

Explaining Regulatory Preferences: CSR, Soft Law, or Hard Law? Insights from a Survey of Nordic Pioneers in CSR

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Explaining Regulatory Preferences: CSR, Soft Law, or Hard Law? Insights from a Survey of Nordic Pioneers in CSR

Maria Gjølborg

Abstract

Business is often assumed to resist increased social and environmental regulation, preferring voluntary or soft-law approaches to global governance. This article analyzes the dynamics between CSR, soft law, and hard law by exploring corporate attitudes in the Nordic area towards CSR and regulation—an area reputed to be a forerunner in both CSR and social and environmental regulation. The analysis, based on a survey of the Nordic companies with the strongest CSR performance, reveals skepticism towards relying on CSR and voluntary approaches, combined with a very strong preference for increased international regulation of social and environmental issues. Drawing on insights from recent analyses in the governance literature, the article discusses the conditions under which business favors increased social and environmental regulation, concluding that corporate self-interest and increased international regulation can indeed coincide.

KEYWORDS: corporate social responsibility, hard law, soft law, regulatory preferences, business strategy

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Introduction

The global community faces social and environmental challenges on an unprecedented scale, creating a pressing need for effective global governance. Business is a key actor both in the creation and in the solution of social and environmental problems. On one hand, business is criticized for causing social and environmental damage in a reckless pursuit of profits¹ while obstructing attempts to establish legal frameworks to govern the global economy.² On the other hand, the popularity of Corporate Social Responsibility (CSR) demonstrates a shift in norms, one in which business increasingly accepts responsibility for its social and environmental impact, and changes its practices on a voluntary basis.³ Thus, in the absence of hard laws⁴ and legal frameworks to govern the global economy, CSR emerges as an alternative approach to global governance, based on self-regulation and soft law⁵ mechanisms.

CSR is contested in both public and academic debate.⁶ Critics question the effectiveness of CSR in improving corporate practices; due to CSR's voluntary, market-driven nature, CSR initiatives can induce only incremental changes, as they are inherently limited to situations with a win-win relationship between CSR and corporate profits. Thus, no matter how well intended and executed, CSR initiatives appear inherently unable to address more systemic unsustainabilities in the global economy.⁷ Critics therefore claim that binding regulations are needed to improve the social and environmental practices of the majority of companies.

In general, there is limited knowledge of how CSR, soft law, and hard law are linked, and there is no consensus as to whether CSR has a negative, neutral or positive impact on efforts to create hard law. Business and management disciplines tend to focus on the financial and operational aspects of CSR, and devote less attention to its wider governance implications. Social scientists tend to adopt a rather skeptical stance towards CSR, claiming that irrespective of its ability to improve social and environmental practices at the company level, CSR can supplant or undermine efforts to create hard law. By overemphasizing the achievements of CSR and the potential for win-win situations, CSR proponents

¹ Bakan 2004.

² Utting 2000.

³ Vogel 2009.

⁴ Hard law is defined as “a regime relying primarily on the authority and power of the state (...) in the construction, operation, and implementation, including enforcement, of arrangements at the international, national or subnational level” (Kirton and Trebilock 2004, 9).

⁵ Soft law is defined as “regimes that rely primarily on the participation and resources of nongovernmental actors in the construction, operation and implementation of a governance arrangement” (Kirton and Trebilock 2004, 9).

⁶ See Crane *et al* 2008 for an overview.

⁷ Mayer and Gereffi 2010; Utting and Marques 2009; Vogel 2005.

can, according to these skeptics, create an exaggerated belief in voluntary approaches, thereby weakening the legitimacy of demands for regulations put forth by NGOs, labor unions and activists. Some critics even claim that CSR is a deliberate corporate strategy to pre-empt regulation. By sufficiently improving corporate practices to deflect criticism, by diverting public scrutiny, by co-opting NGOs and marginalizing labor unions, CSR and soft law initiatives can actively weaken key drivers for hard law, according to these critics.⁸ However, other studies indicate that CSR can be a potential new source of improved global governance, claiming that CSR and soft law initiatives can in some instances pave the way for, and actively reinforce, hard law processes, thereby underpinning rather than undermining hard law.⁹

This article aims to explore the relationship between CSR, soft law, and hard law, and to analyze under which conditions companies actively support increased environmental and social regulation. While the majority of evidence in the current debate centers on companies from the United States or from major EU economies, this article provides a Nordic perspective by exploring the attitudes and perceptions of Nordic leaders in CSR. The Nordic area is reputed to be at the forefront both of CSR and of social and environmental legislation, and might offer a different perspective on the dynamics between CSR and regulation. The empirical analysis, based on a survey of the Nordic companies with the highest scores on CSR performance, reveals a strong preference for hard law, and a rather paradoxical skepticism towards CSR: 78 percent of the companies welcome binding international regulation, 70 percent see voluntary initiatives as insufficient to improve corporate performance, and 81 percent disagree that CSR can replace public policy. This strong preference for regulation counters neo-liberal theory, which predicts resistance to increased regulation and government intervention. Moreover, the companies' explicit skepticism towards voluntary initiatives appears somewhat antithetical to the ethos and rhetoric of CSR, which emphasize voluntarism.

The article proceeds as follows: The next provides a literature review of CSR in the governance debate, and the third section outlines the methodology. The fourth section relates the main findings of the survey regarding Nordic companies' perceptions of the role of governments and their perspectives on voluntary versus mandatory regulation of corporate responsibilities. The fifth section explores two possible explanations for the regulatory preferences uncovered, while section six provides a summary and concluding discussion of the implications of the analysis.

⁸ Levy 1997; Riechter 2002; Utting 2000.

⁹ Abbott and Snidal 2000; Haufler 2001; Kirton and Trebilock 2004.

CSR in Global Governance

The governance gap and regulatory failure associated with economic globalization are well discussed in the literature.¹⁰ This inability of governments to hold corporations accountable through democratic institutions and processes led to increasing public discontent in the 1990s. As civil society organizations became increasingly frustrated with corporate unaccountability and governmental inaction, they began to bypass the political level by targeting corporations directly. Through “naming and shaming,” boycotts, demonstrations and confrontational tactics, NGOs managed to attack corporate brands, legitimacy, and in some instances corporate profits.

CSR emerged as a corporate response to these civil society pressures. While the term “CSR” appeared as early as the 1950s,¹¹ its present form is closely linked to the anti-globalization movement beginning in the 1990s.¹² CSR is most commonly defined as going “beyond compliance,” that is, practices where companies voluntarily improve their social and environmental performance.¹³ Furthermore, CSR is understood to be “beyond charity,” as it concerns how companies integrate social and environmental concerns into their core business operations.¹⁴

The debates on CSR and on global governance are becoming increasingly intertwined.¹⁵ In many instances, CSR initiatives simply consist of unilateral or ad hoc projects from single companies, such as developing a code of conduct, a CSR report, or specific projects to improve social and environmental practices in the company without any wider governance implications. However, several CSR initiatives have started out as or developed into soft law institutions with co-regulation through multi-stakeholder participation and monitoring of compliance. These initiatives range from very loose soft law arrangements like the UN Global Compact, with weak compliance mechanisms, to more stringent initiatives, like the OECD Guidelines for Multinational Enterprises. Thus, the boundary between CSR initiatives and soft law is often blurred.¹⁶ Some of the soft law initiatives that originated out of the CSR movement, like the Global Reporting Initiative (GRI) and the Forest Stewardship Council (FSC), have even acquired hard law characteristics. These transitions between CSR, soft law and hard law, indicate that CSR is indeed relevant to the study of global governance and that the

¹⁰ Ruggie 2003; Stiglitz 2003; Stopford and Strange 1991; Story 1999.

¹¹ Carroll 2008.

¹² Levy and Kaplan 2008.

