CHAPTER 12

ESG Reporting

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1 Calls for Consistency, Quality and Reliability in Reporting and Provision of Comparable Information

A Buzzword Does not Suffice

In the aftermath of COP21,[1] policy makers—backed by a growing attention from the civil society—have indicated that they will increasingly dedicate specific attention to transparency, accountability and compliance with Environmental, Social and Governance ("ESG") related topics. Trustworthy information is indeed pivotal in channelling capital towards low-carbon and sustainable activities. Accurate, timely and reliable information is expected to allow investors to make informed decisions on their capital allocations. In relation to transparency, strong voluntary practices would need to be defined with further granularity and based on common and widely-accepted definitions, in

[1] 21st Conference of the Parties that signed up to the 1992 United Nations Framework Convention on Climate Change, held in Paris.

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order for these to serve as a baseline against which ESG performance and comparability can be measured and tracked.

The sustainability reporting topic was until recently likely to remain self-regulated, with the advantage of allowing for an open and flexible sectorial-approach. However, it has been found that such flexibility should be carefully balanced against investors' trust, which strongly relies on the consistency, the quality, the reliability and the comparability of information disclosed.

Not to meet more stringent reporting objectives is currently deemed to jeopardise the credibility of companies and institutions, even those who happen to be active in the field of sustainable activities and/or finance.

Appropriate ESG disclosures and the related sustainability reports will therefore ultimately need to be matched by further convergence of minimum common standards to allow, among other aspects, for product, service and companies performance's comparability, notably in the financial sector. Hence, relevant mandatory sustainability reporting is expected to become a powerful tool to enhance the efficiency of capital markets and a risk-based allocation of financing channelled in economic activities contributing to environmental, social and governance-related objectives.

With a view to enabling trust in sustainability reporting and disclosures, it is necessary that the basis of such reporting is clearly defined and the reported figures and information are comparable across countries and industries.

This means that ESG-related disclosures and transparency are here to stay—it appears now of essence that legislators and regulators worldwide enforce their enshrinement within legal frameworks by setting more stringent mandatory milestones to be complied with, in order to provoke a clear awareness that it is no longer an option not to consider such sustainability aspects when conducting business.

Policy makers and other internal and external stakeholders recognise the growing importance of holding companies accountable for their impacts on climate, environmental and social factors, increasing the need for adequate disclosure on their strategies, the associated risks and their action plan to manage, monitor, track, measure and finally report on the impacts of their activities as well as the resilience of their business models with regards to sustainability.

It has in fact been found that, additionally to engaging in sustainable activities, the establishment of reporting obligations on such business standards contribute to the creation of a proper environment for fostering existing initiatives. In fact, to describe such activities and to provide information about them to others is key for changing pre-existing patterns and to persuade market players to walk the talk on the ESG agenda.[2]

[2] Refer inter alia to recent papers such as Adoption of CSR and Sustainability Reporting Standards: Economic Analysis and Review, Hans B. Christensen, Luzi Hail and Chstitian Leuz, 2019, ECGI; ESG Performance and Disclosure: A Cross-Country Analysis, Florencio Lopez-de-Silanes, Joseph A. McCahery, Paul C. Pudschedl, 2019, ECGI; The

The objectives of standardised reporting include providing information, enabling comparability, allowing the implementation and development of internal control systems, providing for compliance and establishing proper supervision.

The multitude of activities entered into by the broad range of very diverse market players and the inexistence of harmonised reporting standards do not add value to the process and prevent stakeholders (such as clients or supervisors) from ascertaining if the reporting entities are properly embedding ESG principles in their governance. This behaviour has been found to enable practices such as greenwashing.

In "Four Things No One Will Tell You About ESG Data",[3] George Serafeim and Sakis Kotsantonis highlighted "the sheer variety, and inconsistency, of the data and measures, and of how companies report them".

In this paper, a multitude of forms that companies resort to for reporting employee health and safety data was listed, which led its authors to argue that "such inconsistencies lead to significantly different results when looking at the same group of companies".

