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Rethinking Non-Financial Reporting: A Blueprint for Structural Regulatory Changes

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Abstract: The article introduces the thematic issue of *Accounting, Economics, and Law: A Convivium* dedicated to the regulation of non-financial reporting. It provides the reader with an overview of the varying approaches and frameworks that have emerged over time in relation to the reporting of non-financial information. In particular, the article focuses on the European Non-Financial Reporting Directive. We maintain that to date this latter initiative has failed to deliver on its intended objectives. In the context of the ongoing revision process of this initiative, the present paper outlines five key areas to be improved drawing on the lessons learnt from the past as well as from key points raised by the papers in the present thematic issue. What emerges from this collective effort is a renewed agenda that highlights some of the structural failures of the current reporting regime and a blueprint for future reforms. The final section summarises the various contributions of articles included in this thematic issue.

Keywords: non-financial reporting, European regulation, sustainability, corporate social accountability, integrated reporting, non-financial reporting directive, accounting

JEL Classification Code: K22

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1 Introduction

The practice of corporate non-financial¹ reporting has a long history. Over the last four decades, it has attracted a growing amount of attention from various scholars in an interdisciplinary context.² However, research has focused mainly on voluntary business practices, and it is only recently that scholars have started paying more attention to how it is in fact regulated.³ The identified gap in the literature is largely due to the fact that, unlike the practice followed for the dissemination of financial information, companies have enjoyed extensive freedom and considerable discretion in their reporting of non-financial

1 For the scope of this article, we use a definition of non-financial reporting as synonymous with corporate social and environmental reporting. This is in line with the European Commission's definition focusing on information relating to environmental, employee, social, respect for human rights, anti-corruption and anti-bribery matters.

2 For a critical and accessible overview, see for instance Bebbington J., & Gray, R. (2001). An account of sustainability: Failures, success and a reconceptualisation. *Critical Perspectives on Accounting*, 12, 557–587; Buhr, N. (2007). Histories of and rationales for sustainability reporting. In J. Unerman, J. Bebbington, & B. O'Dwyer, B. (eds), *Sustainability Accounting and Accountability*. New York and London: Routledge; Mathews, M. R. (1997). Twenty-five years of social and environmental accounting research: Is there a silver jubilee to celebrate? *Accounting, Auditing & Accountability Journal*, 10(4), 481–531; Owen, D. (2008). Chronicles of Wasted Time? A Personal Reflection on the Current State of, and Future Prospects for Social and Environmental Accounting Research. *Accounting, Auditing and Accountability Journal*, 21(2), 240–267; Guthrie, J., & Parker, L. D. (2012). Reflections and projections: 25 years of interdisciplinary perspectives on accounting, auditing and accountability research. *Accounting, Auditing & Accountability Journal*, 25(1), 6–26; Shabana, K. M., Buchholtz, A. K., & Carroll, A. B. (2017). The institutionalization of corporate social responsibility reporting. *Business & Society*, 56(8), 1107–1135; Stolowy, H., & Paugam, L. (2018). The expansion of non-financial reporting: an exploratory study. *Accounting and Business Research*, 48(5), 525–548; 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.

3 Examples of this new wave of studies of non-financial reporting laws and regulation include Monciardini, D. (2016). The 'Coalition of the Unlikely' Driving the EU Regulatory Process of Non-Financial Reporting. *Social and Environmental Accountability Journal*, 36(1), 76–89; Ioannou, I., & Serafeim, G. (2017). *The consequences of mandatory corporate sustainability reporting: Evidence from four countries*. Harvard Business School Research, Working Paper No. 11-100; 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*, 162, 323–342; La Torre, M., Sabelfeld, S., Blomkvist, M., Tarquinio, L., & Dumay, J. (2018). Harmonising non-financial reporting regulation in Europe: Practical forces and projections for future research. *Meditari Accountancy Research*, 26(4), 598–621.

information. Despite some noticeable exceptions,⁴ until recently in most jurisdictions non-financial reporting was not legally binding. There are not dominating global standards for non-financial reporting that can be compared to International Financial Reporting Standards and the US GAAP, but dozens of competing and complementing standards and guidelines. Whilst companies could decide to include social and environmental information in some sections of their mandatory annual reports (e.g. the UK Management Discussion and Analysis), there were no specific requirements for them to do so besides some fragmented reporting rules in the EU Accounting Directive.⁵ Business organisations could decide to entirely avoid any form of non-financial reporting or, alternatively, to cherry-pick and even fabricate positive information to be included in glossy reports aimed at strengthening their social and environmental credentials.⁶ This widespread ‘impression management’⁷ exercise has emerged alongside the rise of a large variety of voluntary reporting frameworks stemming from multi-stakeholder initiatives, such as the Global Reporting Initiative (GRI), and often sponsored by international organisations, such as the UN Global Compact. While the rise of voluntary

4 France, for instance, had already in 1977 introduced a legislative obligation for all firms with more than 300 employees to issue a social review (*bilan social*) based on over 100 performance indicators. Then again in 2001, with Article 116 of the *Loi sur les Nouvelle Régulations Économiques* (NRE), France was the first European country to adopt mandatory non-financial disclosure for publicly-listed companies. For a detailed account, see for instance Gond, J.-P., & Igalens, J. (2012). *La Responsabilité sociale de l'entreprise*. Paris: Puf.

5 Article 19a of 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 as amended by 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, OJ L 182, 29.6.2013, p. 19–76.

6 See for instance Deegan, C. (2002). Introduction: The legitimising effect of social and environmental disclosures—a theoretical foundation. *Accounting, Auditing and Accountability Journal*, 15(3), 282–311; Cho, C., & Patten, D. M. (2007). The role of environmental disclosure as legitimacy tools: a research note. *Accounting Organizations and Society*, 32(7), 639–647.

7 Solomon, J. F., Solomon, A., Joseph, N. L., & Norton, S. D. (2013). Impression management, myth creation and fabrication in private social and environmental reporting: Insights from Erving Goffman. *Accounting, organizations and society*, 38(3), 195–213. See also Diouf, D., & Boiral, O. (2017). The quality of sustainability reports and impression management. *Accounting, Auditing & Accountability Journal*. Cho, C. H., Laine, M., Roberts, R. W. and Rodrigue, M. (2015), “Organized hypocrisy, organizational façades, and sustainability reporting”, *Accounting, Organizations and Society*, Vol. 40, pp. 78–94.

adoption of non-financial reporting has been convincingly explained as a way to confer legitimacy to organisations, its regulation is still under-theorised⁸.

During the last decade, the situation has been changing rapidly, particularly in Europe, and non-financial reporting has ceased to be an exclusively or mainly voluntary practice. Following the individual initiatives of various European countries⁹, the European Union has likewise introduced a requirement for corporate non-financial reporting. Over 6,000 companies in the European Economic Area are now required to publish a report on their policies, risks and outcomes regarding environmental, social and human rights matters following the national implementation of a 2014 EU Directive on disclosure of non-financial and diversity information by certain large undertakings and groups (hereon labelled NFRD).¹⁰ The NFRD aims to lay the foundation for new models of corporate reporting that complement the regulation of financial statements, management reports and corporate governance statements in the Accounting Directive and International Financial Reporting Standards with environmental and social information necessary for understanding a company's performance, as well as the impacts of its activities on society. The NFRD constitutes a pivotal step towards opening up a public debate on how reporting on the sustainability impacts of business should be undertaken henceforth. It aims at ensuring that the largest listed companies disclose 'the impact of [their] activity, relating to, as a minimum,

8 As recently pointed out by a call for papers for a Special Issue of *Accounting Forum* on 'Non-financial Reporting Regulation: Role, Process and Consequences', very few studies have specifically investigated the role of non-financial reporting regulation and most of these studies have investigated the effect of non-financial reporting regulation on corporations, by mainly focusing on its impact on the level/quality of CSR disclosure and on its economic (primarily capital market) consequences. Hence, important topics related to NFR regulation are underexplored or are yet to be examined. See Baboukardos, D., Gaia, S., Lassou, P., Gordon S., & Soobaroyen, T. (2020). Call for Papers Special Issue of Accounting Forum. Non-financial Reporting Regulation: Role, Process and Consequences. *Accounting Forum*. The call can be retrieved here: <file:///C:/Users/dm466/Downloads/SpecialIssueonNon-financialReportingRegulationAF.pdf>.

9 Prominent examples of national policy and regulatory initiatives include the 2009 Danish law on CSR reporting; the Dutch Banking Sector Agreement regarding human rights; the 2015 UK Modern Slavery Act; the French Law on the 'duty of vigilance'. For an overview see KPMG (2016). *Carrots & Sticks. Sustainability Reporting Policies Worldwide - Today's Best Practice, Tomorrow's Trends*.

10 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, OJ L 330, 15.11.2014, p. 1–9; see European Commission. Non-financial reporting: EU rules require large companies to publish regular reports on the social and environmental impacts of their activities. Retrieved from https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters’,¹¹ also with a view to facilitating responsible investment. The stance of the EU on this type of reporting was that it is ‘vital to managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection’.¹²

The emergence of a legislative framework at different levels of governance requires greater scholarly attention, especially with regard to the regulatory aspects of non-financial reporting. The academic debate is shifting from *whether* to regulate corporate non-financial reporting to *how* this type of reporting should be regulated. Some of the central themes of this new and stimulating research agenda and engagement include the need for understanding the challenges and opportunities of creating a mandatory framework for the reporting of non-financial information. Key questions to be considered include the following:

- What are the key features of a mandatory regime that aims to provide meaningful non-financial reporting?
- To what extent is the much needed transformation towards a more sustainable society to be achieved with the help of amendments made to accounting laws?
- On a more general level, what are the conditions for creating a democratic and pluralistic regime that empowers corporate stakeholders?
- What are the real possibilities of achieving transformative reforms through mainstream institutions – such as the European Union – and given ongoing power asymmetries?

