Competition Law, Ethics and Corporate Social Responsibility

*By Ioan Lazăr**

The importance of corporate social responsibility (CSR) activities has increased in recent years. More undertakings active on different markets are becoming aware of the importance of improving labour policies, investing in safety training of employees, environmental protection, local community-related projects, volunteering, and charitable activities. At issue is whether higher degrees of competition associated with periods of economic crisis will affect the degree of competition on the market in a favourable or a non-favourable manner. Based on statistical data currently available, this paper will analyse whether higher levels of competition will increase investments in CSR activities to create trustworthy firms that will survive even in economically harsh periods, or will otherwise reduce the aforementioned types of investments and thereby facilitate the flourishing of anticompetitive practices on the market. This paper will first start with a short presentation of the concept, importance and meaning of corporate social responsibility, followed by considerations related to the importance of ethics in competition law. Finally, the author will analyse the impact of competition on CSR-related activities and the ways in which the pressure of competition can impact on CSR investments.

Keywords: *Corporate social responsibility; Competition; Anticompetitive practices; CSR activities; CSR investments*

Introduction

Nowadays, companies are operating in an open and globalised economic environment where consumers are highly informed, having access to important information allowing them to choose the right products that best fit their needs.

Development over recent years has sustained the tendency of consumers, investors, and employees to conduct business in a way that also contributes to the greater good of society. In this context, care for the environment, the improvement of labour conditions, engagement in corporate social responsibility activities, contribution to the well-being of local communities has become an integral part of the company's efforts.

Today's companies are operating in a business environment in which undertakings are operating on the market with a clear deeming purpose. Besides their economic goals, they are contributing to the attainment of socially important

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goals (e.g., poverty reduction, recycling, care for local producers, promotion of low toxicity products, etc.).

Also, another reality of the actual business conditions is the presence on the market of well-informed consumers, who demonstrate no tolerance towards unethical companies. The proliferation of the use of social networks permits consumers to show collective resistance to companies consciously engaged in business practices detrimental to the consumer.

Corporate social responsibility related activities are increasing the value which consumers, employees, clients, and commercial partners are attributing to businesses, especially in the pandemic context, bringing to the forefront issues related to food insecurity, poverty, social problems, local communities' cohesion, wage disparities, healthcare system capacity.

The current state of research in this domain indicates that companies increasingly focus on corporate social responsibility and related activities in times of crisis because the companies' long-term profits are dependent on embracing the needs of customers, employees and suppliers.

Recent studies[1] indicate that companies investing in their employees, providing safe products to consumers, dealing fairly and ethically with suppliers, and protecting the environment are more appreciated in the eyes of consumers.

The intensification of competition in times of crisis was considered to have determined firms to differentiate their products, and CSR activities represent one strategy to obtain that differentiation on the one hand and the loyalty and trust of stakeholders in general, on the other hand[2].

The second current opinion on the topic in the specialised literature considers that the intensification of competition for markets and consumers, which is specific during economic crisis, will determine companies to pay attention to market competition strategies more focused on short-term survival, based on cost reduction. In this latter view, CSR related costs are considered avoidable and usually cut from the list of the companies' costs[3].

On the other hand, economic crisis can represent a period in which anticompetitive behaviours (especially in the form of illegal state aids, anticompetitive agreements, abuse of dominance) and unethical behaviours (e.g., exclusion of competitors, exploitation behaviour of dominant companies, environment pollution, worker abuse to reduce costs etc.) of companies can flourish[4].

Another important aspect that has been analysed in the specialised literature regards the way in which companies are reacting to economic crisis, depending on the size of their market shares[5]. It can be observed that firms with bigger market shares tend to invest more in CSR related activities in times of economic crisis,

[1]See for example, Lins, Servaes & Tamayo (2017); Servaes & Tamayo (2017); Asemah-Ibrahim, Nwaoboli & Asemah (2022); Souto (2009); Simionescu & Dumitrescu (2014); Bhattacharya, Good & Sardashti (2020).