To date, the pre-existing framework of voluntary and scattered reporting was in fact allowing market players to prepare multidimensional and incomplete reporting, jeopardising resources, enabling the continuation of information asymmetries and contributing to the non-assimilation of the moral hazard by the recipients of such information.[4]

Enhancements to a Scattered Framework

Fortunately, there has been some encouraging improvements. The normative context in which sustainability reporting exists has been constantly developing, diversifying and becoming more specific. By relying on pre-defined standards, norms and labels, a more proactive approach can be adopted to respond to changes in transparency requirements and market expectations—an approach that must be structured by reference to an operational framework drawn up by recognised organisations. Recent years have seen the development of a wide range of national, European and other international norms and standards. Different and yet at the same time complementary, those norms and standards encompass varying characteristics which need to be understood, as

Future of Disclosure: ESG, Common Ownership, and Systhematic Risk, John C. Coffee, 2020, ECGI.

[3] George Serafeim/ Sakis Kotsantonis, Four Things No One Will Tell You About ESG Data, 2019, available at https://www.hks.harvard.edu/centers/mrcbg/programs/growthpolicy/four-things-no-one-will-tell-you-about-esg-data.

[4] Such reporting was mainly the result of the voluntary application of Stewardship Codes and Responsibility Investment Principles by some early bird market players, which created the need for auditing such reports. Auditing methods have also been built up on a case by case and non-harmonised basis (vg Sustainalytics EGS, Bloomberg).

well as the added value that they respectively offer, in order to enable companies to determine which set of rules are best suited and relevant to meet their specific needs and objectives.

Given the diversity of those norms and standards, it may appear difficult to select the right frame of reference against which to assess an organisation's sustainability performance.

For the purpose of sustainability reporting, norms and standards most commonly encountered may be classified not only according to the sustainability objectives they tend to reflect but also to the extent to which they are recognised and accepted (global, European or national influence).

The number of issued texts and initiatives on the subject has built up, step by step, a structure enabling the normative framework of sustainability reporting to emerge and take shape, going back to the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises published in 1976, which provided a comprehensive overview of the main instruments and methods available to enterprises intending to conduct business in a responsible manner.[5]

In 2000, the United Nations launched the Global Compact[6] initiative, a non-binding act whereby undertakings, non-governmental organisations and associations covenant to respect ten universally defined principles concerning human rights, labour standards, the environment and measures to combat climate change and publish each year a report on the progress made in implementing such principles.

The International Organisation for Standardization's ("ISO") 26000 standard issued in 2010[7] and the adoption by the United Nations of the 2030 Agenda programme comprising seventeen Sustainable Development Goals ("SDGs") in 2015[8] have finally empowered an international consensus around the "responsibility of an organisation for the impacts of its decisions and activities on society and environment, through transparent and ethical behaviour that contributes to sustainable development […]" and allowed for the global community to "acknowledge the importance of corporate sustainability reporting and encourage companies, where appropriate, especially publicly listed and large companies, to consider integrating sustainability information into their reporting cycle". Among those SDGs, a specific goal[9] encourages "companies, especially large and transnational companies, to adopt

[5] Available at https://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm.

[6] Vide https://www.unglobalcompact.org/what-is-gc/mission/principles.

[7] Available at https://www.iso.org/iso-26000-social-responsibility.html; vide also https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso26000_sr.pdf, p. 1.

[8] Vg https://sdgs.un.org/2030agenda.

[9] SGD 12.6 Live Tracker available at https://sustainabledevelopment.un.org/partnership/?p=9851.

sustainable practices and to integrate sustainability information into their reporting cycle".

The Sustainability Accounting Standards Board (SASB),[10] founded in 2011, issued a set of globally applicable sectorial standards designed to assist organisations to report on the impacts that they have on the environment, on the economy and governance, and on society as a whole. Those standards are aimed, in essence, at investors since they are oriented towards financial aspects of sustainable development.[11]

In 2015, the Financial Stability Board,[12] international body that monitors and makes recommendations about the global financial system, recognised that climate change embeds a financial risk to the economy and established the Task Force on Climate-Related Financial Disclosures (TCFD), which recently provided a framework for reporting on climate risk,[13] allowing organisations to better understand, consider and report on such risk.

The Global Reporting Initiative[14] ("GRI") constitutes to date an internationally recognised frame of reference for sustainability reporting. The GRI's standards aim to enable all undertakings and organisations, in particular financial institutions, to account for their performance across four dimensions, namely the economic, the environmental, the social and governance aspects, by applying indicators and guidelines specific to each activity and sector. The GRI published an internationally recognised standard for non-financial reporting, whereby an organisation draws up a public report on its economic, environmental and/or social impacts and consequently, on its positive or negative contributions to the attainment of the objective of sustainable development. In light of the issuance in 2014 of the European Directive on non-financial and diversity disclosure ("NFRD"),[15] the GRI issued a document to inform users on how the GRI Standards can be used to comply with all aspects of the European Directive.[16] This linkage initiative sheds light on the multitude of existing standards to report on the sustainability topic and moreover on the need to establish harmonised and comparable reporting standards.

