

Social responsibility of the manufacturer in a scope of product safety

Spółeczna odpowiedzialność producenta w zakresie bezpieczeństwa produktów

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Abstract

In this paper product safety issues were presented from the perspective of running a socially responsible company. The first part outlined the concept of corporate social responsibility (CSR). Then two initiatives related to this concept were presented, stressing the themes on consumer protection. Next the regulations and systems to ensure the health and safety of consumers were discussed.

Słowa kluczowe: CSR, interesariusze, ochrona konsumenta, RAPEX, HERMES

Abstrakt

W artykule przedstawiona została problematyka bezpieczeństwa produktów z perspektywy działania przedsiębiorstwa społecznie odpowiedzialnego. W pierwszej części zarysowano pojęcie społecznej odpowiedzialności przedsiębiorstw (CSR). W dalszej kolejności zaprezentowano dwie inicjatywy związane z tą koncepcją, a w szczególności zwrócono uwagę na zawartą w nich tematykę ochrony konsumentów. Następnie omówiono regulacje prawne oraz systemy mające na celu zapewnienie ochrony zdrowia i bezpieczeństwa konsumentów.

Introduction

The concept of corporate social responsibility (CSR) relates to identifying and balancing stakeholder expectations while taking into account social and environmental consequences of the company's activities. For this reason, the concept is also called *company stakeholder responsibility* [1]. In the literature, stakeholders are often determined as carriers of the risk, interested parties or groups, strategic supporters. They are those groups who affect and/or could be affected by an organization's activities, products or services and associated performance. Clients/consumers are the first degree stakeholders [2], i.e. stakeholders, who conclude formal contracts and agreements with the company. Without the commitment of these stakeholders the company cannot survive or grow. Manufacturers are trying

to offer their customers products that meet their expectations and needs. First, however, entrepreneurs are obliged to guarantee its customers safety of their life and health from the product side.

The study conducted by the Consumer Federation [3] on the entrepreneurs knowledge of the universally binding law regulating the problem of product safety showed that over a half of the businessman are not familiar with these regulations and obligations imposed on them by the product safety law. Knowledge of these issues is extremely important both for the reason of consumers protection and safety and the responsibility connected with it, which rests on the manufacturer, distributor, and in some cases on the seller.

This aim of this article is to draw attention on the products safety as a base of socially responsible company, as well as to indicate legal regulations

related with producer responsibility and protection of consumer rights protection.

Social Responsibility of the Producer

Under the directives of the European Parliament and Council 2001/95/EC on general product safety, the term *producer* means:

- the manufacturer of the product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;
- the manufacturer's representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product;
- other professionals in the supply chain, insofar as their activities may affect the safety properties of a product.

Corporate Social Responsibility means that the company is aware of obedience both the moral principles and commitments made to account for its activities in the legal rigors before the public and employees. The top management of the company is responsible for the actions and the consequences of actions in the field of: life and health of other people, including their safety, environmental quality, the right collaboration with the others [4]. The concept of social responsibility is often define as a holistic, which stems from the fact that you cannot be a little bit responsible and a little irresponsible [5]. The most quotes model of social responsibility, by A.B. Carroll (see figure 1), results in a vivid way (the model is presented in the form of a pyramid) that the hierarchy of social responsibility is built on the Maslow's hierarchy of needs model. Economic responsibility is the foundation. To exist, the company must comply with it – there is no other choice. Legal responsibilities is located above. There is a choice. Manager may decide against the law and the company, acting economically, will exist. However, this lack of legal liability can be detected and unethical choice of manager is risky – the company may incur legal liability. Therefore, strictly law-abiding companies are guided by the ethical responsibility further. Selection of decisions at this level is associated with the number of additional criteria. The most complex are the decisions of firms which taking on the philanthropic responsibility. They are located at the top of the corporate social responsibility pyramid [6].

The concept of CSR is characterized by a wide range of topics and the multiplicity of stakeholders,



Fig. 1. The Pyramid of Corporate Social Responsibility [7]
Rys. 1. Piramida Społecznej Odpowiedzialności [7]

whose expectations the company should take into account. Themes of health and safety is present in all initiatives related to running a socially responsible company. To present in this article, the author has chosen two global initiatives – *the international standard ISO 26000 and the OECD Guidelines for Multinational Enterprises*.