[2]International Monetary Fund (2022); Dobre (2013); Notta & Vlachvei (2015).

[3]See for example, Kee-Hong, El Ghoul, Gong & Guedhami,(2021); Havlinova & Kukacka (2023).

[4]See for more details on the subject at Gurria, Jenny, Ferrandi, Szilágyi, Lueckenhausen, Jaspers, Harrop & Russell (2020); Da Silva & Núñez Reyes (2021); Lowe (2009).

[5]Buchanan, Cao & Chen (2018); Ogachi & Zeman (2020).

when the expected benefit of investments in these kinds of activities allegedly higher. On the other hand, companies with small market shares are focused on reducing the costs in crisis periods as part of the general tendency to reduce costs in the context of financial constraints.

The Concept and Typology of Corporate Social Responsibility

From a conceptual point of view, corporate social responsibility can be defined as the sum of the business initiatives of commercial companies related to ethics and sustainability and which present a social impact, contributing to the achievement of the respective company's mission in the world and which influence the way the company is perceived in society.[6]

Today's businesses are organisations whose missions go beyond the mere objective of profit maximisation, and are also part of the social construct of the communities in which they operate. According to the OECD Corporate Governance Principles, social responsibility is associated with the concept of good corporate governance that positively influences consumers' behaviour, as they have a positive perception of businesses that engage in such practices.[7]

The objective of enterprises is, after all, to find a balance between making a profit at the enterprise level, creating economic value for shareholders, while at the social level, contributing to the increase of social well-being by reducing unemployment and increasing the gross national product.

The corporate social responsibility activities are considered more important in periods of financial crisis when the implications of such undertakings contribute to the improvement of the company's social image and increases the consumers' confidence in the quality of services offered by the company. However, financial crises negatively influence the investment of companies in social projects, in the context of the general tendency of companies to reduce costs related to economic activity.

Corporate social responsibility actions are considered especially important in times of financial crisis when the enterprises' involvement in such activities contributes to generate a better social company image and increases the confidence of consumers in services/products offered.

Regarding the typology of social responsibility activities, the specialised literature distinguishes[8] between: environmental social responsibility, social responsibility related to the protection of fundamental rights and aspects related to ethics in business, philanthropic social responsibility and economic responsibility.

Environmental social responsibility of companies[9] takes into consideration the commitment of a company to sustainability, as well as to an environment-friendly business conduct by taking measures to reduce greenhouse gas emissions,

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[6]Idowu, Capaldi, Fifka, Zu & Schmidpeter (2015) at 25.
[7]OECD (2021).
[8]See for more details at Hansen & Sierestad (2017) at 51 et seq.
[9]For more details related to the concept of environmental corporate governance see Dathe, Dathe. Dathe & Helmold (2022) at 115.

opting for the use of environment-friendly raw materials, avoiding the use of single-use plastics and in general, and by keeping the care for the environment at the centre of all operations. At the same time, care for the environment cannot exist without the commitment of the company and its employees to the idea of sustainable business development as part of the general mission of the company.

Ethical responsibility of companies involves their commitment to ethical business strategies that respect the principles of fair business practices as well as the fundamental rights of the actors involved.[10] Ethical responsibility, therefore, aims at avoiding any form of discrimination at the workplace related to race, nationality, sex, age, religion, political opinion, etc., guaranteeing a fair minimum wage and avoiding forms of labour exploitation.

The philanthropic responsibility of companies concerns the orientation of the company's actions towards the public well-being in general, by involving the company in charitable actions that serve the good of the local community in which the company operates, or which are related to the well-being of society in general, thus increasing social trust in the company's actions. [11]

Finally, the *economic responsibility* of the company refers to the adoption of financial decisions that serve the public good, such as investments in renewable energy sources, reducing production costs, investments in educational programs and charitable actions.

