

Paying the penalty:

The cost of CSR misconduct



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Introduction



The border between corporate social responsibility and a corporation's legal responsibility is a subtle border, and one that is beginning to shift. Even the concept of social responsibility itself is changing, including new topics, covering new territories and gaining unexpected influence. Vigeo's latest study observes more than 2,500 listed companies around the world, offering a significant analysis of reports and assessments. **One out of five companies in this study (19.2% of the sample) has received a legal sanction for failing to comply with at least one social responsibility factor.** In addition, it is not uncommon for the same company to deal with multiple legal proceedings on different issues directly related to social responsibility.

These proceedings, in the form of judicial convictions, administrative sanctions or settlements, represented around 95.5 billion euros for the companies analysed during the study's review period.

Social responsibility's increasing presence in the legal sphere shows contrasts among regions: around one-third (30%) of North American

companies were sanctioned in the period under review, while the same was true for one-fifth (22%) of European companies and one tenth of firms from Asia Pacific region. Finally, 8% of companies in emerging countries received a CSR related legal sanction. The study also identifies 15 sectors in which a large number of companies are particularly exposed to legal sanctions, such as Waste and Water Utilities (50%), the Automobile industry (43%), the Food industry (23%), Pharmaceuticals and Biotechnology (34%) and Banks (21%).

The type and scale of legal proceedings fall, by different proportions, under the six pillars of social responsibility developed by Vigeo: Human Rights, Environment, Business Behaviour, Corporate Governance, Human Resources and Community Involvement. Topics related to Business Behavior (including the withholding of or failure to provide information to clients, involvement in corrupt affairs and price or market fixing) have the greatest risk of sanctions.

The Business Behaviour domain includes 55% of the observed legal

sanctions and generated costs of 60.6 billion euros.

Other factors of social responsibility are found to have fewer implications with legal proceedings. 13% of sanctions are related to environmental protection claims resulting in 5.6 billion euros in costs. Proceedings related to the respect of human rights, despite representing only 7% of sanctions, come in third place in terms of the amount of fines (7.6 billion), confirming the growing risk of neglecting this dimension within a company's social responsibility strategy. In contrast, the human resources domain comprises only around 11% of the legal proceedings and has the lowest fines (1.3 billion euros).

For those involved in the management of companies, this study offers very valuable findings in order to take action.

Main findings



1. Out of a panel of 2,522 companies, **1,015 CSR-related legal sanctions** were registered by Vigeo between 2012 and 2013.
2. **484 companies appear to have been subject to CSR-related legal sanctions** in the same period (**19.2% of the panel**).
3. 30% of North American companies and 22% of European companies received a legal sanction, while only 8% of companies from Emerging Markets and 12% of companies from Asia Pacific did.
4. Almost 50% of the condemnations took place in the United States and 25.5% in European countries.
5. The 4 Vigeo macrosectors in which CSR-related sanctions are more frequent are: **Finance** (22.5% of total sanctions) **Food & Health** (22.1%), **Energy and Utilities** (17.1%) and **Industry** (16.5%).
6. The 15 most often sanctioned companies in the period 2012–2013 belong to 3 sectors: **Pharmaceuticals & Biotechnology, Banks, Energy**.
7. **55% of the total number of sanctions were issued for violations of Business Behaviour** rules. Sanctions for issues on Health and Safety conditions of employees represented 9% of the CSR related sanctions while violation of Non-Discrimination represented 4% of the sanctions.
8. The **10 highest sanctions** in terms of **costs** incurred in 2012–2013 were given to companies belonging to 3 sectors: **Banks, Energy and Pharmaceuticals & Biotechnology** and ranged from USD 13 billion to USD 2.2 billion.
9. As far as **collective CSR-related sanctions** are concerned, the most expensive ones ranged between USD 25 billion and USD 5 billion. **The Finance macro sector received 4 out of the 5 most expensive sanctions** and most part of them concerned unfair **business practices**.
10. Concerning **companies' reactions to the sanctions**, almost one half of the companies only appeared to acknowledge the existence of the sanction, 40% of them appeared to remain totally silent and **only around 11% disclosed future corrective measures**.
11. Generalised and severe CSR related sanctions have generated a **reinforced legislative activity** as the recent legislations on tobacco product packaging and on transparency of the banking system demonstrate.

Methodology of analysis



Vigeo's definition of Corporate Social Responsibility (CSR) integrates both the companies' unilateral obligations (Codes of conduct, internal regulations, internal, sector or transnational agreements) and companies commitments deriving from soft law sources (such as the OECD Guiding Principles for Transnational Companies, the ILO).

This study analyses the occurrence and costs of legal sanctions related to CSR issues in a panel of 2,522 companies rated by Vigeo between 2012 and 2013.

CSR related legal sanctions are classified as follows:

- **Judicial condemnations:** sentence of guilty established by a tribunal.
- **Settlements:** determination of a dispute by mutual agreement without judicial sentence.
- **Administrative sanctions:** a restriction, obligation or similar type of constraint imposed by an administrative body for violation of a disciplinary code or set of internal regulations.

With this study Vigeo will describe the occurrence of CSR related legal sanctions and the companies' reactivity in relation to:

- 4 geographical areas;
- 36 sectors;
- Vigeo's 6 domains of analysis;
- 38 sustainability drivers.

Each CSR related legal sanction may concern one or several sustainability drivers and domains of analysis. Similarly, one CSR legal sanction may be given to one company at a time or several companies simultaneously.

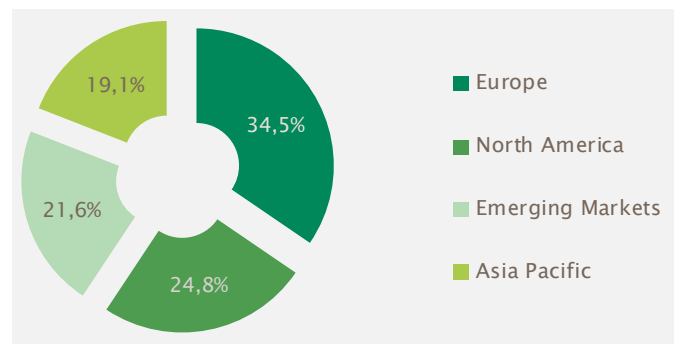


The universe



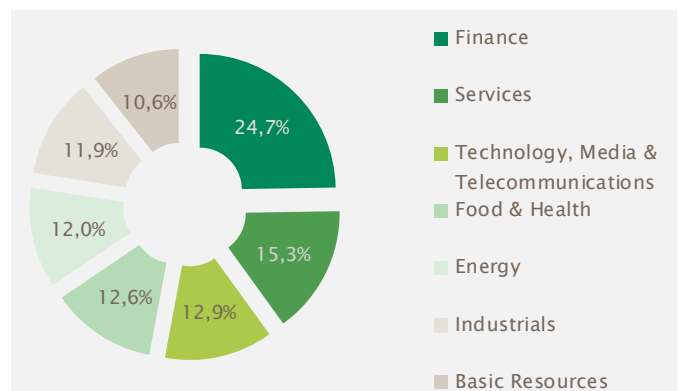
The 2,522 companies analysed are divided into four regions as follows:

Total number of companies in Vigeo's universe	
Region	
Europe	871
North America	625
Emerging Markets	545
Asia Pacific	481
Total	2522



The 2,522 companies are also divided into 7 macro-sectors shown below:

Total number of companies in Vigeo's universe	
Macro-Sector	
Finance	624
Services	386
Technology	325
Food & Health	317
Energy	302
Industrials	300
Basic Resources	268
Total	2522



The sanctioned companies by region

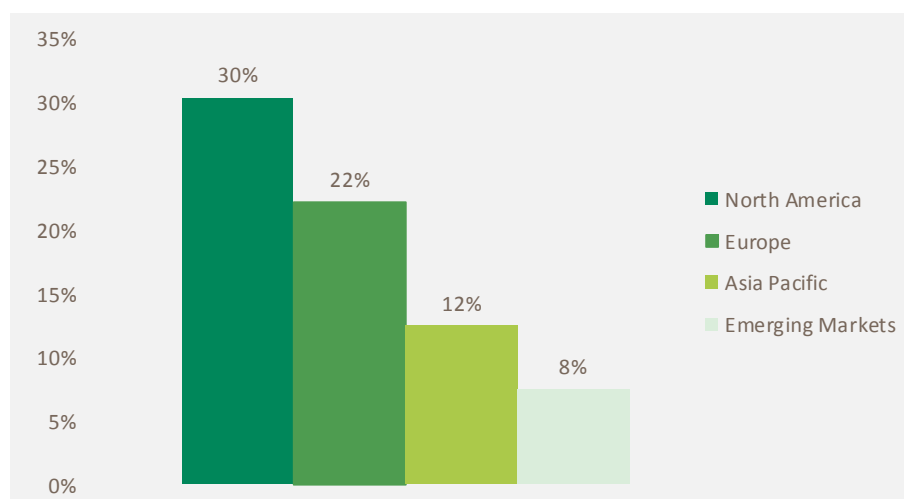


Among the companies in the panel, **484 have been subject to CSR-related legal sanctions** during the period of the study (**19.2%** of the panel).

Companies located in North America and Europe appear to be most hit by CSR related sanction as the table below illustrates.

Sanctioned companies by region			
Zone	Sanctioned Companies	Total Companies	%
North America	190	625	30%
Europe	193	871	22%
Asia Pacific	60	481	12%
Emerging Markets	41	545	8%

30% of North American companies and 22% of European companies received a legal sanction, while only 8% of companies from Emerging Markets and 12% of companies from Asia Pacific did.



The most sanctioning countries



CSR related legal sanctions analysed by Vigeo were distributed by Tribunals or Administrative Authorities or Institutions from 52 countries worldwide. The table below presents evidence of the 10 countries that have produced the most sanctions during the period under review.

The top 10 countries whose authorities emitted the most CSR related legal sanctions cover some **82%** of the cases of condemnations. Almost **50% of sanctions took place in the United States and 25.5% in European countries** even though **European Authorities** accounted for only **3.3%** of the overall sanctions registered in the period under review.

One possible explanation of this observation is the predominant culture and legislation existing in the USA where citizens, alone or in group, have easier access to and more frequent recourse to justice than in European countries.

The *class action law suits* allow a group of persons who have all been injured or damaged by a company to join together to pursue legal recourse in court. Class action suits originated in the USA where they are widespread.

However, some civil law countries such as Italy have recently introduced it or, like in France, are discussing the possibility of doing so. The class action suit offers a series of advantages to individuals

suing a company, since they can aggregate their claims, have a more efficient legal process and lower the cost of litigation. Therefore, people are provided an incentive to utilize legal recourse in countries where class actions are possible.

In addition, the USA has a strong tradition of *shareholders activism*, due to cultural reasons and to the dispersed shareholder structure, typical of the country. Shareholders

in the USA are more prone to challenge the company's executives and to appeal to lawyers in case of a company's alleged violation of their rights.

This exposes companies operating in the USA to a higher risk of being brought to court and therefore to being subject to legal sanctions.

Top 10 sanctioning countries

	Number of condemnations	% of condemnations
United States	491	48,4%
France	89	8,8%
United Kingdom	75	7,4%
Singapore	29	2,9%
Spain	26	2,6%
Australia	25	2,5%
Brazil	25	2,5%
Germany	22	2,2%
India	18	1,8%
Canada	17	1,7%
Italy	17	1,7%
Japan	15	1,5%

Types of sanctions

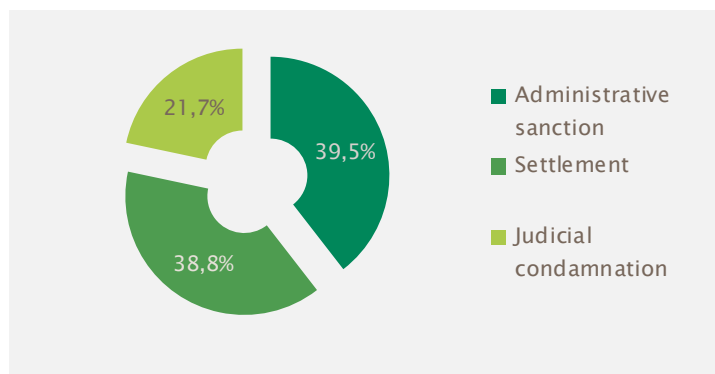


The 484 companies, that were subject to sanctions, 1,015 CSR related legal sanctions were registered: some of the companies hit by legal sanctions were sanctioned several times and /or

on several subjects during 2012–2013.

In categorizing the types of sanctions, we observe that in the majority of cases companies were condemned under administrative procedures (39.5%) or they

resorted to settlement to stop the legal proceeding against them (38.8%). In only 21.7% of the cases were companies subject to judicial condemnations.



Settlement is a practice mostly used in the USA where 86.3% of the overall settlements were concluded. This outcome is related to two main subjects: on one side, the high cost of convictions in the USA pushes companies to choose settlements for reasons of economic convenience. In addition, companies sued in the USA run a high risk of developing a negative

reputation, since a large part of the information disclosed during trials is made public. Therefore, companies prefer to avoid disclosing too much information and settle.