The ISO 26000:2010 standard [8], which aim is to systematize the knowledge in the field of CSR, corporate social responsibility are described under the seven thematic areas: organizational governance, human rights, labour practices, environment, fair operating practices, consumer issues, community involvement and development [9]. In view of the issues discussed in the article, elaboration requires area connected with customers / consumers. This area, among the issues relating to responsible marketing, consumer service, support, and complaint, consumer data protection and privacy and access to essential services covers the topics of consumers health and safety protection. In accordance with ISO/FDIS 26000:2010 protection of consumers' health and safety involves the provision of products and services that are safe and that do not carry unacceptable risk of harm when used or consumed. The protection should cover both the intended use and foreseeable misuse. Clear instructions for safe use, including assembly and maintenance, are also an important part of the protection of health and safety. Products and services should be safe, regardless of whether or not legal safety requirements are in place. Safety includes anticipation of potential risks to avoid harm or danger. As all risks cannot be foreseen or eliminated, measures to protect safety should include mechanisms for product withdrawal and recall. In protecting the health and safety of consumers, an organization should take the following actions and pay special attention to vulnerable groups (with special attention to children) that might not have the capacity to recognize or assess potential dangers. It should:

- provide products and services that, under normal and reasonably foreseeable conditions of use, are safe for users and other persons, their property, and the environment;
- assess the adequacy of health and safety laws, regulations, standards and other specifications to address all health and safety aspects. An organization should go beyond minimum safety requirements where there is evidence that higher requirements would achieve significantly better protection, as indicated by the occurrence of accidents involving products or services that conform to the minimum requirements, or the availability of products or product designs that can reduce the number or severity of accidents;
- when a product, after having been placed on the market, presents an unforeseen hazard, has a serious defect or contains misleading or false information, stop the services or withdraw all products that are still in the distribution chain. An organization should recall products using appropriate measures and media to reach people who purchased the product or made use of the services and compensate consumers for losses suffered. Measures for traceability in its value chain may be pertinent and useful;
- minimize risks in the design of products by:
 - identifying the likely user group(s), the intended use and the reasonably foreseeable misuse of the process, product or service, as well as hazards arising in all the stages and conditions of use of the product or service and, in some cases, provide specially tailored products and services for vulnerable groups;
 - estimating and evaluating the risk to each identified user or contact group, including pregnant women, arising from the hazards identified; and
 - reducing the risk by using the following order of priority: inherently safe design, protective devices and information for users;
- assure the appropriate design of information on products and services by taking into account different consumer needs and respecting differing or limited capacities of consumers, especially in terms of time allocated to the information process;
- in product development, avoid the use of harmful chemicals, including but not limited to those that are carcinogenic, mutagenic, toxic for reproduction, or persistent and bio-accumulative. If products containing such chemicals are offered for sale, they should be clearly labelled;
- as appropriate, perform a human health risk assessment of products and services before the

introduction of new materials, technologies or production methods, and, when appropriate, make documentation available to consumers;

- convey vital safety information to consumers using symbols wherever possible, preferably those that have been internationally agreed, in addition to the textual information;
- instruct consumers in the proper use of products and warn them of the risks involved in intended or normally foreseeable use; and
- adopt measures that prevent products from becoming unsafe through improper handling or storage while in the care of consumers.

OECD Guidelines for Multinational Enterprises [10] are recommendations addressed by governments to multinational enterprises. They provide voluntary principles and standards for responsible business conduct consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable. The document is determining behavior standards for multinational companies, relating to the business aspects such as disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, taxation.

According to the Guidelines discussed, which can act as a foundation for socially responsible strategy, enterprises when dealing with consumers, should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the safety and quality of the goods or services they provide. In particular, they should:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels;
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions;
3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden;
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair;
5. Respect consumer privacy and provide protection for personal data;
6. Co-operate fully and in a transparent manner with public authorities in the prevention or

removal of serious threats to public health and safety deriving from the consumption or use of their products. [10].

Summarizing the above considerations it should be noted that one of the basic conditions for running the socially responsible business is to protect the rights of consumers and providing them with safe products.

Consumer protection

The protection of life and health of consumers and their economic interests was and is the primary objective of EU policy. In accordance with the applicable requirements the consumers have a right to protect both his life and health, and economic interests. Protection of economic interests of the buyers are leading by the rules ensuring the quality of goods offered on the market (rules on guarantees and warranties), the provisions relating to the unauthorized contractual clauses, the provisions of the prohibition of unfair advertising and product safety legislation (general and specific) [11].

Legal expression of the EU consumer policy are consumer directives adopted by the legislation of individual Member States [11]. Particular attention in the field of consumer protection deserve two directives:

1. Directive 1999/34/EC of the European Parliament and of the Council amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [12] as well as
2. Directive 2001/95/EC of the European Parliament and of the Council on general product safety [13].

According to article 1 of the Directive 85/374/EEC, the producer shall be liable for damage caused by a defect in his product. Protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective. For the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified [14]. According to article 3 paragraph 3, when the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product.

The producer shall not be liable as a result of this Directive [14], if he proves:

(a) that he did not put the product into circulation; or

(b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or

(c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; or

(d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or

(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or

(f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.

The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.

Consumer permissions resulting from the Directive are limited in time. The manufacturer bears responsibility only for ten years since the introduction of a defective product on the market. In addition, the consumer may assert their rights under the directive within three years from the date on which discover or could easily learn of the damage [15].