Besides the types of social responsibility mentioned above, companies can engage themselves in social activities promoting the ideas of good corporate governance by investing in the physical well-being and mental health of employees, by engaging in volunteer activities, by prioritising environmentally friendly supply chains, etc.

The way a company involves itself in different types of CSR activities (environmental, social, economic etc.) has a direct influence on customers' attitudes related to the product and to the satisfaction they show towards a certain brand of service and product. This, in turn, directly influences the reputation of the company (*Figure 1*).

[10]See for more details at Boubaker & Nguyen (2019) at p. VI.
[11]See also at Hopkins (2007) at 113.

Figure 1. *How the Reputation of the Company is formed*

Source: Corporate social responsibility and reputation (reputationx.com)

Ethics in Business and its Importance

In a business environment characterised by fierce competition, the value of ethics in business can be in danger. Promotion of standards of excellence, high quality products and services, equity, teamwork, responsibility, and care for the consumers have direct impact on corporate behaviour and their employers and can represent an asset of the company in its competition to attract more clients.

The concept of fair competition implies the obligation of economic agents to exercise their business activity in good-faith and according to honest commercial customs. Thus, fair competition expresses a concept of affirmation in business, through generally accepted and honest commercial strategies.

Unfair competition is defined[12] as the sum of commercial acts contrary to honest customs in industrial and commercial matters, such as: comparative advertising; offering advantageous terms in commercial contracts if the client also attracts other buyers; false advertising regarding the characteristics of products or services, the nature or content of services, omission of essential information; dissemination of false or misleading information regarding competitors; the discrediting of competitors, aggressive advertising practices, etc.

Legislators worldwide are sanctioning unfair commercial practices by applying civil, criminal, and administrative sanctions in order to protect the interests of consumers and to facilitate small and medium-sized companies to penetrate markets.

[12]For details see de Very (2006) at 8.

At the European level, *Directive no. 2005/29/EC*[13] regulates unfair commercial practices in order to realise relatively uniform rules at the level of Member States regarding unfair business-to-consumer commercial practices, materialised in any act or omission directly related to the promotion, sale or supply of a product or service by a trader to consumers. The objective of the directive is to realise the protection of consumers interests before, during and after commercial transactions, irrespective of the place of purchase or sale in the EU.

The Directive mentioned above defines unfair commercial practices[14] as those contrary to the requirements of professional diligence and those which are likely to distort the purchasing behaviour of the average consumers by forcing them to make purchasing decisions that they otherwise would not make in the absence of such unfair commercial practice. The provisions of the directive differentiate between misleading commercial practice (made by action or omission) and aggressive commercial practices. They also contain an exemplificative list of commercial practices prohibited in all circumstances.

In the first category of *misleading commercial practices*[15], they mention the category of misleading actions, such as the company offering false or deceptive information regarding the existence, nature or characteristics (benefits, risks, composition, origin etc.) of the product, the extent of commitment of the trader, eventual price advantages, and service of repair related information.

Further, in the second category of misleading commercial practices, the directive refers to *misleading omission*[16], manifested by information offered in an unclear, unintelligible, ambiguous or untimely manner which can cause an unspecific purchasing decision.

In the light of the above-mentioned directive, *aggressive commercial practices*[17] are considered those practices which significantly impair the freedom of choice of average consumers, by making them take purchasing decisions that otherwise they would not have taken, due to aggressive or unfair coercion, harassment, or undue influence. The aggressive nature of commercial practices is determined by taking into consideration the nature, location and duration of practices, the use of abusive language or behaviour, the existence of specific health circumstances that impair the consumers' judgement or that influence their decisions regarding the product.

