Why 'less is more' in non-financial reporting initiatives: concrete steps towards supporting sustainability

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Abstract

Calls are repeatedly made on corporations to respond to the challenges facing the planet from a sustainable development perspective and governments take solace in the idea that corporations' transparency on their corporate activity in relation to sustainability through voluntary reporting is adequately addressing the problem. In practice, however, reporting is failing to deliver truly sustainable results. The article considers the following questions: how does the varied reporting landscape in the field of non-financial reporting impede the objectives of fostering corporations' sustainable practices and which initiative, among the options available, may best meet the sustainability objectives after a decluttering of the landscape takes place?

The article argues that the varied corporate reporting landscape constitutes a key obstacle to fostering sustainable corporate behaviour, insofar as the flexible and *please all* approach followed in the context of corporate sustainability reporting offers little to no real incentive to companies to behave more sustainably and ultimately *pleases none* in the long run. The case made is that '*less is more*' in non-financial reporting initiatives and hence the article calls for a revision of key aspects of the European Non-Financial Reporting Directive, which, as is argued, is more likely to achieve the furtherance of sustainable corporate behaviour. Although the different reporting requirements offer the benefits of focusing on different corporate goals and activities, targeting different audiences and allowing for a level of flexibility that respects the individual risks to sustainability associated with each industry, the end result is a landscape that lacks overall consistency and comparability of measurements and accountabilities, making accountability more, rather than less, difficult to achieve.

The article acknowledges the existence of several variances relating to the notion of sustainability *per se*, which continues to remain a contested concept and variances between companies and industries in relation to how each is operating sustainably or unsustainably respectively. Such variances have so far inhibited the legislator from easily outlining through tailored legislation the individual risks to global sustainability in an all-encompassing manner. The end product is a chaotic system of financial reporting, CSR reporting, non-financial reporting and integrated reporting and little progress to increase comparability and credibility in order for companies to be held accountable and to behave in ways that do not harm the planet. A 'clean up' of the varied initiatives in the terrain of non-financial reporting is recommended.

Introduction

Climate change is largely a result of human action.[1] Dangerous levels of global warming are giving rise to extreme weather events and rising sea levels, which have manifested in more frequent heat waves, droughts, floods and hurricanes, leading to threats to food security and agricultural production, as well as damage to critical infrastructure and interrupted provision of basic services such as water and sanitation, education, energy and transport, with significant health risks.[2] Recent protests by *Extinction Rebellion* and *Youth Strike for Climate Justice* have brought home the grave threat the planet faces as a result of climate change. Numerous scientific reports have also recently raised the bar with regard to the enormity of the threat. In May 2019 the Report published by the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services noted the real risk of losing a million species, threatening the continued existence of humans too.[3] Another recent report provides that there are only 12 years left to act meaningfully in order to avoid catastrophic levels of global warming with corporations having played a central role in bringing about this global warming threat.[4] The recent IPCC Report on Climate Change highlighted the urgency of the need to reduce carbon emissions by approximately 45%, in order to limit global warming to 1.5°C above pre-industrial levels by 2030, to be cut to zero carbon by 2050.[5] This lends support not only to the Sustainable Development Goals of 2015, especially Goal 13 on urgent action to combat climate change, but also to the 2030 Agenda for Sustainable Development[6] and the Paris Agreement Framework, which came into force in November 2016, for an internationally coordinated effort to tackle climate change.[7]

Industrial activities of corporations of all sizes provide the link between human action and global warming. Thus, as Wright and Nyberg observe, corporations are the 'principal agents' of greenhouse gas emissions.[8] Certain companies in particular have been identified as responsible for emitting nearly two-thirds of industrial carbon dioxide, and a small number of carbon producers are responsible for methane emissions as well as 83 producers of coal, oil, natural gas and 7 cement manufacturers, contributing to a rise in atmospheric concentrations

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[1] Vitousek, P.M., Mooney, H.A., Lubchenco J. and Melillo J.M. 'Human Domination of Earth's Ecosystems' *Science* 25 Jul 1997:Vol. 277, Issue 5325, pp. 494-499.

[2] See eg: Union of Concerned Scientists, *Global Warming Impacts* at https://www.ucsusa.org/our-work/global-warming/science-and-impacts/global-warming-impacts

[3] Brondizio E.S., Settele J., Díaz, S. and Ngo H.T., (editors) (2019) *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science- Policy Platform on Biodiversity and Ecosystem Services*.. (IPBES Secretariat, Bonn, Germany).

[4] Intergovernmental Panel on Climate Change (IPCC) (UN) *Special Report on Global Warming of 1.5 oC* , (SR15) at http://www.ipcc.ch/report/sr15/

[5] Intergovernmental Panel on Climate Change (IPCC) (UN) Special Report on Global Warming of 1.5 oC , (SR15) at http://www.ipcc.ch/report/sr15/

[6] Available at https://www.unenvironment.org/explore-topics/sustainable-development-goals

[7] Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf The Paris Agreement is legally binding and may lead to nations being named and shamed for their failure to fulfil their stated commitments.

[8] Wright, C., & Nyberg, D. (2015) *Climate change, capitalism, and corporations* (Cambridge University Press), at 3.

of CO_2 and CH_4, GMST and global sea level.[9] More generally, corporations supply products and services, contributing towards an increase or decrease in energy use and carbon emissions that leave a carbon footprint. Corporate contribution to climate change is so clear that it merits policy makers' primary attention in terms of prompting corporations' efforts to reduce global warming and carbon emissions. As suggested by the chief executive of the Carbon Trust, 'business will do the heavy lifting in the transition to a sustainable future'[10].

Calls are repeatedly made on corporations to respond to the challenges facing the planet from a sustainable development perspective and governments take solace in the idea that corporations' transparency on their corporate activity in relation to sustainability through voluntary reporting is adequately addressing the problem. In practice, however, reporting is failing to deliver truly sustainable results. The article identifies the existence of several variances that have led to a complex corporate reporting landscape, which, however, operate as setbacks to supporting corporations' sustainable practices. The first variance identified relates to the notion of sustainability *per se*, which continues to remain a contested concept. The second variance exists between companies and industries in relation to how each is operating sustainably or unsustainably respectively. This does not enable the legislator easily to outline through tailored legislation the individual risks to global sustainability associated with each industry in an all-encompassing manner.

As a result of these various factors, a variety of reporting approaches has been allowed and corporations are provided with considerable freedom to shape the debate by making the choice of *what* they will report on and *how* they will report on it. The end product is a chaotic system of financial reporting, CSR reporting, non-financial reporting and integrated reporting. Ultimately, despite the fact that different reporting requirements aim to focus on different corporate goals and activities, to target different audiences and to allow for a level of flexibility that respects the individual risks to sustainability associated with each industry, this varied landscape lacks overall consistency and comparability of measurements and accountabilities, making accountability more, rather than less, difficult to achieve.

The article considers the following questions: how does the varied reporting landscape in the field of non-financial reporting impede the objectives of fostering corporations' sustainable practices and which initiative, among the options available, may best meet the objectives after a decluttering of the landscape takes place?

The main argument is that the flexible and *please all* approach followed in the context of corporate sustainability reporting *pleases none* in the long run, considering that the varied corporate reporting landscape is the key obstacle to sustainable corporate behaviour as it

[9] Heede R (2014) 'Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers 1854-2010' *Climatic Change* 122:229-241; Ekwurzel, B., Boneham, J., Dalton, M. W., Heede, R., Mera, R. J., Allen, M. R., & Frumhoff, P. C. (2017) 'The rise in global atmospheric CO2, surface temperature, and sea level from emissions traced to major carbon producers' *Climatic Change*, *144*(4), 579-590.

[10] Carbon Trust, *Lessons from the frontline of corporate climate action*, available at https://www.carbontrust.com/corporate-sustainability-leadership/new-frontiers-corporate-climate-action/

offers little to no real incentive to companies to behave more sustainably. The article makes the case that '*less is more'* in non-financial reporting initiatives and that the objective of reporting should be to increase comparability and credibility in order for companies to be held accountable and to behave in a manner that does not harm the planet. This justifies the need for a 'clean up' of the varied initiatives in the terrain of non-financial reporting. Regulation needs to tackle specific sustainability threats and challenges and not merely company specific risks. Making improvements to the European Non-Financial Reporting Directive that applies on a mandatory basis may help to further these objectives. The Directive, with the required reforms, might go a step further and provide an alignment between the type of information disclosed and the audience it targets. It might also provide a common definition of concepts such as 'materiality' and identlfy for whom the information is in fact 'material', relying on economic, social and governance factors and Sustainable Development Goals for guidance.

Despite previous literature having made attempts at outlining and identifying the problem of complexity relating to corporate reporting and sustainability, the article provides an original take on the matter insofar as it takes the discussion a step further by providing a comparative table of different reporting initiatives with reference to specific characteristics, such as: target group of information, coverage of companies that need to comply, mode of application, materiality concept addressed, extent and basis of criticisms of each initiative and the extent to which it is estimated to achieve the furtherance of sustainabilty. This is undertaken with the objective of considering how best to reform the European Non Financial Reporting Directive ('NFRD') so that it might be more successful in furthering sustainability objectives compared to other initiatives. The structure of the article is as follows. Part 1 showcases the lack of clarity surrounding the concept of sustainability, which underpins the flexibility afforded to corporations in their reporting on sustainability. This part also provides an overview of the literature that has looked at non-financial reporting initiatives and explains how this article will contribute to that literature. Part 2, describes the complexity of the reporting landscape and compares the initiatives therein. Part 3 addresses the problems in furthering sustainability resulting from this complex reporting landscape and looks in particular at the problematic aspects of the varied initiatives having different target recipients and different areas of focus. Part 4 uses behavioural economics theory to explain non-financial reporting's failure to deliver and to support the argument that a decluttering of the reporting regime is necessary. Part 5 explores the potential for the NFRD to contribute to the suggested decluttering by proposing reforms that will streamline the reporting process and engage the right audiences, acknowledging, also, that more work is needed for reporting to contribute effectively towards reducing the sustainability threat posed by corporate activity.

