



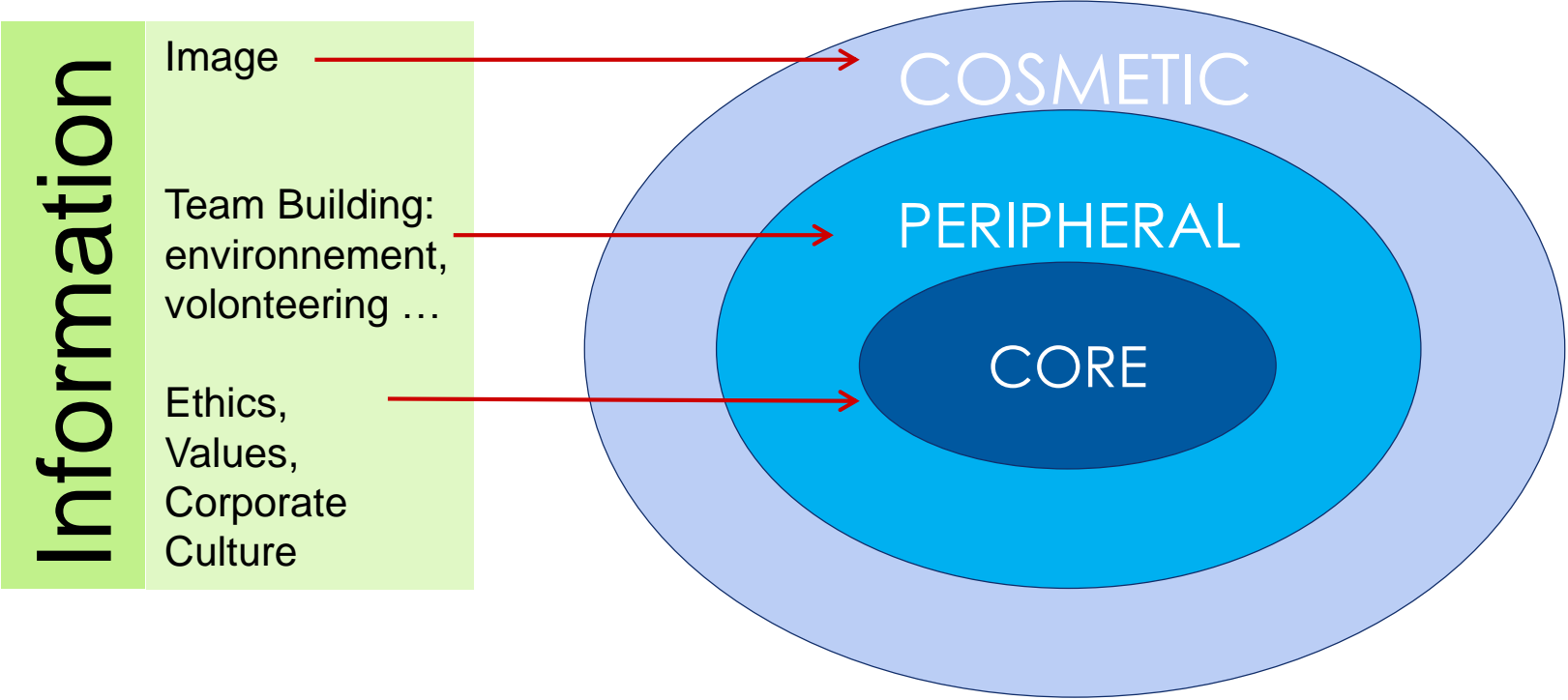
CSR and Company Law

Jean-Marc Gollier – FRDO/CFDD 29/1/2019 - Sustainable investment in Belgium: Better safe than sorry

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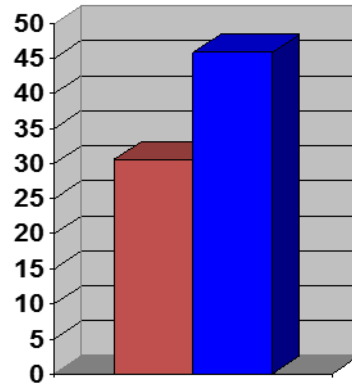
- I. CSR: definition and concepts
- II. Company Law and CSR
 - a) The Corporate Interest
 - b) CSR, Company Law and ESG

Spheres of *Corporate Social Responsibility*



Economic Chart

Financial growth, "To Infinity... and Beyond!"



