

FOM-Conference

FOM International CSR Research Conference


Implementing Sustainable CSR Management Solutions

Track 2, Session 3
Governance / Finance

18.04.2013, 15:45 Uhr

„Legal Framework of CSR in Germany“

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at FOM, Attorney-at-Law Düsseldorf, Germany



April 18th-19th 2013

FOM Hochschule für Oekonomie & Management
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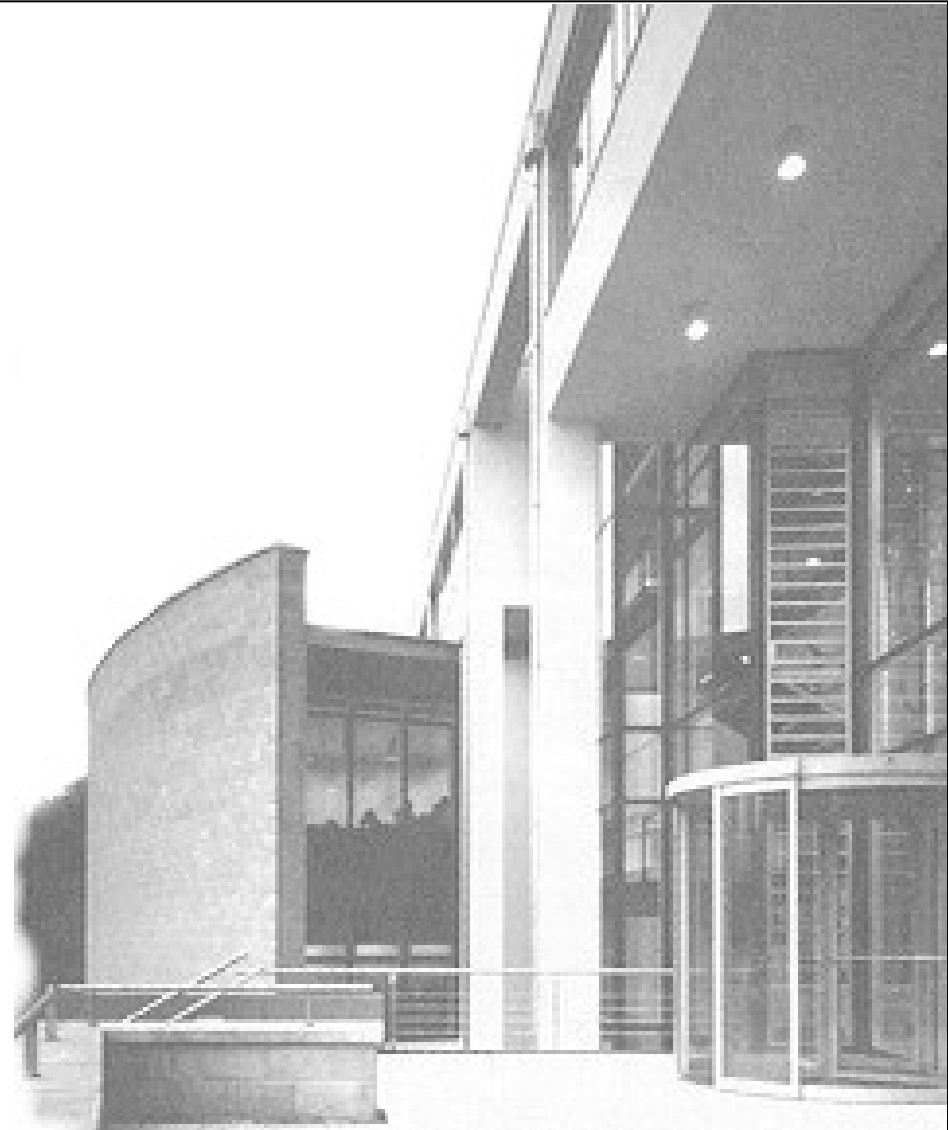
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Must Ethics Pay?

Legal Framework for CSR
in Germany

Köln, 18 April 2013

Prof. Dr. Olaf Müller-Michaels



- [OECD Guidelines for Multinational Enterprises](#)
- [Global Compact: The Ten Principles](#)
- [European Commission: „New policy on CSR“](#)
- [Deutscher Nachhaltigkeitskodex](#)
- [Global Reporting Initiative \(GRI\)](#)
- [EFFAS KPIs for ESG](#)
- [IIRC Discussion Paper: Towards Integrated Reporting](#)

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

- The Federal Cabinet approved the National Strategy for CSR in the form of an "Action Plan for CSR" on October 2010
- German Federal Government introduced "CSR Award for Enterprises with Vision" in 2012
- Alliance 90/The Greens party proposed the revision of the Business Judgement Rule to include ethical, sociological and ecological standards in the "diligence of a prudent manager"
 - + Right now a manager has the duty not to act against common welfare, but does not have to support it. Therefore he could be held liable for damages if the stakeholders lose money because of CSR investments.

- Shareholder value und stakeholder value embedded in German Corporate Governance and Sustainability Codices
- Pluralism of interests to be considered by management board
 - + Shareholder
 - + Employees
 - + Customers
 - + Other groups related to the company
- Companies should contribute to the enhancement of the public good

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

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

- Essentials
 - + Voluntary
 - + Altruism

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

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

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



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

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

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

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

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