Consumer rights is an area which has undergone significant changes in Poland recent years. The changes were primarily related to the Polish accession to the European Union in May 2004. With the adoption of Community law, the scope of consumer protection has been broadened, it has been strengthened to monitor compliance with the law in this area. For the protection of consumer rights and interests has been appointed Office of Competition and Consumer Protection (OCCP). President of the OCCP has the authority to order the withdrawal of dangerous products, may investigate and make decisions in the case of practices infringing the interests of consumers, may also intervene in cases where contracts between the seller and the buyer contain so "prohibited clauses" – which is contrary to the provisions of law or morality [16].

To ensure a high level of health and safety of consumers in the European Union in 1984 the RAPEX system was established [17] – the European system for rapid exchange of information on dangerous products. The legal basis for its operation is Directive 2001/95/EC of the European Parliament and the Council of 3rd December 2001 on general product safety. The functioning of this system lies in the collection and exchange of data between Member States and the European Commission about products posing a threat to life or consumers health [18]. Information on products posing a threat are distributed between the competent authorities in this area through a network of national contact points (a single point was set up in each country [19]). Information about dangerous products are also important for consumers, and for this reason, since 15th January 2004 the European Commission, has been publishing on a website dedicated to consumer affairs, weekly updated reports on products posing a serious threat, which was notified to the system. For each product the reports supply us following information: description of the product with an indication of the risks it causes, the reporting country the product in the system and measures taken in relation to the product by the country making a notification [20]. Data from the European Commission [21] shows that RAPEX helps to raise the level of consumer safety. The total number of notifications transmitted through the system has increased since 2004 [22], thereby the number of cases of withdrawal from the market products that threaten the health of consumers has increased. In the years 2004–2008 the number of notifications increased fourfold [23]. Among the dangerous products mostly are reported toys, electrical appliances and motor vehicles. Polish counterpart in the RAPEX-system is HERMES [24], led by the Office of Competition and Consumer Protection (OCCP). On the system website you can see a list of disputed articles that have found on it, if the control procedure performed by an institution of control [25] demonstrates that the product does not meet the essential requirements. Entry shall be made by the President of the OCCP. Like the RAPEX system, HERMES is equipped with a search engine to facilitate the identification of products not meeting the essential requirements [26].

Product safety

The Act on general product safety (12th December 2003, Register No. 229, item. 2275) transposes the Directive of the European Parliament and

Council 2001/95/EC requires to launch onto the market only safe products and requires from producers a number of responsibilities - ranging from indication on the product name and address of the manufacturer, conduct research, provide consumers with information to assess possible risks and the obligation to inform the President of the OCCP in the case where the manufacturer finds that has launched a dangerous product [27].

According to the Directive 2001/95/EC for the safe product is considered, any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular:

- the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;
- the effect on other products, where it is reasonably foreseeable that it will be used with other products;
- the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product;
- the categories of consumers at risk when using the product, in particular children and the elderly.

The product that does not satisfy the requirements mentioned above is not safe [28].

The provisions of applicable law provide for severe penalties for traders who do not comply with the requirements of the Act. These penalties apply to both launching unsafe products, and failure to perform duties imposed by the supervisory authority. On a fine and imprisonment shall be liable to an entrepreneur who is launching the products entered in the Register of Dangerous Products [29]. The register is available on the website of the Office for Competition and Consumer Protection.

In order to improve product safety, and thus the health of consumers by monitoring accidental injuries related to the use of consumer products, in 1986 it was appointed European Home and Leisure Accident Surveillance System (EHLASS). This system (database) contains information about non-fatal accidents that have occurred in the home and in leisure time and during sporting activities.

EHLASS system is the only European Union database containing details enable to formulate preventive actions against the increasing wave of accidents in the home and during leisure time in Europe [30].

In Poland, Consumer Accident Monitoring System [31] collects information on consumer accidents about their circumstances and health consequences, as well as products associated with these accidents. The information enable to identify products which, by its nature or circumstances of use may be dangerous. On this basis, intervention action can be taken by the appropriate supervisory institution as well as information and educational activities [32].

Conclusions

Social responsibility is a way of running a company, where goodwill is created complying with the needs and expectations of its stakeholders. More responsible is the company that does not divide its profits, but the one that generates its profits in a fair, ethical manner, such as ensuring safe use of its products. Implementation of CSR without fulfilling by the company its elemental commitment, which is compliance with the law, can be likened to building a house, where the construction starts from the roof rather than the foundations. We cannot speak about socially responsible company without ensuring safety products for their clients / consumers.

In accordance with applicable law, the manufacturer shall be liable for damage caused by produced defective product. In order to protect consumer health and safety in the European Union have been set up appropriate systems and records of dangerous products. The information contained in them allow to take preventive action. Fast-paced changes in product design, construction and materials means that products can be used prior to the relevant legal requirements for safety [9]. Products offered by a socially responsible manufacturer should be safe, regardless of whether the relevant legal requirements for safety have been established.

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