Judicial and Administrative sanctions are more evenly distributed by country. In particular:

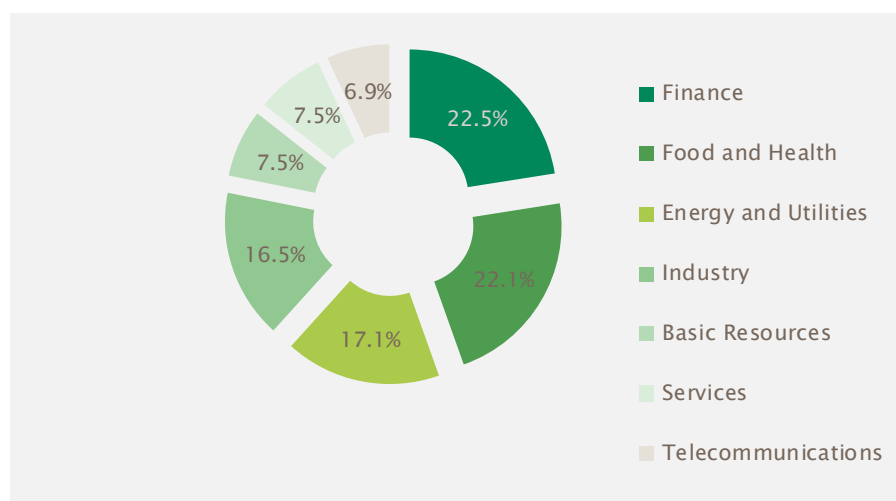
- 20% of Administrative sanctions were given by US authorities, 12% by British authorities and 7.7% by European institutions/authorities.
- 32.3% of judicial sanctions were given by United States tribunals and 29.1% by French ones.



Sanctions by sector



The graph below shows the breakdown of CSR-related legal sanctions according to **Vigeo's 7 macro sectors**.



Companies from four macro sectors (**Finance, Food and Health, Energy and Utilities and Industry**) received 78.1% of the overall CSR related legal sanctions, while the

bottom three macro sectors in terms of frequency of CSR related legal sanctions were Basic Resources, Services and

Telecommunications (overall 21.9% of the CSR related legal sanctions).



The table below shows the **15 Vigeo sectors** with the highest proportion of companies that faced a CSR related sanction in 2012–2013.

15 sectors with highest proportion of sanctioned companies			
Sector	Number of sanctioned Companies	Companies in the sector	% sanctioned companies
Waste & Water Utilities	8	16	50,0%
Automobiles	29	67	43,3%
Tobacco	5	13	38,5%
Healthcare Equipment Serv.	25	68	36,8%
Heavy Construction	10	28	35,7%
Luxury Goods & Cosmetics	12	34	35,3%
Pharmaceuticals & Biotechnology	24	71	33,8%
Energy	32	95	33,7%
Building Materials	15	45	33,3%
Industrial Goods & Services	26	78	33,3%
Aerospace	9	28	32,1%
Food	21	90	23,3%
Beverage	9	41	22,0%
Banks	50	233	21,5%
Electric Components & Equipment	7	33	21,2%

In these 15 sectors reported on in the above table, the percentage of sanctioned companies ranges from 50% for Waste and Water Utilities to 21.2% for Electric Components and Equipment.

The outcome of the Waste & Water Utilities (WWU) sector can be explained by the particularly sensitive activity of these companies that have a high impact on the environment and on the health of stakeholders such as local communities. This consideration has generated stringent international frameworks for companies operating in this sector

and raised awareness among stakeholders of their rights. The European directives on drinking water and river basin management were established in 1998 and 2000 as legal frameworks. The principle objectives of these directives include preventing pollution, promoting sustainable water usage, protecting environment, improving aquatic ecosystems and mitigating the effects of floods and droughts. In addition, in July 2010 the UN adopted a resolution that explicitly recognised the human right to water and sanitation. In July 2011, the European Parliament voted for a non-binding resolution

that proclaims that access to water should be a fundamental and universal right.

All this, therefore, exposes WWU companies to stringent scrutiny both by local authorities and local communities. As the example in next page shows, the most common issues for WWU companies were the accidental pollution of soil and water, the local pollution and the health of the local communities.

Severn Trent (Waste and Water Utilities, UK)

In January 2013 Severn Trent Water was fined for exceeding legal levels of ammonia discharge from a south Shropshire sewage works plant between March 2010 and March 2011. The company was fined GBP 15,000 and ordered to pay GBP 3,878.36 in costs, along with a GBP 15 victim surcharge. Twelve samples were taken at Bishop's Castle Sewage Treatment Works over a 365 day period and one quarter of the samples taken failed to meet the standard required by the permit.

The second sector most frequently exposed to CSR related legal sanctions is the Automobile sector (43.3% of companies were concerned). This is also a sensitive sector, given the peculiarities of its products. Automobiles are, in fact, a durable consumer good, whose well functioning impacts directly consumers wellbeing and life. Therefore customers question more and more frequently the correct functioning of vehicles in case of accidents.

Automobiles also have a negative environmental impact in terms of

contribution to climate change. Their environmental impact is subject to greater scrutiny by consumers and are submitted to increasingly stringent regulations. One example of this is the Euro 6 Emission Standards, which entered into force in January 2014 and sets more stringent requirements for Nitrogen Oxides Emissions and particulate matters. Furthermore, Automobile companies belong to the Industry macro-sector that is traditionally under advanced scrutiny of trade unions in regards to labour rights and health and

safety issues. Finally, Automobile companies are increasingly questioned for anti-competitive behaviours by international institutions.

Therefore, issues such as product recalls for defaults, sanctions from Competition Authorities and recourse to justice for violations of employees' health and safety norms are common in the sector.

Ford Motors (Automobiles, USA)

On August 1, 2013, Ford reached a settlement with the National Highway Traffic Safety Administration (NHTSA) to pay a fine of USD 17.35 million for failing to conduct a recall of its Escape model on time. The case dates back to August 2012 when Ford recalled about 423,000 Escape models in the United States that were manufactured between 2001 and 2004 because of a defect that caused the accelerator to remain blocked. The recall came after the NHTSA opened a preliminary investigation during which it found evidence that Ford may have known about the safety problem and did not tell customers or the government, which is considered a violation of the federal law.



THE 15 MOST FREQUENTLY SANCTIONED COMPANIES

The table below illustrates the number of CSR-related sanctions for the 15 companies in the panel that were most often sanctioned during the period under review.