1. Non-financial reporting for sustainability – reviewing the literature

A. Sustainability: A contested concept providing corporations with too much freedom

In order to support business and corporations in their efforts to respond to the challenges facing our planet from a sustainable development perspective, developing appropriate policies and regulations that aim to provide an enabling infrastructure is important. A major challenge in this regard arises because of the multiple and competing definitions of sustainability[11] and of climate change[12], which entail geographical distinctions and diverse understandings of sustainable development.

In 1987 the World Commission on Environment and Development, in what is widely known as the Brundtland Report, defined development as 'sustainable' when it 'meets the needs of the present without compromising the ability of future generations to meet their own needs' and described it as 'a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.'[13] The Brundtland Report's definition of Sustainable Development underlines that the relevant 'needs', are 'the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs'.[14] Gray suggests that the Brundtland Report's definition has led to 'a widespread agreement' that sustainable development 'involves the preservation and/or maintenance of a finite and crucial environment; and incurs some duty of social justice – between and within generations.'[15]

Sustainable development was subsequently adopted as an overarching objective by Governments at the Earth Summit of 1992 in Rio de Janeiro, together with a set of Rio Principles and a global action plan, Agenda 21.[16] The United Nations has also promoted the objective of sustainable development, recognising throughout its reports that strong interdependencies exist among the economic, social and environmental dimensions of sustainable development.[17] In 2015, Member States of the United Nations adopted a set of Sustainable Development Goals to end poverty, protect the planet, and ensure prosperity for

[11] See for example, Rose, J and Cachelin A (2018) 'Critical Sustainability: incoporating critical theories into contested sustainabilities' *Journal of Environmental Studies and Sciences*. DOI:10.1007/s13412-018-0502-9.

[12] M. Goldman, S. Turner, M. Daly, (2018) 'Advancing a critical political ecology of climate change adaptation: epistemology, ontology and ethics', *WIREs Clim. Change*, 9, Article e526, 10.1002/wcc.526

[13] UN, World Commission and Environment and Development (1987) *Our Common Future: The Brundtland Report*, Chapter 2: 'Towards Sustainable Development' (Oxford: Oxford University Press, 1987).

[14] UN 1987, Ibid., 43

[15] Gray, R. (2010) 'Is accounting for sustainability actually accounting for sustainability… and how would we know? An exploration of narratives of organisations and the planet' *Accounting, Organizations and Society* 35(1): 47-62, at 53.

[16] Agenda 21, UN Conference on Environment and Development (Earth Summit), Rio de Janeiro June 13, 1992, available at https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf

[17] See World Health Organization (2005) *World Summit Outcome Document*, 15 September 2005; United Nations (2014) *Prototype Global Sustainable Development Report* (Online unedited ed.). New York: United Nations Department of Economic and Social Affairs, Division for Sustainable Development (2015) *Global Sustainable Development Report 2015 Edition* (Advanced Unedited Version).

all as part of a new UN sustainable development agenda, encouraging governments, the private sector, civil society and individuals to participate in the realisation of these goals.[18]

Confusion, however, often arises as the terms 'sustainability' and 'sustainable development' from a policy perspective, 'sustainable development' from a business perspective, 'environmental social governance (ESG)', 'greening', 'triple bottom' line[19] and 'corporate social responsibility (CSR)' are used interchangeably. Management literature has, since the 1990s, made attempts to incorporate notions of sustainable development into corporate strategy and discusses the emergence of corporate environmentalism and organizational processes of environmental management.[20] The S&P Dow Jones Index, which is managed cooperatively by S&P Dow Jones Indices and RobecoSAM, defines 'corporate sustainability' as 'a business approach that creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental and social developments.'[21] Immediately we can see a tension arising between different understandings of sustainability. Indeed, the ICC Business Charter for Sustainable Development 2015 draws a distinction between 'Sustainable Development' from a policy maker's perspective by referring to the definition provided by the 1987 Brundtland Report and 'sustainability' or 'sustainable development' in a business context, by referring to it as a process whereby companies seek to manage their financial, societal (including governance) and environmental risks, obligations and opportunities, otherwise known as a 'triple bottom line' approach. The ICC Business Charter also points out that the term *'sustainability/sustainable development'* is often used as an umbrella term including 'Corporate Social Responsibility (CSR)', 'Environmental, Social, Governance (ESG)' or 'triple bottom' line.[22] A blurring of these distinct understandings may easily evolve. Acknowledging this distinction, the European Commission makes reference to 'sustainability' within the field of corporate governance in its latest reports as synonymous to a company's long-term business growth.[23]

Despite being used interchangeably, these terms in fact suggest very different interpretations of 'sustainability'. As Gray observes, sustainability 'is not only a complex and elusive notion

[18] 'Transforming our world: the 2030 Agenda for Sustainable Development' 21 October 2015 17th session adopted by the General Assembly of the United Nations on 25 September 2015.

[19] See 'Triple bottom line' 17 November 2009, *The Economist*, explaining that 'The triple bottom line' was first coined in 1994 by John Elkington which consists of three measures of profit, people and planet to measure the financial, social and environmental performance of the corporation over a period of time.

[20] S.B. Banerjee, 'Who Sustains Whose Development? Sustainable Development and the Reinvention of Nature' (2003) 24(1) *Organization Studies* 143–180, at 161.

[21] RobecoSAM website on Corporate Sustainability available at http://www.sustainability-indices.com/sustainability-assessment/corporate-sustainability.jsp

[22] International Chamber of Commerce Business Charter for Sustainable Development, 'Inspire and Grow your Business in the 21st Century – Business Charter for Sustainable Development' (2015) at 5, available at http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2015/ICC-Business-Charter-for-Sustainable-Development-2015/.

[23] European Commission, Green Paper: *The EU Corporate Governance Framework*, COM (2011) 164 final, (2011) 10 and 18.

but one which is fraught with potential contradiction.'[24] Gray also concludes that 'there is clearly no single "sustainability" that can be known and accounted for' and that there are more tangible ways of knowing about *un*-sustainability under differing assumptions.[25]

The critical divergence is between planetary or community sustainability and the sustainability of the corporation through its long-term growth. These different understandings of sustainability give rise to different priorities: addressing risks within the context of the planetary boundaries[26], including environmental, human and social risks, or risks to the microcosmos of the corporation or an industry. Further problems identified by Gray include uncertainties inherent in a number of factors: that sustainability is connected to ecological and societal boundaries that are not necessarily the same as organizational or corporate boundaries; an understanding of sustainability is largely a collective outcome of personal value judgements around politics, nature, religion, planetary ecology and morality; and sustainability may rely on overall interactions within a broader system that cannot easily be predicted.[27]

B. A brief review of the non financial reporting literature

Existing literature in the fields of business, management, and accounting has made reference to the varied understandings of sustainability and scholars have specifcially discussed how the concept of sustainable development has evolved over the past three decades[28], acknowledged the disconnect between different versions of business sustainability and developed a typology of business sustainability with a focus on effective contributions for sustainable development.[29] Such scholars have encouraged others to pay particular attention to how they use these terms in their studies, after examining how different constructs related to the term sustainability are used interchangeably in the literature.[30]

A body of literature has also grown that identifies the need of stakeholders for[31] and existence of a landscape of various reporting inititiatives. Camilleri, for example, notes both

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[24] Gray (2010) at 53.
[25] Gray (2010) at 56.
[26] Steffen, W., Richardson, K., Rockström, J., Cornell, S. E., Fetzer, I., Bennett, E. M., ... & Folke, C. (2015). Planetary boundaries: Guiding human development on a changing planet. *Science*, *347*(6223), 1259855.
[27] Gray (2010) at 57.
[28] T. Dyllick and K. Hockerts 'Beyond the business case for corporate sustainability' *Business Strategy and the Environment* 11 (2002) 130–141. In the accounting literature see eg: Brooks, C., & Oikonomou, I. (2018) 'The effects of environmental, social and governance disclosures and performance on firm value: A review of the literature in accounting and finance' *The British Accounting Review*, *50*(1), 1-15; and Schaltegger, S. 'Linking environmental management accounting: A reflection on (missing) links to sustainability and planetary boundaries' *Social and Environmental Accountability Journal* 38, no. 1 (2018): 19-29.
[29] T. Dyllick and K. Muff 'Clarifying the Meaning of Sustainable Business: Introducing a Typology From Business-as-Usual to True Business Sustainability' *Organization & Environment*, *29*(2) (2016) 156–174
[30] H. Alhaddi 'Triple Bottom Line and Sustainability: A Literature Review' *Business and Management Studies* 1(2) (2015).
[31] de Villiers, C. (2018) 'Stakeholder requirements for sustainability reporting' In de Villiers et al (eds) *Sustainability Accounting and Integrated Reporting* Vol. 57, No. 63, pp. 57-63 (Routledge, in association with GSE Research).