[10] Available at https://www.sasb.org/.

[11] Vide https://www.sasb.org/company-use/.

[12] Information available at https://www.fsb.org/.

[13] Available at https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf.

[14] Founded in 1997, with the objective of creating the first accountability mechanism to ensure companies to adhere to responsible environmental conduct principles, eg https://www.globalreporting.org/.

[15] 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.

[16] Refer to https://www.globalreporting.org/media/mwydx52n/linking-gri-standards-and-european-directive-on-non-financial-and-diversity-disclosure.pdf.

The International Integrated Reporting Council ("IIRC")[17] also issued general guidelines and formulated recommendations to assist undertakings and other organisations wishing to prepare an integrated report which aims at enabling decision-useful reporting by integrating and communicating a holistic range of factors that materially enhance the organisation's ability to create value.

Finally, global consulting undertakings as AccountAbility have also been disclosing standards to enable users to report on sustainability—AA1000 AccountAbility Principles ("AA1000 AP")[18] is a set of internationally recognised general guidelines whereby organisations evaluate, manage, improve and communicate their responsibility and performance in terms of sustainable development. The guidelines are based on the principles of inclusivity of stakeholders, of the materiality in identifying relevant issues, of the responsiveness to actions carried out and of the impact of actions undertaken.

State of Play—Materiality Seems to Fit All

As we believe to have demonstrated, there is no single set of metrics and indicators that properly cover all ESG aspects for all companies globally. Moreover, the landscape of ESG criteria has been rapidly evolving and some issues that were overlooked are becoming of greater importance.

Therefore, criteria for a balanced sustainability report should be grouped together according to the following fundamental principles:

1. Relevance: the information provided must have a connection with the relevance of the analysis of the issues and priority impacts involved in companies' activities;
2. Balance: the information provided must show not only the positive but also the negative/adverse impacts on the social and societal, environmental and economic factors;
3. Inclusion of stakeholders: the information must provide the organisation's responses to all relevant stakeholders' expectations and interests;
4. Quality of information: the information must be reliable, comparable, clear, balanced (according to its relevance), verifiable and linked to a given period.

In addition, another dimension that has been increasingly noted is the materiality of information that needs to be included on a sustainability reporting. In light of the tremendous amount of ESG data to be considered as a basis for meaningful transparency and reporting of business sustainability strategies, materiality is becoming an essential filter and criterion for determining

[17] Global not-for-profit organization founded in 2015—vide https://integratedreporting.org/.

[18] Available at https://www.accountability.org/standards/.

what information will be truly relevant to fit the communication objective of companies' specific reports.

It is worth detailing to what extent the concept of materiality can be applied to all ESG-related matters and shall not be limited to financial information.

Materiality has been generally defined both within the European Union ("EU")[19] and national legislations as information which, if not (accurately) provided, is susceptible of influencing its users' decisions.

Moreover, for non-financial information reporting purposes, it has been found that the interests of the widest range of stakeholders possible should be considered, for different needs and perspectives to be envisaged when determining that said information is material.

The EU has been emphasising the concept of "double materiality" to enhance the qualitative assessment to be considered when disclosing information and to require the reporting not only on the impact of sustainability risks on business models—outside-in risks—but as well on the impact of businesses on the sustainability factors—inside-out risks.[20]

The various dimensions described above—that appear to be relevant to build a reliable and useful sustainability reporting—have been progressively considered within the significant acceleration of the European (and international) regulatory agenda.

2 How the EU Agenda is Accelerating the Move from Voluntary Approaches to Mandatory Regulatory Regimes

A Challenging European Policy Issuing Process

When it comes to shaping, directing and ultimately triggering financial institutions, corporates and investors' incentives, an adequate policy landscape is key.

As such, Europe's regulatory agenda emerged as a reaction to the status quo and has been setting the pace by forcing market players to phase out from a voluntary and non-standardised scenario of ESG reporting into an increasingly mandatory harmonised environment.[21]

[19] See namely article 2 (16) 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 ("Audit Directive") and repealing Council Directives 78/660/EEC and 83/349/EEC.

