

corporate social responsibility

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February, 2011

CORPORATE RESPONSIBILITY PROVISIONS IN THE SPANISH SUSTAINABLE ECONOMY LAW^(*)

Lower House of the Spanish Parliament. It has yet to be published in the Official State Gazette, which is when it will come into force. The law aims to promote Corporate Social Responsibility (CSR) in Spain and sets out guidelines on communication and the inclusion of non-financial matters as a new factor in company management.

Thus, Articles 35 and 39 of the new Law contain CSR obligations for state-run public entities, and entities in the private sector, respectively.

State-run public entities, which include government-sponsored commercial companies and state-owned business enterprises attached to the central government, are required by the law to file annual corporate governance reports and sustainability reports, and to fulfill a series of specific CSR-related obligations, all of which must be completed within a year following the law's entry into force. The departments and bodies to which public business enterprise groups belong must also draw up a group sustainability plan.

On Tuesday February 15, 2011, the law known as the "Sustainable Economy Law" was passed by the

"Article 35. Sustainability in the management of public enterprises.

1. Government-sponsored commercial companies and state-owned business enterprises attached to the central government shall adapt their management to the principles set forth in this Law.

2. Within one year from the entry into force of this Law, they shall adapt their strategic plans in order to:

a) file annual corporate governance reports and sustainability reports in accordance with generally accepted standards, with a special focus on real gender equality, and the full integration of people with disabilities;

^(*) Information obtained from the Official Gazette of the Lower House of the Spanish Parliament of February 16, 2011, Series A no. 60-18.

b) review their production processes for goods or services, by applying environmental management principles aimed at complying with EU rules on environmental auditing and management;

c) encourage their suppliers to adopt corporate social responsibility principles and practices, particularly as regards promoting the integration of women, real gender equality, and the full integration of people with disabilities, having special regard to compliance with Article 38.1 of Law 13/1982 of April 7, 1982 on social integration of people with disabilities;

d) include in their procurement processes, where the nature of the contracts so allow, and provided that they are compatible with EU law and are specified in the contract notice and the specifications or in the contract itself, performance terms and conditions relating to the level of greenhouse gas emissions and the maintenance or improvement of environmental values that may be affected by the performance of the contract. In addition, in the award criteria for contracts, where their purpose so allows and these conditions are directly related thereto, higher scores shall be awarded for the saving and efficient use of water and energy, the environmental cost of the life cycle of materials, ecological production methods and procedures, waste generation and management, and the use of recycled and reused or ecological materials;

e) optimize energy consumption at their headquarters and facilities by entering into energy services agreements that enable energy consumption to be reduced, and paying the contractor with savings made in energy bills;

f) identify courses of action associated with research, development and innovation processes related to the activities in the corporate purpose of the entity aimed at obtaining technology not currently existing on the market, which can contribute to the improvement of their production processes.

g) propose and, as appropriate, establish, in the framework of collective bargaining, mechanisms that facilitate worker mobility within the sector of public business enterprises attached to the central government, and establish a training system aimed at qualifying workers and enabling them to adapt to new technologies and the sustainability culture;

h) The departments or bodies to which the public business enterprise groups belong shall draw up, by reference to the contents of the strategic plans of the enterprises, a group sustainability plan establishing support, strengthening and cooperation measures that exist alongside the initiatives of the enterprises, and defining mechanisms for the monitoring and control of the sustainability objectives taken on by the group.”

As regards the private sector, public authorities are called upon to provide incentives to companies, especially SMEs, to adopt or create CSR policies, always in accordance with generally accepted standards, within what have hitherto been voluntary initiatives in the business world.

The Law partially includes an amendment specifying that Spanish SA corporations (*sociedades anónimas*) may publish their policies and outcomes in CSR matters each year in a specific report, which must mention whether or not this information has been examined by an independent third party. If the corporation has more than one thousand employees, this report must also be notified to the Spanish Corporate Social Responsibility Council (*Consejo Estatal de Responsabilidad Social Empresarial* or “CERSE”).

Moreover, any enterprise can make a voluntary application to be recognized as a “socially responsible company” according to the conditions to be determined by the CERSE.

“Article 39. Promotion of corporate social responsibility.

1. In order to provide incentives to enterprises, organizations and institutions, whether public or private, especially small- and medium-sized enterprises and sole proprietorships, to adopt or create corporate social responsibility policies, public authorities shall have in place a policy to promote social responsibility, by disseminating knowledge and existing best practices, and encouraging examination and analysis of the effects of social responsibility policies on competitiveness in business.

In particular, the Government shall provide them with a set of characteristics and indicators for their self-assessment in the area of social responsibility as well as standard forms or reference material for reporting purposes, all in accordance with international standards on this subject.

2. The set of characteristics, indicators and standard forms for reference mentioned in the previous paragraph shall be in keeping especially with the objectives of transparency in management, good corporate governance, commitment to local issues and the environment, respect for human rights, improved employee/employer relationships, promotion of the integration of women, of real gender equality, of equal opportunities and universal accessibility for people with disabilities, and of sustainable consumption, all in accordance with any recommendations that may be made in this respect by the Spanish Corporate Social Responsibility Council, created by Royal Decree 221/2008 of February 15, 2008 which regulates that body.

3. SA corporations may publish their policies and outcomes in Corporate Social Responsibility matters each year in a specific report based on the objectives, characteristics, indicators and international standards mentioned in the foregoing paragraphs. In all cases, that specific report must specify whether or not it has been examined by third parties.

In the case of SA corporations with more than 1,000 employees, this annual Corporate Social Responsibility report shall be notified to the Spanish Council for Corporate Social Responsibility which will enable proper monitoring to be carried out of the degree of implementation of Corporate Social Responsibility policies at large Spanish enterprises.

Moreover, any company can make a voluntary application to be recognized as a socially responsible company subject to the conditions to be determined by the CERSE.

4. The Government shall provide the necessary resources to enable the Spanish Council for Corporate Social Responsibility to discharge its functions fully.”

In short, Spain is following the lead of other countries such as Denmark and France in enacting legislation on CSR matters.

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