To address some of these questions, on 19 September 2017, academics, business executives and representatives, civil society experts and regulators came together in Brussels for the ‘Non-Financial Reporting for a Sustainable Circular Economy: Towards Greater Policy Coherence?’ conference.¹³ The conference was organised

11 Article 19a of 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 as amended by 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, OJ L 182, 29.6.2013, p. 19–76.

12 Recital 3 of 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, OJ L 330, 15.11.2014, p. 1–9.

13 Sustainable Market Actors for Responsible Trade. Non-Financial Reporting for a Sustainable Circular Economy: Towards Greater Policy Coherence?, 19 September 2017. Retrieved from <https://www.smart.uio.no/events/events/20170919-non-financial-reporting.html>.

by the ‘Sustainable Market Actors for Responsible Trade’ (SMART) project.¹⁴ The collection of papers that were the result of the conference presentations had an aim of identifying how non-financial reporting and corporate governance could contribute to a shift to more sustainable business practices. The papers addressed some of the most important challenges in the area of non-financial reporting, including harmonisation, reporting integration, development of business reporting standards and assurance, and internalisation in corporate governance.

The idea for this thematic issue of *Accounting, Economics, and Law: A Convivium* originated from papers presented at this conference. In this thematic issue, 18 scholars provide nine perspectives on the regulation of non-financial reporting and related topics such as reporting integration and sustainable finance. The issue is organised into three parts: the first part adopts a comparative perspective by reflecting on various European frameworks, the USA and international accounting standards; the second part pays particular attention to the central issue of assurance and verification of non-financial information and its standardisation; the third and final part outlines some critical theoretical contributions aimed at broadening and opening up the existing debates on non-financial reporting regulation.

In this thematic issue, we aim to address this under-researched interdisciplinary area by providing a variety of theoretical and empirical contributions related to the rapidly changing non-financial reporting regulatory agenda. The issues considered in the nine papers included in this issue cover a broad spectrum of topics: comparative analyses of non-financial reporting regulation at different levels of governance; the standardization, integration and harmonization of reporting and assurance practices; research on the socio-political context, main actors and underlying ideological that characterise the non-financial reporting regulatory discourse. The main purpose of this introduction is not only to summarise this wealth of analyses but to try to find a preliminary synthesis, a new basis on which it is possible to think about the identified variety of issues as an emergent research and policy agenda. In particular, our aim has been to question systemic issues and deep structures that appear to impose important constraints on the effective regulation of corporate non-financial reporting. The remainder of this introduction to the thematic issue is organised as follows. The next section provides an overview of the varying approaches and frameworks that have emerged over time in relation to the reporting non-financial information. Section 3 focuses on the NFRD. As editors of this thematic issue, we make the argument that the

¹⁴ EU Funded Project Horizon 2020 on Programme INT-4-2015 ‘Europe as a Global Actor: in search of greater policy coherence for development’. The conference was sponsored and supported by law firm Frank Bold and by Cass Business School’s ‘Purpose of the Corporation’ project.

European regulator has failed to address the most fundamental issues, which only a well-developed legal framework would be well equipped to deal with. Section 4 outlines five suggestions that may allow for the design of a mandatory non-financial reporting regulatory regime that would in fact have an impact in supporting sustainable practice. Section 5 concludes by summarising the various contributions of articles included in this thematic issue.

2 Three Waves of International Frameworks for Sustainability Reporting

The non-financial reporting landscape is characterised by an ever-expanding maze of options. A case in point is offered by the NFRD, which provides a list of no fewer than 21 national, EU-based and international standards and frameworks that companies may rely on for compliance. The list (summarised and compiled in Table 1) constitutes a partial yet powerful illustration of the level of fragmentation and confusion that characterises corporate non-financial reporting.

While some of the frameworks listed in Table 1 share similar underlying assumptions, overlaps are only partial and major differences persist across the various frameworks in relation to crucial issues such as the legitimacy of the standard-setting bodies; the definition of materiality; the users towards which the reporting framework is oriented; the thematic aspects included and the key principles or more detailed set of Key Performance Indicators (KPIs) adopted.

In order to make sense of this fragmented landscape, various interpretative keys can be adopted. In the following, we will try situating non-financial reporting frameworks using a historical perspective and identify various waves or layers relating to non-financial reporting and specifically its conceptual and material development. Broadly speaking, we can identify three major accelerations over the decades through which the current regulatory landscape has emerged.

Firstly, the original wave of the 1970s, led by governmental initiatives, produced, at the international level, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.¹⁵ While the Guidelines were subsequently revised and expanded on over time, it is interesting to highlight that the focus of the original declaration on employment and industrial relations reflects the spirit of the time and the power of trade unions, with a

¹⁵ Organization for Economic Co-operation and Development. Guidelines for multinational enterprises. Retrieved from <http://www.oecd.org/corporate/mne/>.

Table 1: List of Standards or Framework Companies can Use to Comply with the EU NFRD (2017 EU Guidelines on Non-financial Reporting).

Standard	Standard setter organisation	Issues covered	Website
CDP (formerly the Carbon Disclosure Project)	CDP Global System, consisting CDP Worldwide Group (the Group's holding company), CDP Europe AISBL and CDP North America, Inc.	A global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts	https://www.cdp.net/en
CDSB Framework for reporting environmental & climate change information	The Climate Disclosure Standards Board	A framework for reporting environmental information	https://www.cdsb.net
OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas	Organization for Economic Co-operation and Development	Recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices	https://www.oecd.org/corporate/mne/mining.htm
the EU Eco-Management and Audit Scheme (EMAS)	European Commission	Management instrument developed by the European Commission for companies and other organisations to evaluate, report, and improve their environmental performance	https://ec.europa.eu/environment/emas/index_en.htm
KPIs for ESG: A Guideline for the Integration of ESG into Financial Analysis and Corporate Valuation (Version 3.0)	The European Federation of Financial Analysts Societies Society of Investment Professionals in Germany	Key performance indicators for environmental, social and governance issues	https://www.dvfa.de/fileadmin/downloads/Publikationen/Standards/KPIs_for_ESG_3_0_Final.pdf
GRI Standards	Global Reporting Initiative	Global standards for sustainability reporting	https://www.globalreporting.org/Pages/default.aspx
OECD-FAO Guidance for Responsible Agricultural Supply Chains	Organization for Economic Co-operation and Development	Global framework and benchmark to help agri-businesses and investors contribute to	https://www.oecd.org/daf/inv/investment-policy/rbc-

Table 1: (continued)

Standard	Standard setter organisation	Issues covered	Website
Guidance on the Strategic Report	Food and Agriculture Organization of the United Nations UK Financial Reporting Council	sustainable development identify and mitigate adverse impacts A best practice statement on strategic report prepared by UK enterprises	agriculture-supply-chains.htm https://www.frc.org.uk/getattachment/fb05dd7b-c76c-424e-9daf https://www.oecd.org/corporate/mne/4293c9fa2d6a/Guidance-on-the-Strategic-Report-31-7-18.pdf
Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development	Organization for Economic Co-operation and Development	Recommendations addressed by governments to multinational enterprises operating in or from adhering countries	https://www.oecd.org/corporate/mne/
UN Guiding Principles Reporting Framework	Shift Project, Ltd.	Guidance for companies to report on how they respect human rights	https://www.ungpreporting.org
ISO 26000: Social Responsibility	International Organisation for Standardisation	Uncertified guidance on best practices relating to social responsibility	https://www.iso.org/iso-26000-social-responsibility.html
The International <IR> Framework	International Integrated Reporting Council	Framework for integrated reporting	https://integratedreporting.org/resource/international-ir-framework/
Model Guidance on Reporting ESG Information to Investors	Sustainable Stock Exchanges Initiative	A template for stock exchanges to develop their own, custom guidance how issuers report ESG considerations	https://sseinitiative.org/wp-content/uploads/2015/09/SSE-Model-Guidance-on-Reporting-ESG.pdf

Table 1: (continued)

Standard	Standard setter organisation	Issues covered	Website
Product Environmental Footprint (PEF) Guide	European Commission	A multi-criteria measure of the environmental performance of a good or service throughout its life cycle	https://ec.europa.eu/environment/eussd/pdf/footprint/PEF%20methodology%20final%20draft.pdf
The Natural Capital Protocol	Natural Capital Coalition	A decision-making framework that enables organizations to identify, measure and value their direct and indirect impacts and dependencies on natural capital	https://naturalcapitalcoalition.org/natural-capital-protocol/
SASB Standards	The Sustainability Accounting Standards Board	Industry-specific disclosure standards across environmental, social, and governance topics	https://www.sasb.org
The Sustainability Code	German Council for Sustainable Development	An internationally applicable reporting standard for topics relating to sustainability	https://www.nachhaltigkeitsrat.de/en/projects/the-sustainability-code/
Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	International Labour Organisation	Guidelines to multinational enterprises, governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life, and industrial relations	https://www.ilo.org/wcmsp5/groups/public/-ed_emp/-emp_ent/-multi/documents/publication/wcms_094386.pdf
The United Nations (UN) Global Compact	United Nations	A non-binding initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation	https://www.unglobalcompact.org

Table 1: (continued)

Standard	Standard setter organisation	Issues covered	Website
Sustainable Development Goals	United Nations	An urgent call for action by all countries - developed and developing - in a global partnership for sustainable development	https://sustainabledevelopment.un.org/?menu=1300
Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework	United Nations Human Rights Council	A global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity	https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusiness-HR_EN.pdf

notable absence of environmental issues.¹⁶ At the beginning of the 1980s, this international regulatory debate suddenly came to an end. As a consequence, for over two decades, non-financial disclosure was widely conceived as only a market-led practice, adopted by corporations on a purely voluntary and discretionary basis.¹⁷

A new wave of non-financial reporting frameworks emerged in the 1990s/early 2000s, including in particular the Eco-Management and Audit Scheme (EMAS) (1993);¹⁸ the influential Global Reporting Initiative (GRI) (1996);¹⁹ the UN Global Compact (UNGP) (2000);²⁰ and the Carbon Disclosure Project (CDP) (2000).²¹ Each framework has specific characteristics and has attracted focused and critical academic discussions.²² At the same time, it is important to point out that all of the frameworks have certain aspects in common that reflect the historical context: A) In line with a period marked by the ‘retreat of the state’, they are voluntary and often were filling the void due to the lack of legislative initiatives on non-financial reporting; B) Because of the first mentioned factor, all frameworks focused on the principle that the only means available to prompt companies to voluntarily disclose non-financial information is to demonstrate that this will lead to a competitive advantage, typically linked to reputational rewards. Underpinning this wave of frame-working is the so-called ‘business case for corporate

16 For instance, according to the Guidelines, enterprises should “observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country” International Investment and Multinational Enterprises (OECD, Paris, 1976: 16) For a comprehensive analysis of the original Guidelines, see Hägg, C. (1984). The OECD guidelines for multinational enterprises. *Journal of Business Ethics*, 3(1), 71–76.