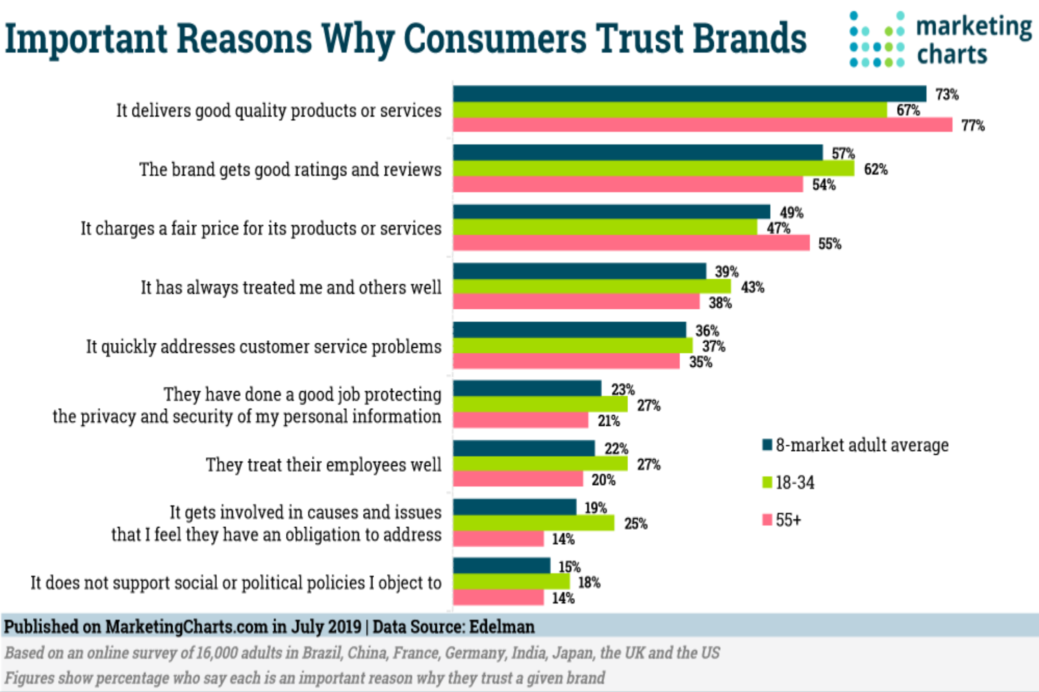
The directive contains a list[18] of 35 unfair commercial practices which should be prohibited by Member States, such as: the publication of fake consumer reviews; hidden advertising in search results and the resale of tickets that the trader has acquired using automated means; displaying a trust mark, quality mark or equivalent, without having obtained the necessary authorisation; stating the false information that the product can be legally sold; false statement related to the limited nature of the products or services; falsely describing a product as sold for

[13]Directive no. 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning, *at 22–39.*
[14]Directive no. 2005/29/EC, Art. 5.
[15]Directive no. 2005/29/EC, Art. 6.
[16]Directive no. 2005/29/EC, Art 7.
[17]Directive no. 2005/29/EC, Arts 8-9.
[18]Directive no. 2005/29/EC at Annex no. 1.

free, making persistent and unwanted solicitations by telephone, mail or other means etc.

Regarding sanctioning the unfair commercial practices Directive no. 2019/2161/EU[19], which was amended to Directive no. 2005/29/EU, refers to specific solutions that the affected consumers can obtain, for example in the form of compensation or price reduction. The penalties Member States will sustain for such practices should be effective, proportionate, and dissuasive and they should amount to at least 4% of the trader's turnover and above 2 mil. Euro in major cross-border infringement cases[20].