[20] Albeit having intended to consider such concept in the NFRD, it has been argued that "the directive does not include an adequate definition of the concept of materiality"—vg https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf.

[21] Listed below are some of the most relevant EU's regulatory initiatives on the sustainability agenda:

In the financial sector, a considerable number of EU regulations currently converge on the need for establishing an appropriate flow of information on ESG factors to all stakeholders benefiting from financial institutions' activities (e.g. investment, lending, insurance, asset management) to allow each of such undertakings to comply with specific disclosure requirements. Timely availability of appropriate and relevant sustainability data is one of the current most important challenges for the financial sector to meet disclosure requirements and to measure the real impact of their activities on the economy and the society.

Undertakings are therefore called upon to take part in a movement designed to integrate sustainability into their strategy and reporting. Nevertheless, such undertakings remain faced with a dilemma where the most responsible decision does not necessarily appear to be the most profitable one. This obstacle undeniably reinforces the need to impose certain (but not limited to) transparency and disclosures obligations on undertakings. Those obligations have gradually taken shape within the upcoming framework of European law.

Several key actions from the EU Action Plan on Financing Sustainable Growth clearly suggest that ESG disclosures and transparency cannot be considered a passing trend.

The Sustainable Finance Disclosure Regulation

The present paragraph focuses on current ESG reporting obligations within the EU, mainly those foreseen in the SFDR. This regulation constitutes, together with the Taxonomy Regulation and Benchmark Regulation, the cornerstone of the 2018 EU Sustainable Finance Action Plan, which embeds a

i. 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 ("NFRD");
ii. Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies;
iii. Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks ("Benchmark Regulation");
iv. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector ("SFDR");
v. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation").

strong political ambition to redirect capital flows towards sustainable activities and foster greater transparency and long-termism in financial and economic activities.

The SFDR applies for the most part from 10 March 2021 and lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes, as well as the provision of sustainability-related information with respect to financial products.

Its objective is to provide investors/clients (both professional and retail) with more transparent information and to guide them in considering ESG contributions on targeted investments, in addition to strict financial return. After having assessed the information describing the products' ESG characteristics and/or sustainable objectives, and how markets participants and financial advisers manage sustainability risks, investors are expected to be able to make better-informed investment decisions as regards the sustainability of such financial products.

The new rules introduced by the SFDR are complex and they are having a considerable impact on the obliged financial entities. The SFDR foresees obligations for financial market players (i) at entity level, by imposing general ESG disclosure duties; (ii) at product level, by foreseeing specific ESG disclosure duties; and (iii) policy amendments in order to incorporate ESG principles.

These new disclosure rules require the preparation of new information to be added to existing pre-contractual documentation, websites and periodic reports. These rules complement the existing information requirements on ESG aspects of investment strategies, policies or products/services, which are frequently already being reported by concerned financial institutions.[22]

The complexity, the scope of rules, the amount of information that needs to be collected to comply with the rules and the challenging timelines require significant effort from in-scope firms and joint efforts from experts in several departments.

Thus, the SFDR brings substantial changes to the current mandatory disclosure requirements for financial institutions by adding a completely new category of sustainability-related disclosures, with the frequently mentioned argument that even mere disclosures are supposed to create incentives for boosting financial products with sustainability-related credentials.

However, both regulators and market players have been arguing that the SFDR is to some extent unclear as to what obliged entities are expected

[22] Notably refer to regulations such as the NFRD, the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU or the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

to disclose, and that said regulation needs to be complemented with more granular rules.

To provide additional clarity on the construction of the approved new set of rules, the European Supervisory Authorities ESMA, EBA and EIOPA ("ESAs") raised, in a letter dated 7 January 2021,[23] a set of questions addressed to the European Commission ("EC") on priority issues relating to the application of the SFDR.

This action led to the issuance, on 6 July 2021, of the much-awaited decision C(2021) 4858 final, which provides further guidance to all market players.[24] The EC answers do not extend the obligations already contained in the applicable legislation but clarify certain provisions, notably confirming the regulatory neutrality in terms of financial products design and contributing to the concept of "promotion" of ESG characteristics.

On February 2, 2021, the ESAs additionally issued, through their Joint Committee, their final report on draft Regulatory Technical Standards ("RTS") with regard to the content, methodologies and presentation of sustainability-related disclosures under the SFDR.[25]

Having considered the feedback received from stakeholders to the public consultation which preceded the mentioned draft report, the ESAs has updated (i.e. reduced) the core set of mandatory indicators for principal adverse impacts, which is supplemented by an extended list of opt-in indicators. The ESAs have also decided to develop specific indicators for investments in sovereigns and real estate assets.