17 Unerman, J. Bebbington, J., & O’dwyer, B. (Eds.) (2007). *Sustainability Accounting and Accountability*. New York and London: Routledge; Gray, R., Dillar, J., & Spence, C. (2009). Social Accounting as If The World Matters. *Public Management Review*, 11(5), 545–573.

18 European Commission. What is EMAS. Retrieved from https://ec.europa.eu/environment/emas/index_en.htm.

19 Global Reporting Initiative. Retrieved from <https://www.globalreporting.org/Pages/default.aspx>.

20 United Nations Global Compact. Retrieved from <https://www.unglobalcompact.org>.

21 CDP. Retrieved from <https://www.cdp.net/en>.

22 Isaksson, R., Steimle, U. (2009). What does GRI-reporting tell us about corporate sustainability? *The TQM Journal*, 21(2), 168–181; Isaksson, R., Steimle, U. (2009). What does GRI-reporting tell us about corporate sustainability? *The TQM Journal*, 21(2), 168–181; Brown, H. S., de Jong, M., & Lessidrenska, T. (2009). The rise of the Global Reporting Initiative: a case of institutional entrepreneurship. *Environmental Politics*, 18(2), 182–200; Levy, D. L., Brown, H. S., & de Jong, M. (2010). The contested politics of corporate governance. The case of the Global Reporting Initiative. *Business & Society*, 49(1), 88–115; Dingwerth, K., Eichinger, M. (2010). Tamed Transparency: How Information Disclosure under the Global Reporting Initiative Fails to Empower. *Global Environmental Politics*, 30(3), 74–96.

responsibility’ (‘doing well by doing good’) and an instrumental approach to corporate responsibility; C) compared to the first wave of the 1970s, there is a stronger emphasis on climate and environmental issues, as illustrated in particular by EMAS and CDP, which focus exclusively on these. The original focus on meeting the requirement to keep employees and trade unions informed is then extended to other stakeholders, in particular Civil Society Organisations (CSOs), but the former focus on employee and social information was lost.

Today, we are positioned within the third wave (or layer) of non-financial reporting frameworks that originated after the 2008 financial crisis in response to the legitimacy crisis of *laissez-faire* and voluntary approaches to business regulation that characterised the three decades between 1980 and 2010. A number of legislative initiatives aimed at enhancing corporate transparency and non-financial disclosure have been adopted at the national level such as the 2010 Dodd-Frank Act in the US; the 2010 Grenelle II Law and the ‘Devoir de Vigilance’ Law in France; and the 2013 Companies Act and 2015 Modern Slavery Act in the UK.²³ This new regulatory momentum has been followed through, at the international level, by a variety of new relevant frameworks and the profound revision of some of the existing ones (such as the OECD Guidelines and the GRI). The new frameworks include, in particular:

- the ISO 26000 Social Responsibility Standard issued in 2010 by the International Organisation for Standardisation (ISO), the world’s largest developer and publisher of standards;²⁴
- the UN Guiding Principles on Business and Human Rights (UNGP, also known as the ‘Protect, Respect and Remedy’ Framework) that have been endorsed by the UN Human Rights Council (UN HRC) in 2011;²⁵
- the International Integrated Reporting Framework (<IRF>) issued by the International Integrated Reporting Council (IIRC) in 2014;²⁶

23 Knudsen, J. S., Moon, J., & Slager, R. (2015). Government Policies for Corporate Social Responsibility in Europe: A Comparative Analysis of Institutionalisation. *Policy & Politics*, 43(1), 81–99.

24 International Organization for Standardization. ISO 26000: Social responsibility. Retrieved from <https://www.iso.org/iso-26000-social-responsibility.html>.

25 United Nations (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. New York and Geneva: United Nations. Retrieved from https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

26 International Integrated Reporting Council. International <IR> Framework. Retrieved from <https://integratedreporting.org/resource/international-ir-framework/>.

- the recommendations issued in 2017 by the Task Force on Climate-related Financial Disclosures (TCFD), developed by the Financial Stability Board;²⁷
- the 17 Sustainable Development Goals (SDGs) set in 2015 by the United Nations General Assembly and intended to be a “blueprint to achieve a better and more sustainable future for all”.²⁸

Again, all these initiatives and frameworks are different, and they have individually attracted a substantive body of research and great attention by practitioners and stakeholders.²⁹ However, taken together they show some common features that differ from the previous phases and signal that further shifts in the corporate accountability landscape are to take place. The following three elements stand out: (A) There is a stronger regulatory role of public authorities. The public policy debate has moved forward from ‘whether’ to disclose to ‘how’ to undertake disclosure in relation to non-financial reporting and how it should be regulated. This is creating a competition among a variety of standard-setters deploying different approaches. However, private standard-setters such as ISO and the IIRC – which had the aim of developing a globally accepted framework – lack legitimacy and authority, and have so far been adopted by a relatively small number of companies. At the same time, legally binding obligations for non-financial reporting, which had the aim of addressing the failures of these types of voluntary regulation, run the risk of creating further fragmentation and higher

27 Task Force on Climate-related Financial Disclosures. Retrieved from <https://www.fsb-tcfid.org/>.

28 United Nations. Sustainable Development Goal Platform. Helping governments and stakeholders make the SDGs a reality. Retrieved from <https://sustainabledevelopment.un.org/>.

29 See for instance Mares, R. (Ed.). (2011). *The UN guiding principles on business and human rights: foundations and implementation*. Leiden: Martinus Nijhoff Publishers; Bonnitcha, J., & McCorquodale, R. (2017). The concept of ‘due diligence’ in the UN guiding principles on business and human rights. *European Journal of International Law*, 28(3), 899–919; Helms, W. S., Oliver, C., & Webb, K. (2012). Antecedents of settlement on a new institutional practice: Negotiation of the ISO 26000 standard on social responsibility. *Academy of Management Journal*, 55(5), 1120–1145; Hahn, R., & Weidtmann, C. (2016). Transnational governance, deliberative democracy, and the legitimacy of ISO 26000: Analyzing the case of a global multistakeholder process. *Business & Society*, 55(1), 90–129; de Villiers, C., Unerman, J., Rinaldi, L., Brown, J., & Dillard, J. (2014). Integrated reporting: On the need for broadening out and opening up. *Accounting, Auditing & Accountability Journal*, 27(7), 1120–1156; Flower, J. (2015). The International Integrated Reporting Council: A story of failure. *Critical Perspectives on Accounting*, 27(C), 1–17; O’Dwyer, B., & Unerman, J. (2020). Shifting the focus of sustainability accounting from impacts to risks and dependencies: researching the transformative potential of TCFD reporting. *Accounting, Auditing & Accountability Journal*. <https://doi.org/10.1108/AAAJ-02-2020-4445>; Biermann, F., Kanie, N., & Kim, R. E. (2017). Global governance by goal-setting: the novel approach of the UN Sustainable Development Goals. *Current Opinion in Environmental Sustainability*, 26, 26–31.

administrative costs for corporations operating across different jurisdictions. The result so far has been the emergence of a hybrid regime for reporting that combines voluntary and mandatory elements. (B) In the mid-1990s, the GRI emphasised the similarities (analogy) between sustainability reporting and financial reporting to gain legitimacy and institutionalize the practice of voluntary non-financial reporting.³⁰ Today, some of the most important innovations of this new wave of regulatory initiatives are generated outside the analogy with financial accounting. A prominent example is the inclusion of non-financial information about environmental and social due diligence in supply chains (UNGPs; OECD Guidelines; UK Modern Slavery Act; French Law ‘Devoir de vigilance’).³¹ In these initiatives it is evident that there is a shift from mere corporate communication to corporate accountability and supply chain management. (C) If the previous two waves were driven respectively by the information needs of organised labour and civil society, it is increasingly clear that during the current phase, so-called ‘responsible investors’ and Environmental Social and Governance (ESG) disclosure have come to play a key role. After four decades characterised by the financialisation of the global economy,³² this is hardly surprising and again reflects the spirit of our times. The financial sector has accumulated immense leverage and influence on corporations, political leaders and even organized civil society, as illustrated by Cerrato and Ferrando (2020) in their contribution to this thematic issue.³³ At the same time, since 2009 it has been in the eye of the storm following the global (North-Atlantic) financial crisis of 2007–2008 and under increased public scrutiny and regulatory pressure. Thus, investor-driven initiatives aimed at enhancing transparency and

30 Etzion, D., & Ferraro, F. (2010). The Role of Analogy in the Institutionalization of Sustainability Reporting. *Organization Science*, 21(5), 1092–1107.

31 This regulatory area is in rapid expansion. The Business & Human Rights Resource Centre offers an updated list of national and regional initiatives for mandatory human rights and environmental due diligence in Europe. This can be retrieved from: <https://www.business-humanrights.org/en/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe>.