the growth of initiatives at EU level which requires Member States to transpose the new EU provisions into their own legal systems and a lack of specific requirements in relation to the type of non-financial indicators that should be included in annual reports.[32] How these regulations may (or may not) affect government entities and big corporations is still, according to Camilleri, in need of further investigation. Haller, Link and Groß observe that calls for improving the effectiveness of non-financial reporting information via frameworks, guidelines and standards have resulted in a 'very heterogeneous reporting practice' responding to a complex and 'voluminous set of guidance' that contains 'more or less-detailed rules of how to construct and present' the non-financial information.[33] Much of the information is presented voluntarily and using a varying basis in content and volume.[34] One result of the different contexts in which non-financial reporting has been used, as observed by Eccles and other commentators,[35] is that no single clear definition of the concept of non-financial reporting has emerged.[36] Stolowy and Paugam explore where non-financial information is reported and how non-financial reporting has evolved over time in corporate reporting practices.[37] They note that non-financial reporting has attracted considerable interest from many key stakeholders, including the United Nations Global Compact, the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC), the Sustainability Accounting Standards Board (SASB) and the Task Force on Climate-related Financial Disclosures, regulators such as the European Commission, and the increasing number of investors in the ESG investment segment.[38] The result has been to increase the amount and extent of non-financial reporting by firms facing multiple demands for information from diverse stakeholders[39] leading ultimately to the problem of information overload.[40]

Within this broader context and understanding of the problem of information overload, more specifically, numerous commentators have assessed the possibilities that arise with the emergence of integrated reporting. In particular, integrated reporting offers potential for more targeted and discrete information that is better tailored to individual organizations,

[32] Camilleri, M. A. (2015) 'Environmental, social and governance disclosures in Europe' *Sustainability Accounting, Management and Policy Journal*, 6(2), 224-242.
[33] Haller, A., Link, M., & Groß, T. (2017) 'The term 'non-financial information'–a semantic analysis of a key feature of current and future corporate reporting' *Accounting in Europe*, 14(3), 407-429, at 410.
[34] Ibid. See also Haller, A. (2006) Nachhaltigkeitsleistung als element des value reporting [Sustainable performance as part of value reporting]. *Zeitschrift fur Controlling & Management*, 50, 62–73.
[35] Eccles, R., & Krzus, M. (2010). One report: Integrated reporting for a sustainable strategy. Hoboken, NJ: John Wiley & Sons; Eccles, R., Serafeim, G., & Krzus, M. (2011) 'Market interest in nonfinancial information' *Journal of Applied Corporate Finance*, 23, 113–127.
[36] Haller, Link and Groß, (2017), at 411-12. See further, Erkens, M., Paugam, L., and Stolowy, H., (2015) 'Non-financial information: state of the art and research perspectives based on a bibliometric study' *Comptabilité – Contrôle – Audit*, 21 (3), 15–92.
[37] Stolowy, H., & Paugam, L. (2018) 'The expansion of non-financial reporting: an exploratory study' *Accounting and Business Research*, 48(5), 525-548.
[38] Ibid, at 526.
[39] Ibid, at 526.
[40] Ibid, at 525.

enabling them better to tell their story.[41] Melloni *et al* suggest that an integrated report could enable a company to say more with less.[42] However, integrated reporting is not without its problems including, as Flower identifies, the problem of regulatory capture.[43]

A number of studies have provided comparative overviews of non-financial reporting in the public sector.[44] These studies highlight potential for inconsistencies across the different reporting regimes. Additionally, Biondi *et al* note the danger of fads and fashions, organizations seeking to achieve legitimacy through window-dressing strategies, or conforming only to institutional pressures.[45] Comparing different initiatives, internationally, Jackson *et al*, suggest that whilst mandatory non-financial reporting has helped to address some of the weaknesses of 'pure' business self-regulation, it lacks powers of regulatory enforcement to prevent irresponsible corporate activities.[46]

Some commentators observe that much of the existing mandatory non-financial reporting and CSR standards are unlikely to adress investor or stakeholder concerns. Such commentators call for more contextual and comparable information to be required by future non-financial and CSR reporting standards.[47]

Despite aknowledgement of the variations that exist between the terms, literature in the field of law and sustainability has offered little by way of a robust comparative overview of the varied reporting initiatives relevant to the private sector that aim to support the furtherance of sustainability objectives, nor has there been a firm acknowledgment of the chaotic nature of the reporting landscape created. This article seeks to contribute to the literature by filling this gap, first with a descriptive overview and comparison of the different reporting initiatives. The article identifies the key differences, strengths and weaknesses of each such intitiative as well as showing how the collected initiatives create a messy and confusing reporting environment for companies and their stakeholders. The paper then makes proposals for improving the field first by selecting the best of the initiatives and then suggesting how they

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[41] de Villiers, C., Venter, E.R., and Pei-Chi Kelly, H. (2017) 'Integrated reporting: background, measurement issues, approaches and an agenda for future research' *Accounting & Finance*, 57 (4), 937–959.
[42] Melloni, G., Caglio, A., and Perego, P., 2017. Saying more with less? Disclosure conciseness, completeness and balance in integrated reports. Journal of Accounting & Public Policy, 36 (3), 220–238.
[43] Flower, J. (2015). The international integrated reporting council: a story of failure. Critical Perspectives on Accounting, 27, 1-17. See further on integrated reporting Villiers, C., & Mähönen, J. (2014) 'Integrated reporting or non-financial reporting' in Sjåfjell, B., & Wiesbrock, A. (Eds.) (2014) *The greening of European business under EU law: taking article 11 TFEU seriously* (Routledge) 118.
[44] See eg: Manes Rossi, Manes-Rossi, F. (2019) 'New development: Alternative reporting formats: a panacea for accountability dilemmas?' *Public Money & Management*, 1-4; Montesinos, V., & Brusca, I. (2019) 'Non-financial reporting in the public sector: alternatives, trends and opportunities. Revista de Contabilidad-Spanish' *Accounting Review*, 22(2), 122-128; Biondi, L., & Bracci, E. (2018) 'Sustainability, Popular and Integrated Reporting in the Public Sector: A Fad and Fashion Perspective' *Sustainability*, 10(9), 3112.
[45] Biondi et al (2018) at 30115.
[46] Jackson, G., Bartosch, J., Avetisyan, E., Kinderman, D., & Knudsen, J. S. (2019) 'Mandatory non-financial disclosure and its influence on CSR: An international comparison' *Journal of Business Ethics*, 1-20.
[47] See eg Hazelton, J., & Perkiss, S. (2018) 'How useful are CSR reports for investors? The problems of comparing environmental and social disclosures' In Boubaker, S., Cumming, D. and Nguyen, D.K. (eds) *Research Handbook of Finance and Sustainability* (Edward Elgar Publishing), chapter 5, 93-109.

might be developed further to lead to reports that will contribute effectively towards creating more sustainable business practices. This is especially important from a legal perspective considering that the existing variety of understandings of sustainability does not only lead scholars and organisations to provide different accounts of their relationship with sustainability, but more importantly it ultimately gives corporations freedom to act without fear of being held fully to account for any negative ecological or societal impacts. Part 2 describes the varied reporting landscape and compares different initiatives, highlighting how they vary with regard to their target group, coverage, mode of application of the reporting rules, extent to which the concept of 'materiality' is utilised in the text of each reporting initiative, and whether and how each initiative furthers sustainability.

2. A Varied Reporting Landscape

In the EU, companies are required to provide financial reporting[48], non-financial reporting[49] integrated reporting[50] and sustainability/CSR reporting.[51] Unlike financial reporting which has been well developed with standardised rules, assurance and verification requirements, non-financial reporting is much more fluid. Wide discretion has been left to individual companies in terms of *what* information is disclosed and *how* this is undertaken. This section provides a description and overview of selected reporting initiatives in each of these areas. The section demonstrates that that there is a huge contrast between the well-developed and reasonably comprehensive and consistent financial reporting framework and that of a chaotic hotchpotch of non-financial reporting initiatives.

A. Financial Reporting : Overview and critique

EU legislation requires that all limited liability companies[52] prepare financial statements that provide a true and fair view of a company's financial position for each financial year. Under

[48] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

[49] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[50] In 2013, the International Integrated Reporting Council (IIRC) released a framework for integrated reporting. The framework establishes principles and concepts that govern the overall content of an integrated report, available at http://integratedreporting.org/.

[51] Sustainability reporting is published by a company or organization on a voluntary basis and reflects on the economic, environmental and social impacts caused by its everyday activities, including the organization's values and governance model; sustainability reporting can be considered as synonymous with other terms for non-financial reporting, such as triple bottom line reporting and corporate social responsibility (CSR) reporting, to name a few; For more information on varied forms of reporting witin the sustainability context refer to C. Villiers and J. Mahonen "Accounting, auditing, and reporting: supporting or obstructing sustainable companies' objective?" at 175-225 and B. Sjafjell "The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously" at 123-124. in B. Sjafejll and B.J. Richardson (Eds) *Company Law and Sustainability*: *Legal Barriers and Opportunities*.

[52] Note that non-listed companies and small businesses follow different financial reporting requirements.

EU rules, listed companies, in particular, must prepare their consolidated financial statements in accordance with the international financial reporting standards, ('IFRS')[53], a single set of international standards that provide a common accounting language used by more than 100 countries aiming to make company accounts understandable and comparable across international boundaries. Regulation (EC) No 1606/2002 lays down a mandatory rule for all EU listed companies to use IFRS in their consolidated financial statements and allows EU countries discretion and the option to extend the use of IFRS for annual financial statements to non-listed companies as well.[54] The aim of this is to ensure the clarity and comparability of financial statements, to limit administrative burdens and to provide for simple and robust accounting rules, especially for small and medium-sized enterprises.[55] Minimum requirements for financial statements include the balance sheet, the profit and loss account and a number of notes to the financial statements. Member States' companies legislation may also require that large and medium-sized companies publish management reports. Distinctions between companies are made based on categories between micro, small, medium and large companies which are, in turn, based on thresholds concerning turnover, total assets and number of employees.[56]

Overall, the financial reporting requirements and accounting practices are well understood and consistently followed. By contrast, the non-financial reporting landscape is less consistent and much softer in its approach, leaving considerable freedom for companies to decide for themselves which initiative they will follow and what information they will present and to whom. We show these features in our description in the next section.