Steven Maijor, Chair of the ESAs Joint Committee, has recently stressed that the issued set of rules *"strike a careful balance between achieving common disclosures across the range of financial products covered by the SFDR and recognising that they will be included in documents that are very diverse in length and complexity"*.[26]

On February 25, 2021, the ESAs further issued a joint supervisory statement on their report recommending that impacted stakeholders refer to the draft RTS when applying the SFDR during the interim period within which the final RTS are not in force.[27] This would serve as guidance for the impacted market players, in light of the goal of harmonisation and would also allow supervisors to properly prepare for the effective and consistent application

[23] Available here: https://www.esma.europa.eu/sites/default/files/library/jc_2021_02_letter_to_eu_commission_on_priority_issues_relating_to_sfdr_application.pdf.

[24] Vide https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf.

[25] Available here: https://www.eiopa.europa.eu/content/final-report-draft-regulatory-technical-standards_en; the final RTS may differ from the draft.

[26] Vide https://www.eba.europa.eu/three-european-supervisory-authorities-publish-final-report-and-draft-rts-disclosures-under-sfdr.

[27] Available here: https://www.esma.europa.eu/sites/default/files/library/jc_2021_06_joint_esas_supervisory_statement_-_sfdr.pdf.

and national supervision of the SFDR, promoting a level playing field and protecting investors.

Considering the complexity of the new set of rules, in a letter dated 8 July 2021, the EC deferred application of regulatory technical standards under the Sustainable Finance Disclosure Regulation 2019/2088 (SFDR level 2 measures) to 1 July 2022.[28]

On 22 October 2021, the ESAs jointly released a Final Report on draft RTS regarding taxonomy-related disclosures under the SFDR[29] which foresees templates for pre-contractual and periodic product disclosures. These new RTS will be incorporated with the original ones, submitted to the Commission in February 2021, in one instrument.

In light of the length and complexity of the issued RTS and in order to facilitate the implementation of the delegated act by product manufacturers, financial advisers and supervisors, the date of application of the single ruleset to be issued was postponed from1 July 2022 to 1 January 2023.[30]

At a national level, legislators and regulators are complementarily issuing sets of rules to comply with EU's regulations on ESG reporting.

In Portugal, the Comissão do Mercado de Valores Mobiliários published on February 2, 2021 its Model Report for disclosure of non-financial information by listed companies[31] and, on March 5, 2021, adopted the ESA's recommendations on the application of the SFDR, urging market participants to prepare for the entry in force of the RTS by implementing the ESAs draft during the interim period of year 2021.[32]

In March 2021, the Autorité des Marchés Financiers ("AMF") has published guidance on the implementation of the SFDR and its articulation with the AMF position-recommendation ("AMF doctrine")[33] published in March 2020 (and updated in July 2020) and which applies to French undertaking for collective investment in transferable securities ("UCITS") and alternative investment funds, as well as non-French UCITS that consider ESG criteria and that are authorised to be marketed to French retail investors. The AMF doctrine aims to prevent the risk of greenwashing by requiring that information provided to non-professional investors regarding fund's consideration

[28] Vide https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts.pdf.

[29] Available here: https://www.esma.europa.eu/sites/default/files/library/jc_2021_50_-_final_report_on_taxonomy-related_product_disclosure_rts.pdf.

[30] Vide letter dated 25 November 2021 to European Parliament and Council, available here: https://www.esma.europa.eu/sites/default/files/library/com_letter_to_ep_and_council_sfdr_rts-j.berrigan.pdf.

[31] Available here: https://www.cmvm.pt/pt/Legislacao/ConsultasPublicas/CMVM/Documents/Modelo%20de%20Informa%c3%a7%c3%a3o%20N%c3%a3o%20Financeira.pdf.

[32] Vide https://www.cmvm.pt/pt/Comunicados/comunicados_mercado/Pages/20210305a.aspx.

[33] Available at https://www.amf-france.org/en/regulation/policy/doc-2020-03.

of non-financial characteristics is proportionate to the actual consideration of these factors.

In Luxembourg, the Commission de Surveillance du Secteur Financier has implemented in December 2020 a fast-track procedure to facilitate the submission of the funds' prospectus and issuing document updates limited to reflect changes required under the SFDR.[34]

National doctrines therefore complement the SFDR, with the objective to making each country's approach converge to the maximum extent with the EU regulatory framework.