32 Epstein, G. A. (Ed.). (2005). *Financialization and the World Economy*. Cheltenham: Edward Elgar Publishing; Strange, S. (1996). *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press; Strange, S. (2015). *Casino Capitalism*. Manchester: Manchester University Press.

33 See Cerrato, D., & Ferrando, T. (2020). The financialization of civil society activism: sustainable finance, non-financial disclosure and the shrinking of bottom-up engagement, in this thematic issue.

tackling climate issues and human rights violations could be seen also as a manner to regain (or maintain) social legitimacy.³⁴

The NFRD is part of this third wave of non-financial reporting regulatory initiatives. Given its large-scale application (over 6,000 large companies) and the size of Europe's Common Market, the Directive has a primary relevance in this regulatory debate. European prominence is confirmed also by the contribution of Virginia Harper Ho to this thematic issue of *Convivium* which illustrates the gap between Europe and the US that is lagging behind in this regulatory field.³⁵ At the same time, Europe is an interesting test-bed because it shows the ongoing limitations and challenges that characterise non-financial reporting. Many stakeholders and some academics had high hopes that EU legislation could have led to some degree of harmonisation or at least to a simplification of the fragmented and confused landscape outlined in this section. However, as demonstrated by Aureli, Salvatori and Maranghi in their article for this thematic issue, the NFRD did not generate the expected regulatory convergence across different Member States. On the contrary, the authors found increased regulatory divergence, because of the variety of historical, cultural, economic and political realities.³⁶

As will be discussed in the following section, thus far the NFRD has failed to achieve its intended objectives and deep structural reforms are needed if Europe wants to enhance its leadership in shaping the transition to a more sustainable economy.

3 Structural Failures in the Construction of the EU Regime for Non-financial Reporting

Tsagas and Villiers argue in their article included in the present thematic issue of *Convivium*,³⁷ that while it is clear that the NFRD has represented a welcome shift towards a stronger regulatory agenda for supporting sustainability, various limitations and shortcomings remain. By maintaining a very broad and generic

34 Investors had a prominent role in the Paris Agreement 2015. Many investor-driven climate initiatives exist. It is worth mentioning the Task Force on Climate-Related Financial Disclosures (TCFD) that was set up in 2015 by the Financial Stability Board (FSB) to develop voluntary, consistent climate-related financial risk disclosures. In the area of human rights violations, one could look at the investor-led Corporate Human Rights Benchmark (CHRB).

35 See Harper Ho, V. (2020). Non-Financial Reporting & Corporate Governance: Explaining American Divergence & Its Implications for Disclosure Reform, in this thematic issue.

36 Aureli, S., Salvatori, F., & Magnaghi, E. (2020). A Country-comparative Analysis of the Transposition of the EU Non-Financial Directive: An Institutional Approach, in this thematic issue.

37 See Tsagas, G., & Villiers, C. (2020). Why “less is more” in non-financial reporting initiatives: concrete steps towards supporting sustainability, in this thematic issue.

approach, the NFRD has failed to achieve its intended objective ‘to increase the relevance, consistency and comparability’ of information disclosed by large corporations across the European Union. They specifically explain how random and arbitrary compliance with various reporting initiatives makes companies’ sustainable practices ‘less’ rather than ‘more’ transparent, offering a comprehensive view on different reporting frameworks that shows that there is a need to provide some clarity in this complex landscape. Their article supports reform of the NFRD, which has constituted a positive step in the right direction, and advises on stronger guidance on what to report and how to report it.

There is evidence that the NFRD’s initial ambition to tackle sustainability issues was compromised. Several studies have illustrated how the Commission’s initial ambitious plans for mandatory non-financial reporting – promoted in particular by the Internal Market Commissioner, Michel Barnier – faced harsh resistance and were gradually watered down to gain enough support to become EU law.³⁸ At the moment of writing this article there is a renewed, wide and shared consensus that the shortcomings of the NFRD need to be addressed. The limitations of the NFRD have recently been exposed by a large-scale assessment (1,000 companies) performed by the Alliance for Corporate Transparency.³⁹ The study clearly demonstrates the limited impact of the NFRD, concluding that while there is a minority of companies providing comprehensive and reliable information, the quality and comparability of corporate non-financial reporting is largely not sufficient to understand their impacts, risks, or even their plans. Similarly, in 2019, European authorities examined the disclosure in the non-financial statements prepared by 937 issuers for the purpose of assessing compliance with the NFRD.⁴⁰ The conclusion of this analysis has identified several shortcomings. In particular, ‘important aspects of the non-financial statement merit further urgent enhancements’, notably disclosure of the principal risks related to environmental matters and especially climate change. Furthermore, the European authorities have highlighted the lack of explanations of why the KPIs selected by the reporting entity are relevant, how they relate to the reporting entity’s targets and how they were prepared (methodology). The analysis also stressed that the absence of detailed and uniform disclosure requirements to complement the Accounting

38 In particular see Kinderman, D. (2019). The challenges of upward regulatory harmonization: The case of sustainability reporting in the European Union. *Regulation & Governance*. <https://doi.org/10.1111/rego.12240>; Monciardini, D. (2016). The ‘Coalition of the Unlikely’ Driving the EU Regulatory Process of Non-Financial Reporting. *Social and Environmental Accountability Journal*, 36(1), 76–89.

39 The Alliance for Corporate Transparency (2020). Research Report 2019. Retrieved from <http://www.allianceforcorporatetransparency.org/>.

40 ESMA (2020). Enforcement and regulatory activities of European enforcers in 2019. April 2020. Retrieved from file:///C:/Users/dm466/Downloads/esma32-63-846_2019_activity_report.pdf.

Directive has led to disclosure of a wide variety of KPIs. In their conclusions, the European authorities called for working towards the promotion of a unified set of international standards on disclosure related to Environmental, Social and Governance (ESG) issues. This position is also now officially endorsed by the European Commission. In January 2020, the Executive Vice President, Valdis Dombrovskis, announced plans to create EU standards for corporate sustainability reporting. In an important speech regarding the implementation of the European Green Deal, he acknowledged that a comprehensive sustainable finance strategy – including legislation on green public procurement and revised EU state aid rules – required a revision of the Non-Financial Reporting Directive. ‘The many overlapping international reporting standards and set-ups confuse companies and investors. They also find it expensive. The EU is well placed to address this situation – and show leadership in building consensus for a set of standards that can be widely accepted.’⁴¹

Thus, the EU Commission is beginning to undertake a crucial revision of the NFRD. To avoid the repeated shortcomings of the past that led to the failure of the NFRD, the present article argues for publicly debating the issues at hand while it provides an analysis of the root causes of the identified regulatory failure. It is argued that the main problem lies in the lack of vision and clarity that characterised the NFRD. The NFRD has been the result of a difficult political compromise which resulted in weak and ambiguous legislation. It substantially evades some of the most fundamental questions and challenges related to the construction of an effective regime for reporting non-financial information. Even the decision by the European Commission to adopt the terminology ‘non-financial’ reporting – rather than the most common ‘ESG’ or ‘sustainability’ or ‘social and environmental’ reporting – has created further confusion and ambiguity about the relationship between this new concept and existing concepts. More substantially, it is unclear how the EU can promote consistency and comparability and, at the same time, provide corporations with discretion on which reporting methods and approach to adopt.⁴² First of all, it is unclear which groups of stakeholders the NFRD does in fact inform and empower.⁴³ Who are the intended beneficiaries of the NFRD and

41 European Commission. Remarks by Executive Vice-President Dombrovskis at the Conference on implementing the European Green Deal: Financing the Transition. 28 January 2020. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_139.

42 La Torre, M., Sabelfeld, S., Blomkvist, M., Tarquinio, L., & Dumay, J. (2018). Harmonising non-financial reporting regulation in Europe. *Meditari Accountancy Research*, 26(4), 598–621.

43 Auld, G., Renckens, S., & Cashore, B. (2015). Transnational private governance between the logics of empowerment and control. *Regulation & Governance*, 9(2), 108–124; Hussain, W., & Moriarty, J. (2018). Accountable to whom? Rethinking the role of corporations in political CSR. *Journal of Business Ethics*, 149(3), 519–534; Banerjee, S. B. (2003). Who Sustains Whose Development? Sustainable Development and the Reinvention of Nature. *Organization Studies*, 24(1), 143–180, 161.

through which regulatory agencies and intermediaries can they be empowered?⁴⁴ Secondly, does the EU initiative aim to foster integration of financial and non-financial reporting, in line for instance with the work of the IIRC,⁴⁵ or does it promote a perspective where financial and societal elements are kept broadly separate?⁴⁶ On all these critical matters, the NFRD is very ambiguous. Let us address them briefly.

Despite being mandatory and legislative-driven by definition, the NFRD has been deliberately designed to follow a non-prescriptive regulatory approach, maintaining a strong continuity with pre-existing voluntary business practices, centred around the self-regulation of the reporting business organisation. European law-makers have opted for a generic “report-or-explain” approach, meaning that companies do not have to report against any given set of standards with which they would be required to comply. As mentioned above, in these circumstances, managers can cherry-pick what information to disclose and what international methodology (if any, or a mixture of them) to adopt in their statements. This legal ambiguity that characterises the Directive could be seen as a way of leaving wide latitude to business organisations and market actors “to fill in the details that the law has left ambiguous”.⁴⁷ Confronted by the fierce opposition of some business associations such as BusinessEurope,⁴⁸ EU policy-makers opted for a rather tame regulatory approach. This is well illustrated by the words used by a representative of the EU Commission in explaining the NFRD to business representatives: “we don’t tell companies how to manage themselves”⁴⁹ and “non-financial reporting

44 Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017). Theorizing regulatory intermediaries: The RIT model. *The Annals of the American Academy of Political and Social Science*, 670(1), 14–35; Brès, L., Mena, S., & Salles-Djelic, M. L. (2019). Exploring the formal and informal roles of regulatory intermediaries in transnational multistakeholder regulation. *Regulation & Governance*, 13(2), 127–140.