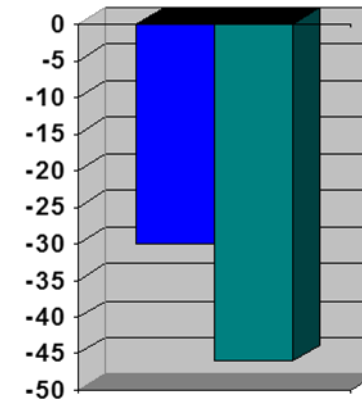
Management
of
externalities

M. Friedman: "*The Social responsibility of Business is to Increase its Profits*"

↳ Corporation is a(n imperfect) 'tool', not a 'person'

Ethical Chart

Social, Environmental engagements "To Infinity... and Beyond!"



Any human action – made individually or through an undertaking – triggers responsibility, generates *concerns* about impact on social and natural environment.

↳ impact = 'externalities'

Externality

- **Definition:** in an economic transaction, an externality is a cost (negative externality) or a profit (positive externality) which is not taken into account in the terms of the transaction.
 - **Positive externality:** pollination by bees



- **Negative externality:** air pollution by industrial plant



Definition European Commission – 25 October 2011

- Communication (COM(2011) 681 of 25 October 2011): CSR is

“the responsibility of enterprises for their impacts on society”

Definition of **sustainability** (Brundtland Report “*Our Common Future*” UN, 1987)
«the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs»

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Belgian Court of cassation, 28 November 2013

« L'intérêt social est déterminé

➤ par le but de lucre

➤ collectif

➤ des associés

➤ actuels *et futurs*

de la société. »

« Het belang van een vennootschap wordt bepaald

➤ door het collectief winstbelang

➤ van haar huidige en *toekomstige* aandeelhouders »

Project PACTE (France)

- Amendment of section 1835 Civil Code, addition of the following paragraph:

« La société est gérée dans son intérêt social et en prenant en considération les **enjeux sociaux et environnementaux** de son activité »

- 9 octobre 2018: Projet voted by the Assemblée Nationale
- Transmitted to the Sénat

New Corporations and Associations Code (Draft)

“Artikel 1:1. Een vennootschap wordt opgericht bij een rechtshandeling door één of meer personen, vennoten genaamd, die een inbreng doen. (...). **Een van haar doelen** is aan haar vennoten een rechtstreeks of onrechtstreeks vermogensvoordeel uit te keren of te bezorgen.”

« Article 1:1. Une société est constituée par un acte juridique par lequel une ou plusieurs personnes, dénommées associés, font un apport. (...). **Un de ses buts** est de distribuer ou procurer à ses associés un avantage patrimonial direct ou indirect. »

- 14 November 2018: Project voted by Commission
- Transmitted to House of Representatives, ... still pending

United Kingdom

- section 172 of the Companies Act 2006:

« ***Duty to promote the success of the company***

*(1) A director of a company must act in the way he considers, in good faith, would be most likely to **promote the success of the company for the benefit of its members** as a whole, and in doing so **have regard (amongst other matters) to***

*(a) the likely consequences of any decision in **the long term**,*

*(b) the interests of the company's **employees**,*

(c) the need to foster the company's business relationships with suppliers, customers and others,

*(d) the impact of the company's operations on the **community** and the **environment**,*