B. Sustainability Reporting Initiatives

There exists a large set of initiatives within the arena of sustainability, with sustainability being defined in its broadest sense to include good governance and broader stakeholders' interests and rights. Our article focuses on the most widely known and used initiatives and maps out distinctions between them with reference to a series of traits, for example the group that is

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[53] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. The 2013 Accounting Directive replaced the 4th Directive (Directive 78/660/EEC) and the 7th Directive (Directive 83/349/EEC), which governed the preparation, by companies incorporated in the EU, of individual company financial statements and group financial statements respectively (other than those prepared by credit institutions and insurance undertakings).

[54] International accounting standards - Regulation (EC) No 1606/2002

[55] Summary of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of businesses, available at https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013L0034; Also see *Financial reporting: EU rules on financial information disclosed by companies*, available at https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/financial-reporting_en

[56] Financial reporting: EU rules on financial information disclosed by companies available at https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/financial-reporting_en

being targeted, the content of the information *per se* and whether and how the concept of 'materiality' is addressed.

B1. Integrated Reporting: Overview and Critique

A global campaign to encourage companies to link different capitals and to see the connections between financial and non-financial factors has been developed in the phenomenon of integrated reporting. This approach was assumed to bridge the different reporting arenas. Integrated Reporting, ('IR'), operates under a voluntary framework introduced by the International Integrated Reporting Council ('IIRC'). The Framework operates on the basis of a set of IR Principles which include: strategic focus and future orientation; connectivity of information; stakeholder relationships; materiality; conciseness; reliability and completeness; consistency and comparability. The goal is to provide financial capital providers with quality information on a company's value creation processes over time. The IR Framework does not focus exclusively on sustainability issues but rather on *six capitals* (financial, manufactured, human, intellectual, social and relationship and natural) and how these impact upon the value creation processes adopted by the company. The aim of IR is to improve and streamline communication and transparency, but also to improve integrated thinking and internal organization.[57]

The IIRC had ambitions for IR to take up a position at the centre of corporate governance and reporting after entering its global adoption phase in 2018.[58] However, whilst the IIRC estimates that worldwide, over 16,400 companies across 64 countries are on their way towards integrated reporting,[59] in the UK, ACCA Global reports that listed companies have been slow to take up this form of reporting.[60] Despite the positive tone of the IIRC's report, as companies may choose whether or not to take up the framework as their guide for reporting, evidence shows that IR is potentially not as wide reaching as the alternative solution offered of the NFRD. Indeed, whilst the NFRD has been criticised because it covers only approximately 6000 companies Europe wide, it is found that recently, approximately only 2000 entities participate in IR networks worldwide.

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[57] For detailed information see the website of the International Integrated Reporting Council at http://integratedreporting.org/

[58] See Sarah Perrin, 'Reap the Rewards of Integrated Reporting' *Accounting and Business Magazine*, ACCA, 1 June 2017 available at http://www.accaglobal.com Monciardini et al estimate the number of companies adopting IR to be only a 'few hundreds of companies: David Monciardini, John Dumay and Lucia Biondi 'Integrated Reporting and EU Law. Competing, Converging or Complementary Regulatory Frameworks?' *University of Oslo Faculty of Law Legal Studies Research Paper Series No. 2017-23*, at 6, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2981674&download=yes .

[59] IIRC, *Breaking Through*, Integrated Report 2017, at 29, available at https://integratedreporting.org/integratedreport2017/download/pdf/IIRC_INTEGRATED_REPORT_2017.pdf

[60] Anne Kirkeby, 'FTSE 100s are slow to embrace integrated reporting' 1 July 2017, available at https://www.accaglobal.com/in/en/member/member/accounting-business/2017/07/corporate/ftse-ir.html

The IR Framework is still relatively in its infancy as a practice and will likely require further development as companies learn from experience of its practice over time. However, early research identifies a number of limitations with the Framework. For example, the Framework provides for a variety of different understandings of reporting scope and content, leading to fragmentation across different institutional regimes and diversity in IR practices.[61] The emergent IR landscape appears to be 'fragmented, cluttered and highly contested.'[62] Furthermore, because IR remains voluntary, there is little by way of standardised methodology in the reporting practices. The existence and influence of competing regimes such as the Sustainability Accounting Standards Board, and the Global Reporting Initiative, alongside the IIRC, means that comparability remains an elusive goal for sustainability information.[63] Flower also critiques integrated reporting on the limited extent to which it explicitly addresses sustainability.[64] Indeed, It becomes quickly apparent from reading documents produced by IIRC and supporting organizations that the goal is to help businesses to develop medium and long-term resilience rather than sustainability in the *Brundtland* sense of that word. IR is not primarily focused on sustainability but is more concerned with organizational gain and competitive edge.[65] It is largely promoted to business actors as a win-win process that will bring to them benefits such as more integrated thinking, greater clarity on business issues and performance, improved stakeholder relationships, enhanced employee engagement, more efficient reporting and improved gross margins.[66] Critics have argued that IR, by following a business case approach, whilst broadening out reporting beyond focus on the financial performance, closes down ways of understanding and engaging with sustainability around top-down business case framings rather than providing scope for stakeholder accountability or critical analysis of sustainability performance or impact.[67] The goal is still primarily one of shareholder wealth maximisation[68] with the needs of the global investor community prioritised.[69] Some critics have suggested that the IR is 'remarkably regressive'[70] and the role of stakeholders is limited to assisting the organization through their

[61] Perego, P., Kennedy, S., and Whiteman, G., 'A lot of icing but little cake? Taking integrated reporting forward' (2016) *Journal of Cleaner Production*, manuscript, at 2.
[62] Perego, et al, ibid, at 11.
[63] Ibid, at 11.
[64] J. Flower, "The International Integrated Reporting Council: A story of failure" *Critical Perspectives on Accounting* (2015) 27(C) 1-17.
[65] See eg Pricewaterhouse Coopers 'Integrated reporting' available at http://www.pwc.com/gx/en/corporate-reporting/integrated-reporting/index.jhtml
[66] Ibid.
[67] Brown, J. and Dillard, J., 'Integrated reporting: On the need for broadening out and opening up', (2014) 27:7 *Accounting, Auditing and Accountability Journal* 1120, at 1133-4.
[68] Brown and Dillard; and Monciardini, D., Dumay, J., and Biondi, L., 'Integrated Reporting and EU Law – Competing, Converging or Complementary Frameworks?' *University of Oslo Faculty of Law Legal Studies Research Paper Series, No. 2017-23*.
[69] van Bommel, K., & Rinaldi, L. (2014). Towards a legitimate compromise?: An exploration of integrated reporting in the Netherlands. *Accounting, Auditing & Accountability Journal*, 27(7), 1157–1189.
[70] Milne M.J. and Gray, R 'W(h)ither ecology? The triple bottom line, the Global Reporting Initiative, and corporate sustainability reporting' (2013) 118:1 *Journal of Business Ethics* 13, at 25.

useful insights about matters that are important to them,[71] whilst it effectively 'extends the legitimate control of the financial sector over intangible, social and natural resources.'[72] A final concern is the credibility of integrated reports and the role of assurance within this context. As Adams points out, the degree of incompleteness with respect to material issues in sustainability reports will occur in integrated reports too. Adams supports the view that reporting on material sustainability impacts should be mandatory.[73] The NFRD takes this reporting activity a step forward onto that path by introducing legal requirements for certain large undertakings across the European Union.

B2. CSR Reporting and Factors/Guieldines/Indicators and Duties: Overview and Critique

Whilst in some countries legal requirements exist to mandate some sort of sustainability reporting in its more complete sense, with the European NFRD constituting one example of this, others do not. The reason for reporting on CSR is because there exist other forces outside the law that compel companies to provide this information. Bonsón and Bednárová refer to the study of Young and Marais in 2012[74] which can be considered a contribution to this field, as it conducted a content analysis of a number of studies regarding a company's CSR and provided an organised set of reasons why companies voluntarily report on CSR.[75] Identified reasons behind such reporting include a company's objective of displaying its responsibility towards a wide range of stakeholders, responding to stakeholders' expectations and contributing to societal well-being, managing their own legitimacy , guarding a company's reputation and identity by engaging with stakeholders, long-term profitability by reducing information asymmetries and improving stakeholder decision-making to diverse institutional pressure.[76] Hence, if a company does not engage in voluntary CSR/sustainability reporting, that may have a negative effect on the aforementioned aspects of a businesses' ongoing operations. CSR reporting is a fairly recent trend which has expanded over the last twenty years.[77] As Tschopp and Huefner explain, the three most widely recognized CSR reporting standards are the Global Reporting Initiative's (GRI) G3 standards, AccountAbility's AA1000 Series, and the United Nations (UN) Global Compact's Communication on Progress (COP), but there exist hundreds of domestic CSR reporting guidelines, principles, regulations, and

[71] Brown and Dillard, at 1134.
[72] Monciardini, et al, at 10.
[73] Carol A. Adams "The International Integrated Reporting Council: A call to action" *Critical Perspectives on Accounting* (2015) 2, 23–28, at 26-27.
[74] S. Young, M. Marais 'A multi-level perspective of CSR reporting: The implications of national institutions and industry risk characteristics' *Corporate Governance: An International Review*, 20 (5) (2012) 432-450.
[75] E. Bonsón and M. Bednárová 'CSR reporting practices of Eurozone companies' *Spanish Accounting Review* 18(2) (2015) 182-193, at 184.
[76] E. Bonsón and M. Bednárová 'CSR reporting practices of Eurozone companies' *Spanish Accounting Review* 18(2) (2015) 182-193, at 184.
[77] D. Tschopp and R. J. Huefner "Comparing the Evolution of CSR Reporting to that of Financial Reporting" *Journal of Business Ethics* (2015) 127(3), 565–577.

