefits of CSR have been considered when the WFD was implemented in Sweden.

1.4 Delimitations

The European Environment Agency defines the area in and around the Baltic Sea as a coastal zone; land influenced by its proximity to the sea and sea influenced by its proximity to land. Several issues arise in such areas, for example coastal pollution and conflicts over land use and over-exploitation of resources.⁴⁴ This thesis will however only investigate the issue of eutrophication in the Baltic Sea and the progress of addressing this issue in Sweden.

⁴² European Commission, 'Sustainable and Responsible Business' (n 28).

⁴³ European Commission, 'Corporate Social Responsibility and Competitiveness' (European Commission, 5 February 2013)

<http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/competitiveness/index_en.htm> accessed 30 October 2013.

⁴⁴ Wieringa, *Environment in the European Union 1995* (n 2) 89.

The focus on eutrophication is motivated by the fact that this is a major problem in the Baltic Sea and because the Baltic Sea is particularly vulnerable to eutrophication.⁴⁵ Sweden is relevant for the study because water management in Sweden has been developed in co-operation between public authorities and private actors for many years.⁴⁶ The delimitations are also made due to the lack of time and space to do a full investigation of the situation and of all aspects in all Member States around the Baltic Sea. Nine countries border the Baltic Sea: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden.⁴⁷ All of these, except Russia, are members of the EU.⁴⁸ Due to human impacts on the Baltic Sea, the sea is now subject to for example eutrophication, pollution, overfishing and disturbed ecosystems.⁴⁹

Several directives from the EU aim to improve water quality.⁵⁰ However, in this thesis only the WFD will be assessed.

Regarding implementation of directives in general, there are several questions that are interesting to discuss: the effectiveness of directives as legislation, the fact that some directives are applicable outside the EU, etcetera. These questions will however not be discussed in this thesis.

Regarding the question, which will be investigated in this thesis, of whether CSR initiatives and collaborative measures taken by corporations and public authorities can be used as tools to achieve the objectives of the WFD, there are several examples that can be explored. Due to a lack of time and space, only a few of these will be presented in this thesis.

1.5 Disposition

This thesis begins with a presentation of the role of CSR in environmental protection in chapter 2. The term CSR is defined there and arguments for and against the use of CSR as a means of improving corporate environmental performance, based on the possible outcomes of CSR, are presented. In the third chapter, information is provided on the historical development of water policy in the EU. Information on why the WFD was enacted is also presented there and the objective of good status, as stated in the WFD, is described.

The implementation of the WFD in Sweden is described in chapter 4. The information provided there focuses on to what extent the implementation

⁴⁵ Wieringa, *Environment in the European Union 1995* (n 2) 90; European Environment Agency, *State and Outlook 2005* (n 14) 135.

⁴⁶ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 173.

⁴⁷ European Environment Agency, *State and Outlook 2005* (n 14) 135.

⁴⁸ European Union, 'Countries' (n 16).

⁴⁹ European Environment Agency, *State and Outlook 2005* (n 14) 135.

⁵⁰ European Environment Agency, *State and Outlook 2005* (n 14) 335.

process in Sweden has considered the possibility of improving water quality through promoting CSR.

Chapter 5 provides information on the possibilities of reducing the eutrophication in the Baltic Sea through CSR initiatives and presents examples of such initiatives. The role of the legislator in improving the effects of CSR initiatives is also presented there.

Each chapter ends with a summary and the author's overall thoughts on the information presented in the chapter.

Finally, an analysis of the information presented in the thesis is provided in chapter 6 and the thesis ends with presenting conclusions, in chapter 7, on whether and how Member States can enhance the effects of CSR and use CSR initiatives as tools in the process of achieving the objective of good status as stated in the WFD.

2 The Role of Corporate Social Responsibility in Environmental Protection

2.1 The Definition of Corporate Social Responsibility

With its Green Paper promoting a European framework for CSR⁵¹ published in 2001, the European Commission sought to create a debate regarding CSR and to collect views and opinions on the use of CSR. The purpose of this was to initiate a process that would result in a framework for the promotion of CSR.⁵² In this document, CSR was defined as ‘a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntarily basis’⁵³. It was a question of corporate actions that went beyond compliance with regulations.⁵⁴ Later, in the renewed EU Strategy 2011-2014 for CSR, the definition of CSR was changed and CSR was now seen as ‘the responsibility of enterprises for their impacts on society’⁵⁵. Legislation and collective agreements were seen as the basis for that responsibility but to take full responsibility corporations should have a process in place to integrate for example environmental concerns into their business operations and core strategy.⁵⁶ The European Commission argued that corporations should lead the development of CSR, but instead of perceiving CSR and regulation as mutually exclusive, it held that regulation was to be used as a means of supporting the development of CSR.⁵⁷

There is still not one single definition of what CSR is.⁵⁸ Rather, different stakeholders define it in different ways. One perception of CSR is that it consists of the actions taken by corporations to address for example environmental problems, that they would not have taken in their normal business practices to maximise profit. In contrast to this, some enterprises label measures taken within the scope of their normal business practices as CSR. For example, efforts to reduce energy use can be labelled CSR.⁵⁹ Furthermore, reality is not always black or white and there may be many reasons behind a single decision. Hence, a business decision may have

⁵¹ European Commission, ‘Green Paper: Promoting a European Framework for Corporate Social Responsibility’ COM (2001) 366 final.

⁵² COM (2001) 366 final (n 51) 6.

⁵³ COM (2001) 366 final (n 51) 6.

⁵⁴ COM (2001) 366 final (n 51) 6.

⁵⁵ COM (2011) 681 final (n 33) 6.

⁵⁶ COM (2011) 681 final (n 33) 6.

⁵⁷ COM (2011) 681 final (n 33) 7.

⁵⁸ Mares (n 41) 3.

⁵⁹ Vogel (n 31) 4.

market-driven causes and be guided by social pressures or ethical concerns.⁶⁰

Additionally, in contrast to CSR in relation to labour practices, which is mostly applied in developing countries, CSR initiatives regarding the environment are primarily taken by corporations in developed countries where there is extensive government regulation or anticipation of other forms of state control. It can therefore be difficult to distinguish measures encouraged by corporate virtue from those that are taken as a result of public policy.⁶¹ Moreover, measures defined as CSR initiatives cannot always be distinguished from measures that would have been taken within the scope of normal business practice. One example is the more efficient use of resources, which leads to both a more environmentally friendly business practice and lower costs.⁶² However, for the purpose of this study, the label of the measure taken is not important. The reason why enterprises have undertaken environmental CSR initiatives is relevant as it provides information on how legislators can encourage enterprises to act more environmentally friendly. A company may have taken measures to make its business more environmentally friendly due to corporate virtue, anticipation of future regulations, to mitigate production costs, or other reasons.⁶³ All actions that lead to corporate environmental responsibility are regarded as CSR initiatives for the purpose of this thesis.

2.2 Sustainable Development as a Goal for the European Union

One of the purposes of the WFD is to create a framework for the protection of water that promotes a sustainable use of water.⁶⁴ According to the European Commission, 'Sustainable Development stands for meeting the needs of present generations without jeopardizing the ability of future generations to meet their own needs'⁶⁵. The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01 states that the EU shall endeavour to create a sustainable development of Europe by balancing economic growth and environmental protection.⁶⁶ This provision is codified in Article 3 of the Consolidated version of the Treaty on European Union [2012] OJ C326/01.⁶⁷ Sustainable development is an overarching goal for the EU and

⁶⁰ Vogel (n 31) 4.

⁶¹ Vogel (n 31) 110.

⁶² Vogel (n 31) 110-111.

⁶³ Vogel (n 31) 133.

⁶⁴ Dir 2000/60/EC (n 3) art 1(b).

⁶⁵ European Commission, 'Sustainable Development' (European Commission, 5 July 2013) <<http://ec.europa.eu/environment/eussd/>> accessed 3 October 2013.

⁶⁶ Treaty of Lisbon (n 28) art 1(4).

⁶⁷ Consolidated version of The Treaty on European Union [2012] OJ C326/01, art 3.3.

it is seen as a way of increasing competitiveness, since competitiveness and sustainability are argued to be mutually reinforcing concepts.⁶⁸

According to the European Commission, sustainable development is achieved by taking both short-term and long-term objectives into account and by regarding economic, social and environmental concerns as interdependent parts of human progress. Thereby, sustainable development ensures a better quality of life for the generations of today and the generations of tomorrow.⁶⁹ The citizens of Europe will live in a society that is more prosperous and just and that provides a cleaner, safer and healthier environment.⁷⁰ This is the main goal of the EU Sustainable Development Strategy⁷¹ which was enacted to deal with the existing main threats to sustainable development; emissions of greenhouse gases, daily use of hazardous chemicals, loss of bio-diversity, etcetera.⁷² To achieve this goal, policies are not enough. The European Commission holds that sustainable development can only be achieved if it is used as a principle that guides both the choices that people make every day, and bigger economic and political decisions.⁷³

2.2.1 Corporate Social Responsibility as a Tool for Creating a Sustainable Development

In the renewed EU strategy for CSR⁷⁴ that was published in 2011, the European Commission defines CSR as ‘the responsibility of enterprises for their impacts on society’⁷⁵. Corporations take this responsibility by including social, environmental, ethical, human rights and consumer concerns into the core strategy for their business. This shall be done with the aim of maximising the creation of shared value for the owners/shareholders of the corporation, for other stakeholders and for society at large. As means for reaching this goal, the European Commission mentions that enterprises should adopt long-term approaches to CSR and explore the possibilities of developing new products, services and business models.⁷⁶

Furthermore, corporations shall work towards the objective of identifying, preventing and mitigating the possible adverse impacts they may have. The European Commission therefore holds that particularly large corporations

⁶⁸ European Commission, ‘Sustainable and Responsible Business’ (n 28).

⁶⁹ European Commission, ‘Sustainable Development’ (n 65).

⁷⁰ European Commission, ‘A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development’ COM (2001) 264 final, 2.

⁷¹ COM (2001) 264 final (n 70); Council of the European Union, ‘Review of the EU Sustainable Development Strategy (EU SDS) – Renewed Strategy’ (Council of the European Union, 26 June 2006).

⁷² COM (2001) 264 final (n 70) 2-5.

⁷³ European Commission, ‘Sustainable Development’ (n 65).

⁷⁴ COM(2011) 681 final (n 33).

⁷⁵ COM(2011) 681 final (n 33) 6.

⁷⁶ COM(2011) 681 final (n 33) 6.

and corporations that can have adverse impacts, should carry out risk-based due diligence that includes their supply chains.⁷⁷

The European Commission argues that CSR is a ‘necessary and natural counterpart’ to making the EU more competitive.⁷⁸ CSR is even perceived as one of the contributions that will help the EU reach its goal of becoming ‘the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion’⁷⁹. The argument behind this is that companies that are successful in managing change in a socially responsible manner, by making trade-offs between the requirements of different stakeholders, will have a positive influence at the macro-economic level.⁸⁰

The European Commission argues that CSR is in the interest of corporations because it requires them to engage with both internal and external stakeholders. This provides corporations with an ability to foresee change in societal expectations and operating conditions. Corporations therefore gain a competitive advantage from CSR since the process involved in it enables them to adapt their business to future conditions.⁸¹ Furthermore, reduced energy use and waste disposal can increase the profit and make a company more competitive.⁸² The European Commission holds that to maximise the possible benefits of CSR, corporations should adopt a strategic approach to it.⁸³ Such an approach can lead to benefits regarding for example risk management, cost savings, access to capital and innovation capacity.⁸⁴

According to the European Commission, CSR is also in the interest of society since corporations are expected to be able to contribute to the creation of sustainable development in Europe through CSR initiatives.⁸⁵ When information on for example environmental impacts that an enterprise has is disclosed, stakeholder involvement can be furthered and thereby sustainability risks are more likely to be identified.⁸⁶

Conclusively, the European Commission promotes the use of CSR as a way of achieving an important goal for the EU: sustainable development. It does therefore not seem to be controversial for Member States to encourage the use of CSR in the process of implementing the WFD. However, whether Member States are actually able to use CSR initiatives as tools for achieving

⁷⁷ COM(2011) 681 final (n 33) 6.

⁷⁸ European Commission, ‘Sustainable and Responsible Business’ (n 28).

⁷⁹ COM (2001) 366 final (n 51) 3.

⁸⁰ European Commission, ‘Corporate Social Responsibility: A Business Contribution to Sustainable Development’ COM (2002) 347 final, 3.

⁸¹ COM (2011) 681 final (n 33) 3.

⁸² COM (2001) 366 final (n 51) 10.

⁸³ COM (2011) 681 final (n 33) 3.