45 Flower, J. (2015). The International Integrated Reporting Council: A story of failure. *Critical Perspectives on Accounting*, 27(C), 1–17; Adams, C. A. (2015). The International Integrated Reporting Council: A call to action. *Critical Perspectives on Accounting*, 27(C), 23–28, 26–27; Dumay, J., Bernardi, C., Guthrie, J., & Demartini, P. (2016). Integrated reporting: A structured literature review. *Accounting Forum*, 40(3), 166–185.

46 Schaltegger, S. (2018). Linking environmental management accounting: A reflection on (missing) links to sustainability and planetary boundaries. *Social and Environmental Accountability Journal*, 38(1), 19–29.

47 Edelman, L. B. (2016). *Working Law: Courts, Corporations, and Symbolic Civil Rights*. Chicago: University of Chicago Press, 34.

48 Kinderman, D. (2016). Time for a reality check: Is business willing to support a smart mix of complementary regulation in private governance? *Policy and Society*, 35(1), 29–42.

49 ACCA (2016). The impact of non-financial reporting in the EU (by Sara Lewis). Retrieved from <http://www.acca.ee/gb/en/member/member/accounting-business/2016/05/practice/good-business.html>.

does not exist as such ... We need to remind ourselves that companies are the real protagonists.”⁵⁰ At the root of the problem is the still dominant neoliberal conception of the role of the law in addressing market failures. According to this view, business regulation should be as limited as possible because regulation represents an administrative burden for business that risks limiting free choice and straitjacketing innovations coming (only) from self-regulated markets. Despite the announcement of the EU Commission about the launch of preparatory work on European non-financial reporting standards, past experience suggests being cautious about the actual possibility that EU law-makers will embrace substantive and radical changes. For instance, the Executive Vice President Dombrovskis was quick to point out that “The best and most widely accepted elements of what exists today will be the starting point”.⁵¹

Hence, the solutions suggested and the way forward should be centred on addressing foremostly who the NFRD is supposed to benefit and what is the relationship between non-financial and financial accounting. First of all, concerning the users and addressees of the NFRD, EU policy-makers failed to clearly identify the intended beneficiaries of the NFRD and through which regulatory agencies and intermediaries they can be empowered.⁵² The underlying view they have taken is that non-financial reporting should lead to a win-win-win situation that will eventually (in the long term) benefit everyone. The NFRD is meant to benefit all the parties involved: it creates greater value for the reporting companies; better information for all the users of non-financial disclosure such as investors, civil society and other stakeholders; and positive implications for society and the natural environment at large. This approach, in line with the dominant ‘difference-blind’⁵³ and depoliticised CSR and ‘monologic

50 ACCA, AVIVA, Barclays, IIRC (2017), Building a more sustainable economy in Europe: “Non-Financial Information and sustainable finance – What next?”, Draft Report, 21 June 2017. Retrieved from https://www.accaglobal.com/content/dam/ACCA_Global/Technical/integrate/Building%20a%20sustainable%20economy%20in%20Europe_event_21%20June%202017%20event%20report%20.pdf.

51 European Commission. Remarks by Executive Vice-President Dombrovskis at the Conference on implementing the European Green Deal: Financing the Transition. 28 January 2020. Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_139.

52 For a more detailed discussion of this point, see Monciardini, D., & Conaldi, G. (2019). The European regulation of corporate social responsibility: The role of beneficiaries’ intermediaries. *Regulation & Governance*, 13(2), 240–259.

53 Similarly to Taylor’s idea of ‘difference-blind’ liberalism, in the dominant approach to CSR there is a denial of conflicts and politics or an attempt to claim consensus for economic rationalism presented as mutually beneficial and objective. See Taylor, C. (1994). *Multiculturalism: Examining the Politics of Recognition*. Princeton, NJ: Princeton University Press.

accounting',⁵⁴ tends to deny conflicts and trade-offs. However, as mentioned above, the reality is that the NFRD has always been at the centre of polarised debates and harsh confrontations between different interest groups that express conflicting views on the matter. Until the NFRD explicitly acknowledges these cleavages and addresses asymmetric power and information relationships, the non-financial reporting equation will always be unbalanced in favour of the reporting entity. Instead of considering conflicts as negative, policymakers should acknowledge them and the need for balancing opposing forces as the engine for forging and testing more effective norms and rules through successful bargains and negotiations.⁵⁵

Secondly, there is a need to provide clarity on what the relationship between financial and non-financial corporate reporting is, as it currently remains obscure and even arbitrary. This appears evident in the definition of materiality adopted in the NFRD. EU policy-makers seem to struggle trying to reconcile two different perspectives on materiality: on the one hand, the 'true and fair view' perspective centred on the financial performance of the reporting business entity typical of the financial accounting tradition; and, on the other hand, the emergent society-centred perspective, focussing on the impact of corporate activities on society and nature. The first one focuses on the business organisation and is concerned with the potential or actual impacts of social and environmental risks and opportunities on the "performance, development and position" of the reporting entity. In line with the definition of materiality that characterises financial disclosure, this risk-oriented perspective is centred on the privileged relationship that the company has (or must have) primarily with an investor type of audience. The second perspective focuses on the "external impacts of the company's activities" and is primarily concerned with corporate environmental and social accountability to consumers, civil society, employees, public authorities and investors. This broader perspective focuses on externalities and the social licence of business to operate, and the corporate obligations towards stakeholders, society and nature. The NFRD fails at squaring the

54 As Brown and Dillard notes, "conventional accounting is notably monologic in approach, with an official narrative overwhelmed by capitalist perspectives, positivism and neoclassical economics", Brown, J., & Dillard, J. (2015). Opening accounting to critical scrutiny: towards dialogic accounting for policy analysis and democracy. *Journal of Comparative Policy Analysis: Research and Practice*, 17(3), 247–268, 251; see also Brown, J. (2009). Democracy, sustainability and dialogic accounting technologies: Taking pluralism seriously. *Critical Perspectives on Accounting*, 20(3), 313–342.

55 Monciardini, D. (2019). *Conflicts and Coalitions: The Drivers of European Corporate Sustainability Reforms*. Cambridge: Cambridge University Press.

materiality circle by generically asking companies to include both.⁵⁶ This aim at bridging the two definitions of materiality is still vague and the emphasis on the importance of connectivity between different aspects of non-financial information as well as between financial and non-financial information is not supported by a clear methodology that reporting companies can adopt to define and assess which non-financial issues are material. As mentioned above, EU policy-makers merely encouraged reporting companies to disclose the materiality assessment methodology that was deployed. Thus far, the EU has also maintained an ambiguous and opportunist approach towards the Integrated Reporting (IR) project developed by the IIRC, aimed at integrating some elements of sustainability and financial reporting. The EU Commission maintained that it “is monitoring with great interest the evolution of the integrated reporting concept, and, in particular, the work of the International Integrated Reporting Council.” (European Commission, 2014) At the same time, EU policy-makers explicitly stated that “neither the Directive nor the guidelines require companies to comply with Integrated Reporting.”⁵⁷

4 A Nascent Agenda for Strengthening EU Mandatory Non-financial Reporting Regulation

In this section, key ideas that could be considered by public authorities to strengthen their regulatory approach will be introduced. The approach taken is a generic one and therefore the article does not proceed to propose detailed solutions to the shortcomings that characterise the non-financial reporting landscape and, in particular, the NFRD, as these latter points fall outside the scope of this article. Instead, an outline to the nascent regulatory agenda for more effective and comprehensive non-financial reporting is provided.⁵⁸

⁵⁶ Article 1 of the Directive states that companies concerned must ‘include in the management report 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 both perspectives [...]’.

⁵⁷ European Commission (2017). Frequently asked questions: Guidelines on disclosure of non-financial information. Brussels, 26 June 2017. Retrieved from http://europa.eu/rapid/press-release_MEMO-17-1703_en.htm?locale=en.

⁵⁸ We were also inspired by the comprehensive and detailed reform proposals advanced by the SMART project. See Sjøfjell, B., Mähönen, J, Novitz, T. A., Gammage, C. & Ahlström, H., Securing the Future of European Business: SMART Reform Proposals (May 7, 2020). University of Oslo Faculty of Law Research Paper No. 2020-11. Available at SSRN: <https://ssrn.com/abstract=3595048>.

Consistent with other analyses,⁵⁹ the present article puts forward that the lack of vision of the regulator stems from a cognitive capture, namely a situation in which the regulator begins to think like the regulated actors.⁶⁰ Thus, the rationale behind our proposals is that the needed changes should not be merely based on technical regulatory solutions, but rather require above all deep changes in the underlying normative discourse and regulatory mind-set used to think about sustainability, business reporting and its regulation. If deep changes are not implemented, then as Abela argues in his article for this thematic issue, regulation of corporate reporting will not lead to improved accountability, but merely “to colonise new arenas of value” by “recasting old principles” rather than promoting an enlightened view of the corporation.⁶¹

4.1 Sustainability is the Overarching Principle, Not Just a Set of Issues to be Added to the Annual Report

Too often the policy and regulatory debate on non-financial reporting has been framed in terms of reporting on financial *plus* sustainability information (what the expression ‘non-financial’ itself emphasises) – then discussing the opportunity for better integrating the two.⁶² We contend that a better way of understanding this relationship is to acknowledge sustainability as the overarching normative principle that applies to business reporting as a whole. Indeed, according to some

⁵⁹ This is what de Bakker et al. (2020) refer to as ‘the elephant in the room’. They call “for questioning larger systemic issues and sociopolitical “deep structures” that appear to impose important constraints on business sustainability.” That means “disclosing as well as calling into question the systemic constraints of the current dominant paradigm.” See de Bakker, F. G., Matten, D., Spence, L. J., & Wickert, C. (2020). The elephant in the room: The nascent research agenda on corporations, social responsibility, and capitalism. *Business & Society*. Retrieved from <https://journals.sagepub.com/doi/full/10.1177/0007650319898196>. As an example, Stout and others emphasise the need to debunk the myth that the purpose of the corporation is to maximise shareholder value. See Stout, L. A. (2012). *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public*. San Francisco: Berrett-Koehler Publishers. This debate has prompted some authors to further investigate the difference between ‘truly sustainable business’ and ‘business as usual’. See for instance Dyllick, T., & Muff, K. (2015). Clarifying the Meaning of Sustainable Business. Introducing a Typology From Business-as-Usual to True Business Sustainability. *Organization & Environment*, 29(2), 156–174, 157.