standards, and several other global initiatives, such as Organization for Economic Cooperation and Development (OECD) Guidelines, International Labour Organization (ILO) Conventions, and International Organization for Standardization (ISO) Standards.[78] "Other recent examples of initiatives which aim to support sustainability objectives have included the commitment to include environmental, social and governance (ESGs) factors in investment decision making made by signatories to the UN Principles for Responsible Investment (PRI), launched in 2006[1] and sustainable development goals (SDGs) in board decision making. In 2015, after three years of consultations and negotiations, all 193 UN Member States of the United Nations adopted the 2030 Agenda for Sustainable Development, which contains 17 Sustainable Development Goals and 169 targets. The private sector was expected to play a significant role in the implementation of the SDGs and directors will be expected to filter such goals in corporate decision-making. The IIRC, together with other reporting organisations, has also developed its reporting system further to reflect on and acknowledge SDGs within the IR framework.[79]

The World Business Council for Sustainable Development Reporting Exchange lists the many varied and different sources of reporting available, including guidelines, goals and factors.[80] Those noted are most widely favoured in the UK and include ESG reporting for issuers following the integration of environmental, social and governance factors into investor reporting and communication[81], compliance with the Stewardship Code[82] and the Mandatory Gender Pay Gap Reporting.[83] SDGs, in particular, are assumed to feature alongside directors' duties but this is something which remains unclear, mainly because there is no guidance as to the balancing act between serving different interests. The Special Representative of the UN Secretary General's Corporate Law Project dated 2010[84] in relation to directors' duties found that directors are rarely required to consider non-shareholders' interests, such as those of employees, customers or community members impacted by the company's activities and that although directors are permitted to consider in accordance with the company's best interests, potential human rights impacts which may result in a breach of law or a reputational

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[78] D. Tschopp and R. J. Huefner, ibid., at 578.

[79] See Corporate Reporting Dialogue, *The Sustainable Development Goals and the Future of Corporate Reporting* (2019) available at https://integratedreporting.org/wp-content/uploads/2019/02/The-Sustainable-Development-Goals-and-the-future-of-corporate-reporting-1.pdf

[80] WBCSD is a global, CEO-led organization of over 200 leading businesses working together to accelerate the transition to a sustainable world and the online Exchange list is available at https://www.reportingexchange.com/userdashboard

[81] The London Stock Exchange *Your guide to ESG reporting -Guidance for issuers on the integration of ESG into investor reporting and communication* February 2017 available at http://www.lseg.com/sites/default/files/content/images/Green_Finance/ESG_Guidance_Report_LSEG.pdf

[82] The UK Stewardship Code, September 2012 available at https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf

[83] The Equality Office, *The Mandatory Gender Pay Gap Reporting*, 12 February 2016 available at https://www.gov.uk/government/consultations/mandatory-gender-pay-gap-reporting

[84] Mandate of the Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, Corporate Law Project (2010), Executive Summary, at p. 2.

risk, the regulators generally provide little guidance as to how to make such balancing decisions.[85] Duties which permit the consideration of non-shareholder interests remain inconclusive and subject to wide discretion and do not impose a positive obligation to implement policies or practices towards this direction.[86]

B3. The NFRD: Overview and Critique

The NFRD,[87] which was adopted in October 2014 with a date of implementation in all EU Member States by 2018, amended Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. The rules apply to large public-interest companies with more than 500 employees, which cover approximately 6,000 large companies and groups across the EU, including listed companies, banks, insurance companies and other companies designated by national authorities as public-interest entities. In terms of the information to be disclosed, such undertakings must include

> "a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including: (a) a brief description of the undertaking's business model; (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; (c) the outcome of those policies; (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; (e) non-financial key performance indicators relevant to the particular business. Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so."[88]

In terms of the means available to disclose such information, the Directive gives companies significant flexibility to disclose relevant information in the way they consider most useful. The Recital of the Directive provides that undertakings may rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks such as the United Nations (UN) Global Compact, the Guiding

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[85] Executive Summary, at p. 2.

[86] Executive Summary, at p. 2.

[87] Directive 2014/95/EU of the European Parliament and Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[88] New Article 19a of the Accounting Directive (2013/34/EU) as amended by Directive 2014/95/EU.

Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organisation's Tripartite Declaration of principles concerning multinational enterprises and social policy, the Global Reporting Initiative, or other recognised international frameworks.[89]

The general aim of the Directive of 2014 is three-fold: i) to improve the quality of non-financial reporting across the EU; ii) to allow greater comparability; and iii) to attract inward investment. More specifically, as provided for by the Directive itself, its objective is 'to increase the relevance, consistency and comparability of information disclosed by certain large undertakings and groups across the Union'[90] and essentially aims for non-financial information published by undertakings to become more consistent and comparable.[91] The Directive's provisions operate on a "comply or explain" basis. Additionally, in order to protect commercial sensitivity of undertakings, the Directive makes clear that:

> 'Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.' [92]

In June 2017 the European Commission published a set of guidelines to help companies disclose environmental and social information in compliance with the Directive. The Guidelines Communication[93] and the Commission's Press Release[94] show a priority focused on the business case for non-financial reporting, rather than supporting sustainability goals. The Press Release specifically states:

> 'The new guidelines will support companies in fulfilling their reporting obligations under current non-financial disclosure requirements and will promote smart company reporting. Transparent companies perform better over time, enjoy lower financing

[89] Recital 9 of the Directive 2014/95/EU.
[90] Recital 21of the Directive 2014/95/EU.
[91] Recital 6 of Directive 2014/95/EU.
[92] See Article 1 of the adopted text amending Article 19(a) of the Directive.
[93]Communication from the Commission, *Guidelines on non-financial reporting (methodology for reporting non-financial information)* (2017/C 215/01), available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XC0705(01)&from=EN .
[94] European Commission - Press release, Commission takes further steps to enhance business transparency on social and environmental matters, Brussels, 26 June 2017, Commission takes further steps to enhance business transparency on social and environmental matters, available at http://europa.eu/rapid/press-release_IP-17-1702_en.htm?locale=en .

costs, attract and retain talented employees and are ultimately more successful. Well-informed business and investment decisions have much better chances to succeed.'[95]

There is, however, reference to the Directive forming part of the Commission's aim of developing an overarching and comprehensive EU strategy on sustainable finance as part of the Capital Markets Union.[96] The European Commission's policy on sustainable finance points towards a more holistic direction, finding that:

> 'Sustainable finance includes a strong green finance component that aims to support economic growth while reducing pressures on the environment; addressing green-house gas emissions and tackling pollution; and minimising waste and improving efficiency in the use of natural resources.'[97]

The guidelines also highlight ESG matters and guide companies towards reporting on their material impacts on a number of specific ESG matters.[98] The guidelines make explicit reference to Sustainable Development Goals, providing that: 'The disclosure requirements arising from the Directive make an important contribution towards the Sustainable Development Goals, for example Goal 12 on ensuring sustainable consumption and production patterns and Goal 5 on achieving gender equality and empowering all women and girls.'[99] The reporting requirements are seen also to contribute to implementing the Paris Climate Agreement, insofar as greater transparency will support financial flows being more consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.[100]

Whilst it is clear that the NFRD represents a clear shift towards a stronger regulatory agenda for supporting sustainability there are limitations and the NFRD's approach is still, as suggested by Ahern 'consistent with a regulated autonomy model which pays heed to the valuable contribution of market actors to regulatory practice.'[101] The NFRD combines both a binding requirement and a voluntary element; although it requires a form of disclosure on key issues per se, companies that do not have policies on the subject matters identified may choose to provide minimal disclosure through the comply or explain format, requiring them only to explain *why* they do not have such policies in place. The flexibility and discretion given to undertakings in what and how they disclose could be regarded as a positive and smart approach because it allows companies to report on what is relevant rather than provide a

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[95] Ibid.

[96] Communication of the Commission, 2017/C 215/01, at 2.

[97] European Commission Policy on Sustainable Finance, Overview, available at https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en.

[98] Communication of the Commission, 2017/C 215/01, at 3.

[99] Communication of the Commission, 2017/C 215/01, at 2.

[100] Communication of the Commission, 2017/C 215/01, at 2.

[101] Ahern, Deirdre. "Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive." *European Company and Financial Law Review* 13.4 (2016): 599-630, at 629.

tick-box report full of redundant information and 'noise'. This flexibility enables companies to focus on what is relevant in terms of their own activities and impacts. However, there is also a down side to this approach. As Ahern remarks,

> 'a regulatory approach which bows so far to market freedom invites a fragmented reporting landscape. The non-prescriptive approach to the reporting framework negates the possibility of a uniform approach being taken to sustainability reporting by companies within the EU. As a knock-on consequence, the ability to engage in meaningful cross company comparisons by stakeholders is likely to be significantly hampered.'[102]

The 'comply or explain' framework for the Directive exacerbates this problem. Again, in Ahern's words: '"Comply or explain" regimes are notorious for the variable quality of disclosures they evoke leading to an associated compliance deficit.'[103] Ahern concludes that 'the perennial problem of poor disclosures is unlikely to be completely eradicated from a soft law regulatory regime.'[104] We can see from Ahern's criticisms that the NFRD is arguably too soft on the entities it is targeting, with the likely result that reporting will lack comparability or sufficient overall quality.