Top 15 most frequently sanctioned companies			
Company	Sector	Country	Number of sanctions
Pfizer Inc.	Pharmaceuticals & Biotechnology	USA	18
Bank of America	Banks	USA	16
JPMorgan	Banks	USA	14
Citigroup	Banks	USA	12
RBS	Banks	UK	12
Chevron Corp.	Energy	USA	11
Exxon Mobil Corp.	Energy	USA	11
Deutsche Bank	Banks	Germany	10
Johnson & Johnson	Pharmaceuticals & Biotechnology	USA	10
Barclays	Banks	UK	9
HSBC Holdings	Banks	UK	9
Novartis	Pharmaceuticals & Biotechnology	Switzerland	9
Sanofi	Pharmaceuticals & Biotechnology	France	9
Total	Energy	France	9
UBS	Banks	Switzerland	9

The 15 most frequently sanctioned companies in Vigeo's panel received between 9 and 18 sanctions during the reference period.

These companies belong to 3 sectors:

- Pharmaceuticals and Biotechnology
- Banks
- Energy

Almost one half of the most sanctioned companies (7 over the 15) are incorporated in the United States and 64% of the sanctions occurred in the USA.

The 5 most sanctioned companies are all incorporated in the USA, except the Royal Bank of Scotland (RBS) which is incorporated in the

UK. They all belong to the Banking sector except for the most often sanctioned one, Pfizer, a Pharmaceutical company.

All of Pfizer's CSR related sanctions occurred in the USA and 16 out of 18 are settlements between the company and its stakeholders.

These results can be explained by several reasons.

First, the most frequently hit sectors are the ones that traditionally are exposed to high vigilance by both authorities and individuals, and therefore the ones in which stakeholders' activity is more intense. For example, Banks, following the recent financial scandals and the world economic

crisis have faced greater exposure and vigilance than in the past.

The country in which repeated sanctions to companies were most frequent is the USA.

In the case of Pfizer, the publicly disclosed amount of CSR related sanctions paid totalled USD 2.35 billion, of which 1.33 billion was paid in 2012. The company's turnover in 2011 was USD 61 billion and its net income was USD 10 billion. This means that CSR related sanctions received in 2012 cost the company some 2.1% of its 2011 turnover and 13.3% of its net 2011 income.

Pfizer, Pharmaceuticals and Biotechnology, USA

1. In October 2012 Pfizer reached an agreement to pay USD 164 million to end multiple potential class action lawsuits regarding its painkiller Celebrex (for arthritis). The case began in 2003, when several class-action complaints were filed in federal court in New Jersey against Pfizer, its Pharmacia unit (acquired in 2002) and certain former Pharmacia officers. They were accused of misleading investors about clinical trial results of Celebrex.
2. In November 2012, Pfizer reached a settlement agreement to pay USD 67.5 million to resolve an investors' class action lawsuit against Pfizer's Wyeth unit and some former Wyeth officers and employees. Plaintiffs accused them of illegally misrepresenting the safety of Pristiq, a drug for menopause symptoms, while it was under review for potential approval. Plaintiffs said Wyeth's failure to reveal adverse effects sooner caused its stock price to be inflated between 2006 and 2007.
3. In December 2012 Pfizer agreed to pay USD 55 million to settle charges that its subsidiary Wyeth misbranded the erosive esophagitis drug Protonix. The US Department of Justice said Wyeth committed several violations when promoting Protonix between February 2000 and June 2001, before Pfizer acquired Wyeth in 2009.
4. In January 2013, Pfizer agreed to pay USD 25 million to resolve claims that the company overcharged the Texas' Medicaid program for generic drugs. Pfizer was accused of submitting false claims to the state government, inflating the prices of various generic drugs.



Legal sanctions by CSR issue



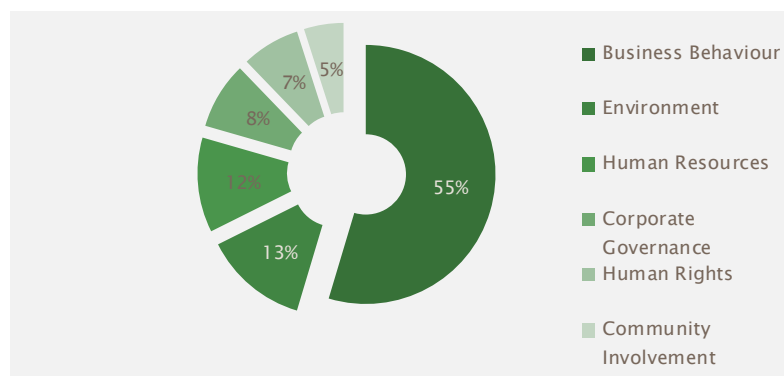
QUANTITY AND COST OF SANCTIONS BY DOMAIN

CSR-related legal sanctions issued to companies in Vigeo's panel concerned different ESG issues, which are included in Vigeo's 6 domains of analysis: Business Behaviour, Human Resources, Environment, Human Rights,

Community Involvement and Corporate Governance.

As the graph below shows, the domain that was most frequently the object of CSR-related legal sanctions is Business Behaviour with 609 cases over a total of

1,015 cases. The remaining 5 domains reveal a more homogeneous outcome, with the number of condemnations ranging from 145 for Environment to 55 for Community Involvement.



The difference across domains may be explained by the stringent international legal framework on the fairness of business practices area and by the strong activity of vigilance of judicial authorities. Within the Business Behaviour domain, two subjects are closely monitored by national and international authorities: **prevention of corruption and prevention of anti-competitive practices.**

In addition, other key subjects in the Business Behaviour domain are related to customer rights: safety of products, information to customers and fairness of contractual clauses. Consumers and users of services are among the most active stakeholders in terms of awareness of their rights. This makes their appeals to justice more accessible and frequent, particularly in the USA, where as explained before, the culture and

recourse to justice make law suits more frequent, and where legislation such as class action suits make it easier for citizens to join as a group and sue companies for suffering a common injury.

The picture in the previous page illustrates the frequency of CSR related legal sanctions. To gain a more complete analysis, it requires complementary information on the costs of CSR related sanctions per domain¹.

Cost of CSR related sanctions for the six Vigeo's domains in 2012-2013	
Domain	Cost of sanction (EUR billion)
Business Behaviour	60,6
Community Involvement	16,6
Human Rights	7,6
Environment	5,6
Corporate Governance	3,6
Human Resources	1,3
TOTAL	95,5

The table above shows that, while Business Behaviour remains by far the domain with the most expensive sanctions in the period under review, with Community Involvement coming in second in terms of costs. Legal sanctions

concerning violations of local community rights or access to products and services, or negative impacts of the products and services on the society appear to be rarer, but represent relatively high costs for companies. In

contrast, Human Resources sanctions, represent only 12% of the total CSR related sanctions.