⁶⁰ Carpenter, D., & Moss, D. A. (2014). *Preventing Regulatory Capture*. Cambridge: Cambridge University Press; Engstrom, D. E. (2013). Corraling Capture. *Harvard Journal of Law & Public Policy*, 36(1), 32–39.

⁶¹ See Abela, M. (2020). Paradise Lost: Accounting Narratives Without Numbers, in this thematic issue.

⁶² See Mähönen’s paper in this thematic issue.

prominent legal scholars, it is already possible to identify sustainability as an overarching objective of the European Treaty, which has yet to be integrated into EU company law and securities law.⁶³ In this sense the approach taken by the EU so far is clearly inadequate. Taking sustainability goals seriously would require to systematically review accounting rules on the basis of their compatibility with the broader EU objectives of creating a more circular, just and low-carbon economy. For instance, Scholten, Lambooy, Renes and Bartels illustrate in this thematic issue how the International Financial Reporting Standards (IFRS) accounting framework does not encourage corporate climate change disclosure, advantaging non-renewable energy as compared to renewable energy companies.⁶⁴ The EU approach to ‘non-financial reporting’ has been to include social and environmental issues as an add-on to the existing financial reporting regulatory framework. Namely, Article 19a NFRD requires companies to either include a ‘non-financial statement’ in their annual reports dedicated to non-financial (social and environmental) information or (as a main rule in practice) a totally separate report, rather than structuring financial reporting rules as part of the broader emerging EU regime for corporate social and environmental accountability. In discourse theory, the approach taken by the EU can be defined as a form of ‘transformism’.⁶⁵ That is, growing demands for radical transformations of unsustainable business emerging from a large base of citizens (businessmen, civil society organisations, investors, consumers, etc.) have been disarticulated and captured by incorporating some of their instances (e.g. climate, human rights, biodiversity) into the dominant logic of accounting but only (or mainly) to the extent that they are also financially relevant.

63 See in particular the work of Beate Sjøfjell. For instance, Sjøfjell, B. & Wiesbrock, A. (eds). 2015. *The Greening of European Business under EU Law: Taking Article 11 TFEU*. Abingdon: Routledge; Sjøfjell, B., & Richardson, B. J. (Eds.). (2015). *Company Law and Sustainability: Legal Barriers and Opportunities*. Cambridge: Cambridge University Press.

64 See Scholten, R., Lambooy, T., Renes, R., & Bartels, W. (2020). The impact of climate change in the valuation of production assets via the IFRS framework – An exploratory qualitative comparative case study approach, in this thematic issue.

65 *Transformismo* in the work of Antonio Gramsci denoted a process of incorporation of opposition figures or groups into the conservative-moderate ‘political class’: see Gramsci, A. (1971). *Selections from the Prison Notebooks of Antonio Gramsci* (Q. Hoare & G. NowellSmith, Trans.). New York: International Publishers. The concept has been further developed by Laclau and Mouffe’s discourse theory: see Laclau, E., & Mouffe, C. (2001). *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. Second edition. London: Verso. For a broader overview of transformism and discourse theory see Howarth, D. (2005). Applying discourse theory: The method of articulation. In D. Howarth & J. Torfing (Eds.), *Discourse Theory in European Politics: Identity, Policy and Governance* (pp. 316–349). London: Palgrave Macmillan.

4.2 Overcome the Institutional Analogy Between Reporting for Financial Information and Reporting for Social and Environmental Impact

As mentioned above, for many years non-financial reporting has been a voluntary practice and, as such, it struggled immensely to be accepted and recognised by business organisations. As illustrated by the work of Etzion and Ferraro,⁶⁶ to legitimise this new practice in the eyes of business executives, voluntary social and environmental disclosure came to be structured as analogous to existing financial accounting practices.⁶⁷ In this sense, the development of non-financial reporting has been developed largely through this analogy, in terms of similarity or departure from the financial accounting discourse and institutions.⁶⁸ Notwithstanding the crucial theoretical and practical contribution of the accounting profession, we argue that this analogy has limited the inputs of other forms of expertise, particularly to the development of mandatory non-financial reporting. It is fair to say that financial accountants and auditors lack the necessary understanding of issues such as climate change, human rights violations, and biodiversity. In this thematic issue, Sonnerfeldt and Pontoppidan demonstrate the limits of the current auditing and assurance regulatory framework when dealing with non-financial information.⁶⁹ As sustainability requires a multidisciplinary effort, it would be crucial to have a much greater input from outside accounting and finance expertise. In turn, this opening needs going beyond the analogy with financial accounting to include, for example, natural scientists, human rights and environmental lawyers, anti-corruption experts and trade union and employment experts in the policy development process. As a matter of fact, research on non-financial reporting has also been fruitfully developed

66 Etzion, D., & Ferraro, F. (2010) The Role of Analogy in the Institutionalization of Sustainability Reporting. *Organization Science*, 2(5), 1092–1107.

67 “Analogy” refers to correspondences in some particulars between things that are otherwise unlike. As discussed by a large body of literature, the analogy in argumentation plays a key role in both social and natural sciences and in the promotion and shaping of institutional design. See Hesse, M. B. (1963). *Models and Analogies in Science*. London: Sheed & Ward; Lawrence, T. B., Hardy, C., & Phillips, N. (2002). Institutional effects of interorganizational collaboration: The emergence of protoinstitutions. *Academy of Management Journal*, 45(1) 281–290.

68 For instance non-financial reporting frameworks such as the GRI, the SASB or the IIRC are structured similarly to financial accounting standard-setting bodies such as the IASB. They often employ or are led by trained accountants and non-financial reports are presented in a way that mimics financial reporting as a form of business communication for financial actors and other stakeholders to understand the social and environmental performance of a company.

69 See Sonnerfeldt, A., & Pontoppidan, C. A. (2020). The Challenges of Assurance on Non-financial Reporting, in this thematic issue.

outside the accounting literature.⁷⁰ However, much of this work has been developed in isolation due to a ‘silo mentality’. More needs to be done to integrate this body of knowledge into the regulatory debate about reporting for sustainability.

4.3 Business Reporting Regulation and Practices Should be Restructured on the Basis of the Double Materiality Principle

The conventional approach to business reporting – including non-financial reporting – has been company-centric (i.e. the ‘true and fair view’ doctrine). However, this perspective has often been challenged by advocates of social and environmental reporting as too narrowly focused on value creation for the organisation and its shareholders, rather than shared value for society and environmental protection.⁷¹ As has been mentioned, reporting duality was already evident in the text of the NFRD. However, the concept of ‘double materiality’ was officially introduced only in 2019 by the European Commission in the guidelines on reporting climate-related information.⁷² It helpfully distinguishes between reporting on the [social and environmental] impact of the company’s activity – directed at social stakeholders, and reporting on the company’s [financial] development, performance and position – directed at economic stakeholders. If further developed, this distinction can help to overcome the confusion about the users and addressees of the NFRD, clarifying the relationship between financial and non-financial information (see Section 3). It also contributes to decoupling social and environmental reporting from the analogy with

70 For instance Biermann, F., Kanie, N., & Kim, R. E. (2017). Global governance by goal-setting: the novel approach of the UN Sustainable Development Goals. *Current Opinion in Environmental Sustainability*, 26, 26–31; Bonnitcha, J., & McCorquodale, R. (2017). The concept of ‘due diligence’ in the UN guiding principles on business and human rights. *European Journal of International Law*, 28(3), 899–919; Chompu-Inwai, R., Jaimjit, B., & Preamsurianunt, P. (2015). A combination of Material Flow Cost Accounting and design of experiments techniques in an SME: the case of a wood products manufacturing company in northern Thailand. *Journal of Cleaner Production*, 108, 1352–1364.

71 Biondi, Y. (2014). Better Accounting for Corporate Shareholding and Environmental Protection. *European Company Law*, 11(2), 129–132; Unerman, J., Bebbington, J. & O’dwyer, B. (2018) Corporate reporting and accounting for externalities. *Accounting and Business Research*, 48(5), 497–522.