⁸⁴ European Commission, ‘European Competitiveness Report 2008’ COM (2008) 774 final, 107-116; European Commission, ‘Commission Staff Working Document’ SEC (2008) 2853, 137-150.

⁸⁵ COM (2011) 681 final (n 33) 3.

⁸⁶ COM (2011) 681 final (n 33) 14.

the objective of the WFD depends on the actual results that CSR can bring and on whether the Member States can influence enterprises to act more environmentally friendly.

2.3 Achieving Environmental Objectives through Corporate Social Responsibility

CSR initiatives can contribute to objectives set out in public policy. For example, the European Commission argues that CSR initiatives such as investments in eco-innovation and implementation of environmental management systems can contribute to a more sustainable use of natural resources and reduced pollution.⁸⁷ However, good regulation should not be substituted for CSR initiatives since the latter normally only address a small part of major issues.⁸⁸

Regarding the WFD, the objectives it sets out are considered ambitious. Implementation of the directive requires the Member States to invest a lot of effort into balancing the use of water and the protection of water. The Member States shall rearrange the administration of their water management, co-operate with other Member States and/or non-Member States regarding international river basins, implement measures to ensure that deterioration of the status of all bodies of surface water is prevented and protect, enhance and restore all bodies of surface water.⁸⁹ These are some of the reasons for the low ambitions shown by the Member States that argue that high costs and a lack of knowledge of what improvements that can be made through different measures are the biggest reasons to why they will not achieve the goal of good ecological status by 2015. Eutrophication is one of the most severe reasons why water bodies will not meet the objective of good status in time.⁹⁰ In several Member States the water management regarding the control of nutrient pollution has not yet been reformed and Member States refer to excuses such as that water bodies are heavily modified⁹¹ to avoid having to change their water management.⁹²

⁸⁷ European Commission, 'Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility' COM (2006) 136 final, 4.

⁸⁸ Halina Ward, 'Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock' (The World Bank – International Finance Corporation 2004) 7; Jane Nelson, 'Leadership, Accountability and Partnership: Critical Trends and Issues in Corporate Social Responsibility' (John F. Kennedy School of Government, Harvard University 2004) 7.

⁸⁹ Dir 2000/60/EC (n 3) arts 3-4; COM (2012) 670 final (n 10) 3; Scheuer and Naus (n 32) 5; Maria Lee, 'Law and Governance of Water Protection Policy' in Joanne Scott (ed), *Environmental Protection: European Law and Governance* (Oxford University Press 2009) 561.

⁹⁰ Scheuer and Naus (n 32) 4-11.

⁹¹ A heavily modified water body is a body of surface water which as a result of physical alterations by human activity is substantially changed in character, see Dir 2000/60/EC (n 3) art 2.9.

⁹² Scheuer and Naus (n 32) 4.

The European Commission argues that Member States can avoid potential conflicts, problems of management and costs through including stakeholders in the process of implementing the WFD because this contributes to long-term, widely accepted solutions.⁹³ In the view of the European Commission, Member States are also likely to find more sustainable solutions if they are developed in a dialogue with different stakeholders.⁹⁴ Furthermore, taking participation a step further, even though the WFD does not require the Member States to do so, by making interested parties responsible for parts of the water management through establishing water users' organisations, is often considered 'best practice'.⁹⁵ This method seems similar to the situation promoted by the European Commission where regulation supports the development of CSR.⁹⁷ The main difference between the two situations seems to be that the former situation is more strictly organised by the legislator, while the latter situation to a larger extent is controlled by corporations.

2.3.1 Examples of How Environmental Improvements Can be Achieved through Corporate Social Responsibility Initiatives

Several improvements of corporate environmental performance have been made through CSR initiatives. One example regards forestry. The wood products sold in Europe and the United States are to a smaller extent produced from tropical, old-growth and endangered forests.⁹⁸ This change was encouraged by NGOs that pressured retailers of wood products to stop selling products produced from tropical and old-growth forests, and instead focus on products made from forests that are responsibly managed. The pressuring activities consisted of boycott campaigns and demonstrations at do-it-yourself home improvement and furniture stores that got significant attention from the media and the public.⁹⁹ As a consequence of this,

⁹³ European Commission, *Common Implementation Strategy for the Water Framework Directive (2000/60/EC): Guidance Document No 8: Public Participation in Relation to the Water Framework Directive* (Office for Official Publications of the European Communities 2003) 14.

⁹⁴ European Commission, *Guidance Document No 8* (n 93) 26.

⁹⁵ Best practice is one way of improving policy in the EU. Governments within the EU look at what is going on in other countries to see what works best and then adopt the *best practice* in a way that suits their circumstances, see European Union, 'Eurojargon' (European Union) <<http://europa.eu/abc/eurojargon>> accessed 8 November 2013.

⁹⁶ European Commission, *Guidance Document No 8* (n 93) 13.

⁹⁷ See COM (2011) 681 final (n 33) 7.

⁹⁸ Vogel (n 31) 162.

⁹⁹ David F Murphy and Jem Bendell, 'New Partnerships for Sustainable Development: The Changing Nature of Business-NGO Relations' in Peter Utting (ed), *The Greening of Business in Developing Countries: Rethoric, Reality and Prospects* (Zed Books 2002) 218-219; Vogel (n 31) 114-115.

Home Depot, which purchased 10 per cent of wood exports from Chile, influenced the major lumber companies in Chile to sign an agreement that established forest protection and conservation.¹⁰⁰

Another positive impact on the environment that derives from CSR is reduction of greenhouse gas emissions.¹⁰¹ Public pressure has encouraged companies to reduce their negative environmental impacts in this area as well.¹⁰² One example is the efforts made by Ford, which developed a hybrid SUV that runs on gas and electricity and therefore uses a lot less fuel per mile than a car that only runs on gas. Due to their environmentally engaged chairman, and pressure from NGOs, Ford also created a “living roof” that captured storm-water. Thereby, the company reduced its water treatment costs.¹⁰³

Another company that has addressed environmental issues is British Petroleum whose initiative was influenced by the negative publicity that Shell had got for not performing environmentally friendly enough in the eyes of environmental activists.¹⁰⁴ The chief executive of British Petroleum stated that it would be unwise to ignore the potential threat of global warming, even though the scientific evidence for it was not clear. Since British Petroleum contributed to approximately 1 per cent of the carbon emissions from human activity globally, he meant that they had a responsibility to act. Consequently, between 1998 and 2002 the company reduced its emissions of greenhouse gas by 10.6 per cent compared to its 1990 levels.¹⁰⁵ British Petroleum also invested in solar power and decided to install solar power technology in 200 gasoline stations in Europe.¹⁰⁶

In Sweden, several measures to reduce nutrient run-off have been taken by farmers as a result of the project *Greppa Näringen*.¹⁰⁷ This project was started in 2001 by the Swedish Board of Agriculture and the purpose of the project was to support farmers to take voluntary actions to achieve the environmental objectives set out by the Swedish government. One of the environmental objectives is that there should be no eutrophication.¹⁰⁸ The support provided through *Greppa Näringen* primarily consists of providing farmers with information and tools that enable them to make their business

¹⁰⁰ Vogel (n 31) 116.

¹⁰¹ Vogel (n 31) 162.

¹⁰² Vogel (n 31) 121.

¹⁰³ Vogel (n 31) 122-123.

¹⁰⁴ Vogel (n 31) 112-123.

¹⁰⁵ David G. Victor and Joshua C. House, 'BP's Emissions Trading System' (2006) 34 Energy Policy 2100, 2105; Vogel (n 31) 123-124.

¹⁰⁶ Vogel (n 31) 125.

¹⁰⁷ Stina Olofsson and others, 'För ett Effektivt Arbete mot Miljömålen' (Jordbruksverket, 2007) 5.

¹⁰⁸ Olofsson and others (n 107) 3; *Greppa Näringen*, 'Projektbeskrivning' (*Greppa Näringen*, 10 February 2011)

<greppa.nu/omgreppa/projektbeskrivning.4.32b12c7f12940112a7c800018407.html> accessed 28 November 2013.

more environmentally friendly.¹⁰⁹ More than 6,500 farmers are members of Greppa Näringen and partly due to the actions taken as a result of Greppa Näringen, nitrogen run-off in Sweden was reduced by 7,000 tons between 1995 and 2003.¹¹⁰

The reasons why farmers have become members of Greppa Näringen are, amongst others, curiosity and the possibilities of reducing production costs by using good advice, the possibility to eliminate the need for new environmental regulations, the ability to fulfil customers' requirements of how food should be produced and the will to contribute to improving the state of the environment and having the farm and land in a good condition when it is passed over to the next generation.¹¹¹

An interesting point is that when the environmental objectives were enacted, there was a discussion about whether legislation should be enacted to reduce nutrient run-off. However, since the implementation of such legislation was expected to lead to increased administration costs for farmers it was decided that guidance should be given to farmers as a way of reducing nutrient run-off without legislation.¹¹² In a report published by Greppa Näringen in 2011¹¹³, it was stated that guidance to farmers does not solve all issues related to agriculture, but that is also true regarding legislation and environmental grants. Those three components combined, however, can contribute to a sustainable agriculture.¹¹⁴

It should further be mentioned that there are business benefits for enterprises that take environmental objectives into account. For example, investments in environmentally friendly technologies can enhance a company's competitiveness.¹¹⁵ The image and reputation of a company plays a large role in the competitive environment of business, and consumers and NGOs generally reward companies that are environmentally responsible.¹¹⁶ Financial institutions assess the risk of loans to corporations by evaluating their social and environmental behaviour and CSR thereby provides companies with financial advantages.¹¹⁷ Moreover, reducing energy use or waste disposal can mitigate production costs.¹¹⁸ There is also a growing belief among corporations that business success and shareholder value must be achieved through behaviour that is responsible even though market-

¹⁰⁹ Greppa Näringen, 'Projektbeskrivning' (n 108).

¹¹⁰ Olofsson and others (n 107) 4.

¹¹¹ Bibbi Bonorden (ed), 'Ett Decennium av Råd – Som Både Lantbruket och Miljön Tjänar på' (Greppa Näringen 2011) 33.

¹¹² Bonorden (n 111) 11.

¹¹³ Bonorden (n 111).

¹¹⁴ Bonorden (n 111) 65.

¹¹⁵ COM (2001) 366 final (n 51) 6.

¹¹⁶ COM (2002) 347 final (n 80) 6.

¹¹⁷ COM (2001) 366 final (n 51) 7; Donald Sutherland, 'Europe Tightens Corporate Environmental Accounting Rules' *Environment News Service* (Brussels, 5 October 2001).

¹¹⁸ COM (2001) 366 final (n 51) 10.

oriented.¹¹⁹ Many enterprises also believe that CSR enhances their ability of risk management.¹²⁰

From the above-mentioned examples it can be concluded that it is possible to influence the environmental performance of corporations and that enterprises seem to respond to pressure that affects their business in some way. As explained in this chapter, corporations change their environmental performance when NGOs pressure them through boycott campaigns. Changes made in one company can also influence other enterprises down their supply-chain. Environmentally engaged chairmen can further influence the environmental performance of an enterprise in a positive way. In particular, ways of avoiding bad publicity seem to have effect. The fear of receiving bad publicity if they do not act environmentally friendly can drive enterprises to improve their environmental performance. Furthermore, enterprises can improve their environmental performance if they believe that such actions will hinder new environmental legislation from being enacted. For some companies, acting more environmentally friendly is also a way of responding to the requirements of their customers.

2.3.2 Reasons Why Corporate Social Responsibility Is Not the Solution to Environmental Problems

One reason for criticism against CSR is that it goes against the perceived fundamental purpose of corporations to make a profit and create wealth for its stakeholders.¹²¹ Critics of CSR argue that enterprises should only comply with legal requirements and follow the signals of markets. Hence, they should not take any further responsibility than what is prescribed by law.¹²² According to Milton Friedman, an often-cited critic of CSR, enterprises only have one social responsibility and that is to maximise profit in the ways allowed by law.¹²³ Critics who are of this opinion hold that CSR influences corporations to ignore their responsibility to maximise shareholder value.¹²⁴ However, the fact that many companies have become vulnerable to pressures from consumers and activists has led to that corporations have been persuaded into changing their behaviour into becoming more

¹¹⁹ COM (2002) 347 final (n 80) 5.

¹²⁰ COM (2002) 347 final (n 80) 9.

¹²¹ Pranay Gupte, 'Arthur Laffer: Corporate Social Responsibility Detrimental to Stakeholders' *New York Sun* (New York 19 January 2005) <nysun.com/business/arthur-laffer-corporate-social-responsibility/7944/> accessed 15 October 2013.

¹²² Mares (n 41) 1.

¹²³ Milton Friedman, 'The Social Responsibility of Business is to Increase Its Profits' *The New York Times Magazine* (New York, 13 September 1970).