FOCUS: QUANTITY AND COST OF CSR-RELATED SANCTIONS BY ISSUE

The table below illustrates the CSR issues included in Vigeo's 6 domains that have most frequently been the object of sanctions.

CSR issues most frequently content of sanction			
Domain	CSR issue	number of sanctions	sanctions in %
Business Behaviour	Prevention of anti-competitive practices	212	19%
Business Behaviour	Prevention of corruption	120	11%
Business Behaviour	Information to customers	106	10%
Human Resources	Improvement of health and safety conditions	97	9%
Business Behaviour	Responsible Customer Relations	92	8%
Corporate Governance	Audit & Internal Controls	81	7%
Business Behaviour	Product Safety	65	6%
Environment	Pollution prevention and control	58	5%
Human Rights	Non-discrimination	48	4%
Community Involvement	Promotion of the local development	35	3%

¹ Nota bene: for 10% of the CSR related sanctions no quantified costs were available

82% of the sanctions were issued for violation of 10 key CSR issues.

40% of the sanctions had to do with corruption, anti-competitive practices and consumer rights violations.

The sectors that have the highest proportion of legal sanctions seeking to limit corruption are: Banks (41.4% of sanctioned companies) and Pharmaceutical and Biotechnology (18.1%). The two sectors also account for the highest proportion of companies that have received a sanction for lack of information to customers (44.2% of sanctioned companies are from the Banks sector and 20.2% are Pharmaceutical companies). As far as Product Safety is concerned, three sectors appear to have received 64.6% of the total legal sanctions: Automobiles (20% of sanctioned companies), Healthcare Equipment & Services (16.9%) Pharmaceuticals and Biotechnology (27.7%).

As the table in the previous page shows, CSR related legal sanctions concerning the improvement of Health and Safety conditions of the company's employees is the fourth highest CSR issue in terms of frequency of sanctions (9%), while cases of discrimination accounted for 4% of the sanctions.

Sectors whose companies are more often subject to legal sanctions for Health and Safety issues are the ones with the most exposed employees and therefore the ones whose employees are more protected by law or by key actors

such as trade unions. Those sectors are: Automobiles (13.2% of sanctioned companies), Industrial Goods & Services (12.2%) and Food (11%). Finally, sectors that are most exposed to discrimination issues appear to be Banks (16.7% of sanctioned companies), Automobiles (8.3%) and Specialised Retail (8.3%).

As the table on next page shows, the 10 CSR key subjects for which legal sanctions were most frequent, represent overall 70% of the total costs of CSR related sanctions calculated by Vigeo (66.9 billion of Euros). Among them, legal sanctions for the violation of information to customers appear to have been the most costly ones for companies (26 billion of Euros in 2012-2013).

Cost of CSR related sanctions for the most recurrent issues			
Domain	CSR issue	Cost of sanction (EUR billion)	% of total costs
Business Behaviour	Information to customers	26,0	27,2%
Business Behaviour	Responsible Customer Relations	9,0	9,4%
Business Behaviour	Prevention of corruption	7,5	7,9%
Business Behaviour	Prevention of anti-competitive practices	7,4	7,8%
Business Behaviour	Product Safety	6,3	6,6%
Environment	Pollution prevention and control	4,9	5,1%
Corporate Governance	Audit & Internal Controls	2,9	3,0%
Community Involvement	Promotion of the local development	1,5	1,6%
Human Resources	Improvement of health and safety conditions	1,2	1,2%
Human Rights	Non-discrimination	0,2	0,2%
TOTAL cost of the most recurrent issues		66,9	70,0%

CSR related sanctions on issues of corruption, anti-competitive information to customers represent included in the Business Behaviour practices, information to clients, 10% in terms of frequency, but domain appear to be not only the responsible management of clients 27,2% in terms of costs (see the most frequent but also the most and product safety). In particular, example of Johnson & Johnson expensive ones overall (prevention sanctions for violation of below).

Johnson & Johnson (Pharmaceuticals & Biotechnology USA)

Johnson & Johnson agreed to pay over USD 2.2 billion in criminal and civil fines to settle accusations of marketing for unapproved use and overstating the safety and effectiveness of its antipsychotic drug, Risperdal. The agreement is one of the most important pharmaceutical settlements in U.S. history and the largest in a string of cases involving the marketing of antipsychotic and anti-seizure drugs to older dementia patients. The settlement, which requires federal approval, was meant to also resolve accusations that the company inappropriately promoted two other drugs, the heart-failure drug Natrecor and Invega, a newer antipsychotic drug.

It is worth noting that one companies in legal sanctions following the explosion of the environmental subject, Pollution during the reference period. Cases Deepwater Horizon rig in Macondo Prevention and Controls, accounted of severe environmental may account for this result. for 5% of the total costs spent by condemnations such as the one

BP (Energy, UK)

On April 20, 2010, a gas release and subsequent explosion occurred on the Deepwater Horizon rig working on the Macondo exploration well in the Gulf of Mexico. Eleven people died and others were injured. The fire burned for 36 hours before the rig sank, and hydrocarbons leaked into the Gulf of Mexico before the well was closed and sealed. BP reached an agreement with the US Department of Justice (DOJ) to resolve accusations and federal criminal charges. The company pleaded guilty and agreed to pay USD 4.5 billion in penalties. BP's guilty plea covered 14 criminal charges, including the Clean Water Act and Migratory Bird Treaty Act violation. The Louisiana Department of Environmental Quality (DEQ) and several local governments filed suits seeking environmental penalties. Under an agreement with the DOJ, BP will also pay USD 2.4 billion to the National Fish and Wildlife Foundation and USD 350 million to the National Academy of Sciences. The company also paid USD 20 billion to the Deepwater Horizon Oil Spill Trust fund.

The improvement of health and safety in the workplace, despite representing 9% of the total CSR related legal sanctions, accounted in 2012-2013 for only 1.2% of the total costs of sanctioned companies. However, this should not undermine the importance of the consequences of the legal

sanctions incurred on this subject. The latter, in fact, generate a series of indirect costs which may have a high materiality. For example, repeated condemnations for violations of social dialogue or for health and safety problems are likely to generate bad reputation among the companies' future

employees. This could turn into low attractiveness for the company, lack of cohesion of human capital, low motivation and consequently low productivity rate.