Figure 2. *The Factors which Influence Consumers' Trust*

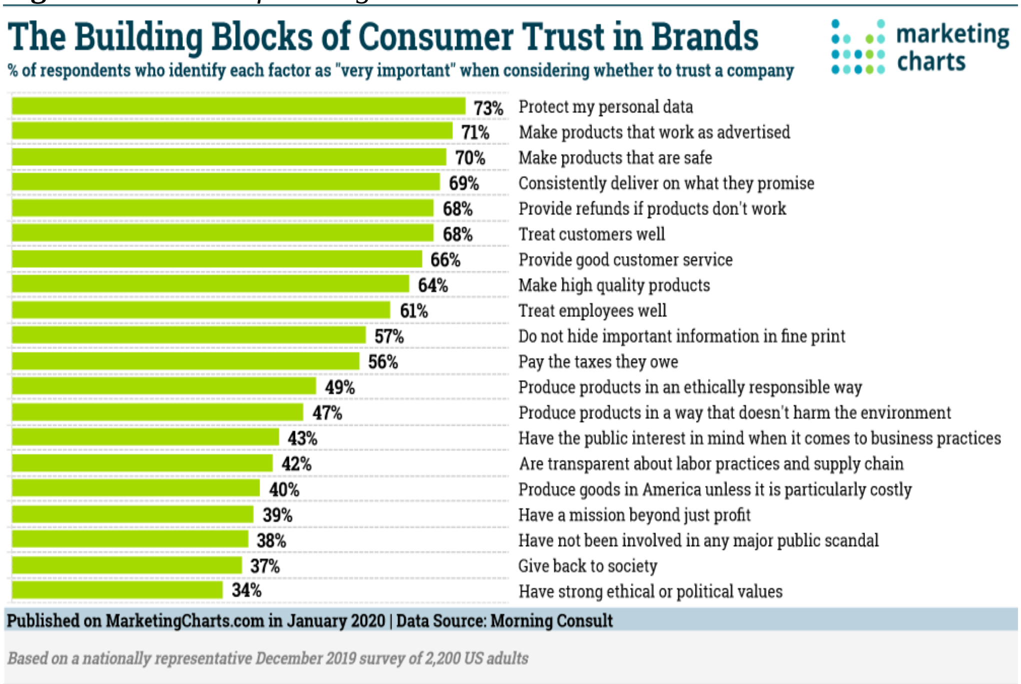


Source: [Brand Trust Is Becoming More Important: Here Are Some Key Stats And Themes - Marketing Charts]() ([www.marketincharts.com]() – 2019)

[19]Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 at *7–28.*

[20]Directive no. 2019/2161/EU, Art. 1.

Figure 3. *Factors Influencing Consumers Trust in the US*



Source: The Building Blocks of Consumer Trust in Brands - Marketing Charts (www.marketing charts.com – 2020)

Statistical data offered recently to publicity (*Figure 2*) shows, that, besides the good quality of products and services offered by an undertaking on the market, consumers – irrespective of their age – trust brands for perceiving a fair price for the offered product and services, for the fair treatment accorded to their consumers and to their employees, as well as for their implementation in solving the problems of communities where they are activating.

Similarly, a market study carried out on US consumers (*Figure 3*) has revealed relatively similar results showing that consumers appreciate fair advertising, fair treatment of consumers and employees even above product quality. Ethical production, strong ethical values, care for the environment, production in accordance with public interest, transparency, mission beyond profit and the fact that they are offering back to consumers are also important factors when it comes to consumers' decisions to buy certain products.

Ethics in business as a component of the companies' socially responsible behaviour prevents malpractices, increases consumer and client confidence, protects consumer rights, contributes to a good image of the company in society, protects employees and other stakeholders from abusive behaviour, contributes to consumer satisfaction. Ethics in business is one of the necessary assets for the success of companies.

In times of economic crisis, keeping the values of ethics in business is even more important in the context of companies' struggle to gain the trust of the major stakeholders (clients and consumers).[21] Therefore, the companies exploiting the crisis are likely to suffer reputational damage.