The NFRD is also designed to appeal to different actors and arguably has a limited target group, because its scope covers a relatively small number of entities. The limited number of undertakings subject to the requirements of the NFRD is problematic. The group to which it applies is a small proportion of the business entities which are active across Europe. Smaller businesses and their associations will undoubtedly be satisfied because they will not have to comply. The NFRD's alignment with approaches of some Member States such as in Denmark would make it more acceptable. At best, CSR and sustainability advocates would see support for their goals through the introduction of legislation.[105]

3. Systematic comparison of varied forms of reporting

A review conducted in 2010 of three aspects of the corporate information environment, namely voluntary firm disclosures, mandatory firm disclosures, and disclosures by independent information intermediaries aimed to provide a better understanding of how each contributes to the information available for valuation and stewardship purposes. The review concluded that one of the biggest challenges facing researchers more generally in the area of reporting is considering the interactions among the various information sources.[106]

[102] Ahern, ibid, at 629.
[103] Ahern, ibid, at 622.
[104] Ahern, ibid, 623.
[105] T.R. Johansen, 'EU Regulation of Corporate Social and Environmental reporting' (2016) 36:1 *Social and Environmental Accountability Journal* 1-9, at 3.
[106] A. Beyer, D. Cohen, T. Lys, B. Walther 'The Financial Reporting Environment: Review of the Recent Literature' *Journal of Accounting and Economics* (2010) 50 (2–3) at 296–343, at 159-160.

In order to answer the article’s central research question on how the varied reporting landscape in the field of non-financial reporting impedes the objectives of fostering corporations’ sustainable practices and which initiative, among the options available, may best meet the sustainability objectives after a decluttering of the landscape takes place, the article follows a methodology of providing a comparative analysis of the initiatives referred to above. Despite previous literature mentioned in Part 1 having already engaged with the discussion of a series of initiatives in the sphere of non-financial reporting, none have proceeded to place particular weight on one initiative over another by comparing a broader range of initiatives, so as to draw the attention of policymakers and legislators on why and how they should focus on reforming one particular form of non-financial reporting.

To answer our research question effectively an identification of factors that influence the desired aims and objectives of fostering corporations’ sustainable practices is required, together with an assessment of the utility of an intervention through reform of one initative over another. The variables selected for the construction of the following comparison and table - target group, coverage, mode of application, materiality, criticisms, and sustainability furtherance - have been chosen on the basis of factors most likely to influence the impact that the legal framework will have in supporting corporations’ sustainable practices. More specifically, the article focuses on the following: the size of the target group and scope of application that the initiative applies to and covers respectively, the strength of the mode of application in terms of whether the initiative applies on a mandatory basis, the strength of the endorsement of the popular and useful concept of materiality in the text of the initiative, and finally the depth of the criticisms from scholars and private and public actors and how strongly those same groups endorse how the initiatives further sustainable practices or not.

Using deductive reasoning, if a particular initiative ticks more boxes relating to these factors compared to the other initiatives, we suggest that the more likely it is that the initiative should take precedence over others and that the policymakers should focus their attention on reform for the purpose of improvement of that initiative in order for an effective decluttering of the non-financial reporting landscape to take place. The source of data for the construction of this table are provided from academic literature devoted to discussing the respective initiatives, the primary source of the text of each initiative itself and reports on the application of the initiatives following their adoption. Table 1 provides a systematic outline of key forms of reporting identified earlier in this paper and compares the target recipients, the companies which they cover, the mode of application followed, whether they reflect on the issue of ‘materiality’, and the extent to which such initiatives are in fact found to further sustainability objectives.

Table 1: Forms of Reporting Initiatives and Systematic comparison

FORMS OF REPORTING	FINANCIAL REPORTING	INTEGRATED REPORTING	NON-FINANCIAL REPORTING DIRECTIVE	SUSTAINABILITY/ CSR REPORTING	GUIDELINES, FACTORS, INDICATORS
TARGET GROUP	markets	investors	markets, investors, stakeholders	Stakeholders/media / General public	varied actors
COVERAGE	all limited liability companies	declaration (multi-sector global membership)[107]	large public interest companies +500 employees (UK)	optional (high risk vis-a-vis sustainability companies)	optional
MODE OF APPLICATION	mandatory	subscription	mandatory	voluntary	voluntary
'MATERIALITY'	n/a	open	open	open	specified
CRITICISMS (HIGH/LOW)	accepted/low	high	low/medium	high	medium
SUSTAINABILITY FURTHERANCE	low/zero	low	medium	low	medium

3.1. General Comments

The present section points to the very clear differences that the table above shows and a more focused commentary is offered in section 3.2 below. As has been identified in section 2

[107] Note that IR has the backing of major accountancy firms and professional associations and also offers to pilot a preliminary framework for IR, with a two-year, three-phase pilot programme for companies (such as Microsoft, HSBC, and Gold Fields) to trial the type of reporting. For information on IR see https://integratedreporting.org

of the paper, each reporting initiative referred to can be seen to target a different group, as well as cover a specific range of companies based on various criteria. Whilst financial reporting has clear metrics and targets markets, intergrated reporting targets investors specifically and the NFRD aims to target a wide range of specific actors, namely markets, investors and other stakeholders. The milder versions of voluntary reporting in the CSR/sustainability reporting opted for by the companies in their marketing/advertising material essentially aim to target various stakeholders, including the media and the general public. Guidelines, factors and indicators can be seen to target a wide range of actors, though specific ones cannot be clearly identified. In terms of coverage, financial reporting targets all limited liability companies, whilst the NFRD targets large public interest companies with more than 500 employees within the EU. Other initiatives apply on a voluntary basis and hence provide an opt-in for any company that subscribes to the respective form of reporting. Parallel to the reference on coverage is the mode of application of these initiatives which similarly is mandatory for financial reporting and the NFRD, whilst voluntary for the other initiatives. The concept of 'materiality', as a contested concept, has been addressed more specifically by the ESG factors, whereas other reporting initiatives leave the concept relatively open to interpretation for the companies involved. In terms of criticisms, the initiatives which are welcomed with a more positive approach have been the NFRD, as well as some of the guidelines, factors and indicators, which are also endorsed and referred to by the NFRD. The next section will proceed to look at differences in sustainability emphases that can be found across the reporting regime, especially business sustainability and planetary sustainability.

3.2. Comparative discussion: Business related sustainability versus planetary sustainability

The content of different types of reporting often comes as a direct response to the information that the respective target audiences may demand. Whilst sustainability reporting tends to focus on risks and opportunities that arise from sustainability issues, the emphasis placed on the investor-related consideration of risk, meaning the financial risk, is unlikely to assist companies in seriously tackling the sustainability challenges which necessarily impact upon people and planet in the long-term. To the detriment of true sustainability this is where the inherent problematic basis of corporate governance lies; it largely places emphasis on serving the interests of investors, namely by corporate pursuit of profit.

One must be wary of the fact noted by Mol that 'markets and states are likely to "capture" transparency arrangements for their own goals more frequently, which will not necessarily be aligned with the original normative ideals of democracy and participation.'[108] It is possible to view this danger in IR. As we have pointed out, IR is not concerned with sustainability but

[108] Mol, Arthur P. J. 'The Lost Innocence of transparency in Environmental Politics' in Gupta and mason (eds) *Transparency in Global Environmental Governance – Critical Perspectives* (2014: Cambridge Mass, MIT Press), 39-59. Available as a pdf document at https://www.researchgate.net/publication/264891986_The_Lost_Innocence_of_Transparency_in_Environmental_Politics, at 26.

with extending the control of shareholders to capitals beyond financial capital. Compared with the EU's NFRD which is concerned with 'the internal and external social, natural and economic impacts of the activities of the firm', the IR Framework focuses, instead, on 'the capacity of the firm to create (shareholder) value exploiting internal and external social, natural and economic resources (capitals)'.[109] From a sustainability perspective, the point can be better exemplified with reference to ESG factors as an example where investors are the target recipients. Although integration of ESG factors has proven benefits, such as bringing lower volatility and therefore lower risk, and consequently higher risk-adjusted returns to investors,[110] there are key concerns relating to the value of ESG factors being integrated for the purposes of furthering planetary type sustainability. A recent study identifies that the vast majority of investors are motivated by financial reasons rather than ethical reasons in using ESG data, and a large number of investors use ESG information because of client demand or as part of their product development process. Investors believe that ESG metrics provide more useful information on risks and less so on competitive positioning and how investors exhibit different ESG styles.[111] With such data it can safely be argued that ESG integration in investment decision-making relates more to the business case for operating in a sustainable way and focuses less on sustainability *per se*. Indeed, as Harper Ho remarks, 'for most investors who use ESG information, non-financial indicators typically complement or augment, rather than displace standard measures of financial performance. Their inclusion is intended to capture dimensions of risk and return that have been overlooked in traditional financial analysis rather than the investor's position on ethical and social issues.'[112] The fact that there are different ESG styles also suggests compromised comparability across various sectors.