¹²⁴ The Economist, 'The Good Company' (20 January 2005) <economist.com/node/3555212> accessed 15 October 2013 as cited in Vogel (n 31) 12.

environmentally friendly.¹²⁵ Friedman also noted that resources spent on CSR could contribute to a company's goodwill.¹²⁶

The evolution of business has further created a new form of corporations that have the purpose to achieve environmental goals.¹²⁷ The pressure from consumers and activists has also contributed to that enterprises undertake CSR initiatives with the belief that it is in the interest of their shareholders. If such initiatives were not valuable to investors, who care about financial returns, they would sell their shares. This has not been the case. However, as explained below, consumers are not always concerned about the environmental aspects of a company's production method and the argument of consumer pressure can therefore not be consistently applied. Moreover, responsible firms are not necessarily less profitable than irresponsible ones.¹²⁸ Corporations can make a profit while contributing to environmental objectives by including CSR as a strategic tool in their business plan.¹²⁹ Although, it is important to note that all measures taken are not beneficial from a financial point of view. At least in the short term, the most responsible behaviour may not be the best alternative financially.¹³⁰

Some industries often have severe adverse environmental impacts.¹³¹ CSR initiatives have arisen as attempts to deal with such problems. One example is the voluntary actions taken by enterprises to reduce carbon emissions in the United States.¹³² In order to deal with the issue of climate change,¹³³ American firms reduced their carbon emissions to levels equal to about four per cent of the total emissions in the United States in 2002.¹³⁴ However, not all American firms made the same commitment. Some firms made only slight commitments and others made none at all. Reasons for the lack of engagement may have been inability to find cost-effective ways of reducing emissions, too little public pressure, too small returns from reducing energy use or uninterested business leaders.¹³⁵

Another example is the initiative taken by the Swiss chemical firm Ciba that tried to sell a low-salt dye in order to reduce wastewater. Due to the customers' focus on the price of the dye, instead of environmentally friendly production, this initiative was not as successful as it could have been.¹³⁶

¹²⁵ COM (2002) 347 final (n 80) 6; Naomi Klein, *No Logo* (Flamingo 2000); Vogel (n 31) 9.

¹²⁶ Friedman (n 123).

¹²⁷ Vogel (n 31) 13.

¹²⁸ Vogel (n 31) 13.

¹²⁹ COM (2001) 366 final (n 51) 4.

¹³⁰ COM (2011) 681 final (n 33) 10.

¹³¹ Mares (n 41) 100.

¹³² Vogel (n 31) 131.

¹³³ Vogel (n 31) 130.

¹³⁴ David G. Victor, *Climate Change: Debating America's Policy Options* (Council on Foreign Relations 2004) 27.

¹³⁵ Vogel (n 31) 131-132.

¹³⁶ Forest L. Reinhardt, *Down to Earth: Applying Business Principles to Environmental Management* (Harvard Business School Press 2000) 21-22.

Furthermore, the positive impacts of CSR are narrow in geographical scope.¹³⁷ Public pressure is not effective all over the world. This has meant that even though improvements in environmental performance have been made in some parts of the world, the overall result has been negative.¹³⁸ One example of this relates to forestry. Even though NGOs achieved positive results regarding imports of responsibly produced wood to Europe and North America, wood from tropical forests is exported to countries such as Malaysia, Thailand and Indonesia.¹³⁹

Another criticism comes from NGOs and regards the fact that CSR is not a binding concept. At the WSSD in Johannesburg in 2002, a new form of regulation called *partnerships* was introduced. These partnerships could include governments, NGOs and other stakeholders that would strive to implement the outcomes of the WSSD. There would be no authority that coordinated or oversaw the progress of the partnerships. Many NGOs held that this was a way for governments to let go of their responsibility to enact binding instruments and at the same time allow corporations to take credit for being seen as taking responsibility. Even though some NGOs were positive to the concept of partnerships, others were critical in particular regarding partnerships that did not have mechanisms in place for transparency and accountability.¹⁴⁰

Finally, government regulations have had a measurably larger impact on the environmental performance of corporations than CSR.¹⁴¹ Even though CSR has made a difference, it would be better if regulations were in place.¹⁴² It is also possible that firms that have improved their environmental performance because of the interest of their executives will change their policies and behaviour when these executives are replaced.¹⁴³

2.4 Summary and Thoughts

The understanding of CSR has evolved from being the actions corporations take out of virtue and that go beyond what is required by law, to being the

¹³⁷ Vogel (n 31) 111.

¹³⁸ Joseph Domask, 'From Boycotts to Global Partnerships: NGOs, the Private Sector and the Struggle to Protect the World's Forests' in Jonathan P. Doh and Hildy Teegen (eds) *Globalization and NGOs: Transforming Business, Government and Society* (Praeger Publishers, 2003) 165.

¹³⁹ Peter Dauvergne, *Shadows in the Forest: Japan and the Politics of Timber in Southeast Asia* (Massachusetts Institute of Technology 1997) 2; Murphy and Bendell (n 99) 221; Vogel (n 31) 119.

¹⁴⁰ Jan Martin Witte and Charlotte Streck, 'Introduction: Progress or Peril? Partnerships and Networks in Global Environmental Governance' in Charlotte Streck, Jan Martin Witte and Thorsten Benner (eds), *Progress or Peril? Partnerships and Networks in Global Environmental Governance* (Global Public Policy Institute 2003) 1-4.

¹⁴¹ Neil Gunningham, Robert A Kagan and Dorothy Thornton, *Shades of Green: Business, Regulation and Environment* (Stanford University Press 2003) 145-146; Vogel (n 31) 133.

¹⁴² Vogel (n 31) 163.

¹⁴³ Vogel (n 31) 136.

responsibility taken by enterprises that is based on and enhanced by legal provisions. Furthermore, the European Commission has acknowledged that CSR is necessary for achieving the overarching goal of the EU of sustainable development. CSR has thus gained importance in the view of the EU and it is considered to be able to contribute to objectives set out in public policy.

As presented in this chapter, the environmental performance of enterprises can be improved by external pressure such as boycotts and the fear of bad publicity. The key seems to be to use a pressure that affects the business of a company. Then not even the view that corporations only have one responsibility – to maximise profit – can hinder a company from taking action to adapt its behaviour to what is expected. However, CSR on its own is not enough to change the environmental performance of an amount of companies sufficient to improve the health of the environment.

If the situation were different, there would be more CSR initiatives addressing different issues in society than there are today. As of now, only a small part of environmental problems are dealt with through CSR projects. There are several potential reasons for this. Possibly, CSR is not profitable for all corporations. As noted above, many consumers are still mostly concerned about price, not about the environmental performance of the company they purchase products from. Another reason may be that not all enterprises are aware of the potential benefits that can be gained through CSR initiatives.

They may also lack information on how to achieve those benefits. Since NGOs have been able to encourage or pressure corporations to behave more responsibly, legislators should also have the ability to do so. The legislator creates the environment in which corporations operate. Legislators further have the potential to achieve results covering a wider geographical scope since they can target all actors within their jurisdiction.

3 European Union Water Policy

3.1 Objectives of Water Policy in the European Union

Administering water, a resource that is moving and does not stop at national borders, can seem like an overwhelming task. Policymakers all over the world are continuously concerned with the issue of how water can be protected from environmental threats. The solutions presented have been combinations of regulations governing different parts of water management, instead of consistent policies.¹⁴⁴ The same approach has been adopted by the EU.¹⁴⁵

The primary purpose of enacting legislation in the EU is to enable integration by for example eliminating barriers to trade between Member States. When developing legislation regarding the environment, the focus has been on setting standards for activities that have negative impacts on the environment.¹⁴⁶ In relation to protection of water, the development of EU regulations started in the 1970s.¹⁴⁷ The directives produced at this stage of the evolution of EU water policy focused on regulating the water quality per se. The first directives on drinking and bathing water were enacted during this time.¹⁴⁸

The directive on drinking water (75/440/EEC)¹⁴⁹ divided drinking water into three different categories and the purpose of the directive was to protect human health from negative impacts caused by polluted water.¹⁵⁰ The Member States were meant to take samples of their drinking water on a regular basis, in order to evaluate whether the water was suitable for drinking or not.¹⁵¹ If the water did not fulfil the standards that were to be set by the Member States, the Member States should, by all means necessary, ensure that the water quality was improved until the quality was acceptable.¹⁵²

When the directive on bathing water (76/160/EEC)¹⁵³ was developed, the focus was still on ensuring that the water was suitable for human use. Environmental protection was also mentioned, but the directive allowed

¹⁴⁴ Elli Louka, *Water Law and Policy* (Oxford University Press 2008) 23.

¹⁴⁵ Louka, *Water Law and Policy* (n 144) 49.

¹⁴⁶ Louka, *Water Law and Policy* (n 144) 51.

¹⁴⁷ Louka, *Conflicting Integration* (n 37) 166.

¹⁴⁸ Louka, *Conflicting Integration* (n 37) 164.

¹⁴⁹ Dir 75/440/EEC (n 11).

¹⁵⁰ Dir 75/440/EEC (n 11) arts 1-2; Louka, *Conflicting Integration* (n 37) 166.

¹⁵¹ Dir 75/440/EEC (n 11) art 5.

¹⁵² Dir 75/440/EEC (n 11) art 4.

¹⁵³ Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water [1975] OJ L31/1.

Member States to exclude a generous amount of water bodies from the requirements of the directive.¹⁵⁴ The directive was only applicable to waters in which bathing was explicitly authorised or in which bathing was not prohibited, and which were normally used for bathing by a large amount of people.¹⁵⁵ For such waters, the directive provided standards that the Member States were required to comply with within ten years after the directive had entered into force.¹⁵⁶

The second stage of water policy development in the EU, the mid-1970s and the beginning of the 1980s, was more concerned with water pollution caused by discharges of hazardous substances.¹⁵⁷ The most important directive enacted during this period was the directive on dangerous substances (76/464/EEC)¹⁵⁸ that presented lists of substances prohibited from being discharged into water, and substances for which discharge required permits.¹⁵⁹ This directive was applicable to all waters.¹⁶⁰

Another directive enacted at EU level was the directive on the protection of groundwater (80/68/EEC)¹⁶¹, which was also concerned with discharges of hazardous substances.¹⁶² The purpose of the directive was to protect human health, the water supply, living resources, the aquatic ecosystem and other legitimate uses of water.¹⁶³ Hence, protection of the water as such was considered important.¹⁶⁴ This was not the case with the directive on shellfish water (79/923/EEC)¹⁶⁵. The objective of this regulation was to protect human health and to ensure good quality of products that were to be consumed.¹⁶⁶

In the late 1980s and during the 1990s, the water policy continued to focus on the quality of water as such, but several regulations regarding the sources of pollution were also enacted.¹⁶⁷ Directives that complemented the directive on dangerous substances (76/464/EEC), for example the directive on mercury (82/176/EEC)¹⁶⁸ and the directive on cadmium (85/513/EEC)¹⁶⁹,

¹⁵⁴ Dir 76/160/EEC (n 153) preamble-art1; Louka, *Conflicting Integration* (n 37) 167.

¹⁵⁵ Dir 76/160/EEC (n 153) art 1; Louka, *Conflicting Integration* (n 37) 167.

¹⁵⁶ Dir 76/160/EEC (n 153) art 3.

¹⁵⁷ Louka, *Conflicting Integration* (n 37) 164.

¹⁵⁸ Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community [1976] OJ L129/23.

¹⁵⁹ Louka, *Conflicting Integration* (n 37) 168.

¹⁶⁰ Dir 76/464/EEC (n 158) art 1.1.

¹⁶¹ Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances [1979] OJ L20/43.

¹⁶² Dir 80/68/EEC (n 161) art 1.

¹⁶³ Dir 80/68/EEC (n 161) art 1.2.

¹⁶⁴ Dir 80/68/EEC (n 161) preamble.

¹⁶⁵ Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters [1979] OJ L281/47.

¹⁶⁶ Dir 79/923/EEC (n 165) art 1; Louka, *Conflicting Integration* (n 37) 172.

¹⁶⁷ Louka, *Conflicting Integration* (n 37) 164.