¹³ World Business Council for Sustainable Development (WBCSD) 2002.

¹⁴ European Union 2001; Porter and Kramer 2006.

¹⁵ Levy and Kaplan 2008.

¹⁶ Hirschland 2006; Vogel 2009.

relationship between the three is better described as a continuum rather than as a dichotomy.¹⁷

The Role of CSR in the Development of Soft and Hard Law

There is substantial literature, primarily within business studies, documenting how CSR can improve corporate social and environmental practices while also improving corporate profits.¹⁸ Critics, however, claim that CSR, being predicated on a market-driven logic, is inherently limited to these situations with a “business case” for CSR. Such win-win situations seem mainly to arise for companies with high-profile brands, companies operating in high-risk locations or industries, or in consumer-sensitive markets.¹⁹ Furthermore, due to its market-based, voluntary nature, CSR tends to induce only incremental changes that do not address structural unsustainabilities and governance deficits in the global economic system.²⁰ As a case in point, one of the most studied and successful CSR initiatives, the Forest Stewardship Council (FSC) certification scheme, covers only 1.8 percent of total global forests, the majority being in the northern hemisphere where forest management practices are in relatively less need of improvement.²¹

Thus, the literature indicates that, despite the successes of CSR, mandatory, hard law is necessary to affect the practices of the great majority of companies and to ensure minimum standards. From a sustainability perspective it then becomes crucial to understand the governance implications of CSR, in particular its effect on soft and hard law. Unfortunately, CSR theory within the business and management disciplines rarely discusses the role of corporations as political actors in global governance.²² From a political science viewpoint, however, CSR cannot be understood in isolation from the wider debate on power and global governance.²³ As Levy and Kaplan²⁴ argue, the weakness of the business case for CSR suggests that one should not underestimate the political motivations for companies to engage in CSR.

The majority of social scientists writing about CSR tend to be skeptical regarding the impact of CSR on global social and environmental governance. These authors emphasize that improvements in corporate practices historically are

¹⁷ Kirton and Trebilock 2004.

¹⁸ Bhattacharya, Sen, Korschum 2008; Elkington 1998; Jensen 2001; Kurucz, Colbert and Wheeler 2008; Porter and Kramer 2006.

¹⁹ Margolis and Walsh 2003; Mayer and Gereffi 2010; Vogel 2005.

²⁰ Doane 2005.

²¹ Pattberg 2006.

²² Marcus, Kurucz and Colbert 2009; Scherer and Palazzo 2008; Vogel 2005.

²³ Blowfield 2005; Fuchs 2007; Moon and Vogel 2008; Newell 2000.

²⁴ Levy and Kaplan 2008.

associated with regulation, tripartite agreements, and pressure from civil society, and that precisely these drivers run the risk of being undermined by CSR: By engaging NGOs in dialogue and cooperation, often side-stepping labor unions, and improving practices sufficiently to stave off severe criticism and ensuing demands for hard law, CSR may in effect weaken key drivers for the development of binding regulations.²⁵ For instance, German companies demand regulatory relief in direct exchange for greater efforts in CSR,²⁶ illustrating how CSR might undermine hard law.²⁷ Some critics go further, and claim that CSR is a deliberate corporate strategy to pre-empt and undermine regulation. Approaching CSR from a power perspective, these analyses portray CSR as an attempt to increase the discursive power of business in global governance.²⁸ Thus, critics subscribe to a zero-sum or even negative-sum model where CSR supplants rather than supplements hard law.

However, while rather silent on the issue of how CSR, soft law and hard law are actually linked, several studies document that there can be a positive-sum relationship between CSR and hard law. Some authors refer to an “emergent juridification” of CSR, whereby governments or intergovernmental organizations use CSR initiatives as a basis for developing both soft and hard law.²⁹ For instance, the Swedish government requires all state-owned enterprises to report according to the GRI guidelines and the Danish government requires all major companies to report on CSR in their annual reports. Thus, CSR initiatives do in some instances pave the way for soft law, which in turn can develop into hard law. Such transitions from purely self-regulated CSR to soft law are seen as a promising avenue for improved social and environmental governance. In this respect, soft law has comparative advantages when it comes to establishing new governance regimes; it is less demanding, more flexible, and more feasible due to its legitimacy among governments, business, and NGOs. These characteristics make soft law easier to achieve as a first step towards improved governance, leaving it to hard law to create effective monitoring and enforcement over time.³⁰ Furthermore, CSR and soft law are argued to spur cognitive, discursive and normative changes which might have greater impact on governance than do the specific rules and standards set down by these initiatives.³¹ In addition, civil regulations and private social and environmental standards have the advantage, compared to domestic government regulations, of not being defined as a “barrier

²⁵ Utting 2000.

²⁶ Kinderman 2008.

²⁷ Kirton and Trebilock 2004; Schaffer and Pollack 2010.

²⁸ Fuchs 2007; Levy 1997; Riechter 2002.

²⁹ Buhman 2010.

³⁰ Abbott and Snidal 2000 and 2009; Skjærseth, Stokke and Wettestad 2006.

³¹ Pattberg 2006.

to trade” by the WTO agreements—a loophole in international trade law which civil regulation manages to exploit.³² However, the majority of authors see soft law mainly as a stepping-stone towards hard law. As summarized by Kirton and Trebilock: “It [soft law] is primarily valuable as a sometimes indispensable proving ground—a precursor and a useful intermediate step to hard law, or even a stimulus for it.”³³

Corporate Policy Preferences: CSR, Soft Law or Hard Law?

While it is a commonly held view that business generally opposes regulation and has achieved widespread deregulation, the evidence points to a more complex picture of “regulatory flux” wherein “dramatic regulatory, deregulatory and re-regulatory shifts are occurring simultaneously.”³⁴ Levi-Faur³⁵ even argues for a “regulatory explosion” in relation to global capitalism. In this respect, it is important to distinguish between regulation *of* business and regulation *for* business.³⁶ The former refers to regulations that constrain corporate freedoms in the interest of the common good, such as restrictions on emissions or legal minimum standards for working conditions, while the latter refers to regulations that protect or promote business interests, such as property rights, contract laws or subsidies. Thus, business may be strongly in favor of increased regulation, both hard and soft, when it corresponds to corporate self-interest. Indeed, dominant companies or industries often use their political and economic leverage to achieve regulation that protects their competitive position, as illustrated by the classic case of corporate lobbying for the WTO adoption of the Agreement on Intellectual Property Rights, TRIPS.³⁷ Thus, it is the regulatory content, rather than the form, which determines corporate support or resistance.

However, regulations in *the social and environmental* domain often constitute regulation *of* business, which entails restrictions on corporate freedoms. Thus, the baseline assumption in most neo-liberalist, structuralist, and constructivist approaches is that business in general prefers maximum discretion in social and environmental governance. Minimal regulation is assumed to be the default position,³⁸ and the literature abounds with examples of corporate resistance to regulation.³⁹ Corporate lobbying against the UN Code of Conduct for Transnational Corporations and the Kyoto Protocol, as well as the promotion of

³² Vogel 2009.

³³ Kirton and Trebilock 2004, 27.

³⁴ Ayres and Braithwaite 1992, 6.

³⁵ Levi-Faur 2005.

³⁶ Braithwaite and Drahos 2000.

³⁷ Sell 2003.

³⁸ Abbott and Snidal 2009, 75.