Other Regulatory Initiatives

The EU had however been active within non-financial disclosure topics even before the SFDR. In 2014, the NFRD[35] had been issued, which lays down the rules on disclosures of non-financial information and diversity disclosures for certain large undertakings and groups with more than 500 employees. For public interest entities concerned, it foresees, on a consolidated basis, the issuance of a non-financial statement containing information relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.

In their annual report, in-scope companies must publish information in accordance with the five areas as referred to in the NFRD: business model, policies pursued, due diligence processes implemented, the policies' outcomes and the principal risks and how they are managed, including key performance indicators ("KPIs").

Since 2014, the European authorities issued complementary guidelines to the NFRD, in order to enlighten markets players as to how to better meet the NFRD's objectives.

In June 2017, the EC published non-binding guidelines on the NRFD,[36] which set out key principles for providing useful, relevant and comparable information: (1) disclosure of material information, (2) fair, balanced and understandable information, (3) comprehensive but concise information, (4) strategic and looking-forward information, (5) stakeholder-oriented information, (6) consistent and coherent information.

[34] Vg https://www.cssf.lu/en/2020/12/communication-on-regulatory-requirements-and-fast-track-procedure-in-relation-to-regulation-eu-2019-2088-on-the-sustainability-related-disclosures-in-the-financial-services-sector/.

[35] As specified in Whereas (25) of the SFDR, the form and presentation required by NFDR was found not always to be suitable for direct use by financial market participants and financial advisers when dealing with end investors, which should have the option to use information in management reports and non-financial statements for the purposes of SFDR in accordance with NFDR, where appropriate.

[36] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0705(01)&from=EN.

On June 18, 2019, the EC published guidelines on corporate climate-related information reporting, which in practice consist of a new supplement to the previous guidelines.[37] This supplement provides companies with practical recommendations on how to better report the impact that their activities are having on the climate as well as the impact of climate change on their business.

In January 2020, the EC launched a consultation on the review of the Non-Financial Reporting Directive ("NFRD"), seeking to collect feedback from stakeholders in order to help to standardise and simplify companies' reporting at the European level, including through the introduction of EU reporting standards as well as to give effect to the changes required by the SFDR and the Taxonomy Regulation.

To this end, on June 25, 2020, the EC has mandated the European Financial Reporting Advisory Group (EFRAG)[38] to issue a report setting out recommendations on the development of EU sustainability reporting standards, which were issued on March 8, 2021 and embed a roadmap for the development of a comprehensive set of EU sustainability reporting standards.[39]

However, in parallel, the EU Platform on Sustainable Finance ("Platform")[40] advocates reforms to EFRAG's governance structure and funding (if it were to become the EU sustainability reporting standard setter) to ensure that future EU sustainability reporting standards would be developed resorting to an inclusive and rigorous process.

The expert group of which the Platform is composed aims to "have a single, coherent view on the relationship of SFDR, NFRD and Taxonomy reporting obligations to double materiality concepts"[41] and is therefore advising on how to define reporting requirements to enable companies in communicating how and to what extent their activities are aligned with the EU taxonomy as well on their transition plans.

The Platform relies on six reporting principles to guide companies on sustainability reporting requirements:

[37] Available here: https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf.

[38] General information available at https://www.efrag.org/Assets/Download?assetUrl=/sites/webpublishing/SiteAssets/Letter%2520EVP%2520annexNFRD%2520%2520technical%2520mandate%25202020.pdf.

[39] Roadmap available at https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FEFRAG%2520PTF-NFRS_MAIN_REPORT.pdf.

[40] Vide https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en.

[41] Vg https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/210319-eu-platform-transition-finance-report_en.pdf, p. 19.

1. Proportionality
2. Integrity
3. Relevance
4. Consistency
5. Predictability
6. International application.

On April 21, 2021, the EC has released the EU Sustainable Finance—April package,[42] which comprises an impressive number of legislative initiatives that form part of the European Green Deal[43] and intend to further orientate investors towards more sustainable technologies and businesses and is expected to be in force as from 2022 onwards.