¹⁶⁸ Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry [1982] OJ L81/29.

were developed in the 1980s and added substances to the list in the directive on dangerous substances (76/464/EEC).¹⁷⁰

Controlling the sources of pollution became important for the legislator in the 1990s.¹⁷¹ Examples of directives enacted in this decade are the directive on wastewater treatment (91/271/EEC)¹⁷² and the directive on control of nitrates from agricultural sources (91/676/EEC)¹⁷³.¹⁷⁴ The purpose of the directive on wastewater was to make sure that urban sewage water and some industrial wastewater was collected and treated before it was discharged into the sea or fresh water.¹⁷⁵ Such procedures were normally not established in Europe at this time and the implementation of the directive has improved the treatment of wastewater significantly in all of Europe. However, further improvements are still necessary since some major cities still discharge almost untreated wastewater.¹⁷⁶ The directive on nitrates from agricultural sources was enacted to reduce the levels of nitrate in drinking water.¹⁷⁷

Implementation of directives on water was complicated from the start.¹⁷⁸ Reasons for this were lack of flexibility, difficulties with establishing programs for control, ambitious objectives and stringent deadlines.¹⁷⁹ However, as a result of regional initiatives such as HELCOM¹⁸⁰, improvements have been made, one example being that the levels of hazardous substances in the Baltic Sea have decreased significantly.¹⁸¹

In 1996 the European Commission held that there was a need for a framework directive regarding water resources.¹⁸² Water policy had to be sustainable, meaning that several objectives and interests, such as the sufficient supply of drinking water, the supply of water for the industry and agriculture, and the protection of the good ecological state of the aquatic environment, had to be balanced. In relation to this, the European Commission mentioned protection of the environment as one important

¹⁶⁹ Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges [1983] OJ L291/1.

¹⁷⁰ Louka, *Conflicting Integration* (n 37) 173.

¹⁷¹ Louka, *Conflicting Integration* (n 37) 175.

¹⁷² Council Directive 91/271/EEC (n 11).

¹⁷³ Council Directive 91/676/EEC (n 11).

¹⁷⁴ Louka, *Conflicting Integration* (n 37) 164.

¹⁷⁵ Dir 91/271/EEC (n 11) art 1.

¹⁷⁶ Louka, *Conflicting Integration* (n 37) 175-176.

¹⁷⁷ Dir 91/676/EEC (n 11) art 3.

¹⁷⁸ Louka, *Conflicting Integration* (n 37) 166-172.

¹⁷⁹ European Commission, *Fourth Annual Survey on the Implementation and Enforcement of Community Environmental Law: 2002* (Office for Official Publications of the European Communities 2003) 11; Louka, *Conflicting Integration* (n 37) 166-175.

¹⁸⁰ Baltic Marine Environment Protection Commission – Helsinki Commission, ‘About Us’ (HELCOM, 2013) <<http://helcom.fi/about-us>> accessed 29 October 2013.

¹⁸¹ European Environment Agency, *Europe’s Water: An Indicator-Based Assessment Summary* (Office for Official Publications of the European Communities, 2003) 8; Louka, *Conflicting Integration* (n 37) 170.

¹⁸² European Commission, ‘Communication from the Commission to the Council and the European Parliament: European Community Water Policy’ COM (96) 59 final, 1.

aspect that needed special attention.¹⁸³ Water policy was also considered important for the development of a balanced and sustainable economy.¹⁸⁴

With the introduction of the WFD in 2000, the EU presented the first legal instrument aiming to achieve an integrated water management that is consistent on an international level.¹⁸⁵ In viewing water as a resource, or a heritage¹⁸⁶, the WFD regulates both water pollution and the management of water.¹⁸⁷

3.2 The Water Framework Directive

The WFD establishes a framework for water management in the EU. As such, it is meant to ensure that water management in the EU is coherent. It provides tools that are meant to improve the water quality in the EU, and it states certain goals that shall be achieved. Member States can however set other goals than those stated in the WFD, if they provide explanations for why they have done so.¹⁸⁸

The WFD is based on the creation of new units called 'river basin district[s]'.¹⁸⁹ The Member States shall divide their territories into such districts and assign water bodies to them.¹⁹¹ Management measures set out in the WFD shall then be applied to the different 'river basin district[s]'¹⁹² in a way that is appropriate for each specific district.¹⁹³ If, as is often the case in Europe, a 'river basin'¹⁹⁴ is located in the territory of more than one state,¹⁹⁵ it shall be identified as an international river basin district.¹⁹⁶ The WFD also requires the Member States to co-operate regarding the management of such districts,¹⁹⁷ and thereby further integrates the water management in the EU. Now the Member States do not only have to co-operate regarding the goals to be achieved, but also regarding the measures that are to be taken to achieve those goals.¹⁹⁸ In addition, the Member States shall attempt to coordinate the management of river basins that extend beyond the area of the EU with non-Member States. The Member States shall then see to that the provisions set out in the WFD are applied within their national territory, and endeavour to establish a

¹⁸³ COM (96) 59 final (n 182) 2-5.

¹⁸⁴ COM (96) 59 final (n 182) 8.

¹⁸⁵ Louka, *Water Law and Policy* (n 144) 37.

¹⁸⁶ Dir 2000/60/EC (n 3) preamble 1.

¹⁸⁷ Louka, *Conflicting Integration* (n 37) 164.

¹⁸⁸ Louka, *Water Law and Policy* (n 144) 54.

¹⁸⁹ Dir 2000/60/EC (n 3) art 2.15.

¹⁹⁰ Louka, *Water Law and Policy* (n 144) 52.

¹⁹¹ Dir 2000/60/EC (n 3) art 3.1.

¹⁹² Dir 2000/60/EC (n 3) art 2.15.

¹⁹³ Dir 2000/60/EC (n 3) arts 3.2, 11.

¹⁹⁴ Dir 2000/60/EC (n 3) art 2.13.

¹⁹⁵ Louka, *Water Law and Policy* (n 144) 53.

¹⁹⁶ Dir 2000/60/EC (n 3) art 3.3.

¹⁹⁷ Dir 2000/60/EC (n 3) art 3.4.

¹⁹⁸ Louka, *Water Law and Policy* (n 144) 53-54.

collaboration with the goal of achieving the objectives of the WFD in the whole river basin district.¹⁹⁹ The effects of this provision, and the possibilities of applying it, are interesting subjects. However, since this thesis focuses on the possibilities of using CSR as a tool for achieving the objectives of the WFD, those issues will not be explored further here.

3.2.1 Objectives of the Water Framework Directive

The WFD states that '[w]ater is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such'²⁰⁰. The need for actions to protect the ecological quality of surface waters, and measures ensuring a sustainable use of water, have been highlighted in earlier discussions about water policy in the EU. Such conclusions were for example drawn during the Community Water Policy Ministerial Seminar in Frankfurt 1988 and in the declaration of the Ministerial Seminar on groundwater held at The Hague in 1991.²⁰¹ In line with these statements, and due to the fact that the need for sufficient quantities of water of good quality was increasing in the EU, the European Environment Agency confirmed the need for actions in a report published in 1995.²⁰² When this report had been published, the work towards creating a framework for a sustainable water management began.²⁰³

The WFD states that it is necessary to provide a framework for water policy within the EU,²⁰⁴ but in order to achieve the best possible results, decisions regarding specific water bodies have to be taken by local authorities.²⁰⁵ The WFD also allows Member States to aim for less stringent environmental objectives than those stipulated in the WFD should the achievement of those objectives be infeasible or disproportionately expensive and provided that certain requirements are met.²⁰⁶

The main objective of the WFD is to 'achieve the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances'.²⁰⁷ When these conditions are achieved, the waters of the EU are considered to have reached 'good ecological status'^{208, 209}. Article 4 of the WFD stipulates what Member States need to do to reach that goal. The Member States shall take all measures that are necessary to prevent that the

¹⁹⁹ Dir 2000/60/EC (n 3) art 3.5.

²⁰⁰ Dir 2000/60/EC (n 3) preamble 1.

²⁰¹ Dir 2000/60/EC (n 3) preamble 2-3.

²⁰² Dir 2000/60/EC (n 3) preamble 4.

²⁰³ Dir 2000/60/EC (n 3) preamble 5-10.

²⁰⁴ Dir 2000/60/EC (n 3) preamble 18.

²⁰⁵ Dir 2000/60/EC (n 3) preamble 13.

²⁰⁶ Dir 2000/60/EC (n 3) art 4.5.

²⁰⁷ Dir 2000/60/EC (n 3) preamble 27.

²⁰⁸ Dir 2000/60/EC (n 3) art 2(22).

²⁰⁹ Dir 2000/60/EC (n 3) Annex V.

status of water bodies deteriorate. Regarding surface water, Member States shall also protect, enhance and restore such bodies aiming at achieving good surface water status in 2015. However, if a water body is artificial²¹⁰ or heavily modified, the Member States shall instead protect and enhance the water body aiming to achieve good ecological potential and good surface water chemical status in 2015. Furthermore, the Member States shall implement measures aiming at reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances.²¹¹

3.2.2 Stakeholder Involvement

The process of ‘public information and consultation’²¹² provided for in the WFD makes it different from other directives on water.²¹³ As one of the key governance mechanisms provided for in the WFD,²¹⁴ it requires Member States to involve stakeholders in the process of implementing the directive.²¹⁵ Stakeholders can be defined as those who have a specific interest in the decisions that are made regarding water management.²¹⁶ In the Guidance Document on Public Participation²¹⁷ (Guidance Document) the term stakeholder is used as a synonym for interested parties and corporations are mentioned as one kind of stakeholder.²¹⁸

The idea behind stakeholder involvement in decision-making regarding water management is that it is more likely that stakeholders will act in accordance with the decisions made if they have been involved in the process of making them.²¹⁹ Furthermore, stakeholders have knowledge and experience that can be used to develop sustainable legislation based on realistic facts.²²⁰ It is therefore presumed that better decisions can be made if those who are interested in the management of water participate in the decision-making process.²²¹

According to the WFD, the Member States shall encourage all interested parties to actively get involved in the implementation process. This especially applies to measures taken in relation to the RBMPs. For example, the Member States shall publish information about the timetable set for the production of RBMPs, and information about what issues are identified in certain river basins. Water users shall also be given the opportunity to

²¹⁰ An artificial water body is a body of surface water created by human activity, see Dir 2000/60/EC (n 3) art 2.8.

²¹¹ Dir 2000/60/EC (n 3) art 4.

²¹² Dir 2000/60/EC (n 3) art 14.

²¹³ Louka, *Conflicting Integration* (n 37) 190.

²¹⁴ European Commission, *Guidance Document No 8* (n 93) 9; Lee (n 89) 43.

²¹⁵ Dir 2000/60/EC (n 3) art 14.

²¹⁶ Louka, *Water Law and Policy* (n 144) 63.

²¹⁷ European Commission, *Guidance Document No 8* (n 93) 14.

²¹⁸ European Commission, *Guidance Document No 8* (n 93) 15-16.

²¹⁹ COM (96) 59 final (n 182) 13; Louka, *Water Law and Policy* (n 144) 63.

²²⁰ European Commission, *Guidance Document No 8* (n 93) 14.

²²¹ Louka, *Water Law and Policy* (n 144) 63.

comment on the information published by the Member State.²²² The comments given are often published and a public institution that performs in accordance with best practice shall provide answers to the comments and information on how they are considered when decisions are made.²²³ Information about what measures have been taken in relation to public participation, the results of these and how the results have been considered in the RBMPs shall also be included in those plans.²²⁴

An interesting point to note about the stakeholder participation described in the WFD is that even though the WFD states that Member States shall encourage *all* interested parties to get involved in the process of implementing the directive,²²⁵ subsequent publications do not provide a clear explanation of what this provision means. The Guidance Document points out that it is not necessary to involve all stakeholders. The Member States shall carry out an analysis of which stakeholders are relevant and focus on their involvement.²²⁶ Hence, the Member States are supposed to decide which stakeholders hold a specific interest in the decisions that are going to be made. According to the Guidance Document, such interests are normally held by those who can be affected by the decisions, and those who may influence the decisions. At the same time, stakeholders are defined as interested parties,²²⁷ that is, those who Member States shall encourage to actively get involved in the implementation process according to Article 14 of the WFD.

In another part of the same document it is stated that the stakeholder analysis shall be carried out in order to ensure that no important stakeholders are forgotten.²²⁸ Considering this explanation of the purpose of the stakeholder analysis, and the fact that the Guidance Document was developed to support the implementation of the WFD,²²⁹ it can be concluded that more weight most likely should be given to the statement that no important stakeholders should be forgotten, than to the statement that it is not necessary to involve all stakeholders. This conclusion is further supported by the Guidance Document, which highlights that stakeholders whose opinions might be difficult to handle must not be omitted from the consultation process.²³⁰

According to the European Commission, public and user participation is essential to achieve the best possible results regarding water management.²³¹ In its report *European Waters – Current Status and Future Challenges*

²²² Dir 2000/60/EC (n 3) art 14.

²²³ Louka, *Water Law and Policy* (n 144) 65.

²²⁴ Dir 2000/60/EC (n 3) Annex VII.

²²⁵ Dir 2000/60/EC (n 3) art 14.1.