³⁹ See for instance Falkner 2008; Fuchs 2007; Mattli and Woods 2009; Vormedal 2010.

voluntary approaches by ICC⁴⁰ and WBCSD⁴¹ are oft-cited examples of how corporations mobilize against anticipated regulations and use voluntary initiatives to accommodate criticism. “Responsible Care” and the “Code of Pharmaceutical Marketing Practices” are also argued to be examples of voluntary initiatives by global firms to forestall imminent threats of regulation.⁴² The result is a “regulatory capture” in which the regulation (or lack thereof) favors the interests of the regulated rather than the public interest and common good.⁴³

While the literature does document instances of corporate lobbying *for* increased social or environmental regulations by dominant industries or companies, closer inspection reveals that pro-regulation lobbying is the result of strategic corporate positioning in situations where companies perceive regulation to be highly likely or unavoidable.⁴⁴ In these situations, expectations of regulations cause a tipping point at which a critical mass of companies shift their political strategies away from regulatory opposition and towards strategies for influencing regulatory design.⁴⁵ One such example is the U.S. Climate Action Partnership (USCAP) where major corporate emitters started to lobby for strong domestic climate regulations in the United States at a time when such regulations were perceived as inevitable. This expectation of impending regulation rendered the previous anti-regulation approach politically untenable, and USCAP therefore lobbied forcefully for a market-based emissions trading scheme to forestall less attractive alternatives such as command and control- or tax-based regulations. Thus, the USCAP case does not reflect a corporate preference for stricter climate regulations per se, but rather a preference for the climate regulation that was considered the most business-friendly option.⁴⁶

In parallel, firms are assumed to favor CSR and weaker forms of soft law, preferably unilateral or industry-based self-regulation, instead of stronger forms of soft law, such as co-regulation or civil regulation in which NGOs, labor unions, and governments participate in regulatory design and implementation.⁴⁷ These regulatory preferences are illustrated in the case of the forest industry, where industry associations have created competing, business-friendly certification

⁴⁰ International Chamber of Commerce.

⁴¹ World Business Council for Sustainable Development.

⁴² Braithwaite and Drahos 2000; Newell 2005; Rowlands 2001.

⁴³ Mattli and Woods 2009; Posner 1974.

⁴⁴ Companies that stand to benefit directly from stricter standards, for instance clean-tech companies, will also have incentives to lobby for stricter regulations, but this class of companies is often not powerful enough to create regulatory momentum.

⁴⁵ Vormedal 2010.

⁴⁶ Meckling 2008.

⁴⁷ Levy and Kaplan 2008; Ruggie 2003; Vogel 2005 and 2009.

schemes in response to the Forest Stewardship Council certification, which has stricter standards enforced through co-regulation.⁴⁸

Thus, the order of business preferences in social and environmental governance is assumed to be no regulation, followed by soft law, with a preference for weaker forms such as unilateral and industry-based self-regulation rather than co-regulation. Finally, hard law is considered the least desired option. NGOs, labor unions and progressive governments, on the other hand, are seen as the driving forces for establishing soft law, and for converting soft law into hard law.⁴⁹ However, the findings in the following analysis challenge this picture, as a clear majority of the companies strongly favors increased international social and environmental regulation. This preference for increased regulation has important implications for our understanding of the potential governance effects of CSR and provides a new perspective on the underlying dynamics linking CSR to soft and hard law.

The Nordic Model of Business-Society Relations

Nordic companies can provide an interesting perspective on the debate concerning CSR and governance, as the Nordic area⁵⁰ is reputed to be a leader both in CSR and in social and environmental regulation.⁵¹ Relative to the size of their economies, Nordic companies are overrepresented on key performance-based CSR indicators,⁵² and the Nordic governments are known to be advocates of sustainable development, human rights, and environmental protection in both national and international politics.⁵³ The Nordic inclination for social justice and environmental protection is often explained with reference to the “Nordic Model,”⁵⁴ a model that has attracted popular and scholarly interest, first as an alternative political-economic model positioned between liberalism and communism, and later for the model’s ability to deliver strong economic results in combination with high social welfare and cohesion.⁵⁵ While the Nordic countries are internationally known for strong, social-democratic policies and corporatist

⁴⁸ Abbott and Snidal 2009; Fuchs 2007.

⁴⁹ Gunningham and Kagan 2005; Vogel 2009.

⁵⁰ The Nordic countries comprise Denmark, Sweden, Finland and Norway, as well as Iceland and the Faroe Islands. “Scandinavia” is often used to denote the same countries, but does strictly refer to the Scandinavian peninsula (Norway, Sweden and parts of Finland) or to denote the countries using Scandinavian languages (Danish, Swedish, Norwegian, Icelandic and Faroese).

⁵¹ Birkin, Polesie and Lewis 2009; McCallin and Webb 2004.

⁵² Gjørlberg 2009; Midttun, Gautesen and Gjørlberg 2006; Nordic Council 2005.

⁵³ Kuisma 2007; Lafferty and Meadowcroft 2000.

⁵⁴ Also known as the Nordic Third Way, or Middle Way.

⁵⁵ Andersen et al., 2007; Byrkjeflot, Myklebust *et al.*, 2001.

agreements,⁵⁶ Cox argues that the defining feature of the Nordic Model is not its specific policies, but rather the underlying norms, values and ideas of universalism, solidarity, and decommodification.⁵⁷ Kuisma⁵⁸ argues that these norms are anchored in the Nordic normative legacy, which predates the social-democratic era and extends beyond politics and into all fields of society, including Nordic business culture. During the 1980–1990 period there was a marked interest in the Nordic “value-based” management style, and the management literature concludes that there is a specific Nordic cluster in terms of egalitarian, collectivist, and participatory management values and practices.⁵⁹

Thus, Nordic companies, characterized by a value-based management style and embedded in societies with strong traditions and institutions for social and environmental protection, can provide a fresh perspective concerning social and environmental governance, as the companies’ political strategies and perceptions of the role of CSR, soft law and hard law may differ from business approaches elsewhere.

Methods

The survey was designed to capture practices and perceptions of Nordic “pioneers in CSR” – pioneers in the sense that the companies have been rated and ranked, by an external organization, as having a high performance in CSR related areas. Seven criteria were used for identifying pioneering companies: The Dow Jones Sustainability Index⁶⁰ and FTSE4Good,⁶¹ as well as the OMX GES Sustainability Nordic Index,⁶² that is, all the Nordic companies with the best sustainability ratings on the international and the Nordic stock exchanges. The selection also includes all Nordic companies in the 2009 ranking of the “100 Most Sustainable Corporations”⁶³ announced annually at the World Economic Forum in Davos, based on similar screening methodology as the above indices. To broaden the criteria beyond stock-listed companies, the selection includes all Nordic companies reporting a score of B or higher according to the Global Reporting Initiative⁶⁴ guidelines, Nordic companies with CSR reports ranked among the Top 50 CSR reports identified by the think tank SustainAbility,⁶⁵ and Nordic member

⁵⁶ Esping-Andersen 1990.

⁵⁷ Cox 2004.

⁵⁸ Kuisma 2007.

⁵⁹ Grenness 2003.

⁶⁰ Available from: <www.sustainability-index.com/>.

⁶¹ Available from: <http://www.ftse.com/Indices/FTSE4Good_Index_Series>.

⁶² Available from: <<http://www.ges-invest.com>>.

⁶³ Available from: <<http://www.global100.org/list.htm>>.

⁶⁴ Available from: <<http://www.globalreporting.org/ReportServices/GRIReportsList>>.

⁶⁵ Available from: <<http://www.sustainability.com/library/tomorrow-s-value>>.

companies of the World Business Council for Sustainable Development,⁶⁶ a CSR organization that grants membership by invitation only, and requires a substantial dedication from senior management.

These seven initiatives and rankings are imperfect measures of actual CSR performance. They are not based on in-depth analyses of the companies' practices, focus mainly on management processes rather than actual outcomes, and rely to a certain extent on corporate self-reporting.

Nevertheless, qualifying for the selected initiatives does require companies to document best-in-class CSR practices and being approved by an external organization. The seven initiatives are therefore considered appropriate to identify companies with high CSR performance. Still, it is important to keep in mind that in this article, terms such as 'CSR success' and 'CSR pioneers' refer to companies that have excelled in these seven rankings, and do not imply guarantees of a complete representation of the companies' practices.