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

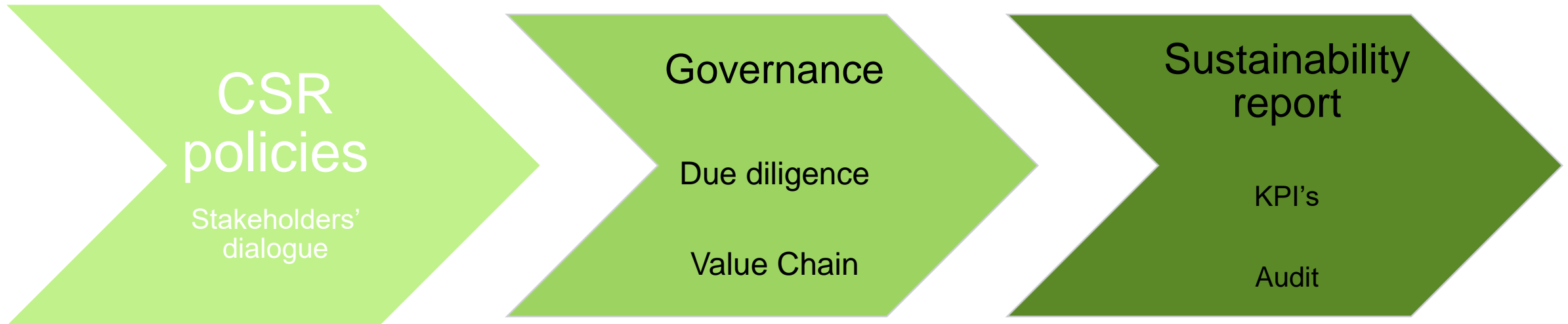
(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company. » (we underline and emphasis)

CSR, Company Law and ESG

DIRECTIVE 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards **disclosure of non-financial and diversity information** by certain large undertakings and groups

Whereas

(3) (...) disclosure of non-financial information is vital for **managing change towards a sustainable global economy** by combining **long-term profitability** with **social justice** and **environmental protection**.



U.N. Summit 2015 / COP 21 – Paris 2015 / GRI Standards



The United Nations Sustainable Development Summit for the adoption of the post-2015 development agenda and the Sustainable Development Goals will be held from 25 to 27 September 2015 in New York and convened as a high-level plenary meeting of the General Assembly.