72 In June 2019, the Commission published guidelines on reporting climate-related information that in practice consist of a new supplement to the existing guidelines on non-financial reporting, which remain applicable. See European Commission. Communication from the Commission: Guidelines on non-financial reporting: Supplement on reporting climate-related information (2019/C 209/01), OJ C 209. 20.6.2019, p. 1–30. Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0620\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0620(01)&from=EN).

traditional financial accounting (see Section 4.2), highlighting the need for different methodologies and expertise.⁷³ However, the idea of ‘double materiality’, as it is outlined in the EU guidelines on reporting climate-related information, has various shortcomings that need to be addressed. First, it is limited to climate aspects and it is meant to be applied only to reporting on non-financial information. Instead we suggest that double materiality as a principle should be applied to business reporting as a whole and in relation to all aspects of business reporting regulation (financially material as well as socially and environmentally material issues). Furthermore, the Guidelines seem to imply that the two forms of materiality largely overlap (or tend to overlap in the medium-long term). This reflects the tendency to see sustainability as a win-win and converging development driven by the business case for ‘doing well by doing good’. While overlaps exist, we understand the two materiality perspectives as incommensurable and based on alternative underlying assumptions. Thus, more than converging, they are complementary views. Furthermore, the guidelines still leave the reporting company with discretionary power to decide which matters are material to them.⁷⁴ Instead we advocate the establishment of detailed and sector specific KPIs for environmental and social materiality assessment defined by public authorities together with companies and key stakeholders, updated on a regular basis. Lastly, in our view, double materiality should be seen as a distinction between a company-centred and a society-centred perspective on materiality – not as a distinction between financial reporting and sustainability reporting. As mentioned above (Section 4.1), financial materiality rules should be reviewed to make sure that all sustainability-related issues that are material to understanding the position of a company are taken into account. As Mähönen points out in his contribution to this thematic issue,⁷⁵ the idea of reporting integration as proposed by the IIRC could be more correctly defined as ‘financial reporting 2.0’ and it goes somewhat in the direction of an expanded company-centred financial materiality assessment. To be effective, a society-centred materiality assessment should be developed on the basis of a plural and interdisciplinary approach (Section 4.2), including insights from climate science, biodiversity, human rights, employment relations, and so on. Contrary to traditional financial accounting, it can be seen more as an instrument of governance of the corporation rather than a communication tool adopted by the business organisation. It is not just about changing non-financial reporting rules. It

⁷³ It is interesting to note that this need for a greater distinction emerged as sustainability reporting had to become more specific about KPIs and reporting methodologies, which required a different approach to materiality than financial materiality – i.e. climate-related information.

⁷⁴ The guidelines state that “companies should consider using the proposed disclosures in these guidelines if they decide that climate is a material issue from either of these two perspectives”.

⁷⁵ See Mähönen, J. (2020). Integrated reporting and sustainable corporate governance from European perspective, in this thematic issue.

is, as Jansson and Veldman argue in this thematic issue, a matter of reassessing corporate governance conceptual foundations.⁷⁶ In this sense, as proposed by the SMART project, it has to be more appropriately seen as the external phase (reporting and verification) of a broader company's social and environmental (sustainability) due diligence process.⁷⁷

4.4 Connectivity of Reporting Reforms with the Other EU Initiatives on Environmental Sustainability and Corporate Social Accountability

While the NFRD has been strongly linked to the EU sustainable finance initiative⁷⁸ – as often highlighted by the EU Commission – it is still very poorly connected to other relevant parts of the European Green Deal and ongoing EU regulatory initiatives. For instance, on 29 April 2020, the European Commissioner for Justice, Didier Reynders, announced that the Commission had committed to introducing rules for mandatory corporate environmental and human rights due diligence.⁷⁹ The initiative was presented as part of the European Green Deal and it followed a vast campaign launched by 100 organisations calling for EU human rights and environmental due diligence legislation.⁸⁰ As the NFRD requires disclosure of information about the due diligence process implemented by the undertaking to identify, prevent and mitigate existing and potential adverse social and environmental impacts, the connection between the two initiatives could

76 See Jansson A. J., & Veldman J. (2020). Planetary Boundaries and Corporate Reporting: The Role of the Conceptual Basis of the Corporation, in this thematic issue.

77 See Sjäffjell, B., Mähönen, J., Novitz, T. A., Gammage, C., & Ahlström, H. (2020). Securing the Future of European Business: SMART Reform Proposals (May 7, 2020). University of Oslo Faculty of Law Research Paper No. 2020-11. Retrieved from SSRN <https://ssrn.com/abstract=3595048>; Mähönen, J. (2020). Comprehensive Approach to Relevant and Reliable Reporting in Europe: A Dream Impossible? *Sustainability*, 12, 5277.

78 European Commission. Sustainable finance: The EU is examining how to integrate sustainability considerations into its financial policy framework in order to mobilise finance for sustainable growth. Retrieved from https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en.

79 Fox, B. (2020, April 30). New human rights laws in 2021, promises EU justice chief. *Euraktiv*. Retrieved from <https://www.euractiv.com/section/global-europe/news/new-human-rights-laws-in-2021-promises-eu-justice-chief/>.

80 European Coalition for Corporate Justice (2020). Over 100 civil society organisations demand human rights and environmental due diligence legislation. December 2, 2019. Retrieved from <https://corporatejustice.org/news/16800-over-100-civil-society-organisations-demand-human-rights-and-environmental-due-diligence-legislation>.

hardly be stronger. However, they have developed in parallel and, so far, the revision of the NFRD has not been designed in conjunction with this very relevant regulatory change. Another example concerns the EU circular economy action plan,⁸¹ which is one of the main building blocks of the European Green Deal. It is obvious that changes in accounting and reporting rules play a central role in the transformation of business practices towards circularity. For instance, new forms of reporting can play a crucial role in accounting for the material flows of costly or non-valuable items now considered as sources of value.⁸² Reporting reforms based on a system-thinking approach are also required to facilitate organisations' shift from a product-perspective to a function or life cycle analysis lens.⁸³ However, the current policy debate on the revision of the NFRD entirely overlooks the possible connection with the EU circular economy action plan – arguably because circular economy is an idea that originated and has been developed outside the accounting discourse (see Section 4.2).⁸⁴ A third example of this disconnection concerns the

81 European Commission (2020). Circular Economy Action Plan: For a cleaner and more competitive Europe. Retrieved from https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf.

82 See for instance Chompu-Inwai, R., Jaimjit, B., & Premsurayanunt, P. (2015). A combination of Material Flow Cost Accounting and design of experiments techniques in an SME: the case of a wood products manufacturing company in northern Thailand. *Journal of Cleaner Production*, 108, 1352–1364; Christ, K. L., & Burritt, R. L. (2015). Material flow cost accounting: a review and agenda for future research. *Journal of Cleaner Production*, 108, 1378–1389. Di Maio, F., Rem, P. C., Baldé, K., & Polder, M. (2017). Measuring resource efficiency and circular economy: A market value approach. *Resources, Conservation and Recycling*, 122, 163–171; Morsetto, P. (2020). Targets for a circular economy. *Resources, Conservation and Recycling*, 153, 104553; Geng, Y., Fu, J., Sarkis, J., & Xue, B. (2012). Towards a national circular economy indicator system in China: an evaluation and critical analysis. *Journal of Cleaner Production*, 23(1), 216–224.

83 Andersen, M. S. (2007). An introductory note on the environmental economics of the circular economy. *Sustainability science*, 2(1), 133–140; Geissdoerfer, M., Savaget, P., Bocken, N. M., & Hultink, E. J. (2017). The Circular Economy – A new sustainability paradigm? *Journal of cleaner production*, 143, 757–768; Pieroni, M. P., McAloone, T. C., & Pigosso, D. C. (2019). Business model innovation for circular economy and sustainability: A review of approaches. *Journal of Cleaner Production*, 215, 198–216; Kornberger, M., Pflueger, D., & Mouritsen, J. (2017). Evaluative infrastructures: Accounting for platform organization. *Accounting, Organizations and Society*, 60, 79–95.

84 As argued by Arjaliés et al. (2020), '[d]espite the essential role of accounting to achieve a circular economy, the topic has been surprisingly neglected by accounting research.' See Arjaliés, D-L, Rodrigue, M., Romi, A. (2020), Call for papers Special Issue of Accounting Forum on "Accounting for the Circular Economy", *Accounting Forum*. Retrieved from <https://think.taylorandfrancis.com/accounting-forum-circular-economy/>. However, the accounting profession is slowly responding to the need for greater attention to developing some forms of accounting for the circular economy. KPMG (2019). Circular transition indicators: Proposed metrics for business, by business (Draft for public consultation). Retrieved from https://www.wbcsd.org/Programs/Circular-Economy/Factor10/Resources/Circular-Transition-Indicators_

poor consideration given so far in the debate to the revision of the NFRD with regard to existing EU environmental management, reporting and audit schemes. The EU Commission has developed and tested a number of methodologies and initiatives, such as the EU Ecolabel Product Environmental Footprint and Organisation Environmental Footprint methods, elaborated as a common way of measuring environmental performance of business organisations.⁸⁵ In particular, it is worth mentioning the EU Eco-Management and Audit Scheme (EMAS). The NFRD already contains several references to EMAS and there is empirical evidence of the positive effects on the behaviour and corporate non-financial performance of EMAS-registered companies.⁸⁶ In fact, already in 2002, an EU CSR Communication called for examining whether EMAS could be extended to the management of social performance (European Commission, 2002). Building on the extensive experience of EMAS to develop the European non-financial reporting standards would help to provide comparable and relevant information and connect the NFRD with the aim of creating a European circular economy.⁸⁷ However this option has been sidelined in favour of financial accounting-like and market-driven reporting frameworks. The European Commission has asked the European Financial Reporting Advisory Group (EFRAG) to work on the elaboration of non-financial reporting standards, despite EFRAG's limited experience in dealing with sustainability issues. Once again, this approach risks limiting the contribution of other experts to such an interdisciplinary and complex matter as non-financial reporting. The EU Green Deal offers a unique opportunity for a more comprehensive orchestration and connectivity of all the different initiatives developed at the EU level on corporate social and environmental accountability.

85 Iraldo, F., & Barberio, M. (2017). Drivers, barriers and benefits of the EU Ecolabel in European companies' perception. *Sustainability*, 9(5), 751; Bach, V., Lehmann, A., Görmer, M., & Finkbeiner, M. (2018). Product environmental footprint (PEF) pilot phase — comparability over flexibility? *Sustainability*, 10(8), 2898.

86 Iraldo, F., Testa, F., & Frey, M. (2009). Is an environmental management system able to influence environmental and competitive performance? The case of the eco-management and audit scheme (EMAS) in the European Union. *Journal of Cleaner Production*, 17(16), 1444–1452; Daddi, T., Magistrelli, M., Frey, M., & Iraldo, F. (2011). Do environmental management systems improve environmental performance? Empirical evidence from Italian companies. *Environment, Development and Sustainability*, 13(5), 845–862.