Because most of these selection criteria apply only to publicly listed companies, there are few private, government, or cooperatively owned companies among the 79 companies that met the selection criteria. Furthermore, the criteria favor large, multinational companies. Consequently, as the survey mainly reflects the practices and perceptions of dominant, well-established, multinational, flagship companies of the Nordic countries. There is also a bias towards Swedish companies: 42 companies were from Sweden, 15 from Finland, 13 from Norway and 9 from Denmark. Finally, the questionnaire was addressed to the manager in charge of CSR and a certain bias towards self-praise and political correctness in some of the answers is expected: CSR managers are conditioned to present their companies in a favorable light and the most common location for CSR management in the surveyed companies is the PR/Communications department. Therefore, to get as truthful and relevant answers as possible, the survey's cover letter emphasized that responses were anonymous, and that the survey asked for the company's position, not the respondents' personal convictions. To reduce politically correct answers, care was taken not to pose charged or leading questions, and a pilot version was tested on a select group of companies and NGOs to find the most appropriate and precise way of formulating questions.

The survey mainly used Likert scales where respondents were asked to indicate their level of agreement or disagreement with statements related to CSR, soft law, and hard law. Most questions applied a five-point scale, with the middle option as a neutral "No opinion" to allow respondents to express indifference, as well as a separate category for "Not applicable" and "Don't know."⁶⁷ The respondents were

⁶⁶ Available from: <<http://www.wbcd.org/web/about/members.html>>.

⁶⁷ "Not applicable" and "Don't know" were defined as missing values. "No opinion" answers were included in the calculations but not presented in the charts.

also asked to expand in writing on selected questions of key importance to understanding their attitudes and approaches to CSR.

The survey was designed as an online survey. Since online surveys generally lead to low response rates,⁶⁸ care was taken to obtain the contact information of the specific manager in charge of CSR. Non-respondents were followed up by an e-mail reminder and subsequently a phone call. The average response rate was 77.2 percent, with Norway as the highest responder (92 percent) followed by Denmark (78 percent), Sweden (74 percent) and Finland (73 percent).

Findings

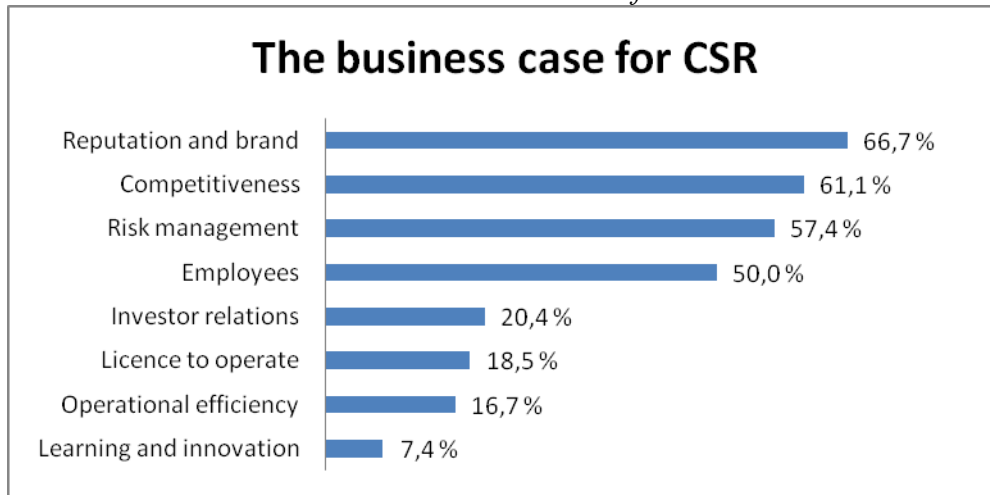
Management and implementation of CSR in the Nordic Pioneers

CSR appears closely linked with reputation, risk, and competitiveness in the Nordic pioneers. When asked to rank the three most important factors for the business case for CSR, respondents cited, in descending order, “reputation and brand equity,” “competitiveness and market position,” and “risk management;” see Table 1. The Nordic findings parallel a similar global study of CEOs,⁶⁹ which also had reputation and brand equity as the most frequently cited factor, with employee relations second, and competitiveness and market position and license to operate tied for third. Efficiency gains, learning, and innovation are often cited in the literature as important factors for the business case for CSR, but these factors received the lowest scores in both the global group and the Nordic group. Correspondingly, the most common location of CSR competency is the Communication and PR department (44 percent), while 32 percent have located CSR competency within the department for Environment/ Health and Safety, and 27 percent of the companies have a separate department dedicated to CSR. HR, business strategy or legal departments are less frequent places to locate CSR competency.

⁶⁸ Sheehan 2001; Shih and Fan 2008.

⁶⁹ World Economic Forum 2003.

Table 1: The Business Case for CSR



However, while CSR activities seem to be driven by reputational concerns, the respondents are eager to point out that they were working with these questions before CSR became mainstream. This claim is backed by the fact that almost 50 percent of the companies report to have put CSR on the agenda in the 1990s (38 percent) or earlier (10 percent), indicating that these companies were early movers in CSR. Furthermore, 73 percent of the companies claim the introduction of CSR stems from a long tradition, indicating that their CSR engagement is linked to practices and traditions that predate the modern CSR movement.

In terms of CSR implementation and management, the answers reflect an approach to CSR closely aligned to the EU definition of CSR.⁷⁰ The companies emphasize the integration of CSR into core business operations, and reject the philanthropic approach to CSR that is more prevalent in the United States. For instance, CSR is reported to influence the development of new products and services (75.4 percent), to be integrated into core business strategy (72.1 percent) and to influence supply chain management (70.5 percent). In contrast, 60 percent of the respondents disagree that sponsoring and charity are a central part of CSR, whereof half indicate strong disagreement.

To conclude, the Nordic pioneers conform to mainstream contemporary CSR practices: CSR engagement is motivated by risk, reputation and competitiveness, with an emphasis on integrating CSR into core business operations. The relatively early starting point of CSR engagement supports the companies' claims that CSR issues have long traditions. Generally, however, the findings do not depart from what one would expect in any other European company in the forefront of CSR.

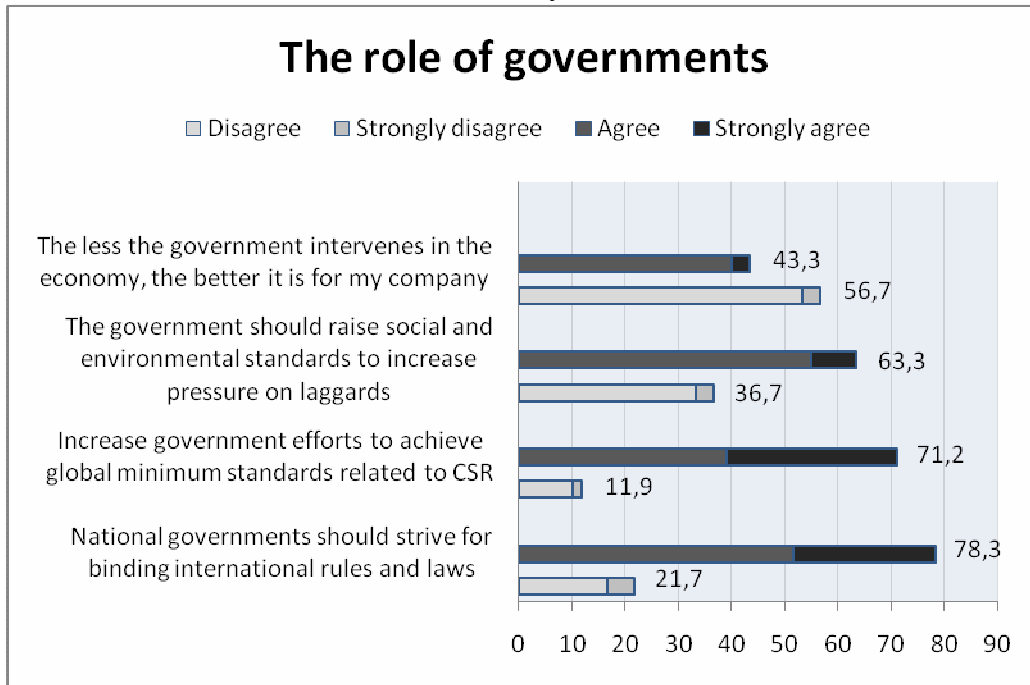
⁷⁰ European Union 2001.