The Financial Impact of Sanctions



THE 10 HIGHEST SANCTIONS

10 highest sanctions			
Company	Sector	Country of sanction	Amount (USD bn)
JP Morgan Chase	Banks	USA	13.0
Bank of America	Banks	USA	11.8
Bank of America	Banks	USA	11.6
Chevron	Energy	Equador	9.5
BP	Energy	USA	4.5
Visa	Financial Services	USA	4.0
Glaxosmithkline	Pharmaceuticals & Biotechnology	USA	3.0
Johnson & Johnson	Pharmaceuticals & Biotechnology	USA	2.5
HSBC Holdings	Banks	USA	2.5
Johnson & Johnson	Pharmaceuticals & Biotechnology	USA	2.2

The 10 highest financial sanctions were given to companies belonging to 4 sectors: Banks, Energy, Financial Services and Pharmaceuticals & Biotechnology. These sectors, can be considered the most sensitive ones in terms of their impact on stakeholders and therefore the ones on which the activity of stakeholders' vigilance is most concentrated.

9/10 of the highest sanctions occurred in the USA. This result may

be explained by the fact that companies sued in the USA must submit to common law, where the fines established at a particular moment are based on the fines received in the past by companies in a similar judicial case. Therefore, common law sentences increase the amount of sanctions over time.

80% of the sanctions ended in settlements.

8 out 10 of the most expensive sanctions were related to Business

Behaviour issues and the two remaining ones were related to environmental issues.

JP Morgan Chase (Banks, USA)

In November 2013 the company agreed to a USD 13 billion settlement with US regulators for misleading investors during the housing crisis. About USD 4 billion of the settlement was to go to homeowners hurt by JP Morgan's practices. Another USD 7 billion were to be paid to settle federal and state civil claims relating to misleading mortgage securities sold by the bank. Some as well was given to investors who lost money. The remaining USD 2 billion were to be paid to the US government as a fine. Although the settlement effectively concludes the US government's civil investigation into the bank, a criminal investigation by the Department of Justice is still ongoing.

In 2012, JP Morgan Chase's turnover was USD 97 billion and its net income was USD 21.2 billion.

Therefore, this particular CSR related legal sanction represented 13.4 % of the company's 2012 revenues and 61% of the company's 2012 net income.

Chevron (Energy - USA)

In 2011, after a complex legal fight that has been fought for nearly two decades, an Ecuadorean court ordered Chevron Corp. to pay USD 19 billion as a result of water contamination and inappropriately disposing of oil industry waste during crude production in the Amazon over a period of nearly 30 years. Chevron has refused to make any payments and accuses Ecuadorean courts of fraud. Because the company has few assets in Ecuador, the plaintiffs (indigenous residents of the Lago Agrio field) could not collect the fine. Their lawyers have thus initiated recognition and enforcement actions of the judgment in other countries, notably in Argentina. On November 7, 2012, an Argentine judge embargoed the USD 19 billion in Chevron Corp. assets in the country. The order applies to 100% of Chevron's capital stock in Argentina, 100% of its dividends and its entire minority stake in Oleoductos del Valle. It also includes 40% of any current or future money that Chevron Argentina holds as well as 40% of all its crude sales. The plaintiffs' lawyer said the company could appeal, but would have to file for an appeal in Ecuador because the judge issued the embargo after a request by an Ecuadorean court. In November 2013, Chevron was fined USD 9.511 billion.

Bank of America, (Banks, USA)

In January 2013, Bank of America reached a USD 11.6 billion settlement with government mortgage agency Fannie Mae to settle claims resulting from mortgage-backed investments that soured during the housing crash.

In 2012 Bank of America turnover was USD 84.2 billion and the net income was USD 11.4 billion.

Therefore, the sanction received accounted for 13.7% of the company's turnover and for 101,7% of the company's net income.

GlaxoSmithkline (Pharmaceutical – UK)

GSK announced that it reached an agreement with the US Government, multiple states and the District of Columbia to settle US investigations on matters related to business practices which occurred in the late 1990s and early 2000s. Under the terms of the settlement, GSK will plead guilty to a three-count criminal accusation, including one count of failing to report safety data about the drug Avandia to the Food and Drug Administration (FDA). GSK will make payments totaling USD 3bn (around 20% of the company's 2011 operating profits).

FOCUS: TOP 5 COLLECTIVE CSR-RELATED LEGAL SANCTIONS

Legal sanctions may concern companies in a group as well, such as when they are collectively responsible for infringements of CSR related principles.

5 highest collective sanctions			
Company	Sector	Type of sanction	Amount (USD bn)
Bank of America, JPMorgan, Wells Fargo & Co., Citigroup Inc., Ally Financial Inc.	Banks	Settlement	25
Aurora, Bank of America, Citibank, JPMorgan Chase, MetLife Bank, PNC, Sovereign, SunTrust, U.S. Bank, Wells Fargo.	Banks	Settlement	9
MasterCard, Visa	Financial Services	Settlement	6
Deutsche Bank, Société Générale, Royal Bank of Scotland Group, JPMorgan, Citigroup	Banks	Administrative Sanction	2
Eni, Shell Exxon, Total	Energy	Administrative Sanction	5

3 out of the 5 most expensive collective sanctions were settlements and 2 were administrative sanctions.

The Finance macro sector (Banks and Financial Services) received 4

out of the 5 most expensive sanctions.

Once again the most expensive sanctions concern Business Behaviour malpractices (4 out of 5).

Interestingly, the remaining case, and the third most expensive one,

concerns a violation of environmental regulations by companies in the Energy sector.

Bank of America, JPMorgan, Wells Fargo, Citigroup, Ally Financial (Bank, USA)

In April 2012 a federal judge approved a USD 25 billion settlement among the nation's five largest mortgage lenders, and the Attorney Generals of 49 states and the District of Columbia over abuses in foreclosure processing. The approval cleared the way for the banks to compensate homeowners who may have been impacted by the so-called robo-signing scandal, in which bank employees signed hundreds of documents a day attesting to facts that they had little or no knowledge of.

Aurora, Bank of America, Citibank, JPMorgan Chase, MetLife Bank, PNC, Sovereign, SunTrust, U.S. Bank and Wells Fargo (Banks, USA)

The American Federal Bureau of Bank Supervision, the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board reported that ten mortgage servicing companies which were subject to enforcement actions for deficient practices in mortgage loan servicing and foreclosure processing have reached an agreement in principle to pay more than USD 8.5 billion in cash payments and other assistance to help borrowers.

ENI, Shell, Exxon and Total, (Energy, Italy, UK, USA, France)

In July 2012, Amnesty International reported that the Nigerian authorities proposed a USD 5 billion "administrative fine" over a 40,000-barrel spill that occurred at the Bonga offshore oilfield in 2011. The fine was imposed by the Nigerian authority in charge of detection and clean-up of oil spills, the National Oil Spill Detection and Remediation Agency.

