Company Law and Sustainability: Legal Barriers and Possibilities

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Overview of my presentation

• Safe and just operating space for humanity
• The role of business and finance
• The results of the Sustainable Companies Project (2010-2014)
• The need for a regulatory ecology approach

• The H2020-funded SMART Project (2016-2020) and possibilities for collaboration
Safe & just operating space for humanity
The role of business and finance

• Business is the backbone of our economies

• Yet: «Business as usual» is not an alternative
  – A very certain path towards a very uncertain future
  – Voluntary shift towards sustainability too slow
  – Competitive advantage for unsustainable business

• Finance in the era of financialisation:
  – Finance for business or finance for the financiers?
  – Financial crises just the tip of the iceberg
  – What the Panama Papers reveal

• Safe and just operating space is threatened
Business is often organised in groups
But who is in control....

... may be difficult to unravel

The Sustainable Companies Project (2010-2014)

• We investigated legal infrastructure of the company: core company law; corporate groups; reporting
• Why the company?
• The company is an ingenious invention
  – Channelling capital to entrepreneurs
  – Creating value for investors, employees and society
• And it is a dominant form of business
• Business and finance
Main results of the SC analysis

- Unrealised potential in company law
  - Possibilities for change in company law
  - Shareholder value vs shareholder primacy
  - Short-term, narrowing effect of shareholder primacy

- Inadequate reporting requirements
  - ‘Non-financial’ reporting not treated seriously
  - Reporting often neither relevant nor reliable
  - Missing link between reporting & corporate duties

- Corporate groups: gap control & responsibility
  - Shareholder primacy exacerbated
A tentative reform proposal for Sustainable Companies

• Redefine the corporate purpose:
  – creating sustainable value within the planetary boundaries while respecting the interests of its investors and other involved parties

• Redefine the duty of the board:
  – To promote life-cycle-based sustainable value creation
  – Includes group issues & supply chain

• Operationalise through long-term, life-cycle-based business plan; key performance indicators to report on

• And: much remains to be analysed and understood!
Regulatory ecology for sustainability

• A polycentric approach to regulation:
  – Law; social norms; markets; architecture

• In the planetary boundaries context this calls for a systemic, interdisciplinary approach
  – Where are the problems?
  – What regulatory factors impact on them?
  – Where and how do we need to make changes?
Sustainable Market Actors for Responsible Trade (SMART)

• Funded under the H2020 call: Europe as a global actor: in search for greater policy coherence for development

• The basis for our contribution:
  – Successful development requires sustainable development
  – The EU’s private market actors and public sector as market actors are crucial to achieving the EU’s development goals
  – Comprehensive, ground-breaking research into the regulatory complexity of the EU’s private and public market actors’ impact on developing countries is required
  – Systemic, interdisciplinary approach is needed
What do we want to achieve?

Contribute to global, sustainable development
within a circular, low-emission economy
compatible with the planetary boundaries
in line with the international development goals
How do we intend to contribute?

• Identify barriers and possibilities in the regulatory ecology of market actors

• Our factual starting point:
  – European businesses selling goods to European consumers & procurers
  – Goods have global supply chain

• Systemic understanding & new insights

• Policy reform proposals

• Sustainability assessment guidelines

• PCD guidelines
How do we intend to work?

• Overarching:
  – Integrate planetary boundaries & international social goals (grand challenge)
  – Systemic, interdisciplinary approach
  – Macro-level hotspot analysis
  – Develop systemic, regulatory ecology theory
  – Mapping & analysis of regulatory ecology

• Product-specific:
  – micro-level hotspot analysis
  – mapping & analysis of regulatory ecology

• Result-oriented, proactive approach
The SMART Consortium

• 25 partners: Europe, Asia, Africa, US, Australia
• 50 scholars (+ their PhD students + network)
• In Europe, select Member States:
  – The Nordic countries
  – The United Kingdom
  – Ireland
  – The Netherlands
  – Italy
  – Poland
  – Slovakia
  – Germany
Object of investigation:

What factors enable or hinder public & private market actors in making development-friendly, environmentally & socially sustainable decisions?
Policy coherence development

Systemic regulatory ecology

- Global sustainable development
- Trade and logistics
- Finance and investment
- Sustainable business
- External regulatory incentives
- Public actors
- Consumers
Happy to stay in touch!

• **Info on our projects and networks:**
  jus.uio.no/companies (under Projects and Networks)

• **Recent publications:**
  – *The Greening of European Business under EU Law*, Sjåfjell & Wiesbrock (eds), Routledge, 2015
  – *Company Law and Sustainability*, Sjåfjell & Richardson (eds), Cambridge University Press, 2015
  – *Sustainable Public Procurement under EU Law*, Sjåfjell & Wiesbrock (eds), 2016

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