Regulatory Preferences: CSR, Soft Law, and Hard Law

When asked to respond to statements about the role of governments and about preferences for CSR, soft law and hard law, the Nordic companies reveal very strong and uniform opinions, the number of agreement responses exceeding 80 percent. As outlined in Section 2.2, theory predicts companies to favor CSR and soft law, and to resist increased social and environmental regulation, as regulation is said to impose costs and reduce competitiveness. As discussed in section 2.3, this regulatory resistance was expected to be somewhat modified by the Nordic culture and institutional environment, making the companies more positively inclined towards hard law and government engagement in the economy. Nevertheless, the findings far exceed the expectations, and indicate that the Nordic setting does more than modify regulatory skepticism. Quite the contrary, the Nordic pioneers in CSR express skepticism towards CSR, combined with a clear preference for hard law, and for government-led ratcheting up of international social and environmental standards.

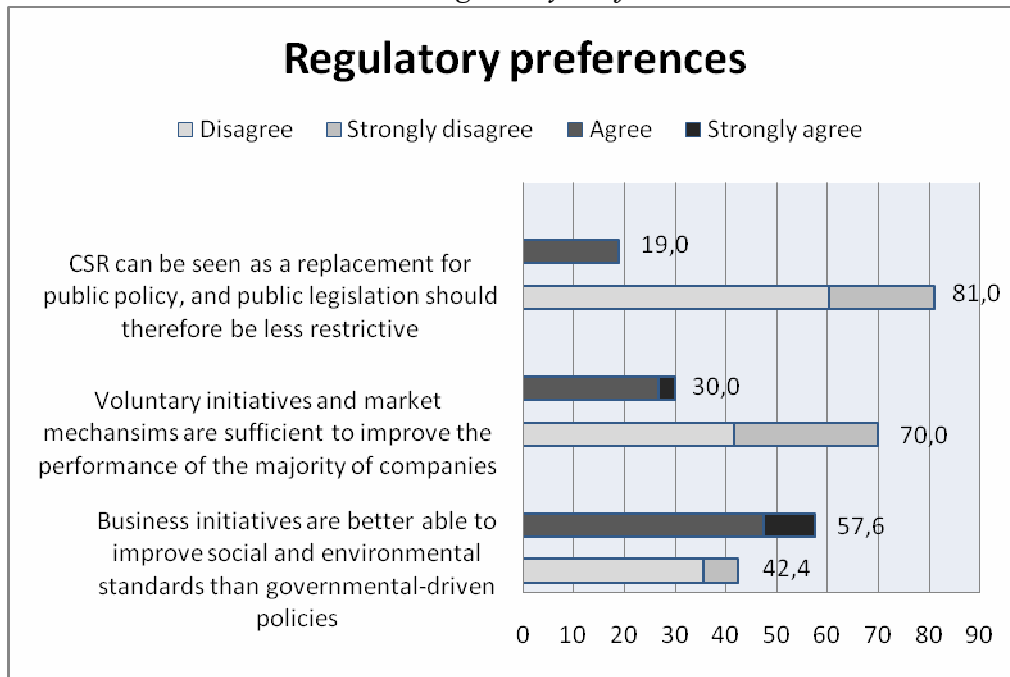
As shown in Table 2, 78.3 percent of the companies think their government should strive for binding rules and laws, and 63.3 percent want their government to raise social and environmental standards to increase pressure on laggards. Contrary to conventional liberal, laissez-faire economic theory, the majority of respondents (56.7 percent) disagree with the statement that “the less the government intervenes the better it is.” These pro-regulation attitudes are mirrored in the respondents’ answers regarding which initiatives they recommend that their government undertake to promote CSR in the national business community. While the respondents recommend mainstream CSR initiatives such as providing forums for dialogue, conducting training, and providing information and tax incentives, they also strongly support regulatory approaches: 71.2 percent recommend that their governments increase efforts to achieve global minimum standards related to CSR, and the majority does not find fewer inspections or less regulation to be important.

Table 2: The Role of Governments



However, the most unexpected finding was respondents' widespread skepticism towards the effectiveness of CSR and voluntary initiatives. Surprisingly, 81 percent of the respondents disagreed with the statement "CSR can be seen as a replacement for public policy, and public legislation should therefore be less restrictive." In fact, the respondents seem to place more trust in government-led processes to ensure social and environmental standards: 70 percent see voluntary initiatives and market mechanisms as insufficient to improve the social and environmental performance of the majority of companies, and 42.4 percent of the companies disagree with the statement "Business initiatives are more able to improve social and environmental standards than government policies are," as shown in Table 3.

Table 3: Regulatory Preferences



Thus, the companies seem to doubt the ability of CSR and voluntary initiatives to achieve significant improvements in social and environmental practices. This skepticism towards CSR is a paradox, since the companies in the survey all have invested resources in developing and documenting their CSR performance. This finding creates a somewhat disturbing picture of the nature of their CSR engagement when considered in light of their answers in the previous section: the most frequent location of CSR competency in the company is in the PR/Communications department, and the companies' prime motivation to engage in CSR is reputation and brand. Thus, the companies seem to participate in CSR initiatives primarily out of PR-related motivations and to have little faith in CSR as an instrument to improve their practices. Their CSR engagement seems to be driven by a logic of symbolic politics. Moreover, the causal order between CSR engagement and social and environmental performance appear somewhat counterintuitive as CSR engagement appears to come post factum: engagement in CSR initiatives does not seem to be the cause of the Nordic pioneers' high social and environmental performance. Instead, already having high social and environmental performance seems to lead to their CSR engagement; to some extent, the companies seem to join CSR initiatives, not to improve their performance, but to improve their *communication* of performance.

Analysis: Explaining Regulatory Preferences

To understand the companies' skepticism towards CSR and their preference for hard law, one must understand to what they attribute their high performance in CSR. The empirical material points to two separate but interrelated explanations. The companies attribute their high CSR performance to cultural and institutional aspects of the Nordic Model; those aspects provide them with a competitive advantage in social and environmental performance – an advantage which in turn explains the companies' preference for hard law, as will be discussed in the following sections.

Values and Institutions: The Nordic Factor

In explaining patterns of success in CSR, the literature points to the importance of systemic factors, rather than to company- or industry-specific factors:⁷¹ studies show that Nordic companies in general are overrepresented in key global, performance-based CSR initiatives,⁷² and the literature on comparative CSR demonstrates that nationality matters for how companies approach and perform CSR.⁷³ Thus, deeply embedded cultural values and traditions, as well as key institutions of the Nordic political-economic systems, might provide answers to the companies' high social and environmental performance, which has qualified them for the CSR initiatives and rankings that form the basis of this survey.