So, whilst financial stakeholders might be interested in financial value and seek reporting disclosures relevant to financial value, other stakeholders might be more interested in disclosures relating to societal value and sustainability impacts as well as other matters. A range of stakeholders may be identified as more appropriate recipients of sustainability reports. Similarly, in connection with integrated reporting, Stubbs and Higgins observe that the primary stakeholders might be found in the 'corporate, investment, accounting, securities, regulatory, academic, civil society and standard-setting sectors'[113] and that what is important in the disclosure is information that might form 'the basis for the conversation'

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[109] Monciardini, *et al* (2017) at 10.
[110] N. C. A.Kumara , C. Smitha , L. Badisa , N. Wanga , P. Ambrosya and R. Tavaresb 'ESG factors and risk-adjusted performance: a new quantitative model' *Journal of Sustainable Finance and Investment* (2016) 6(4) 292–300
[111] A. Amel-Zadeh and G. Serafeim 'Why and How Investors Use ESG Information: Evidence from a Global Survey.' *Harvard Business School Working Paper*, No. 17-079, February 2017, at 28-29.
[112] Harper Ho, V., 'Non-financial risk disclosure and the costs of private ordering' (2017) at https://ssrn.com/abstract=2923561 at 11, and PwC, *Sustainability Goes Mainstream: Insights into Investor Views* (2014) 6-9, at https://www.pwc.com/us/en/pwc-investor-resource-institute/publications/assets/pwc-sustainability-goes-mainstream-investor-views.pdf at 6-9, 'finding that reducing risk is the key motivation for investors', per Ho, at her footnote 60.
[113] Stubbs, W., & Higgins, C. (2018). Stakeholders' perspectives on the role of regulatory reform in integrated reporting. *Journal of Business Ethics*, *147*(3), 489-508.

that the stakeholders will have with the corporations 'to understand their material ESG risks.'[114]

Whilst there is a *de facto* requirement to publish sustainability information, the lack of formal obligation and use of different standards leads to a lack of comparability and an inconsistency of such information, with different stakeholders being targeted or prioritised by different companies.[115] Some reports give precedence to the interests of employees, some to consumers, some to environmentally interested stakeholders. The fluid, softer regulatory environment of sustainability/CSR reporting also brings with it the problem that companies are not necessarily providing the information that their stakeholders require. Bradford *et al* note, for example, that the GRI has not resulted in consumers receiving the information that interests them most, even though the GRI has become a *de facto* guidance which companies follow. Bradford *et al* note that consumers wish to see information on risk and compliance and they are not that interested in economic activities as corporate actors are.[116] This mismatch between stakeholder interests and what companies publish and focus on, points also to a need to involve stakeholders more fully in the reporting and sustainability processes. It is not clear that this is catered for anywhere within the reporting arena.

4. The 'Less is more' argument: what to focus on and why

4.1. Metrics on sustainability to support the function of the market towards sustainability

The Efficient Capital Market Hypothesis posits that markets serve as a more objective institution in which an exchange of information takes place with the use of metrics and that key to the proper function of a stock market that behaves rationally is for the share prices to reflect the company's performance and future prospects. However, this hypothesis has been heavily criticised.[117] As Ha-Joon Chang has rightly identified in relation to the problems relating to capitalism, including the workings of the market as such: 'People "over-produce" pollution because they are not paying for the costs of dealing with it.'[118] Hence, if the costs are not being borne by those who are polluting, the market pricing is not likely to reflect those costs. Moreover, market pricing is unlikely to reflect the sustainability of a corporation within its broadest sense, since all relevant information on CSR practices is not publicly available through mandatory and systematic reporting as a result of companies not yet systematically

[114] Stubbs and Higgins, at 498.
[115] Tschopp and. Huefner (2015) at 574.
[116] M.Bradford, J.B. Earp, D.S.Showalter and P F Williams, 'Corporate Sustainability Reporting and Stakeholder Concerns: Is there a Disconnect?' (2017) 31:1 *Accounting Horizons* 83, at 96.
[117] There is a vast literature on the efficient capital markets hypothesis. See in particular Fama EF (1970) 'Efficient capital markets: a review of theory and empirical work' *J Financ* 25:383–417 and Fama EF (1991) 'Efficient capital markets: II' *J Financ* 46:1575–1617. For a review of the arguments on both sides of the debate see eg: Malkiel, B. G. (2003) 'The efficient market hypothesis and its critics' *Journal of economic perspectives*, *17*(1), 59-82; and Naseer, M., & bin Tariq, Y. (2015) 'The efficient market hypothesis: A critical review of the literature' *IUP Journal of Financial Risk Management*, *12*(4), 48-63.
[118] Ha-Joon Chang *23 Things They Don't Tell You about Capitalism*

reporting on their people and planet impacts.[119] This point has been exemplified through the comparative table referred to in Part 3. Thus, if markets cannot 'value' sustainability[120] and hence provide the arguably objective metrics that will account for those costs, then it is fair to assert that market participants - ie shareholders - are not the correct target audience for sustainability reporting; they will not help in internalising the sustainability costs of corporate activity. One important area for reform therefore is to widen the target group and for initiatives to be steered by metrics that will help markets reflect unsustainable behaviour towards people and planet.

4.2. Why specifying target groups, information and defining the 'materiality' concept matters

One of the reasons for the half-hearted non-financial reporting system might be explained by behavioural economics with reference to 'the paradox of choice' and 'the sisyphus condition'. The concept of the 'paradox of choice' comes to explain the conflicting outcomes brought about by providing the freedom of choice and an overabundance of choice. The 'paradox of choice' provides that: 'The fact that *some* choice is good doesn't necessarily mean that *more* choice is better.'[121] There are costs attached to an over-abundance of choice from a behavioural economics perspective insofar as the concept suggests that as the number of choices increases, negative aspects of having a multitude of options begin to appear.[122] There are several factors reported to conspire to undermine the objective benefits that ought to come with increased choice.[123] The abundance of choice is found to result in what economists call 'opportunity costs', in the sense that one of the 'costs' of any option involves passing up the opportunities that a different option would have afforded and resulting also in high expectations. The 'curse of discernment' is brought about so that there the lower quality items that used to be perfectly acceptable appear no longer to be good enough.[124] So, the

[119] K. Greenfield, 'New Principles for Corporate Law', *Boston College Law School Faculty Papers*, Paper (2005), 56, 90, available at <http://lawdigitalcommons.bc.edu/lsfp/56>, who reports on the problematic way in which financial reporting is conducted; also see R.I. Tricker, *Corporate Governance: Principles, Policies, and Practices*(Oxford/New York: Oxford University Press, 2009), 350, whereby it is explained that companies are still first and foremost concerned in reporting on their economic responsibility, showing that that they are 'profit orientated and market driven'; also see M. Wembridge, 'Without Uniform, Reliable Rules, CSR Reports Will be Read with a Grain of Salt', *The Financial Times*, 15 Jun. 2011, available at <www.ft.com/cms/s/0/5a5366c4-8088-11e0-adca-00144feabdc0.html>, where it is explained that CSR reviews, unlike annual reports, lack a standardized formula and that companies report on their CSR by using voluntary sustainability reporting guidelines, such as those developed by the Global Reporting Initiative (GRI) or 'the Equator Principles'.

[120] See further, Cho, C. H., Michelon, G., Patten, D. M., & Roberts, R. W. (2015) 'CSR disclosure: The more things change…?' *Accounting, Auditing & Accountability Journal*, 28(1), 14–35.

[121] B. Schwartz and A. Ward "Doing Better but Feeling Worse: The Paradox of Choice" in *Positive Psychology in Practice* (Editors: P. Alex Linley and Stephen Joseph) John Wiley & Sons, Inc. (2004) Chapter 6, pp. 86-102 at p. 87.

[122] Ibid, at 87..

[123] Ibid, at 93.

[124] Ibid, 95-97.

'paradox of choice' argument makes the point that for individuals *some* choice is good, but that this doesn't necessarily mean that *more* choice is better, and that there is a cost to having an over-abundance of choice .[125] Along the same lines, according to Brent *et al*, it is found that although organisms prefer to make their own choices, emerging research from behavioural decision-making sciences has demonstrated that many decision-makers find an extensive array of choice options to be aversive, often leading to negative emotional states and poor behavioural outcomes.[126] The excessive choice offered to companies, in terms of what and how they will report in the sustainability arena, gives rise to serious problems from a behavioural economics perspective. The need to specify the target groups and information reported on, as well as the need to define the concept of 'materiality' becomes even more important.

The 'sisyphus effect' follows on from the variety of choice of voluntary reporting in the context of sustainability and the uncertainties surrounding the *utility* of the information corporations in fact are called to provide. The 'sisyphus effect' relates to finding purpose in any activity at hand. Ariely *et al* investigate how finding purpose in any task influences labour supply, concluding that in the more meaningful conditions, as compared to the less meaningful conditions, a subject's productivity influences labour supply more strongly. [127] Transposed to the area of sustainability reporting, the pointlessness of the task of non-financial reporting for most corporations, can easily explain companies' unwillingness to engage in this activity beyond a compliance and a box-ticking exercise. It is not difficult to understand how demanding performance of an activity that has no benefit because of a lack of comparability, accountability and impact may leave corporations disengaged from the overall process, even if they seek, otherwise, to be more sustainable in their operations per se.

In understanding this more fully, it is worth considering how financial and non-financial reporting may differ from a 'meaningful' exercise from a corporation's perspective. Both financial and non-financial reporting target shareholders with the purpose of enabling them to make informed investment decisions. Sustainability or corporate social responsibility reporting also targets multiple stakeholder groups and informs the wider community. In terms of the information encompassed in sustainability reporting however, despite it targeting stakeholders, it may also include issues material to shareholders that are normally set out succinctly in the annual report or equivalent prepared and/or approved by the board itself and addressed to investors. In this chaotic infrastructure of financial and non-financial reporting, the concept of 'materiality' might provide an answer. This term is key in the

[125] B. Schwartz and A. Ward "Doing Better but Feeling Worse: The Paradox of Choice" at page 2 available at https://www.swarthmore.edu/SocSci/bschwar1/Choice%20Chapter.Revised.pdf

[126] Reed, D.D., Kaplan, B.A and Brewer, A.T 'Discounting the freedom to choose: Implications for the paradox of choice' *Behavioural Processes* 90(3) (2012) Pages 424-427.