Within such package, a proposal was drafted of a Corporate Sustainability Reporting Directive ("CSRD"),[44] which, if adopted, will consist in:

i. Amendments to the NFRD, extending its scope of application to all large companies and all companies listed on regulated markets (except listed micro-enterprises), setting additional guidance on the mentioned principle of double materiality, and providing clarification to the maximum extent on several ambiguous reporting obligations, notably imposing Member States to approve legislation stating that sustainability information is to be reported as part of the management report, in a "single electronic reporting format", and foreseeing statutory auditing requirements (e.g. "limited assurance engagement") on companies sustainability reporting,[45]
ii. Amendments to the Transparency Obligations Directive,[46] introducing the concept of "sustainability", imposing statements to be issued by companies' representatives and referring to auditing requirements on sustainability,
iii. Amendments to the Audit Directive, envisaging the mentioned "assurance for sustainability reporting", and setting the rules and procedures which will govern such auditing activity,

[42] Please refer to https://ec.europa.eu/info/files/sustainable-finance-communication-factsheet_en.

[43] Please refer to the webpage https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu_en.

[44] Available here: https://ec.europa.eu/finance/docs/law/210421-proposal-corporate-sustainability-reporting_en.pdf.

[45] The EC is expected to adopt sustainability reporting standards by means of Delegated Acts.

[46] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

iv. Amendments to the Audit Regulation,[47] containing detailed governance rules to be implemented in order for a sound assurance to be issued (e.g. on conflict of interests).

In addition to the ambitious CSRD proposal, a new Taxonomy Climate Delegated Act was approved[48] to allow classification of which activities will best contribute to mitigate and adapt to effects of climate change, and six other Delegated Acts were put forward to amend other sectoral legislations, such as the Solvency II Directive[49] and the Insurance Distribution Directive,[50] as well as to other delegated EU acts (e.g. on MiFID II Directive[51] related topics as the UCITS, Alternative Investment Fund Managers, insurance-based investment products, investment firms), in order for sustainability to be transversely considered by financial firms, such as advisers, asset managers or insurers, in their procedures and their investment advice to clients, both at entity and product levels.

More recently, on 6 July 2021, the EC published its Renewed Sustainable Finance Strategy ("RSFS") with various legislative and non-legislative proposals aimed at supplementing and enhancing the EU Sustainable Finance Action Plan.[52]

The RSFS is built around 4 main pillars: (1) extend the existing EU Taxonomy and toolbox to enable all economic actors to adequately finance their transition plans, (2) improve inclusiveness to further access of citizens and small and medium-sized enterprises to sustainable finance, (3) improve the financial sector's resilience and combat greenwashing, (4) foster global ambition through deepened cooperation and convergence of goals and standards.

The RSFS has been accompanied by a legislative proposal for an EU Green Bond Standard and an updated delegated act on article 8 disclosures of

[47] Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

[48] Provisional texts of the Act and Annexes available at https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800_en.pdf, https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800-annex-1_en.pdf and https://ec.europa.eu/finance/docs/level-2-measures/taxonomy-regulation-delegated-act-2021-2800-annex-2_en.pdf.

[49] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

[50] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

[51] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

[52] Documents available here: https://ec.europa.eu/info/publications/210706-sustainable-finance-strategy_en.

Taxonomy Regulation by undertakings in scope of the NRFD whereby those companies must publish information on how and to what extent their activities are associated with economic activities that qualify as "environmentally sustainable" under the Taxonomy Regulation.

The implementation by EU market players of this newly disclosed set of rules—corresponding to a clear priority of the EU agenda—, some of which are still to be approved and further regulated, constitute an increased challenge to the financial industry and will no doubt involve a continued investment on the sustainability topic.

En Route to a Global Standardised Sustainability Reporting

EU regulations are also impacting players outside the European territory, such as the United States of America ("US"), as rules on product distribution within the EU apply regardless of the home country of the distributor. As such, US asset managers also have to disclose, among other, climate, diversity and governance data for investments by funds to be marketed in the EU, and are forced to comply with European rules on sustainability-related disclosures under SFDR, notably by disclosing the potential harm their investments could do to the environment and society.

In light of growing demand and regulatory pressure for climate change information and ESG data as well as considering questions about whether current disclosures adequately inform investors, the US Securities and Exchange Commission ("SEC" or "Commission")[53] has been reassessing its regulation of climate change disclosures. Since 2010, guidance was provided to issuers as to how existing disclosure requirements apply to climate change matters, investor demand and political push for such review have grown significantly.