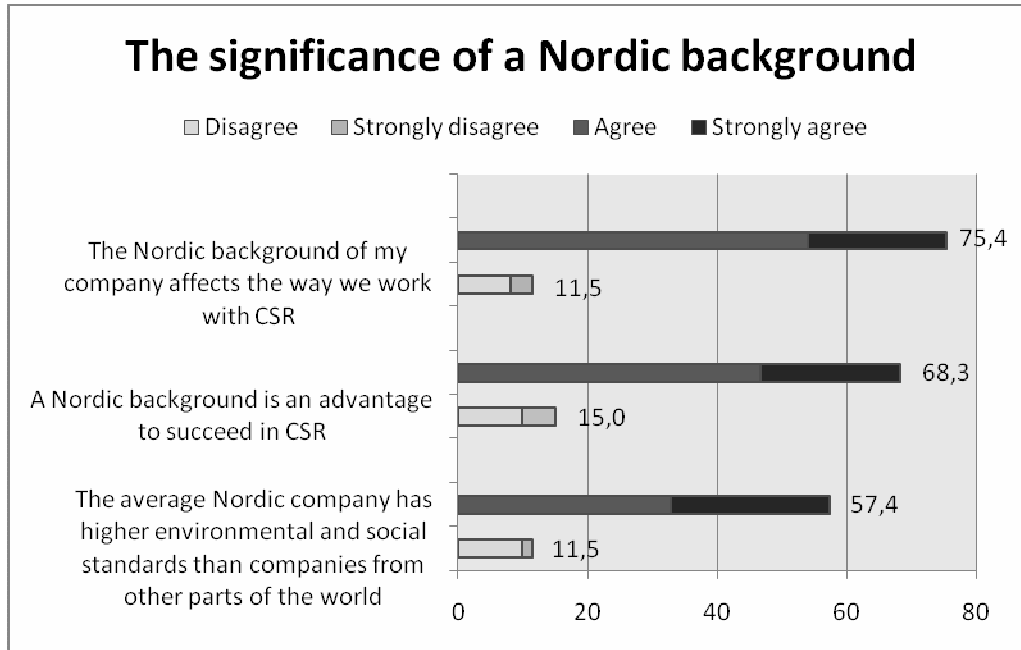
The empirical findings in the survey underscore the relevance of systemic factors. Although this survey comprises companies of different sizes, industries and ownership structures, the agreement rates were close to 80 percent in many answers about CSR in a Nordic perspective. Despite the fact that the majority of the companies in the survey are multinational, with significant markets and production in Central/Eastern Europe, Asia, and Latin America, 75.4 percent agree with the statement “the Nordic background of my company affects the way we work with CSR,” as shown in Table 4.

⁷¹ For a review of how firm-specific factors influence regulatory preferences, see Johnstone *et al* 2004.

⁷² Midttun *et al* 2006.

⁷³ Gjøølberg 2009; Matten and Moon 2008; Williams and Aguilera 2008.

Table 4: The Significance of a Nordic Background

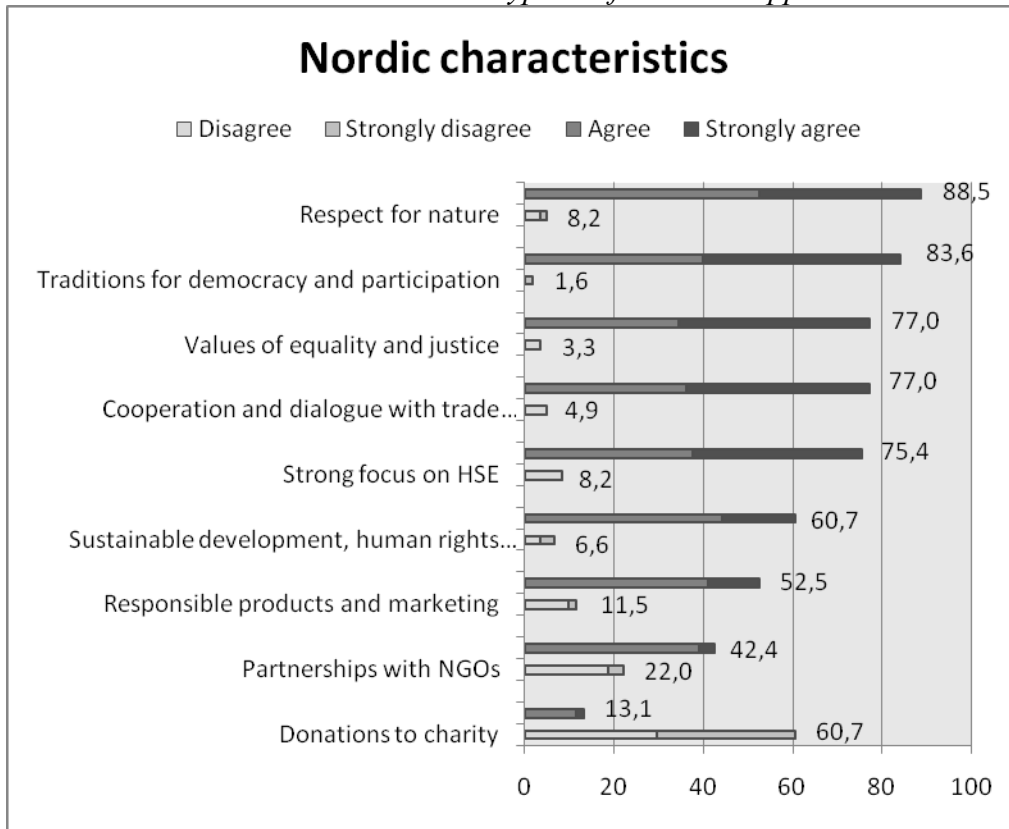


The respondents clearly see their Nordic background as relevant to their high CSR performance: 68.3 percent state that “a Nordic background is an advantage to succeed in CSR,” and the majority agree that the average Nordic company has comparatively higher environmental and social standards, as shown in Table 4.

Moreover, the companies themselves point to Nordic cultural and institutional factors when asked to elaborate on why a Nordic background is an advantage to succeed in CSR. The respondents claim that the Nordic culture, traditions, values, and “the Nordic business model” provide them with experience, competence and knowledge in integrating social and environmental concerns into their business operations. Their answers are strikingly uniform when describing Nordic characteristics in relation to CSR, and the answers correspond closely to expectations from literature on the Nordic Model, which predicts high scores on participatory values, respect for nature, and a strong emphasis on equality.⁷⁴ As Table 5 shows, respect for nature, traditions for democracy and participation, and values of equality and justice, are identified as the most important characteristics. In their written answers the companies also emphasize that environmental awareness, transparency, equality and a consensus-seeking mindset, facilitate stakeholder dialogue and integration of CSR issues into business operations.

⁷⁴ Dahl 1984; Kuisma 2007.

Table 5: Characteristics Rated as Typical of a Nordic Approach to CSR



This Nordic background seems not only to affect employees, management and the board, but also to create higher expectations of ethical business practices in their home markets, as respondents claim that “there is a demand in the [Nordic] market that is not present in many other markets.” This claim is confirmed by findings in the Eurobarometer of “Attitudes of European Citizens towards the Environment,” which reports Nordic scores much higher than the EU average scores. For instance, 99 percent of Nordic respondents answer that the environment is fairly or very important to them, and they show above-average scores on actions undertaken to protect the environment, and on willingness to buy environmentally friendly products.⁷⁵

However, the respondents often mention these *value-based* explanations in tandem with institutions and practices typical of the Nordic *political-economic* systems. As Table 5 shows, cooperation with trade unions, often not considered integral to CSR elsewhere,⁷⁶ was identified as characteristic of a Nordic approach

⁷⁵ Tunkrova 2008.

⁷⁶ Preuss *et al* 2006; Utting 2000.

to CSR, with 77 percent of respondents answering this question positively. Several respondents explain in their written comments that tripartite negotiations and dialogue with employees—induced by the corporatist system—have fostered skills that are highly relevant to their CSR activities, for instance stakeholder dialogue and integration of social concerns into business operations. Cooperation with NGOs, on the other hand, received a substantially lower score (42.2 percent) and is clearly not seen as typically Nordic, although in practice, cooperation with NGOs is slightly more prevalent than cooperation with labor unions (49.2 percent versus 44.3 percent).