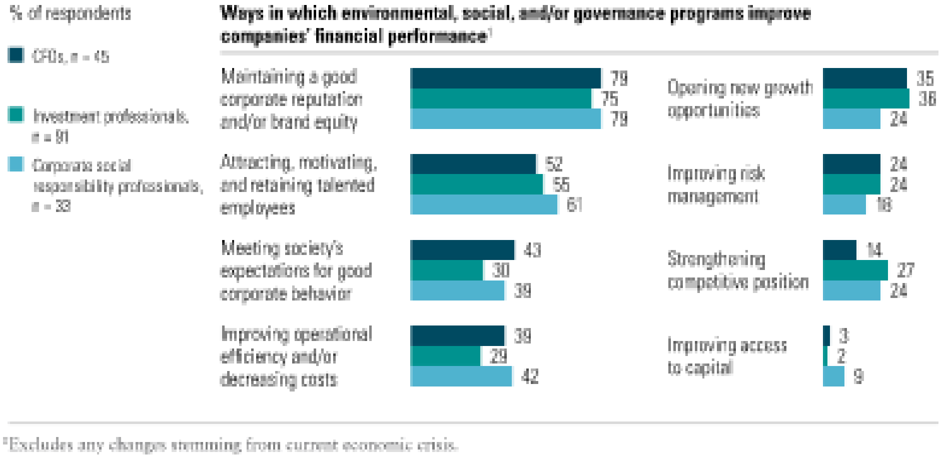
Corporate Social Responsibility of Companies in the context of Economic Crisis, a Strategy to cope with the Effects of the Crisis?

According to specialised literature[22], the company's involvement in social responsibility actions in times of economic recession is associated with a better image of the given company in the business environment, as well as with a high degree of consumer confidence in the products and services offered by the company in question.

Economic recession has been defined as a significant decrease in economic activity at the level of the entire economy, a decrease that is also reflected in the levels of the gross national product.[23] At the company level, periods of economic crisis are characterised by reduced incomes and liquidities, generally followed by reduced costs related to research and development, or marketing activities as well as by reduced amounts of investments in social responsibility.

Although the common strategy of businesses is to reduce investments in social responsibility actions and marketing related costs, they contribute to increasing the value of established businesses in the eyes of consumers in times of crisis. This draws the conclusion that corporate investment in social responsibility actions could represent one of the strategies through which companies could meet the negative effects of economic crisis.

Figure 4. *CSR impact on Firms' Financial Performance*

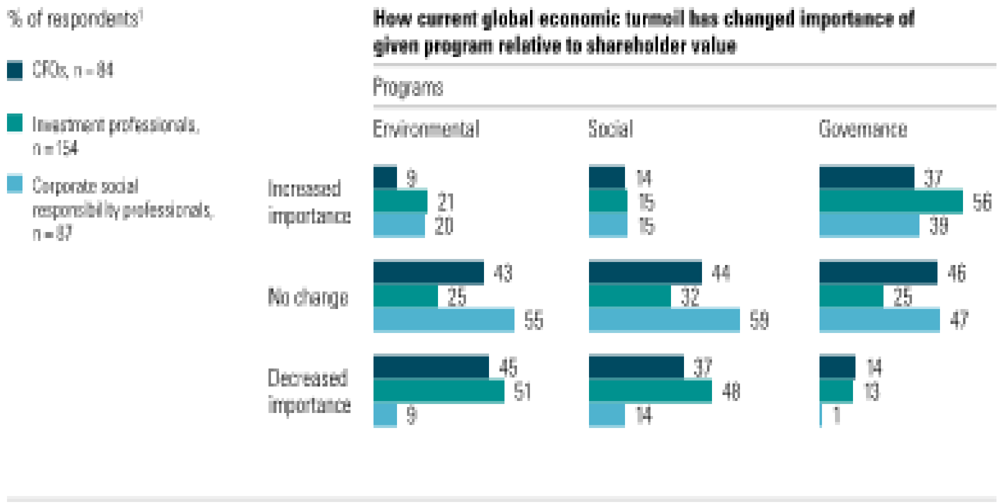


Source:https://www.mckinsey.com/~/media/mckinsey/business%20functions/strategy%20and%20corporate%20finance/our%20insights/valuing%20corporate%20social%20responsibility%20mckinsey%20global%20survey%20results/svgz_srvy_esg_ex2.svgz?cq=50&cpy=Center

[21]See for more details at Cowton, Dempsey & Sorell (2019).
[22]Horrigan (2010) at 13.
[23]Obstfeld, Cho & Mason (2012) at 235.