In March 2021, SEC published a dedicated statement[54] on ESG disclosures, which clearly suggests that such Commission is also shifting towards promoting increasingly mandatory and voluntary ESG information disclosure, as well as producing an international framework on sustainability reporting standards drafted by the International Financial Reporting Standards Foundation ("IFRS Foundation").[55]

More recently, in May 2020, SEC's Advisory Committee approved recommendations advocating for the Commission's efforts in updating reporting requirements which should request issuers to include material, decision-useful

[53] General information available at: https://www.sec.gov/.

[54] Available here: https://www.efrag.org/Assets/Download?assetUrl=/sites/webpublishing/SiteAssets/Letter%2520EVP%2520annexNFRD%2520%2520technical%2520mandate%25202020.pdf.

[55] Vide https://www.ifrs.org/.

ESG factors.[56] In December 2020, the ESG Sub-Committee of the SEC Asset Management Advisory Committee issued a preliminary recommendation that the Commission require the adoption of standards by which corporate issuers disclose material ESG risks.[57]

3 Future of Sustainability Reporting(s)

Considering the above, it seems unequivocal that sustainability reporting has gone far beyond being a pure marketing ploy.

Looking ahead, what is to be expected?

Available indications and increasing regulatory pressure suggest that we can foresee further evolution of standards and practices to report on sustainability risks and factors and on disclosure of ESG performance at both entity and product levels.

There are growing signs that seem to indicate that regulation and standardisation is on the horizon for extending the scope of reporting to themes beyond climate change and environmental issues.

In fact, human rights, nature and/or biodiversity are still under-developed in this respect, and further development on reporting on such matters is anticipated, in line with what seems to constitute the EU agenda's direction: stringent standards, growing credibility, increased scope of action.

Biodiversity for instance has been more and more under the spotlight. The UN Principles for Responsible Investment[58] have recently published a discussion paper on investor action on biodiversity[59] and issued recommendations to investors, urging market players to collaborate with peers and stakeholders to enhance nature-related financial disclosures.

The United Nations also adopted in March 2021 a new framework[60] to integrate natural capital in economic reporting. This System of Environmental-Economic Accounting—Economic Accounting aims to ensure that the contributions of nature—forests, wetlands and other ecosystems—are properly recognised and valued as benefitting people and the economy. More than thirty countries are compiling ecosystem accounts on an experimental basis as a reaction to SEEA-EA's call for action.

As with climate and environment-related risks, nature-related risks need to be better integrated and disclosed. With biodiversity loss moving up the agenda of governments, civil society and financial institutions, efforts are

[56] Recommendations available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf.

[57] Vg https://www.sec.gov/files/potential-recommendations-of-the-esg-subcommittee-12012020.pdf.

[58] Vide https://www.unpri.org/.

[59] Available here: https://www.unpri.org/download?ac=11357.

[60] https://seea.un.org/.

being intensified to increase knowledge, explain terminology, map and disclose how nature loss poses risks to companies. In this context, the University of Cambridge Institute for Sustainability Leadership[61] has recently produced a handbook for identifying nature-related financial risks.[62]

With companies having to disclose more and more with regards to sustainability reports they should already be prospectively assessing those additional requirements in light of existing disclosure obligations, in order to prevent "over transparency" from being materially misleading.

As previously stated, ESG issues need to be addressed globally through global and harmonised reporting solutions and market players must be aware that one size does not fit all, as a framework pertaining to the same risk category faced by the similar companies within the same activity sector may not equally apply. Undoubtedly, the proportionality principle will have to be taken into account when imposing disclosure obligations.

In this regard, the work of the IFRS Foundation to establish a sustainability standards board, combined with the progress made by the EFRAG and the TCFD appears promising.

However, the task of establishing a global and internationally recognised sustainability reporting framework is complex and not without challenges.

The current market and regulatory evolution raises a number of questions and considerations and these will need to be managed carefully. As the EU action plan as well as many international initiatives open up to more and more ESG criteria and data to be included in sustainability reporting, it will be critical to ensure that there is a "chorus approach" and that all players are properly equipped and financially capable to comply with the new rules and provisions. A failure to do so risks undermining the entire credibility of such disclosures. This will require a rigorous, inclusive and transparent process for developing global standards, including all relevant stakeholders within the process. The EU is no doubt playing a leading role in such task, setting the pace for other jurisdictions which will be able to build upon the European framework to address their own needs and targets.

[61] https://www.cisl.cam.ac.uk/.

[62] https://www.cisl.cam.ac.uk/resources/sustainable-finance-publications/handbook-nature-related-financial-risks.