However, strict, longstanding domestic regulation is cited as the main reason why respondents answered that a Nordic background is an advantage to succeed in CSR, as illustrated by these written comments:

Nordic countries have long traditions for CSR-related legislation, which has made the companies here work with these issues for decades.

As a Nordic company, we also have long traditions in living with environmental and social/labor laws that have become a natural part of our thinking.

Social and environmental legislation makes us do most of the basic issues automatically.

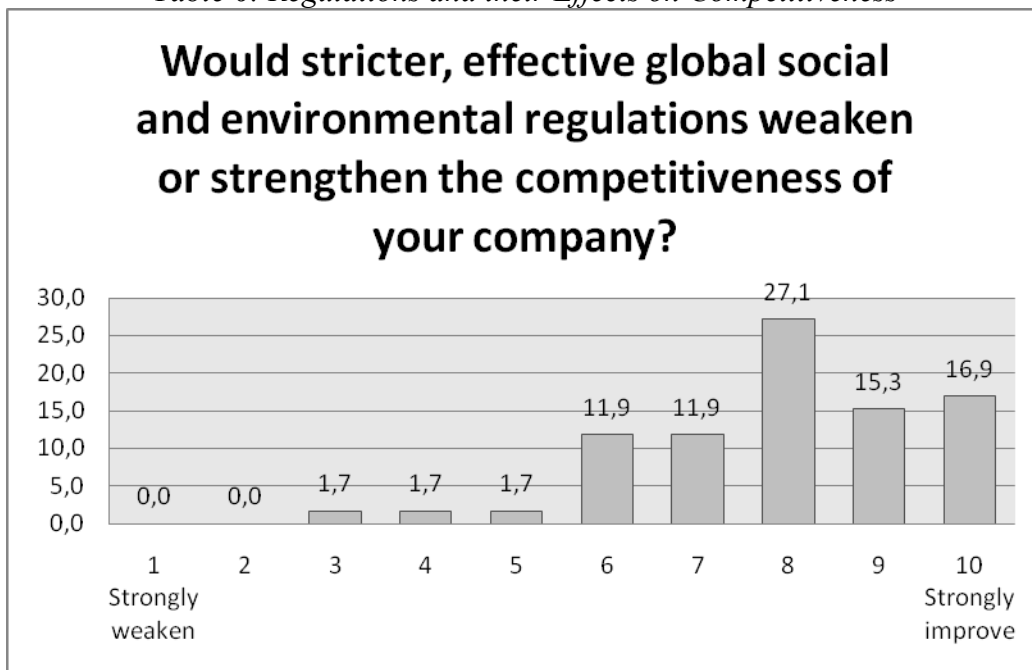
Thus, respondents attributed their success in CSR to the competence, experience and knowledge that result from corporatist dialogue and the high regulatory standards of the Nordic countries, further strengthened by deeply rooted Nordic values, and by the strong expectations of their domestic audience. The companies seem to find that the Nordic cultural, institutional, and regulatory background produces an advantage in CSR. This notion of a specific Nordic advantage in relation to CSR has clear parallels to Hall and Soskice⁷⁷ concept of *comparative institutional advantage*. The authors claim that nationally based social, political and economic institutions can provide a comparative advantage in specific kinds of corporate activities. Whereas Hall and Soskice developed their argument around comparative institutional advantages in innovation, but the survey findings indicate that there might be a comparative institutional advantage for CSR as well, as the Nordic companies find that their Nordic institutional background makes it comparatively easier for them to achieve high CSR performance. It is this competitive position in social and environmental performance which seems to cause their preference for hard law, as opposed to CSR and soft law. This will be discussed in the next section.

⁷⁷ Soskice 2001.

Competitive Advantage: Beneficiaries of a Level Playing Field

The rationale behind the companies' preference for hard law is quite evident in respondents' answers to questions related to competitiveness. When asked how their companies' competitiveness would be affected by stricter, effective, global social and environmental regulations, 83.1 percent of the companies responded that such regulation would *strengthen* their competitiveness, responding with a 6 or higher on a scale of 10. (See Table 6) Only 5.1 percent responded that stricter regulation would weaken their competitiveness, responding with 5 or lower.

Table 6: Regulations and their Effects on Competitiveness



As pioneers in CSR, it is both logical and strategic for these companies to lobby for binding regulation of CSR-related issues: they most likely already comply with conceivable future regulatory requirements, and thus have a competitive advantage. As expressed by one of the respondents:

The point is really GLOBAL AND BINDING [regulations] as this would help eco-efficient, socially responsible companies to win. (respondent's capitalization).

Simply put, lobbying for stricter global regulations would sharpen their competitive advantage and in a sense constitute a return on social and environmental investments already undertaken. Stricter global regulations would impose on their competitors costs that the Nordic pioneers have already absorbed, but from which their international competitors so far have been exempt. Similar strategies are documented in corporate lobbying for the Montreal Protocol by companies already in compliance with anticipated regulations.⁷⁸ Another illustrating example is that of the writing of the ISO 14001 standard: through effective lobbying, European businesses managed to influence the standard so that it resembled the European EMAS scheme, thereby effectively forcing U.S. and Asian competitors to adhere to the same standards that European businesses already had to adhere to under EU regulations.⁷⁹ These processes of a “race to the top”,⁸⁰ where powerful green jurisdictions impose their higher standards on their competitors, illustrate how domestic regulations can serve as a source of strengthened national and international regulations.⁸¹ In the survey, this dynamic seems mainly to apply to international regulations, but respondents also want government to level their national playing fields, as they are positive towards increased regulation that would put pressure on laggards. Presumably, though, respondents would not support, for instance, higher domestic wage regulations, as this would reduce their international competitiveness.

Thus, companies that assume they already comply with future regulation seem to support stricter regulation, as such regulation would strengthen their competitive advantage. Companies *already* subject to stricter, domestic, *mandatory* social and environmental regulations or corporatist agreements will have an incentive to welcome increased global regulation. Correspondingly, companies that *voluntarily*—because of values and tradition, market expectations, operational demands, stakeholder pressure, or competitive strategy—chose to raise their social and environmental standards will have an incentive to support tougher regulations, domestic and global, as tougher regulations would subject competitors to costs that these companies voluntarily accepted.

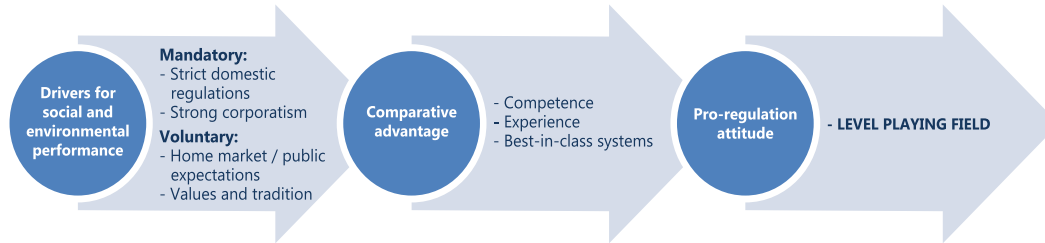
⁷⁸ Vormedal 2008.

⁷⁹ Braithwaite Drahos 2000.

⁸⁰ Also referred to as the “California effect.”

⁸¹ DeSombre 1995 and 2000; Vogel 1995.

Figure 1: Causes of Regulatory Preference for Hard Law



The Nordic companies seem to be in a position where mandatory and voluntary drivers mutually reinforce each other and spur companies towards best-in-class CSR performance, as illustrated in Figure 1.