87 European Commission (2017). Moving towards a circular economy with EMAS. Best practices to implement circular economy strategies (with case study examples). Luxembourg: Publications Office of the European Union.

4.5 Role of Governments as Primary Users of Non-financial Disclosure

While we welcome the decision of the EU Commission to acknowledge the shortcomings of the NFRD and work towards the development of an ambitious set of EU non-financial reporting standards, questions remain about the role of public authorities in addressing this market failure. As mentioned in Section 3, a neoliberal conception of business regulation that tends to minimise state interventions in the economy is still very influential in Brussels (and elsewhere). As a result, governments are not even seen as the primary audience of corporate non-financial reporting, avoiding explicit consideration of the use of this information for rewarding best practices or punishing corporate negative impact. However, we maintain that potentially, this could help to address some of the structural power asymmetries that characterise non-financial reporting. If the previous waves of non-financial reporting standardisation have been driven by the information needs of organised labour (1970s), CSOs (2000s), and responsible investors (2010s), we argue that the current reforms should be driven by governments' need for information useful to monitor and compare corporate actions on issues such as carbon emissions, equality in the workplace, fighting widespread human rights violations and corruption. The development of a society-centred materiality assessment outlined above (Section 4.3) should primarily be used by governments to establish whether companies meet minimum standards associated with changing societal expectations – the so-called 'social licence to operate'.⁸⁸ Companies should be pushed towards improving their performance – as EMAS does for environmental performance – against a set of clear criteria, and they should face greater scrutiny if they consistently underperform. If the EU Commission is serious about non-financial disclosure, then non-financial information should be used (and usable) in courts to address corporate criminal liability in conjunction with legislation on mandatory social and environmental due diligence to identify, prevent, mitigate and account for abuses and environmental damage in their value chains. At the same time, non-financial information has to be taken into account to reward companies that are creating shared value, for instance through tax breaks and by integrating this information in the emerging procurement frameworks of public sector organisations. As happens with EMAS in certain European Member

⁸⁸ Hall, N. L., & Jeanneret, T. (2015). Social licence to operate:: An opportunity to enhance CSR for deeper communication and engagement. *Corporate Communications: An International Journal*, 20(2), 213–227; Parsons, R., Lacey, J., & Moffat, K. (2014). Maintaining legitimacy of a contested practice: How the minerals industry understands its 'social licence to operate'. *Resources Policy*, 41, 83–90.

States, the EU Commission should also seriously consider the possibility of providing financial incentives to help business organisations cover the substantial costs of properly collecting, reporting and externally validating non-financial information.⁸⁹ Equally, we should require full disclosure from the governments themselves that will lead by example and embed a reformed framework for non-financial reporting in their own operations.⁹⁰

5 Contents of the Special Issue

As we have set out in our introduction, the academic debate has already made a profound and important shift from *whether* to regulate corporate non-financial reporting to *how* this type of reporting should be regulated. Hence, the articles contributed to this special issue address the ‘how to regulate aspect’ by reflecting on some of the following themes. The contributions help understand and envision the key features of a mandatory non-financial reporting regime that aims to provide an effective plan for furthering real sustainability. The contributions address the extent of transformation required towards a more sustainable society to be achieved with the help of amendments made to accounting laws. There is also provision made on the discussion relating to the conditions required for creating a democratic and pluralistic regime that empowers corporate stakeholders and an exploration of what the real possibilities of achieving transformative reforms through mainstream institutions are, as well as how to address the given ongoing power asymmetries between institutions. The thematic issue has been divided into three key parts.

5.1 First Part Summary

The first part includes several comparative analyses at the international, sectoral and European levels, dealing with the issue on a jurisdictional basis.

This part begins with Virginia Harper Ho’s comparative analysis of the US and the EU’s approaches to non-financial reporting. Reluctance of the US Securities and Exchange Commission (SEC) to push for standardised non-financial reporting

89 See Heinelt, H. (2019). *Sustainability, Innovation and Participatory Governance: A Cross-National Study of the EU Eco-Management and Audit Scheme*. Abbingdon: Routledge.

90 As the SMART project has required concerning the EU Sustainable Finance Taxonomy. See Cullen, J., Mähönen, J., & Nilsen, H. R. (2020). Financing the Transition to Sustainability: SMART Reform Proposals (May 6, 2020). University of Oslo Faculty of Law Research Paper No. 2020-10. Retrieved from SSRN <https://ssrn.com/abstract=3594433>.

and the weaknesses of private ordering by shareholders has left the US behind global and especially European developments in producing non-financial information. Financial market pressure is growing, however, with increasing demands for material information on ESG risks and for corporate sustainability and climate change response.

Rebecca Scholten, Tineke Lambooy, Remko Renes and Wim Bartels compare the application of accounting standards in the valuation of energy firms' production assets. They conclude that the IFRS framework does not encourage firms, in their climate change reporting, to reflect on the impacts of their management and valuation of production assets, to the detriment of renewable energy firms and to the benefit of non-renewable energy firms. The authors recommend firms to use the IFRS options to report on climate change, wind and solar radiation patterns and estimates of future energy production comparable with the disclosure of proven oil and gas reserves of producers of non-renewables.

Selena Aureli, Federica Salvatori and Elisabetta Magnaghi compare application of the Non-Financial Reporting Directive in five EU Member States, assessing the Directive's capacity to create enough institutional pressure to generate convergence in their regulation. Their results show divergence instead of convergence, caused by differences in national business systems. The paper confirms that historical, cultural, economic and political local contexts mould how corporate sustainability is understood.

5.2 Second Part Summary

The second part deals with the reporting provision process and its main standard-setting.

Amanda Sonnerfeldt and Caroline Aggestam Pontoppidan discuss the challenges of assurance practices within an increasingly complex as well as fragmented corporate reporting regulatory landscape. The paper shows that the assurance concept and standards are still 'in the making', and the definitions and issues remain to be negotiated in different arenas and sites of practice. It emphasises the importance for regulators, companies and their various stakeholders to recognise the value and limits of assurance. Assurance is a means for companies to improve reporting but not an end in itself. As Sonnerfeldt and Pontoppidan state, unless firms have a genuine intention to act on unsustainable practices, disclosures are merely narratives decoupled from underlying organisational realities. To free the full potential of assurance, the firms should first rethink the purpose of their reporting and its assurance.

Jukka Mähönen discusses the relationship between integrated reporting and corporate governance, and especially (1) what kind of stakeholder model, if any, integrated reporting and especially the International Integrated Reporting (<IR>) Framework of 2013 represents, (2) what is the impact, if any, of integrated reporting to material corporate governance in the codes it is included in, and (3) if this latter inclusion occurs, does an integrated view and especially the ‘integrated thinking’ behind the <IR> Framework represent a genuine sustainable value creation driven business model based on the boundaries of the planet and social foundation for humanity, or is it only a view to encourage organisations to take care of the profits accrued to the financial capital providers?

Georgina Tsagas and Charlotte Villiers discuss the important question of what negative consequences stem from the plethora of voluntary non-financial reporting standards on corporate practice. The authors advocate that although there are certain rationales for the differences between the standards, these standards offer no real incentive to corporations to behave more sustainably. The conclusion drawn is that ‘less is more’ in non-financial reporting initiatives, and a plea is made for a revision of the Non-Financial Reporting Directive to work as a platform for a standardised and streamlined framework for reporting applied on a mandatory basis.

5.3 Third Part Summary

The third part deals with the socio-political context, actors and ideologies of non-financial reporting.

Andreas Jansson and Jeroen Veldman see that the problem of the weakness of non-financial reporting is deeper than just the standards themselves. The problem lies in the conceptual foundation of the corporation and in the very basis of corporate governance itself. The mainstream contract and agency theories describe the firm and its set of relationships in a limited way, depicting the firm as a set of a limited number of actors, interests and time-horizons. The authors argue that the mainstream conceptual setup unduly restricts notions of accountability and is connected to a narrow notion of political economy. A broadening of non-financial reporting requires first a critical assessment of the assumed object and audience of reporting in corporate governance theory.

Davide Cerrato and Tomaso Ferrando take a look at non-governmental organisations, environmental movements and individuals’ engagement with non-financial reporting and sustainable finance initiatives. They ask how the third sector can benefit from Environmental, Social and Governance (ESG) indicators in constructing a just and sustainable economy and what the unexpected consequences may be.

Their conclusion is sceptical: the more civil society uses the vocabulary, narrative and paradigm of ESG and sustainable finance, the more financialised civil society itself becomes. Instead, they should push two joint options, combining the short-term tactical use of ESG with the long-term strategy of hard law against unsustainable practices with a view to definancialising the environment and society altogether.

The special volume ends with Mario Abela's contribution of the role of a 'business model' in non-financial reporting frameworks. Regulations define the business model as the organising concept for the non-financial disclosures, with its principal role being to explain how the reporting entity creates value. The author analyses corporate practices and argues that business model reporting does not strengthen accountability but serves as a preformative device to colonise new arenas of value creation by installing unstable concepts such as purpose, value and stakeholders. These unstable terms provide reporting entities with an opportunity to construct narratives that are detached from the financial statements and create narratives without numbers.

As a whole, the special issue paints a colourful picture of the present state of non-financial reporting, its weaknesses and possibilities to create a reliable and useful reporting ecosystem that would encourage firms to adopt sustainable behaviour. In the context of the ongoing revision process of the EU non-financial reporting directive, the present paper has offered five key areas to be improved drawing on the lessons learnt from the past, as well as from the contributions made by the thematic issue collection of papers. The proposed renewed agenda put forward here has highlighted some of the structural failures of the current reporting regime and provides a blueprint for future reforms. Policy makers and public and private actors alike are encouraged to reflect on the points raised and consider lobbying for and implementing structural changes to the existing framework of non-financial reporting to truly and better support the value of furthering sustainability.

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