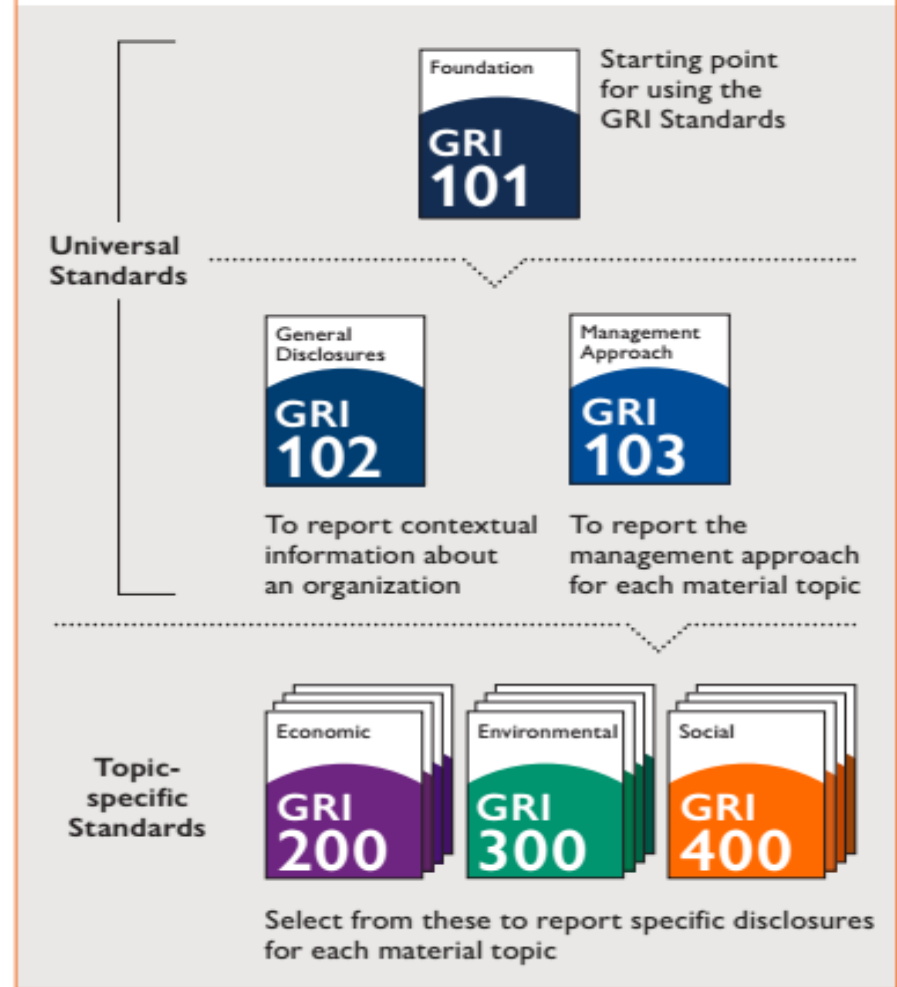


17 goals
169 proposals

Lutter contre les changements climatiques



Figure 1
Overview of the set of GRI Standards



QUESTIONS?

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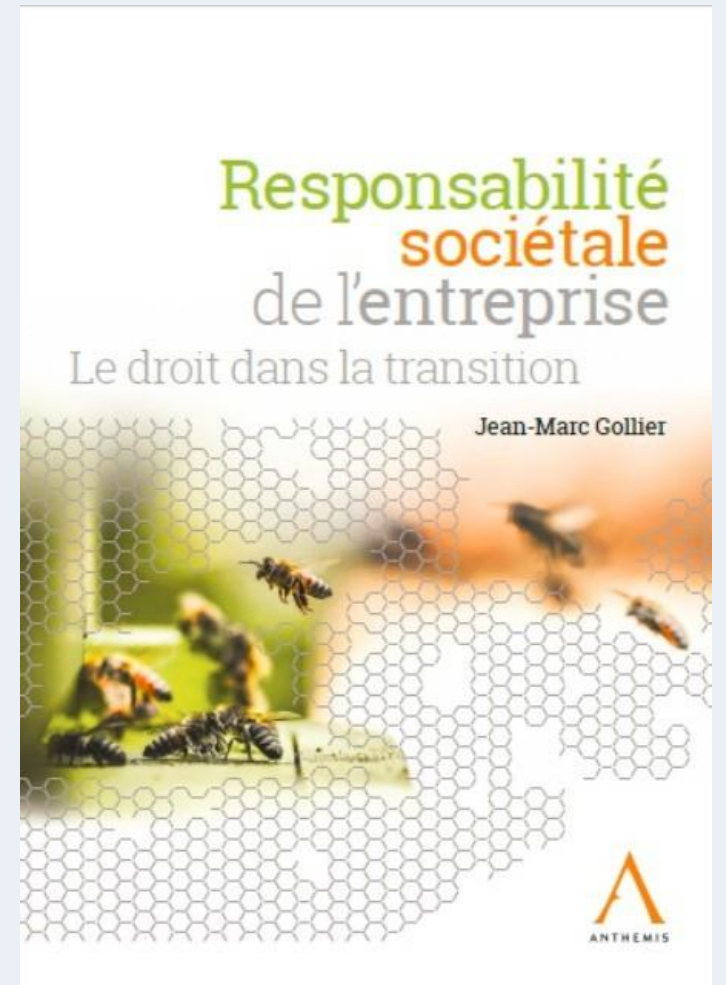


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CSR report:

https://www.eubelius.com/sites/default/files/csr-rapport_2012-2017_en_gecomprimeerd.pdf

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