Nordic Norms Versus Comparative Institutional Advantages

Birkin *et al*⁸² conclude in their study that social norms are the decisive factor for Nordic success in CSR—a love for nature, social equality and consensus. The present survey supports this finding; respondents rate the same norms and values as characteristic of Nordic CSR (Table 5), and explain their CSR success with reference to Nordic norms and institutions. From this perspective, the relevance of the survey findings seems limited to the Nordic context.

However, while Nordic norms and institutions seem decisive to the companies' excellence in CSR, there is nothing specifically "Nordic" about the companies' support for stricter social and environmental regulation. In fact, none of the respondents gives norm-based explanations for their regulatory support. Instead, they list market positioning, competitive advantage and a level playing field as their reasons for wanting stricter regulations. Combined with the findings in Tables 4, 5 and 6, there are strong indications that the companies' pro-regulation position is the logical and strategic extension of their perceived competitive advantage in social and environmental performance, an advantage that is not inherently restricted to Nordic companies. The specific Nordic values and political-economic institutions seem to function mainly as intermediate factors, as factors fostering skills that give the companies a competitive advantage in social and environmental issues. This competitive advantage appears to be the key causal factor for regulatory support: The companies consider their performance best-in-class, or at least above anticipated regulatory requirements. Regulations therefore make good business sense, as they will level the playing field to their benefit. To conclude, regulatory support seems to result from a

⁸² Birkin *et al* 2009.

generic, instrumental “logic of consequence” rather than a specifically Nordic “logic of appropriateness,” to use March and Olsen’s terms.⁸³

Nevertheless, Nordic norms and institutions might affect the companies’ perception and analysis of regulatory risks and opportunities. A general trust in regulations and skepticism towards voluntary approaches seem to be deeply rooted traditions among Nordic managers. In a 1996 survey⁸⁴ of Nordic publicly listed companies, 75 percent of managers did not believe that voluntary, market-based mechanisms were sufficient, and saw legislation as necessary to protect the environment. A comparative study⁸⁵ of Nordic and U.S. managers showed Nordic managers were significantly more positive towards the competitive effects of environmental legislation than were their U.S. counterparts, even though managers from both countries considered their companies to be ahead of competitors. Thus, companies react differently to similar regulatory proposals. A competitive advantage seems a necessary, but still not a sufficient condition for regulatory support. Cross-national comparisons are needed to establish the precise causal combinations that lead companies to favor hard law over CSR or soft law.

Implications and Conclusion

The empirical analysis provides insights into the relationship between CSR, soft law and hard law, and documents that business can support stricter social and environmental regulations under certain conditions. In this respect, it is important to note that the survey includes hardly any niche companies that would benefit directly from stricter, mandatory standards, such as clean-tech companies or social enterprises; companies surveyed were almost exclusively large, dominant, mainstream companies of the Nordic economies.

The findings counter assumptions about corporate resistance to social and environmental regulations, as discussed in section 2.2. Unexpectedly, Nordic CSR pioneers are skeptical towards CSR and voluntary approaches in global governance, and strongly prefer hard law. These findings also challenge critics’ claim that CSR is a corporate strategy to pre-empt legislation, as outlined in section 2.1. Furthermore, the empirical material provides an important addition to the literature outlined in section 2.2 explaining why some companies adopt a pro-regulation position in cases involving direct regulatory threat. In contrast, the Nordic position seems motivated by regulatory opportunities—regulatory threat does not seem to be a necessary condition.

Thus, the empirical analysis contributes to the emerging literature showing how globally competing companies have incentives to work towards industry-

⁸³ March and Olsen 2004.

⁸⁴ Ytterhus and Synnestvedt 1996.

⁸⁵ Lindell and Karagozolu 2001.

wide, international regulations if they are subject to stricter domestic regulation, corporatist pressure, or for commercial reasons must self-impose higher standards.⁸⁶ Depending on political and regulatory momentum, the playing field's unevenness, and available exit strategies, a "tipping point" in corporate political strategy can occur. At this point, a critical mass of companies shift from resistance to support of international regulation out of self-interest, which is expected to positively affect the negotiations of international social and environmental regimes.⁸⁷ In these situations, CSR initiatives may serve as blueprints in developing soft or hard law, as discussed in section 2.1. Such juridification of CSR initiatives demonstrates that CSR can serve as a potential source for soft or hard law, and the Nordic companies' pro-regulation position may indeed indicate a potential source for future juridification of CSR initiatives.

However, can CSR in and of itself contribute to tipping points towards regulatory support? If the Nordic pro-regulation attitude results from a pre-existing competitive advantage in social and environmental performance, CSR appears to be superfluous: CSR initiatives merely rubber-stamp actions that mainly result from regulation, institutions and values which all predate or occur independently of any CSR initiative. Thus, CSR does not seem effective in terms of *causing* responsible behavior. Instead, CSR seems to be effective in terms of *communicating* responsible behavior. As discussed in section 4.1, the companies list PR and reputation as the main motivations for their CSR efforts, and they respond with profound skepticism regarding the effectiveness of CSR in actually improving mainstream business practices. This finding parallels findings of other studies showing that companies see CSR as an effective instrument to enhance legitimacy, but not to enhance management of social and environmental practices.⁸⁸ Regarding causal order therefore, CSR engagement appears to be the effect, not the cause, of the companies' high standards. In conclusion, CSR appears slightly irrelevant, both in explaining the Nordic pioneers' strong social and environmental performance, as well as in explaining their strong pro-regulation position.

However, CSR initiatives can have an independent effect if they provide institutional platforms where alliances between NGOs, governments, and pro-regulation companies can form. Environmental and social risks, liabilities, and opportunities are becoming increasingly intertwined with economic competitiveness, altering how companies calculate their interests, and making more companies likely to engage in CSR initiatives as a first step towards addressing these new challenges.⁸⁹ Therefore, one needs to account for the

⁸⁶ Bendell and Kearins 2005; Mattli and Woods 2009.

⁸⁷ Vormedal 2010.

⁸⁸ Boasson 2009.

⁸⁹ Dashwood 2004, Falkner 2008, Hoffman 2000, Kirton and Trebilock 2004, Reinhart 2000.

importance of ideas when analyzing how CSR can contribute to soft and hard law. Several authors argue that the institutionalized engagement between business and civil society in CSR initiatives may create a dynamic that transcends CSR by inducing normative, cognitive and discursive processes that change perceptions of business's role in society.⁹⁰

Furthermore, CSR initiatives can, in sum, create an uneven playing field by establishing a plethora of overlapping and partially conflicting private regulations and standards. This unintended side effect of CSR can stimulate corporate support for mandatory regulations that would create a more harmonized set of standards for companies. In combination, these regulatory, normative, technological and competitive risks and opportunities can, as illustrated by the Nordic material, shift corporate positions towards support for regulation, as a strategy to secure future competitiveness. Thus, CSR may contribute towards tipping point processes—as a driver for normative, regulatory and technological changes that cause dominant corporations to redefine their interests and change their strategies from resistance to support for soft and hard law processes.

To conclude, the analysis shows that companies' preferences for regulation via CSR, soft law or hard law cannot be taken for granted, but must be understood within a wider context of normative, institutional and regulatory environments, even for companies with strong multinational profiles. Furthermore, the findings document that strong CSR performance is compatible with a regulatory preference for hard law. Nevertheless, CSR appears unlikely in itself to generate tipping points of corporate support for social and environmental regulation. As illustrated by the Nordic material, CSR engagement appears merely to correlate with rather than actually to cause the pro-regulation attitude of Nordic CSR pioneers. However, insofar as CSR initiatives manage to link debates, actors, and processes that contribute towards support for soft and hard law processes, they can overcome some of the inherent limitations that arise from CSR's market-based, voluntary nature.

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⁹⁰ Bernstein and Cashore 2007, Pattberg 2006.

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