The leak was reported to be discovered during a routine operation to transfer crude from the vessel to a tanker. SNEPCo activated its oil spill emergency response procedure, and reported that international experts were flown in to help with response efforts. Clean-up was reported to be completed in January, approximately 10 days after the spill. SNEPCo operated the Bonga offshore field on behalf of contractor parties: Shell (55%), ExxonMobil (20%), Eni (12.5%), and Total (12.5%).



How companies reacted to sanctions



CSR related sanctions might be detrimental to companies both for the direct material consequences and indirect effects. These may affect brand reputation and its attractiveness on the market, as well as the attractiveness of their products and services.

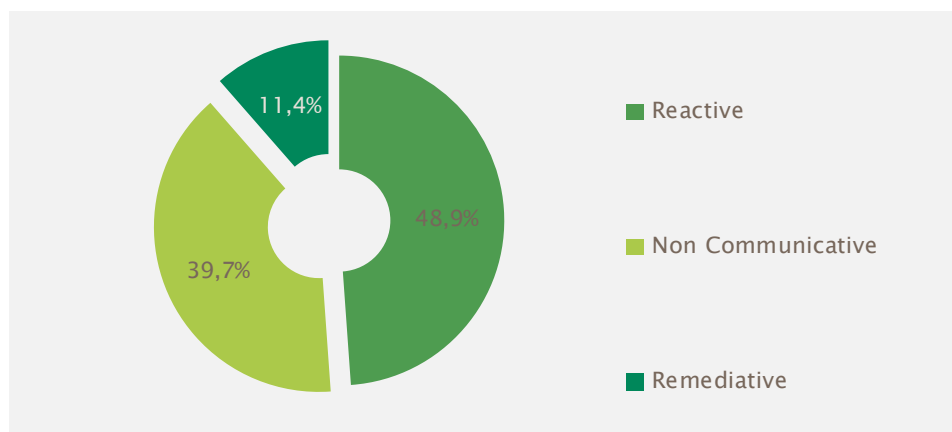
Therefore, some companies respond to these sanctions by showing transparency and then by implementing a series of corrective measures. The company's attitude towards the sanction may mitigate or, on the contrary, worsen the negative impact of a sanction. The strategy of staying silent, adopted

by certain companies does not ever appear to be the correct response. These different reactions represent also a signal for stakeholders on the possible future ability of the company to properly manage CSR related risks.

In the panel analysed by Vigeo, among the 1,015 CSR related legal sanction cases, companies reacted in the following different ways:

- Almost one half of them proved to be reactive: communicating the existence of the sanction without detailing future initiatives.

- Around 40% of them appeared to remain totally silent on the judiciary processes or on the settlements which occurred;
- Only around 11% described both the event and the future actions that they were going to implement to better manage related CSR risks in the future.



Some examples of good practices in terms of remediation are provided below.

Endesa (Electric and Gas utilities –Spain)

In September 2012, the High Court of Catalonia confirmed a EUR 10 million fine for Endesa in response to the blackouts of July 2007 in Barcelona. A reported 350,000 customers were affected, for a duration of up to 56 hours. The blackout was determined to be caused by deficiency of maintenance and upkeep of the network.

Endesa responded with corrective measures. The company refurbished the substation that started the incident (due to a fire) and improved fire-fighting systems.

Olam (Food - Singapore)

In March 2012, Olam settled a pregnancy discrimination case filed by the U.S. Equal Employment Opportunity Commission (EEOC) for USD 140,000 in Fresno, California, USA. The EEOC had charged that a jobseeker was denied an executive assistant position at Olam's Fresno facility (California) due to her pregnancy. According to the federal agency, a female applicant was initially offered the executive assistant position at Olam in December 2010. However, within a very short period of time after disclosing that she was pregnant, Olam rescinded its offer of employment to her and promptly selected an alternate, non-pregnant candidate, the EEOC reported.

Olam and the EEOC ultimately entered into a three-year consent decree, effectively settling the lawsuit. Aside from the monetary compensation for the rejected applicant, Olam agreed to designate an equal employment opportunity (EEO) official to develop procedures for handling sex discrimination complaints; to ensure adequate handling of discrimination complaints; to hold management and human resources staff accountable for failure to comply with such policies; and to provide annual EEO training to all employees at six manufacturing plants in Central and Northern California, along with more specialized training for managers and human resources staff. The EEOC will monitor compliance with the decree.

Initiatives from both Endesa and Olam are likely to help the companies manage future occurrences of similar cases.

In this respect, following particularly severe CSR scandals ending in fines and/ or settlements in the recent past, some companies have proved to put in place initiatives that represented a

radical change in their approach to CSR. Two of the most striking examples are presented in the next pages.

Siemens (Electric Components & Equipment, Germany)

Since 2007 Siemens has been convicted of corruption in several jurisdictions around the world (the U.S., Germany, Hungary, Greece, Austria, Russia, Argentina, Bangladesh, China and Venezuela). In particular, the company has been accused of paying millions of dollars in hush money to cover up bribes it used to win business contracts.

In response to these problems, Siemens has set up advanced corrective measures which include:

- establishing a Corporate Disciplinary Committee, which evaluates proven misbehaviour by members of the management and makes binding recommendations.
- setting an amnesty programme for non-managers cooperating in investigations and disclosing the number of employees who participate in this programme.
- collaboration with the NGO Transparency International to establish the "Collective Action Methods", intended to guarantee transparency in the order-awarding process and to avoid bribery in the awarding of public-sector contracts.
- Supervision by an independent Monitor of the contract-awarding process and observance of the integrity pact established.

In 2009, the company signed an agreement with the World Bank Group (WBG) to resolve investigations involving allegations of corruption by Siemens. The settlement includes a commitment by Siemens to pay USD 100 million over the next 15 years to support anti-corruption work (through the "Siemens Integrity Initiative" launched in 2009). As part of the settlement, Siemens also agreed to co-operate to change industry practices, clean up procurement practices, and to provide information on any additional cases of wrongdoing to the Bank.



GlaxoSmithKline (GSK) (Pharmaceuticals & Biotechnology, UK)

In July 2012, GSK announced that it reached an agreement with the US Government, multiple states and the District of Columbia to conclude the company's most significant ongoing Federal government investigations. GSK will make payments totaling USD 3bn.