²²⁶ European Commission, *Guidance Document No 8* (n 93) 14.

²²⁷ European Commission, *Guidance Document No 8* (n 93) iv.

²²⁸ European Commission, *Guidance Document No 8* (n 93) 63.

²²⁹ European Commission, *Guidance Document No 8* (n 93) ii.

²³⁰ European Commission, *Guidance Document No 8* (n 93) 16.

²³¹ COM (2012) 670 final (n 10) 8.

published in 2012, the European Environment Agency also mentioned involvement of stakeholders as one of the most important parts of achieving a more efficient water management and of protecting ecosystems in European waters.²³²

The fact that the WFD requires an ambitious involvement of stakeholders in the process of implementing the directive can be seen as a sign of that the EU recognises the value of co-operating with enterprises in the process of implementing regulations. Furthermore, the requirement provided for in Article 14 of the WFD means that there should now be forums and methods in place for Member States to involve stakeholders in the process of implementing the directive. These forums and methods can be used for exploring in what ways CSR can contribute to achieving the objectives of the WFD. Stakeholders that participate in the dialogue on how water policy in the EU can be developed can provide the legislator with information on what incentives and support corporations need in order to implement CSR-policies and to take actions aimed at achieving the objectives of the WFD. By creating a dialogue at both a national and a local level, the legislator can gain knowledge of how to provide general support at a national level and knowledge of what actions are needed at a local level.

3.3 The Effects of Eutrophication

Eutrophication is one of the main reasons why Member States will not fulfil the requirement of ‘[g]ood ecological status’²³³ by 2015.²³⁴ It is also the most severe problem in the Baltic Sea.²³⁵

Eutrophication is caused primarily by discharges of nutrients from agriculture, households, fish farms, air pollution fallouts and sewage discharges.²³⁶ The problems are greatest in enclosed and partly enclosed water bodies such as the Baltic Sea, which seldom receives inputs of oxygen rich water.²³⁷ Since large amounts of people populate the area around the Baltic Sea and since the industries situated there are well developed, the discharges of nutrients to the Baltic Sea are rather large.²³⁸ The problem is further enhanced by the fact that the land area from which the discharges arise is several times bigger than the water body itself.²³⁹

²³² Werner and others, *Current Status and Future Challenges* (n 14) 8.

²³³ Dir 2000/60/EC (n 3) art 2(22).

²³⁴ Scheuer and Naus (n 32) 6.

²³⁵ Jesper H. Andersen and others, ‘Eutrophication in the Baltic Sea: An Integrated Thematic Assessment of the Effects of Nutrient Enrichment and Eutrophication in the Baltic Sea Region’ (Helsinki Commission 2009) 2.

²³⁶ Scheuer and Naus (n 32) 6; European Environment Agency, *State and Outlook 2005* (n 14) 152.

²³⁷ European Environment Agency, *State and Outlook 2005* (n 14) 135; Andersen and others (n 235) 3.

²³⁸ Andersen and others (n 235) 3.

²³⁹ European Environment Agency, *State and Outlook 2005* (n 14) 135.

Because of the eutrophication in the Baltic Sea, algae have replaced coastal sea grasses in the sea. This, in turn, has had major negative effects on fish populations and has caused disturbance of recreational activities for humans due to the toxic blooms of algae.²⁴⁰ Severe cases of eutrophication can lead to the creation of dead zones, that is, zones in which there is no oxygen in the water.²⁴¹ Such zones exist in the Baltic Sea and the situation is getting worse.²⁴² Low levels of oxygen in waters lead to changes in species that live there. When there is no oxygen in the water, hydrogen sulphide (H₂S) is created. This substance is lethal to higher organisms. Another issue in waters that lack oxygen is that such conditions cause phosphorus and ammonium to be released from sediments. Higher levels of these substances in the water can lead to increased algal blooms.²⁴³

Reducing, or eliminating, the problems in the Baltic Sea are of environmental as well as economic and social importance.²⁴⁴ Approximately 90 million people live around the Baltic Sea,²⁴⁵ and their wealth – the supply of food, economic benefits, and etcetera – is depending on the future condition of the sea.²⁴⁶ As presented above, under 2.3 Achieving Environmental Objectives through Corporate Social Responsibility, CSR can contribute to objectives set out in public policy. Furthermore, in the view of the European Commission, the objective of good status of the WFD is more likely to be met if the legislator utilises the knowledge and experience that different stakeholders, such as corporations, have.²⁴⁷ It is also possible for the legislator to go one step further, as encouraged by the European Commission,²⁴⁸ and put part of the responsibility for water management on water users, for example by influencing corporations to take CSR initiatives.

3.3.1 Objectives Regarding Eutrophication in the Water Framework Directive

Nutrient conditions are one of the factors used to assess the ecological quality according to the WFD. In a water body of high ecological status, the concentrations of nutrients are within the range of what would be expected if the water body were undisturbed. Signs of eutrophication, such as oxygen balance and transparency,²⁴⁹ remain within the range of what would be

²⁴⁰ European Environment Agency, *State and Outlook 2005* (n 14) 135.

²⁴¹ European Environment Agency, *State and Outlook 2005* (n 14) 152.

²⁴² Mats Walday, Tone Kroglund and Norwegian Institute for Water Research (NIVA), 'The Baltic Sea' (European Environment Agency 13 April 2011) <eea.europa.eu/publications/report_2002_0524_154909/regional-seas-around-europe/page141.html>, accessed 18 September 2013; Holfve and others (n 12) 5.

²⁴³ Andersen and others (n 235) 8.

²⁴⁴ Holfve and others (n 12) 3.

²⁴⁵ Baltic Sea Action Group, 'Cleaning the Sea, Cycling the Nutrients' (Baltic Sea Action Group) <bsag.fi/en/focus_areas/Pages/default.aspx> accessed 18 September 2013.

²⁴⁶ European Environment Agency, *State and Outlook 2005* (n 14) 160.

²⁴⁷ European Commission, *Guidance Document No 8* (n 93) 14.

²⁴⁸ European Commission, *Guidance Document No 8* (n 93) 13.

²⁴⁹ Andersen and others (n 235) 14-19.

expected in undisturbed waters and do not indicate anthropogenic disturbance.²⁵⁰

In a water body of good ecological status, the nutrient concentrations do not exceed levels established to ensure the functioning of ecosystems and good status regarding the biological quality elements regarding phytoplankton, macroalgae, etcetera. Furthermore, oxygenation conditions and transparency remain within the same levels as mentioned for nutrient concentrations.²⁵¹

In a water body of moderate status, the criterion is that the conditions comply with the biological quality elements as mentioned in the preceding paragraph.²⁵²

Water bodies that have a lower status than moderate are classified as having poor or bad ecological status.²⁵³

The objective of the WFD is to achieve good status by 2015.²⁵⁴

3.4 Summary and Thoughts

Implementation of directives on water policy in the EU has been complicated since the first directives were enacted, partly due to too ambitious objectives. The implementation of the WFD provides a holistic approach to water management. However, the objectives are still considered ambitious and they will most likely not be met by the deadline in 2015. It is therefore interesting to investigate new solutions for implementation that can be more successful. According to the European Commission, the best possible solutions can only be developed in collaboration with the public and water users.

The issue of eutrophication in the Baltic Sea is of major concern for the Baltic region since it affects not only environmental but also social and economic aspects. Hence, the situation concerns all actors in the area. Enterprises in the area should therefore also be concerned about improving the situation. The importance of including stakeholders in the implementation process of the WFD has been recognised and a key part of the WFD regards involvement of stakeholders. Since the European Commission has also promoted CSR, considering the possibilities of enhancing the environmental effects of CSR in the implementation process of the WFD is not a big step to take. The extensive participation process required by the WFD further provides a good basis for legislators to gain knowledge of how they can influence corporations to take CSR initiatives aimed to achieve the objectives of the WFD.

²⁵⁰ Dir 2000/60/EC (n 3) Annex V.

²⁵¹ Dir 2000/60/EC (n 3) Annex V.

²⁵² Dir 2000/60/EC (n 3) Annex V.

²⁵³ Dir 2000/60/EC (n 3) Annex V.

²⁵⁴ Dir 2000/60/EC (n 3) arts 4.1(a)(ii), 25.

4 Implementation of the Water Framework Directive

4.1 Issues Regarding Implementation

Directives state certain results that Member States bound by the directive must achieve. It is up to the Member States to decide what measures to take to fulfil the requirements set out in a directive.²⁵⁵ It can therefore be argued that an effective implementation of directives requires clearly stated objectives. In the case of the WFD, the situation is different.²⁵⁶ Article 4(1)(a)(ii) of the directive states that the Member States shall ‘protect, enhance and restore all bodies of surface water [...] with the aim of achieving good surface water status at the latest 15 years after the entry into force of this Directive’²⁵⁷. This provision can mean either that the Member States are required to take measures aiming to achieve ‘good surface water status’²⁵⁸, or that the Member States are obligated to actually achieve ‘good surface water status’.²⁵⁹

Good status for ‘surface water’²⁶⁰ has two components: ‘ecological status’²⁶¹, and chemical status.²⁶² Levels of nutrients in a water body influence the ecological status and for that to be considered good, the biological condition of a water body can only be slightly different from an undisturbed water body.²⁶³ More information is provided in relation to specific elements, and the levels of nutrients in a water body cannot ‘exceed the levels established so as to ensure the functioning of the ecosystem’²⁶⁴. Based on this information, the Member States have to create a classification system.²⁶⁵ However, due to the generality of the provisions,²⁶⁶ the Member States need to know what the biological conditions are like in pristine water bodies to be able to implement the WFD correctly. Since such water bodies are not always available, defining ‘good ecological status’²⁶⁷ in more precise

²⁵⁵ Treaty on the Functioning of the European Union (n 17) art 288.3.

²⁵⁶ Fisher, Lange and Scotford (n 1) 561.

²⁵⁷ Dir 2000/60/EC (n 3) art 4.1(a)(ii).

²⁵⁸ Dir 2000/60/EC (n 3) art 4.1(a)(ii).

²⁵⁹ Fisher, Lange and Scotford (n 1) 561.

²⁶⁰ Dir 2000/60/EC (n 3) art 2(1).

²⁶¹ Dir 2000/60/EC (n 3) art 2(21).

²⁶² Dir 2000/60/EC (n 3) art 2(18).

²⁶³ Dir 2000/60/EC (n 3) Annex V.

²⁶⁴ See for example Dir 2000/60/EC (n 3) Annex V 1.2.4.

²⁶⁵ Josefsson and Baaner (n 20) 466.

²⁶⁶ Brian Moss, ‘The Water Framework Directive: Total environment or political compromise?’ (2008) 400 *Science of The Total Environment* 32, 35.

²⁶⁷ Dir 2000/60/EC (n 3) art 22.2.

and realistic terms is not always possible.²⁶⁸ It should also be mentioned that achieving the ambitious goals of the directive might not be possible.²⁶⁹

Taking what has been stated above into consideration, it is not surprising that studies show that the implementation of the WFD in the Member States has not progressed in the way the European Commission would have liked it to.²⁷⁰ As noted above, under 2.3 Achieving Environmental Objectives through Corporate Social Responsibility, a lack of knowledge on what measures lead to what improvements and a lack of resources to implement measures are two other reasons why the objectives of the WFD will not be met by deadline in 2015.

4.2 Implementation of the Water Framework Directive in Sweden

The implementation of the WFD in Sweden started with SOU 2002:105 and SOU 2002:107. These were governmental official reports on how the implementation of the WFD should be organised,²⁷¹ and on what amendments that had to be made in Swedish law.²⁷² The reports resulted in amendments in the Swedish Environmental Code in 2003.²⁷³ Legislation that regulated water quality was enacted in 2004 when further amendments were made to the Swedish Environmental Code.²⁷⁴ In 2005, two more governmental official reports were published.²⁷⁵ These concerned the need for more amendments in Swedish law,²⁷⁶ and the need for and possibilities of improving existing programmes of measures.²⁷⁷

Below, under 4.2.1 Considering and Encouraging Corporate Social Responsibility when Implementing the Water Framework Directive in Sweden, the implementation process of the WFD in Sweden will be further explored. Focus will be on whether and to what extent the potential of using CSR as a tool for achieving the objectives of the WFD was considered.

²⁶⁸ Fisher, Lange and Scotford (n 1) 562-563.

²⁶⁹ Josefsson and Baaner (n 20) 485.

²⁷⁰ COM (2012) 670 final (n 10) 3-6.

²⁷¹ SOU 2002:105 Klart som Vatten.

²⁷² SOU 2002:107 Bestämmelser om Miljökvalitet.

²⁷³ Lag (2003:890) om ändring i miljöbalken; Proposition 2003/04:2 Förvaltning av Kvaliteten på Vattenmiljön.