Indeed, investment in social responsibility actions represents means of differentiating the company and its brands on the market, being an important element in building brand loyalty and significantly influencing consumer purchasing decisions. Therefore, investing in CSR activities significantly contributes in creating a good reputation for the company, in attracting and motivating employees, in opening growth opportunities, and even in improving access to capital and strengthening the competitive position of the company (*Figure 4*).

Figure 5. *Economic Crisis Impact of CSR Importance*



¹Respondents who answered "don't know" are not shown.

Source:https://www.mckinsey.com/~/media/mckinsey/business%20functions/strategy%20and%20corporate%20finance/our%20insights/valuing%20corporate%20social%20responsibility%20mckinsey%20global%20survey%20results/svgz_srvy_esg_ex4.svgz?cq=50&cpy=Center

Regarding the effects of economic crisis on the importance of different CSR activities, the importance of social or philanthropic corporate social responsibility has understandably increased significantly, along with the general idea of good corporate governance. Meanwhile, however, the importance of environmental CSR activities has not changed significantly (*Figure no.5*).

Thus, although economic crises have a generally negative impact, they can also hide development opportunities for companies that manage to exploit the economic potential of the context. [24]

It has been demonstrated that in times of crisis, consumers look for predictability, stability, a reduction in the risks assumed through purchases, basing their choices on trusted brands over trying new ones. They invest in products that offer a lower cost/use and an increased confidence in the durability of the product, thus allocating more time to choose a reliable product[25].

On the other hand, the major criticism of investments made in corporate social responsibility activities regards the fact that the major purpose of organisations is to provide products and services that bring profit to businesses and

[24]For details see Galloway (2020).
[25]Bhattacharya, Good & Sardashti (2020) at 2055 et seq.

not to invest in actions that lead to a decrease in incomes, the main purpose of enterprises being that of profit maximisation[26]. In relation to this argument, we note that, although the short-term investments in social actions involve an expense at the company level, it represents a possible source of maximising profits in the long term.

Thus, economic studies carried out at the level of the European Commission in a pandemic context revealed that 42% of respondents reported an impairment of the company's economic position as a result of the economic impact of the pandemic. Concurrently, 28% of respondents reported increases in the value of products and the services offered by their companies, the latter being the businesses that have identified growth opportunities for their companies by adapting their business strategies to the social and economic context[27] (through digitalisation, investing in social projects, adapting products and services to new consumer needs, the creation of business partnerships, adaptations in supply chains, changes at the logistics level, the creation of innovative products – e.g. telemedicine, online fitness subscriptions, etc.).

Conclusions

The economic crisis generated by the COVID-19-pandemic has given rise to unprecedented challenges for companies in terms of their adaptation to the new realities of markets where they carry out their activities. In this context, companies need to take important decisions about their CSR activities and related costs, respectively if they need to be reduced or, contrarily, if the level of CSR related costs should be maintained or even increased.

The study has shown that the evidence currently available reveals that the character of today’s market economies typified by the presence of highly informed consumers and the widespread use of social networks, the companies’ commitment for the well-being of local communities, for social projects of local communities and towards environmental protection, will constitute an asset for the company and will increase consumer confidence and brand trust, in general.

The results of recent market statistics clearly indicate that the ethical market behaviour of companies is even more important in times characterised by economic instability, accompanied by social vulnerability of consumers, food insecurity, poverty, and increased needs for cohesion in society.

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[26]Karaibrahimoglu (2010) at 382.

[27]For more details regarding the mentioned possibilities consult *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A Competition Policy fit for New Challenges,* Bruxelles, 18.11.2021.

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