[127] D. Ariely, E. Kamenica and Drazˇen Prelec "Man's search for meaning: The case of Legos" *Journal of Economic Behavior & Organization* 67 (2008) 671–677.

discussion on the utility and value of the various reporting initiatives, as well as the target audience of each means of disclosure respectively. The *Report on Materiality* by the Integrated Reporting Committee states that: 'The interpretation of materiality varies across report forms due to differences in audience, purpose and scope. In Integrated Reporting, a matter is material if it could substantively affect the organization's ability to create value in the short, medium or long term. The process of determining materiality is entity specific and based on industry and other factors, as well as multistakeholder perspectives.'[128] Similarly, the Guidelines Communication on the NFRD relating to the disclosure of material information, provides that materiality of information must be assessed in context and that materiality will be company specific, which will be assessed by the company itself.

The overabundance of choice and the sisyphus effect with its quest for more meaningful reporting point to a need to clean up the existing non-financial reporting landscape by making clearer the target recipients, connecting the required disclosures more closely to their needs and clarifying what is meant by the concept of materiality for non-financial reporting purposes. The comparative table and discussion in Part 3 point to the NFRD as the inititative with greatest potential for reporting on a a more specified set of sustainability impact factors to a broader range of recipients and with the aim of tailoring the details of any such reporting to suit the goals of a company's long term success. Part 5 looks more closely at the possibility of using the NFRD as a starting point for a cleaner, more effective reporting regime.

5. Could the NFRD resolve the problems identified in the sustainability reporting landscape?

A clean-up and streamlining of the reporting landscape is needed to reduce the over-abundance of choice for reporting organization which has led to contradictions, inconsistences, ovelap, confusion and information overload. We concluded above that the NFRD could offer a way forward in this cleaning up process because it arguably comes closest to tackling some of the sustainability challenges we identified in Part 1. Indeed, the substance of the Guidelines Communication[129] and the Commission's Press Release on the NFRD[130] , whilst showing a priority focused on the business case for non-financial reporting rather than supporting sustainability goals, make reference to strategy on sustainable finance and capital markets and they focus on ESG matters, steering companies towards reporting on their material impacts on a number of those specific ESG matters. The European Commission policy on sustainable finance similarly points in a more holistic direction, aiming to define the

[128] Materiality in <IR> Guidance for the preparation of integrated reports November 2015 available at http://integratedreporting.org/wp-content/uploads/2015/11/1315_MaterialityinIR_Doc_4a_Interactive.pdf

[129] European Commission C215/01, 5.2.2017 "Communication from the Commission: Guidelines on non-financial reporting (methodology for reporting non-financial information) ('Guidelines')

[130] European Commission – Press Release, Commission takes further steps to enhance business transparency on social and environmental matters, Brussels, 26 June 2017, available at http://europa.eu/rapid/press-release_IP-17-1702_en.htm

components of a strong green finance policy and practice. The Guidelines Communication to the NFRD also makes explicit reference to the Sustainable Development Goals.

Aiming towards an alignment between the types of information disclosed, the audience which it targets and a common definition of concepts such as 'materiality' and for whom the information is in fact 'material' will help to combat some inconsistencies within the Guidelines Communication, which are currently unclear as to what is the target audience and the purpose of the requested overall sustainability related disclosure. The Guidelines Communication[131] specifically states that information needs to be stakeholder-oriented and that companies should focus on stakeholders as a group, rather than on the needs and preferences of individual or atypical stakeholders.[132] Varied stakeholders, however, have different interests and needs, which may well conflict with each other. In this way also, the objectives of disclosing all material information, including unfavourable aspects, for the target group of investors, as well as for stakeholders as a group and not individually, are likely to conflict. Generic information and guidelines along these lines, despite shedding some light on the application of the NFRD, result in conflicting interpretations around the aims and objectives with insufficient detail for companies on what they are required to provide. From a behavioural economics perspective this does little to incentivise companies to engage meaningfully in the non-financial reporting exercise or to add value to the furtherance of sustainability objectives.

Despite its limitations, the NFRD could still be seen as 'an important incremental step' towards 'mainstreaming sustainability reporting as mandatory rather than optional'.[133] One of its major contributions is to inspire action by governments and individual entities and it might be viewed as a catalyst to encourage more detailed and varied ways of bringing about corporate and stakeholder engagement in reporting and sustainability processes.[134]

A recent research report published by the Alliance for Corporate Transparency Project made a number of suggestions for ways in which the NFRD might be improved.[135] The Alliance argues that there is a need to develop a structure for non-financial reporting that meets both the requirements of standardisation and flexibility, and that facilitates the integration of non-financial information with companies' understanding and reporting on value creation. We would add to this a recommendation for inclusion of a more conclusive and complete definition of non-financial reporting, its key components and what they should entail. This might be accompanied with more detailed guidance that might promote a more common

[131] European Commission C215/01, 5.2.2017 Guidelines.
[132] C215/01 2017 Guidelines at 3.5 "Stakeholder oriented".
[133] Ahern, 629.
[134] Camilleri, M.A., 'Environmental, social and governance disclosures in Europe' (2015) 6:2 *Sustainability Accounting, Management and Policy Journal* 224-242.
[135] Alliance for Corporate Transparency (2019) *The 2018 Report: The state of corporate sustainability disclosure under the EU Non-Financial Reporting Directive - The Alliance for Corporate Transparency project analysis of companies' reporting*.

understanding of the term and a reduction of any semantic confusion. Instead of providing for examples *vis-a-vis* KPIs[136], the NFRD could outline a sample of material issues for specific industries, which would assist in 'measuring' between factors and industries and hence with the 'comparability' of companies in terms of sustainability. This might go some way to responding to gaps identified by commentators such as Haller, Link and Groß.[137] Mandatory provisions for assurance and verification of non-financial statements would also strengthen the authority of the NFRD. Achievement of such a clear structure would enhance companies' accountability and make enforcement possible.

The Alliance for Corporate Transparency Project suggests further improvements, including: stronger monitoring by national governments; publishing a list of companies that are covered under the legislation and their reports to enable third party monitoring; providing options to civil society to initiate enforcement; clarifying liability for non-compliance in national transpositions; coordination with national legislations. A key requirement for extending the impact of the NFRD would be to widen the targeted recipient groups and to extend the rights of stakeholders who will seek access to the reports and opportunities to respond and hold companies to account. Belkir *et al* propose the introduction of a system that enables companies to implement a "Plan, Do, Check, Act" management system against which companies should have to report and act on the feedback with corrective action and follow up on targets set in prior GRI report submissions.[1] This could usefully be added to any reforms of the NFRD.

A key justification for reporting is to encourage dialogue and to provide information for users with the ability to influence, to make informed decisions, and if necessary also to organise collectively and hold disclosers accountable and to challenge them.[138] In reality, however, it appears that information does not always provide the stakeholders with such gains. Instead, as is observed by Mol, 'transparency is marketized and monopolized to gain power and profits, it is used as a form of public relations in symbolic politics, it functions in disinformation and information overflow campaigns, it is part of state and market surveillance of citizen-consumers, and it can further empower the powerful as much as the powerless.'[139] As was noted above, it is clear that there is a need to enable more meaningful participation of stakeholders in the reporting and sustainability processes.

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[136] See Examples and KPIs in European Commission C215/01, 5.2.2017 "Communication from the Commission: Guidelines on non-financial reporting (methodology for reporting non-financial information).

[137] Haller, Link and Groß, above noted, at 422-424.

[138] Dingwerth, Kl, and Eichinger, M, 'Tamed Transparency: How Information Disclosure under the Global reporting Initiative Fails to Empower' (2010) 10:3 *Global Environmental Politics* 74, at 74.

[139] Mol, Arthur P. J. 'The Lost Innocence of transparency in Environmental Politics' in Gupta and mason (eds) *Transparency in Global Environmental Governance – Critical Perspectives* (2014: Cambridge Mass, MIT Press), 39-59. Available as a pdf document at https://www.researchgate.net/publication/264891986_The_Lost_Innocence_of_Transparency_in_Environmental_Politics, at 26

6. Conclusion

Sustainability reporting is no longer a voluntary activity that a company may choose to do or not. Although there are no hard/mandatory rules in place, the business reality is that companies will be punished in the marketplace if they do not provide sustainability information. However, whilst companies are required to report on sustainability issues, what remains open to them is how they are to report and the reporting processes they adopt. The main contribution of the present article has been to offer a comprehensive view on different reporting frameworks and to make evident that there is a need to provide some clarity to this complex landscape. It is clear that the current reporting landscape, being so cluttered and full of inconsistencies and different requirements, is unlikely to impact positively on efforts towards sustainability. We suggest that the scope of the NFRD, as the most promising of the existing inititiatives, should be revisited so as to enhance its contribution to furthering corporations' sustainable practices.

The article supports reform of the NFRD which has constituted a positive step in the right direction. What is required now is stronger guidance on what to report and how to report it. A standardized and streamlined framework is necessary in order to pin companies down to something more concrete, rather than giving to them so much choice on which guidelines, frameworks or recommendations they might follow. Stronger, clearer and more concrete definitions of key concepts are required as well as clarification of the rights of stakeholders in this area of activity. The NFRD should be seen as work in progress, with its limitations havng been highlighted by the present overview. Improving the impact of the NFRD would require an expansion of its scope, to represent sustainability as a positive instead of focusing on negative risks. Member States and companies should have opportunities for effective compliance with the reporting requirements, with the NFRD better defining concepts it refers to. A reformed and improved NFRD should become the guiding framework, overriding compliance with other initiatives which make companies' sustainable practices 'less' transparent instead of 'more'.