²⁷⁴ Lag (2004:224) om ändring i miljöbalken; Proposition 2003/04:57 Vattendistrikt och Vattenmiljöförvaltning; Förordning (2004:663) om ändring i förordningen med länsstyrelseinstruktion.

²⁷⁵ SOU 2005:59 Miljöbalken;, Miljökvalitetsnormer, Miljöorganisationerna i Miljöprocessen och Avgifter, del 1; SOU 2005:113 Åtgärdsprogram för Miljökvalitetsnormer.

²⁷⁶ SOU 2005:59 (n 275).

²⁷⁷ SOU 2005:113 (n 275).

4.2.1 Considering and Encouraging Corporate Social Responsibility when Implementing the Water Framework Directive in Sweden

The development of the report SOU 2002:105 included several hearings where different stakeholders, such as authorities, industry organisations and environmental organisations took part.²⁷⁸ The report acknowledged that the programmes of measures affected many stakeholders, including corporations. It was also mentioned that consultations are an important part of the process of developing RBMPs.²⁷⁹ The purpose of the consultations was to gain knowledge from local actors, and to work according to the legal tradition that those affected by a decision made by an authority should be given the opportunity to comment on it.²⁸⁰ Moreover, the report noted that local actors would likely contribute more to the realisation of the programmes of measures if they felt like they took part in the development process.²⁸¹

In SOU 2002:105, tools mentioned for reducing negative impacts from point sources were provisions in the Swedish Environmental Code on permits, supervision, and etcetera. The report further acknowledged that there should be possibilities of addressing several issues through associations, agreements or contracts.²⁸² Noting that there were meaningful initiatives in place already, the report held that more associations would probably be created.²⁸³ It was also acknowledged that joint actions must be based on voluntary initiatives in order to be effective. The voluntary characteristic meant that the measures taken could be developed in line with the interests and needs of the participants. However, in situations where the participation of all affected parties – and not only those who wanted to – was necessary, voluntary initiatives were not considered sufficient. The same argument was presented regarding situations that required long-term measures. Regulation was considered required when long-term water-treatment management was in the interest of the public.²⁸⁴ At the same time, it was noted that even in the case of regulated joint actions, all parties might have agreed on the measures to take. The difference between regulated and voluntary joint actions was that the former should be used when solid actions were needed in the short- or long-term.²⁸⁵ Agreements between water users, for example farmers, and the water authority in charge were mentioned as a flexible way of improving water quality.²⁸⁶ Amendments in Swedish law should be made to enhance the ability and incentives to make such agreements.²⁸⁷

²⁷⁸ SOU 2002:105 (n 271) 45.

²⁷⁹ SOU 2002:105 (n 271) 12.

²⁸⁰ SOU 2002:105 (n 271) 91.

²⁸¹ SOU 2002:105 (n 271) 158.

²⁸² SOU 2002:105 (n 271) 65.

²⁸³ SOU 2002:105 (n 271) 161.

²⁸⁴ SOU 2002:105 (n 271) 176.

²⁸⁵ SOU 2002:105 (n 271) 177.

²⁸⁶ SOU 2002:105 (n 271) 194-195.

²⁸⁷ SOU 2002:105 (n 271) 195-196.

However, the function of voluntary initiatives presented in the report only regarded water management on a local level.²⁸⁸ Regarding the creation of incentives for water users to initiate water treatment measures, no incentives other than those that would come from the joint action per se, such as the dividing of costs and workload, were mentioned.²⁸⁹ Indicating that the fulfilment of the objectives in the WFD required more financial resources than those available, the report suggested that water users would be charged a fee for activities that had adverse impacts on the water quality.²⁹⁰

In the governmental official report SOU 2005:113, the possibility of encouraging improvement measures, such as agreements between an authority and a group of water users, instead of requiring extraordinary measures, was mentioned as a primary tool for achieving the Swedish environmental quality norms.²⁹¹ As a complement to regulation, instruments that stimulate actors to behave in a desired way should be implemented. The purpose of this was to make the system more flexible without challenging the fulfilment of the environmental quality norms.²⁹² By allowing groups of water users to co-operate, creative solutions could be developed and water users could take advantage of the fact that the cost of achieving a certain environmental effect might vary.²⁹³ Joint actions would also be a more cost-efficient way for society to meet environmental quality norms.²⁹⁴ To enable this kind of co-operation, legislation should be enacted that for example prevented potential conflicts within the groups.²⁹⁵ It was also stated that water users should have the possibility to apply for exemptions if they could meet the environmental quality norm in another way than the one that is prescribed in a certain programme of measures.²⁹⁶

Other legislative documents did not mention the potential benefits of voluntary initiatives taken to improve water quality.²⁹⁷

4.2.2 Considering Corporate Social Responsibility at a Local Level

At a local level, the work towards achieving good ecological status is managed by water authorities.²⁹⁸ The Swedish Water Management

²⁸⁸ SOU 2002:105 (n 271) 176.

²⁸⁹ SOU 2002:105 (n 271) 172.

²⁹⁰ SOU 2002:105 (n 271) 13-143.

²⁹¹ SOU 2005:113 (n 275) 205.

²⁹² SOU 2005:113 (n 275) 206-207.

²⁹³ SOU 2005:113 (n 275) 208-209.

²⁹⁴ SOU 2005:113 (n 275) 216.

²⁹⁵ SOU 2005:113 (n 275) 208-209.

²⁹⁶ SOU 2005:113 (n 275) 211.

²⁹⁷ SOU 2002:107 (n 272); SOU 2005:59 (n 275); Proposition 2003/04:2 (n 273); Proposition 2003/04:57 (n 274).

²⁹⁸ Miljöbalken (1998:808) 5 kap 11 §; Vattenmyndigheterna, 'Välkommen till Sveriges fem vattenmyndigheter!' (Länsstyrelserna) <vattenmyndigheterna.se/SV/OM-VATTENMYNDIGHETERNA/Pages/default.aspx> accessed 16 October 2013.

Ordinance²⁹⁹ states that the authorities in charge shall plan their activities in a way that enables and encourages participation of all affected parties.³⁰⁰

In relation to the Baltic Sea, the work done by the water authority of the South Baltic will be explored in this thesis. The southern parts of the Baltic Sea are the most affected by eutrophication in the world.³⁰¹ This water authority has recognised the importance of including all those affected by water regulation in the process of developing it. They provide information on what they are working on and they arrange consultations before they take decisions in important questions. This is, according to the water authority of the South Baltic, an important way of addressing all relevant issues in question and programmes of measures and other documents and policies can be amended when opinions from stakeholders have reached the water authority.³⁰²

4.2.2.1 River Basin Management Plan for the South Baltic

According to the WFD, the RBMPs shall provide information on what measures that have been taken in order to fulfil the requirement of public and stakeholder participation. They shall also present the results achieved and the changes made to the RBMP in response to those results.³⁰³ In the RBMP for the South Baltic, the measures taken in Sweden to include interested parties in the process of developing the plan were presented. However, the information given on what changes were made due to the opinions of different stakeholders was scarce.³⁰⁴

According to the RBMP for the South Baltic, the water authority of the South Baltic has engaged the public and stakeholders by providing information about water management.³⁰⁵ Consultations have been held three times in order to collect opinions and ideas. The authority has also sent its work programme and overview of essential questions to stakeholders for consideration. The water authority got many answers and these were taken into account in the daily work and in the RBMP.³⁰⁶ Information on how this was done was not presented in the RBMP.

²⁹⁹ Förordning (2004:660) om förvaltning av kvaliteten på vattenmiljön.

³⁰⁰ Förordning (2004:660) (n 299) 2 kap 4 §.

³⁰¹ Holfve and others (n 12) 11.

³⁰² Vattenmyndigheten Södra Östersjön, 'Deltagande och Dialog' (Länsstyrelserna) <vattenmyndigheterna.se/Sv/sodra-ostersjon/deltagande-och-dialog/Pages/default.aspx> accessed 16 October 2013.

³⁰³ Dir 2000/60/EC (n 3) Annex VII.

³⁰⁴ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 162-172.

³⁰⁵ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 163-165.

³⁰⁶ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 166-167.

At an international level there have been meetings where representatives from different Member States have exchanged experiences on the implementation of the WFD. At a national level, the water authorities co-operate with industry organisations and other stakeholders.³⁰⁷ There are also water counsels that mirror the local conditions and those can include representatives from municipalities, the industry, agriculture, forestry, non-profit organisations, etcetera.³⁰⁸

The RBMP for the South Baltic further notes that water management in Sweden has been based on legislation and other regulatory instruments for many years. Industries, municipalities, agriculture and forestry have taken responsibility. They have rebuilt purification plants and improved industries from an environmental point of view.³⁰⁹ The RBMP also mentions that it is important to coordinate measures and co-operate at an international level. For example, HELCOM is seen as important for water management in Sweden.³¹⁰ This is an organisation created through collaboration between the EU and the states surrounding the Baltic Sea; Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden.³¹¹ HELCOM's objective is to protect the Baltic Sea from pollution to restore the health of the sea.³¹² It has adopted the BSAP, which is a strategy aiming to restore good ecological status in the Baltic Sea by 2021. One of the objectives is to achieve a state where the sea is unaffected by eutrophication.³¹³

4.2.2.2 Considering Corporate Social Responsibility in Practice

Water counsels enable different stakeholders to co-operate regarding water management to achieve sustainable results. Those who participate, such as industry organisations, provide knowledge and experience that is important for the progress of water management.³¹⁴

³⁰⁷ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 170.

³⁰⁸ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 171.

³⁰⁹ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 173.

³¹⁰ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Förvaltningsplan' (n 36) 174.

³¹¹ Baltic Marine Environment Protection Commission – Helsinki Commission, 'Contracting Parties' (HELCOM, 2013) <<http://helcom.fi/about-us/contracting-parties>> accessed 21 October 2013.

³¹² Baltic Marine Environment Protection Commission – Helsinki Commission, 'About Us' (n 180).

³¹³ Baltic Marine Environment Protection Commission – Helsinki Commission, 'Baltic Sea Action Plan' (HELCOM, 2013) <<http://helcom.fi/baltic-sea-action-plan>> accessed 21 October 2013.

³¹⁴ Vattenmyndigheten Södra Östersjön, 'Vattenråd och Lokal Samverkan' (Länsstyrelserna) <vattenmyndigheterna.se/Sv/sodra-ostersjon/deltagande-och-dialog/vattenrad/Pages/default.aspx> accessed 18 October 2013.

From the programme of measures published by the water authority for the South Baltic, it is evident that Sweden had state-financed projects aimed at reducing eutrophication already in the 1970s.³¹⁵ Grants from the EU and the Swedish government have contributed to the development of several mechanisms for reducing nutrient emissions. Actions specified in the programme of measures can therefore be taken without any measurable time lag.³¹⁶

The programme of measures for the South Baltic mentions agriculture as one of the biggest sources of nutrient pollution in Sweden.³¹⁷ The measures needed to address this issue have been financed by environment and agriculture grants combined with guidance since the 1990s. This system has been successful and a developed version will henceforth be applied.³¹⁸

Municipal sewage treatment plants also contribute to eutrophication.³¹⁹ The cost of running these is financed through fees that will have to be raised to cover the measures presented in the programme of measures. Industries will have to pay a fee or tax.³²⁰

4.2.2.2.1 The Baltic Sea Initiative

Swedish municipalities along the coast around the Baltic Sea have started several collaborations that collect knowledge and ideas from its members: entrepreneurs, authorities, organisations and scientists. The municipalities have realised that a healthy sea is important for the region and within the collaborations the members discuss the issues regarding the Baltic Sea and develop pilot projects. The purpose of this is to improve the possibilities of taking concrete measures aimed at improving the health of the environment.

Five of these collaborations started The Baltic Sea Initiative (Östersjöinitiativet) in 2012. The Baltic Sea Initiative is a network with the purpose of developing measures that improve the environment in the coastal area, that initiate and enhance environment driven business development, that spread information and that contribute to education.³²¹

³¹⁵ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram för Södra Östersjön 2009-2015' (Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län 2010) 22.

³¹⁶ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram' (n 315) 65.

³¹⁷ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram' (n 315) 62.

³¹⁸ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram' (n 315) 71.

³¹⁹ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram' (n 315) 62.

³²⁰ Vattenmyndigheten i Södra Östersjöns vattendistrikt vid Länsstyrelsen Kalmar Län, 'Åtgärdsprogram' (n 315) 71-72.

³²¹ 'Östersjöinitiativet: Avsiktsförklaring, Handlingsplan, Om Parterna' (2 July 2012) <gotland.se/71474> accessed 1 November 2013.