Under the terms of the settlement, GSK pleaded guilty to a three-count criminal accusation, including two counts of introducing misbranded drugs, Paxil and Wellbutrin, into interstate commerce and one count of failing to report safety data about the drug Avandia to the Food and Drug Administration (FDA). The settlement includes USD 1 billion in criminal fines. GSK's guilty plea and sentence is not final until accepted by the U.S. District Court. GSK is to pay USD 2 billion to resolve civil liabilities with the Federal government and the states under the False Claims Act, the Justice Department said. GSK has agreed to resolve its civil liability for the following alleged conduct: (i) promoting the drugs Paxil, Wellbutrin, Advair, Lamictal and Zofran for off-label, non-covered uses and paying kickbacks to physicians to prescribe those drugs as well as the drugs Imitrex, Lotronex, Flovent and Valtrex; (ii) making false and misleading statements concerning the safety of Avandia; and (iii) reporting false best prices and underpaying rebates owed under the Medicaid Drug Rebate Program. Those 3 latter claims are allegations only, for which there has been no determination of liability yet.

GSK issued a press release on this agreement with the US Government. In this press release the company's CEO acknowledged the facts, and expressed its regret and assured that it had learned from the past.

The company declared to have adopted new policies, enhanced others, and implemented measures to strengthen training and compliance programs, including adding compliance staff.

Since January 2011, for example, GSK has updated its Global Code of Practices for Promotion and Customer Interactions and issued a Scientific Engagement Policy in order to reinforce a clear distinction between its scientific dialogue and its promotional activity. The company, in addition, put in place a new incentive compensation system for GSK professional sales representatives who work directly with health care professionals. The new system eliminates individual sales targets as a basis for bonuses, and instead bases incentive compensation on the quality of the service these representatives deliver to customers to support improved patient health.

In addition, as part of its deal, GSK has entered into a five-year "Corporate Integrity Agreement" (CIA) which includes an "executive financial recoupment program," that requires GSK to change its executive-compensation policies to permit the company to recoup annual bonuses and long-term incentives from certain executives if they, or their subordinates, engage in significant misconduct. The agreement also requires GSK to implement and maintain transparency in its research practices and publication policies.



Legal sanctions: what impact on legal frameworks?



CSR related legal sanctions had a supplementary effect in the past few years as far as the national and international legal frameworks are concerned.

A first example can be seen with the stricter packaging regulation for Tobacco products following repeated condemnation of Tobacco companies for misleading

consumers on the content and the danger of their products.

Below is a settlement case that occurred in the past months.

Altria Group, Reynolds American, Lorillard Tobacco (Tobacco, U.S.A.)

In February 2015, the three largest US tobacco companies, Altria, Lorillard and Reynolds American, agreed to pay a total of USD 100 million to settle over 400 federal lawsuits potentially solving several cases filed after a 2006 ruling by the state of Florida highest court that facilitated the procedure for individuals to sue tobacco companies for smoking-related harm. Under the agreement, Altria's Reynolds American unit, Philip Morris unit and Reynolds Tobacco unit will each pay USD 42.5 million. Lorillard will pay USD 15 million. The case settled accusations that the companies were negligent, conspired to hide information about the dangers of smoking and sold defective products.

International recommendations and National legislations on the subject of regulation of tobacco product packaging have become more and more intense and stringent in the course of the past several years. In 2013, following a WHO Framework issued in 2005, 77 countries and jurisdictions (covering 49% of the world population) had finalized picture warning requirements on

the packaging. In 2005, only 5 countries had done so.

In addition national legislation on plain packaging is being implemented in countries such as Australia (since 2012). Other countries, including Ireland, the United Kingdom, France, and New Zealand are in the process of implementing plain packaging rules. The latter prohibits tobacco

company colours, logos, and design elements on the brand part of the package.

In this respect, the most recent legislation approved in Europe, the directive for European tobacco products entered into force in May 2014. It will give European countries the option to implement plain packaging. Other objectives of the Directive that will be effective as of 2016 are:

- requiring that health warnings appear on packages of tobacco and related products. Combined picture and text health warnings must cover 65% of the front and back of cigarette and roll-your-own tobacco packages;
- setting minimum dimensions for warnings;
- banning all promotional and misleading elements on tobacco products.

A second example is provided by the increasing legislative activity in the banking system originating from the 2008 financial crisis, such as the condemnation that companies such as JP Morgan went through and the recognised dangers that the banking system can cause to the world financial stability.

Among these reforms, the “Dodd-Frank Wall Street Reform and Consumer Protection Act” took place in the USA in 2010. The most important points of the reforms concerned two issues:

- Transparency: increased transparency on *Asset Backed Securities* (ABS) contracts for

customers. ABS are created by buying and bundling loans, and during the financial crisis, ABS holders suffered significant losses. The crisis revealed that many investors were not fully aware of the risk in the underlying mortgages within the pools of securitised assets.

- Corporate Governance: in particular the introduction of advisory votes of shareholders about executive compensation and golden parachutes. In addition an increased disclosure about certain compensation matters was required, including pay-for-performance and the ratio between the CEO’s total compensation and the median total compensation for all other company employees.

In Europe, another important reform occurred following the financial crisis. In 2010 the Committee of European Banking Supervisors (CEBS) introduced the “Guidelines on remuneration policies and practices”. These Guidelines deal with the excessive short termism of and risk taking of top managers and senior executives. These Guidelines introduced relevant remuneration requirements for all employees and specific stricter requirements applicable to the so called “Material Risk Takers”, including deferral of variable remuneration over an appropriate period of time and claw-back provisions.

As the examples above show, most recurrent, generalised and severe CSR related sanctions have not only had an impact on international soft law, but also generated a reinforced legislative activity and an extension of the coverage of the law on some specific subjects.



Conclusions



This study provides evidence on the material, legal and financial factors of CSR-related legal sanctions.

CSR, intended as the ability of companies to take into account stakeholders' legitimate expectations, interests and rights, may appear, at first glance, to be independent from companies' legal risks and consequent costs. This understanding might be reinforced by the consideration that CSR is founded on companies' initiatives inspired by international soft law

which is in many countries difficult to enforce in national courts.

The results of this study show, on the contrary, the existence of a strong link between CSR principles, goals and management and consequent legal risks for companies.

In legal terms, the formation of the definition and content of company's responsibility is still ongoing. Corporate Social responsibility, in this respect, has contributed to an extended legal coverage of social, environmental

and governance issues. Therefore, the integration of Corporate Social Responsibility in the company's strategy enables the prevention of legal risk and the enhancement of judicial security as a key immaterial asset for the company.



This study

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Founded in 2002 and led by Nicole Notat, Vigeo is the leading European expert in evaluating corporate social responsibility through six domains: environment, human rights, human resources, community involvement, business behaviour, and corporate governance.

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