4.3 Summary and Thoughts

CSR initiatives can contribute to achieving the objectives of the WFD. Sweden has already realised the potential benefits of including stakeholders in the process of developing water management and has taken several measures to include stakeholders in the process of implementing the WFD. The possibility of putting some of the responsibility on stakeholders through voluntary initiatives has also been recognised, even though such initiatives are not considered sufficient when stable projects need to be established. As discussed in chapter 2, Sweden has acknowledged that the effect of voluntary initiatives can be enhanced by regulation.

Water management in Sweden has successfully entailed coordinated efforts by public and private actors for many years. However, the discussion in the governmental official reports regarding the implementation of the WFD has not entailed any other suggestions, for how the legislator or the government could encourage private actors to take CSR initiatives to improve the status of water bodies in line with the objectives of the WFD, than the examples mentioned of legislation enabling voluntary actions. Finally, it should be noted that the potential benefits of voluntary actions were only mentioned regarding water management at a local level. Regarding eutrophication in the Baltic Sea, coordinated efforts need to be made by all those that contribute to it.

Conclusively, Sweden has made efforts to include water users in the process of developing water management as well as in the process of implementing the WFD, but there are still many possibilities of encouraging CSR and enhancing the effects of existing CSR initiatives that Sweden has not utilised. CSR initiatives can also be promoted at an international level for wider application and effect. According to the RBMP for the South Baltic, forums for international co-operation on water management are already in place. These can be used for promoting CSR initiatives in the coastal states around the Baltic Sea.

5 The Role of Corporate Social Responsibility in Reducing Eutrophication in the Baltic Sea

Improving the water quality in the Baltic Sea is not only important for the environment. It is also an essential economic and social concern since many jobs depend on it.³²² Emissions of nutrients to the Baltic Sea have been reduced over the last 25 years,³²³ but further improvements need to be made to ensure a healthy Baltic Sea.³²³

There are already CSR initiatives aimed at reducing eutrophication in the Baltic Sea. A few examples have been initiated by the BSAG, an independent non-profit foundation that encourages enterprises to take concrete actions aimed at reducing the problems regarding the Baltic Sea.³²⁴ The actions support the implementation of the BSAP that was adopted by all the coastal states around the Baltic Sea and the EU in 2007.³²⁵ The goal of the BSAP is to restore the good ecological status of the Baltic Sea by 2021. One objective is also that the Baltic Sea will be unaffected by eutrophication.³²⁶

The actions initiated by the BSAG are called *Commitments*: an act or a process that has a direct or indirect positive impact on the wellbeing of the Baltic Sea. An ideal Commitment develops an organisation's business practices in a way that benefits both the organisation and the Baltic Sea.³²⁷

To influence enterprises to make commitments, the BSAG identifies enterprises that can have a solution to a certain problem or part of a problem. The BSAG then contacts a relevant company with a proposal of how it can improve its environmental performance and information on how making such improvements can benefit the company.³²⁸ There are currently more than 200 Commitments made and the progress of these is monitored

³²² Holfve and others (n 12) 3.

³²³ Werner and others, *Current Status and Future Challenges* (n 14) 14.

³²⁴ Baltic Sea Action Group, 'The Way We Work' (Baltic Sea Action Group) <bsag.fi/en/about%20us/Pages/Mission.aspx> accessed 22 October 2013.

³²⁵ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (Baltic Sea Action Group 2013) 13; Baltic Marine Environment Protection Commission – Helsinki Commission, 'Baltic Sea Action Plan' (n 313).

³²⁶ Baltic Marine Environment Protection Commission – Helsinki Commission, 'Baltic Sea Action Plan' (n 313).

³²⁷ Baltic Sea Action Group, 'Commitment to Act For the Baltic Sea' (Baltic Sea Action Group) <bsag.fi/EN/COMMITMENTS/Pages/default.aspx> accessed 8 November 2013.

³²⁸ Email from Pieta Jarva at Baltic Sea Action Group to author (29 November 2013).

by BSAG and evaluated by a third party.³²⁹ 100 Commitments have already been fulfilled,³³⁰ and tangible results have been achieved regarding eutrophication.³³¹ Some organisations have even continued their work after fulfilling their Commitments. This indicates that not only the Baltic Sea benefits from the measures taken, the Commitment maker does too.³³²

Fazer³³³ has made a Commitment. It has decided to make several changes to its business that will have direct environmental impacts. According to Fazer, environmental concerns have been important to the company since it was founded. Making the Commitment, which was initiated by an employee, is one way for Fazer to continue to operate in an exemplary way. The company knows that it has an opportunity to improve the health of the Baltic Sea in co-operation with its partners, and Fazer believes that collaborative measures can achieve significant improvements.³³⁴ For example, Fazer has asked the farmers growing crops for it to use Baltic Sea friendly farming practices. Since Fazer is a major player on the market, it can affect many actors.³³⁵

AGA³³⁶ has made another Commitment. It will purchase and transport biogas that has been produced from animal manure in Leningrad. Run-off from manure is one of the causes of eutrophication and AGA's Commitment will mitigate this problem in Leningrad where there are large poultry farms and consequently also large amounts of manure.³³⁷ In its environmental report, which includes many more initiatives aimed at improving its environmental performance, AGA states that it is '[g]etting ahead through innovation'. In other words, AGA's environmental efforts create added value, competitiveness and a higher profit.³³⁸

A third Commitment has been made by Yara³³⁹ Suomi Oy. It has treated 100 hectares of fields with gypsum. This measure does not harm the

³²⁹ Baltic Sea Action Group, 'Frequently Asked Questions' (Baltic Sea Action Group) <bsag.fi/en/about%20us/Pages/FAQ.aspx> accessed 22 October 2013.

³³⁰ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 10.

³³¹ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 17.

³³² Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 11.

³³³ The Fazer group produces food, bakery and confectionary products, see Fazer, 'Om Fazerkoncernen' (Fazer, 2010) <fazer.se/Om-oss1/> accessed 25 October 2013.

³³⁴ Fazer, 'Fazer has made a Commitment for the Baltic Sea' (n 24).

³³⁵ Email from Pieta Jarva at Baltic Sea Action Group to author (22 October 2013).

³³⁶ AGA is the leading industrial gas company in Northern Europe, See AGA, 'About AGA' (AGA, 2012) <aga.com/international/web/lg/aga/like35agacom.nsf/docbyalias/nav_about_aga> accessed 22 October 2013.

³³⁷ Baltic Sea Action Group, 'Commitment Bank' (Baltic Sea Action Group) <bsag.fi/en/commitments/Pages/All-Commitments.aspx> accessed 22 October 2013.

³³⁸ AGA Gas AB, 'Environment Report 2011.' (AGA, 2011).

³³⁹ Yara is the world's leading chemical company. They convert energy, natural minerals and nitrogen from the air into important products for farmers and the industry, see Yara,

productivity of the cultivation, but it reduces the amount of phosphorus in drainage basins.³⁴⁰ Yara International ASA has made a Commitment to further develop best agricultural practices. The focus is nitrogen management and precision farming.³⁴¹ By analysing the actual need for nitrogen in each part of a field and then applying only that amount, nitrogen emissions from fields are reduced.³⁴²

The Commitment makers of the BSAG have experienced that their Commitments have given them a lot of positive publicity, new clients, valuable contacts, financial benefits and goodwill.³⁴³ They also enjoyed the thought of being part of something important.³⁴⁴

The above-mentioned initiatives are examples of that the Baltic region has good possibilities of addressing the issue of eutrophication through CSR initiatives. Furthermore, the region is financially strong, has a highly educated population and strong domestic companies. The environmental problems can be turned into business opportunities by private actors who, in addition, can export their innovations.³⁴⁵ Moreover, the demand for environmentally friendly business solutions increases as problems such as eutrophication grow.³⁴⁶ For example, investments regarding wastewater treatment are on the way in China and India.³⁴⁷ The growing awareness and interest in environmentally friendly products among consumers in the region, primarily in Sweden and Estonia, also reflect business opportunities available for environmentally responsible enterprises.³⁴⁸

Corporations that analyse their dependence on the Baltic Sea and target issues related to their need can achieve environmental and economic benefits simultaneously.³⁴⁹ This is particularly the case for SMEs since their clients are usually found nearby the company. Therefore, their competitiveness is to a large extent affected by their reputation and image as an employer, producer and actor in the vicinity of the business. They are also dependent on the health, stability and prosperity of the area in which they operate.³⁵⁰

'What We Do' (Yara, 2013) <yara.com/about/what_we_do/index.aspx> accessed 22 October 2013.

³⁴⁰ Baltic Sea Action Group, 'Commitment Bank' (n 337).

³⁴¹ Baltic Sea Action Group, 'Commitment Bank' (n 337).

³⁴² Email from Pieta Jarva (n 335).

³⁴³ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 30-45.

³⁴⁴ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 33.

³⁴⁵ Holfve and others (n 12) 3-14.

³⁴⁶ Holfve and others (n 12) 7-12.

³⁴⁷ Holfve and others (n 12) 23.

³⁴⁸ Holfve and others (n 12) 19.

³⁴⁹ Holfve and others (n 12) 24.

³⁵⁰ COM (2001) 366 final (n 51) 11.

5.1 The Legislator's Possibilities of Enhancing the Results of Corporate Social Responsibility Initiatives

CSR has traditionally developed through voluntary initiatives with no centralised body of enforcement. It has been driven by pressure from the public that have been organised by advocacy groups, and facilitative state action. As a consequence, CSR has not been characterised by legal concepts such as rights, duties and binding instruments. CSR and regulation have even been regarded as two mutually exclusive concepts. However, Mares argues that there are possibilities of improving the effects of CSR initiatives through regulation and policy. Legal instruments can particularly be used to scale up the infrastructure of CSR, and thus improve the results achieved.³⁵¹ Since taking measures that benefit the environment is usually costly for corporations, regulation is needed to achieve a quality of the environment that is satisfactory. If there is no regulation, only firms that benefit from taking environmental measures will do so.³⁵²

The legislator in relation to the implementation of legislation in the EU can be either the Member States or the European Commission.³⁵³ In relation to international agreements, also international organisations such as the United Nations can have the position of the legislator.³⁵⁴ In this thesis, the possibility of the EU or Member States in their role as the legislator in enabling and promoting the use of CSR is explored.

Considering that CSR is an abbreviation for Corporate Social Responsibility, it may seem contradictory to present a chapter about the legislator's possibilities to improve the results achieved through CSR. However, it can be argued that the Member States and other public authorities have a responsibility to promote CSR since CSR contributes to sustainable development and therefore creates value for society.³⁵⁵

In relation to the WFD, the achievement of the objectives of the directive is the responsibility of the Member States.³⁵⁶ They shall take all measures necessary to achieve the objectives,³⁵⁷ and if CSR initiatives can be used as tools for achieving the objectives of the directive, one could argue that it is the responsibility of the Member States to utilise this opportunity.

³⁵¹ Mares (n 41) 20-22.

³⁵² Chris Hilson, *Regulating Pollution: A UK and EC Perspective* (Hart Publishing 2000) 129.

³⁵³ Ulf Bernitz and Anders Kjellgren, *Europarättens Grunder* (Norstedts Juridik 2010) 30-32.

³⁵⁴ Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006) 62.

³⁵⁵ COM (2002) 347 final (n 80) 7.

³⁵⁶ Bernitz and Kjellgren (n 353) 30.

³⁵⁷ Dir 2000/60/EC (n 3) art 4.

Public policy can enhance the positive impacts of CSR by ensuring that CSR initiatives undertaken by different corporations strive towards the same goals and objectives.³⁵⁸ Furthermore, it is important to note that even though the concept of CSR was originally created by and for MNEs, the majority of companies in the EU are constituted of SMEs.³⁵⁹ Hence, while promoting CSR in the EU, the legislator must focus on mechanisms and tools suited for SMEs in particular.³⁶⁰

Including water users in the process of enhancing the state of the Baltic Sea is essential.³⁶¹ The legislator can play a supporting role by enacting complementary regulation, creating market incentives for environmentally responsible performance and ensuring corporate accountability.³⁶²

The European Environment Agency states that improvements can be made by using economic incentives not only in the form of penalties, but also as positive encouragements to promote environmentally sustainable behaviour.³⁶³ In the case of the Baltic Sea, where the majority of corporations are SMEs,³⁶⁴ this method is likely to be effective since one major issue for such corporations in relation to CSR initiatives is that they lack sufficient resources to take such initiatives.³⁶⁵ A lack of financing combined with a lack of suitable partners is also a reason why 26 of the Commitments made to the BSAG have been cancelled.³⁶⁶

For Swedish companies, there are big business opportunities associated to exporting environmentally friendly products to Eastern Europe. However, the Swedish enterprises generally do not have enough resources to perform market surveys and it is therefore important that they are provided with such information.³⁶⁷ Other issues related to business in Eastern Europe and Russia are language barriers, bureaucracy, a lack of legal knowledge, a lack of personal contacts and cultural differences.³⁶⁸

The legislator can promote CSR by establishing policies that ensure that corporations include environmental aspects in their business activities.³⁶⁹ Since there are already non-binding international frameworks in place, European legislators can focus on achieving coherence and quality and the

³⁵⁸ COM (2002) 347 final (n 80) 8.

³⁵⁹ COM (2001) 366 final (n 51) 7; COM (2002) 347 final (n 80) 11.

³⁶⁰ COM (2002) 347 final (n 80) 11.

³⁶¹ Werner and others, *Current Status and Future Challenges* (n 14) 8.

³⁶² COM (2011) 681 final (n 33) 7.

³⁶³ Werner and others, *Current Status and Future Challenges* (n 14) 35.

³⁶⁴ COM (2002) 347 final (n 80) 11.

³⁶⁵ COM (2002) 347 final (n 80) 11-12.

³⁶⁶ Baltic Sea Action Group and Finland's Environmental Administration, 'Commitment Analysis 2013' (n 325) 10.

³⁶⁷ COM (2001) 366 final (n 51) 10; Ellinor Bråsjö and Ulrik Axelsson, 'Potential för svensk Miljöteknik – Utblick mot Estland, Lettland, Litauen, nordvästra Ryssland och Polen' (IVL Svenska Miljöinstitutet, 2007) 5.

³⁶⁸ Bråsjö and Axelsson (n 367) 28-31.

³⁶⁹ COM (2001) 366 final (n 51) 5.

implementation of such instruments. By supporting best practice approaches regarding evaluation and independent verification of CSR, the legislator can ensure that CSR initiatives are effective and credible.³⁷⁰ Reward schemes can also be established in order to promote the implementation of CSR initiatives.³⁷¹ In addition to this, education and raising awareness about the value of CSR, economic benefits and good practices cases are important encouraging measures.³⁷²

Another possibility of the legislator is to utilise the pressure that consumers, investors and other stakeholders can put on enterprises. By establishing mandatory transparency and reporting requirements, the legislator will enable such actors to influence companies to adapt more environmentally friendly business practices.³⁷³ Some SMEs already report environmental information informally.³⁷⁴ If reporting requirements are introduced, it is important that SMEs are given guidance and tools on how to report their CSR initiatives. Published reports should also be verified by independent bodies and measured against standardised benchmarks in order to be credible.³⁷⁵ Requiring investors to disclose information about if and how they consider environmental aspects when making investment decisions further encourages enterprises to publish information about their environmental performance as such information will be requested from investors.³⁷⁶

The UN Secretary-General has stated that voluntary collaborative efforts from corporations and NGOs can be effective in developing and implementing regulations at national level.³⁷⁷ A relevant example of successful government and private actor collaboration in this case is the water supply in Singapore. In its strive to become self-sufficient regarding the production of drinking water, Singapore has doubled the number of water sector corporations to 100, it has attracted international companies, it has exported its innovations through more than 100 water projects and it has created 6,000 jobs so far. An essential part of the success was strong co-operation among stakeholders. The government invested large amounts in research, involved the industry and supported it in the work towards developing innovative solutions.³⁷⁸

The Baltic Sea region has a similar opportunity as Singapore.³⁷⁹ By using this opportunity, the Baltic region could create significant and long-term

³⁷⁰ COM (2001) 366 final (n 51) 6.

³⁷¹ COM (2001) 366 final (n 51) 10; COM (2002) 347 final (n 80) 6.

³⁷² COM (2002) 347 final (n 80) 11-12; COM (2006) 136 final (n 87) 6.

³⁷³ COM (2001) 366 final (n 51) 15.

³⁷⁴ COM (2011) 681 final (n 33) 11.

³⁷⁵ COM (2001) 366 final (n 51) 18; COM (2002) 347 final (n 80) 13-14; Mares (n 41) 146-148.

³⁷⁶ COM (2002) 347 final (n 80) 16.

³⁷⁷ United Nations Secretary-General, 'Enhanced Cooperation between the United Nations and All Relevant Partners, in Particular the Private Sector' (A/58/227, United Nations General Assembly 18 August 2003) 18.

³⁷⁸ Holfve and others (n 12) 24-25.

environmental and competitive benefits.³⁸⁰ Key measures needed are actions targeting the most important issues, increasing accountability, applying an integrated governance approach that includes the countries in the region, different sectors, private actors and the public, creating commercial incentives and investments in environmentally friendly innovations.³⁸¹

5.2 Summary and Thoughts

The CSR initiatives taken in the Baltic Sea area have proven successful in reducing sources of eutrophication in the Baltic Sea and several enterprises have found that the measures taken have led to business benefits. The information presented in this chapter further shows that it is possible for the legislator to encourage corporations to reduce the eutrophication in the Baltic Sea through CSR initiatives.

There are several ways in which the legislator can enable and promote the use of CSR. For example, there are business opportunities for corporations that provide environmentally friendly solutions and products. However, since the majority of the companies operating in the EU are SMEs that lack resources and knowledge about how to improve their environmental performance, it is important that they get enough support that enables them to do so. The legislator can ensure that such support is in place. The legislator also has the ability to ensure that measures are implemented on a wide scale and aimed at the same goal. By analysing what measures that need to be taken and how they can be promoted, the legislator can establish an environment that influences more enterprises to act environmentally friendly and to do so to a larger extent.

Moreover, since SMEs often lack sufficient information on how they can export their environmentally friendly innovations, one measure that can be taken by the legislator or the government is to set up an organisation that provides SMEs that are or are planning to be active abroad with translation of documents and emails, people that can act as personal contacts, information on how business works in the relevant country, etcetera. This would enable more SMEs to profit from their environmentally friendly performance and thus influence more SMEs to develop environmentally friendly production methods. The forums for international co-operation that are already in place could be used for this purpose.

Conclusively, the legislator has many opportunities to improve the effects of CSR and by using those to address the problem of eutrophication in the Baltic Sea, it is likely that the efforts made by corporations in the region will have positive effects on the ability of Member States to fulfil their obligations under the WFD.

³⁷⁹ Holfve and others (n 12) 24-25.

³⁸⁰ Holfve and others (n 12) 24.

³⁸¹ Holfve and others (n 12) 27-28.

6 Analysis

The EU has tried to solve the issues regarding water quality and quantity in the EU by enacting several directives. However, EU legislation aimed at improving the health of the waters in the EU has not had sufficient effect. Similar issues have arisen regarding the implementation of different directives on water policy. Other methods of addressing issues regarding water should therefore be explored.

By influencing corporations to improve the situation, NGOs have already reached tangible results regarding eutrophication in the Baltic Sea. However, a major issue with the effect of CSR initiatives is that only a few corporations implement them and in areas such as the Baltic region, collaborative measures involving all actors that affect the sea are needed. It is important to provide incentives for those corporations that are not yet concerned with improving their environmental performance, and to ensure that those that have already implemented CSR initiatives continue to develop these.

Those who live and work in the vicinity of a specific water body such as the Baltic Sea are likely to be concerned and motivated to improve the water quality since they are directly affected by and dependent on it. By getting public authorities and private actors to co-operate on a local level, knowledge and experience on what issues exist and what possibilities exist to address those issues can be shared and developed. By establishing forums for co-operation between actors in several areas affecting the same water body, such as the Baltic Sea Initiative, the initiatives can be further improved since more actors can provide input. This is a way of exploring how to enhance the use and effects of CSR.

The legislator has many possibilities of ensuring that more companies take environmental responsibility. However, what measures the legislator should take in order to encourage corporations to act more environmentally friendly differ depending on what kind of corporation it is dealing with. In the EU, the majority of corporations are SMEs and measures taken by the legislator should be aimed at improving their environmental performance. Since many SMEs lack knowledge and resources to improve their environmental performance, forcing them to do so might lead to many SMEs closing down. Through consultation processes, public authorities can learn what specific measures they need to take to influence companies in the area to act more environmentally friendly. It can be a question of providing financial support, providing knowledge on why and how certain corporations can contribute to a healthier Baltic Sea, or presenting examples of successful practices.

Even though the main focus should be put on SMEs, MNEs must also be considered. By requiring their suppliers to use Baltic Sea-friendly

production methods, MNEs can influence those companies to achieve improvements. MNEs should therefore also be encouraged to improve their environmental performance and to control their supply chains. This thesis has not focused on MNEs, but it has still been evident that MNEs can benefit from being environmentally responsible. Environmentally responsible behaviour can improve their reputation and give them business opportunities since they can export their innovations.

Establishing transparency laws is one way of improving the environmental performance of companies. Many corporations are vulnerable to getting a bad reputation and they will act environmentally friendly if other kinds of behaviour will risk giving them bad publicity. However, it is possible that this is not true regarding enterprises that are not in the spotlight. Small companies may not be in the spotlight of a major part of society, but they may have to watch their reputation to be able to act in their local arena. Corporations that act down the supply-chain of other enterprises may not be in the direct spotlight of consumers and NGOs. Their performance can, however, be put in the spotlight by transparency regulation that requires enterprises to report on the environmental performance of companies down their supply-chain. Since enterprises that are vulnerable to a negatively affected reputation will not want to be associated with companies whose environmental performance is not in line with the norm, this is a way of targeting enterprises that are not in the direct spotlight. However, to improve the environmental performance of enterprises through transparency laws, the environmental reports produced must also be published so that they have effect on companies' reputations.

In relation to the discussion about CSR it is interesting to note that the European Commission mentions that CSR is a natural and necessary part of the work towards a sustainable development. In my opinion, it is with the legislator that the responsibility for achieving environmental objectives should lie. The legislator has the ability to create the environment in which corporations act and thus has the ability to create incentives for enterprises to act in line with environmental objectives.

The Swedish legislator seems to have recognised potential benefits of enabling corporations to take measures to improve their environmental performance. On a local level, municipalities have taken this a step further by organising platforms for co-operation between public authorities, enterprises and scientists. By scaling up these initiatives, improvements regarding the Baltic Sea can be made. Measures taken as a result of the work of the BSAG prove that corporate behaviour in relation to eutrophication in the Baltic Sea can be improved if the right incentives are provided. When developing the law, the legislator can consider the CSR initiatives that are already in place. These provide knowledge on what actions that can be taken by certain businesses, what standards that can be set and what complementary legislation that is needed. By exploring what incentives drive companies to take certain actions, the legislator can also enhance the use and effects of CSR initiatives.

7 Conclusion

Good regulation cannot be substituted for CSR and thus good regulation should always form the basis for corporate behaviour. However, legislators can learn from CSR initiatives when implementing new environmental standards. In a dialogue with enterprises that have established CSR practices, the legislator can learn what improvements in environmental performance that are possible and cost-effective in different industries and businesses.

By supporting research projects and raising awareness about environmental problems, the government can supply SMEs with information about best practices and encourage them to act more environmentally friendly. Furthermore, a requirement to publish reports on environmental performance will provide an incentive for corporations to act more environmentally friendly since they will get better publicity followed by a higher profit and interested investors if they perform well.

Legislation and CSR should not be seen as mutually exclusive, but rather as two different ways of improving corporate environmental performance. By taking the best of the two and enhancing those parts, best practice regarding environmental regulation can be achieved. Regarding the implementation process of the WFD, the Member States already have to meet a requirement about stakeholder involvement. Hence, forums and methods for dialogue should already be in place. By enhancing these and including a wider spectrum of stakeholders, such as the BSAG that has experience in influencing enterprises to act environmentally friendly, the legislator could reform environmental regulation in a way that enhances the effects already achieved through CSR.

Since the objective of good status of the WFD will not be met by 2015 due to a lack of knowledge and resources, combining efforts of governments and business is a way forward. Furthermore, since CSR initiatives have already proven successful in reducing the eutrophication in the Baltic Sea, they can be used as a means of achieving the objectives regarding eutrophication set out in the WFD.

As presented in this thesis, the majority of the corporations in the EU are SMEs. They often lack knowledge about how and why to change their environmental performance. They normally also lack sufficient financial resources to take CSR initiatives. Therefore, providing the SMEs with information on how they can improve their environmental performance, how taking measures to do so benefits them, examples of successful cases as well as financial support would likely increase the number of enterprises taking measures to reduce the eutrophication in the Baltic Sea.

Through consultation processes at a local level, the legislator can gain more precise information on what incentives that would influence certain corporations to adopt business practices that reduce the eutrophication in the Baltic Sea.

Conclusively, CSR initiatives can be used as tools for achieving the objectives of the WFD, but this requires the legislator to utilise its possibilities of ensuring that corporations are provided with sufficient incentives to implement such initiatives.

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