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LESS IS MORE IN THE AGE OF INFORMATION OVERLOAD: THE PARADIGM SHIFT FROM A SHAREHOLDER- TO A STAKEHOLDER-ORIENTED MARKET*

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This paper aims to examine the innovations introduced by Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 and its transposition measures in Italy (considering the Legislative Decree No. 254 of 30 December 2016, and the recent regulation by the national Supervisory Authority) and in other European countries, as part of a wider research work on non-financial information statements ("NFSs") and listed companies operating within the European markets. It is designed to verify the effectiveness of the tools offered, with the intent of developing a system which can (i) combine, also through the NFSs, long-term profitability, social justice, and environmental protection, and thus (ii) prevent risks to sustainability and (iii) increase the confidence of investors and consumers.

The article is structured in several parts, striving to examine the European regulation, focusing on the NFS comparative and Italian scenario, by offering a descriptive and empirical analysis of the matter, as well as offer-

* Although this Article is the result of the authors' joint work, Sections II.F–G, III, IV, and V are attributable to Maria Lucia Passador, whereas Part I and Sections II.A–E to Federico Riganti. The Introduction and Conclusion are attributed to both authors. All data used in this Article is taken from the authors' original study and is on file with the authors. For the sake of simplicity and clarity, the data will not always be individually cited throughout the Article.

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ing some systemic conclusions, in particular with reference to social interest and to the most suitable way to disclose such information.

Ultimately, the paper is intended to provide the reader with a critical overview of the current non-financial information framework, as it applies at European and at Member State level. Nevertheless, in a forward-looking sense, this piece seeks to understand whether, and how, the issue of non-financial statements can actually (i) modify the actual corporate dialectic within companies required to disclose non-financial information; (ii) improve the accountability of such companies, as well as from the point of view of corporate social responsibility ("CSR"); and (iii) involve investors, primarily institutional ones, in the "life" of those companies which are subject to the NFS regime.

"Seldom, very seldom, does complete truth belong to any human disclosure; seldom can it happen that something is not a little disguised or a little mistaken."

— Jane Austen, *Emma*

INTRODUCTION

Today, the interest shown in the renewed regime for disclosure of financial information—and its potential misuse[1]—is undoubtedly significant and growing. However, attention should also be drawn to the issue of disclosure requirements for non-financial information, a non-ancillary and equally topical issue.

This matter is anything but new; social reporting is a theme that has regained space in the discussion from time to time. In the 1960s and 1970s, "an awareness of external responsibilities ignited debates about reporting in both the United States and Europe."[2] Recently, "legislators have in-

1. *See, e.g.*, Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on Market Abuse (Market Abuse Regulation) Repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, 2014 O.J. (L 173) 1; Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on Criminal Sanctions for Market Abuse, 2014 O.J. (L 173) 179.

2. Allison M. Snyder, Note, *Holding Multinational Corporations Accountable: Is Non-Financial Disclosure the Answer?*, 2007 COLUM. BUS. L. REV. 565, 568–69 nn.10–11 (2007). Snyder's note focuses on the situation during the years 2006–2007 and stresses how at the time there was an increase in voluntary reporting, but investors asked for even more than that. *Id.* at 572–76. More recently, an in-depth study of non-financial disclosure in the United States is outlined in Virginia Harper Ho, *Nonfinancial Risk Disclosure and the Costs of Private Ordering*, 55 AM. BUS. L.J. 407, 415 n.32 (2018). The author remarks from the very beginning that, unfortunately, the SEC only considered financial disclosure reform for the first time in 2016, to ensure a more effective system of investor protection, to ease the formation of capital, and to foster the development of the financial market system, by filling in the inefficiencies and inadequacies identified up to then, and by comparing the U.S. scenario with the foreign one. Actually, before that date, there were several attempts, recently intensified with the JOBS Act of 2012 and the FAST Act of 2015, on an avenue leading the evolution of corporate law towards an enhanced and more widespread disclosure in the hands of investors. It is also worth highlighting two recent initiatives in the direction of sustainability carried out in two very important contexts, on both sides of the Atlantic. On the one hand, the UK Corporate Governance Code (updated July 2018) requires the board to be responsible for policies and practices that reinforce a healthy culture. The board should therefore commit to the workforce through one (or a committee of) director(s) appointed from the workforce, a formal advisory group and a designated non-executive director, or other arrangements that meet the company's and workforce's needs. *See* FINANCIAL REPORTING COUNCIL, THE UK CORPORATE GOVERNANCE CODE 5 (2018). On the other hand, on the opposite shore of the Atlantic, on June

creasingly intervened to encourage companies to pursue specific, predefined goals . . . to cultivate corporate conscience in order to incentivize companies to behave in socially responsible ways and to take long-term considerations into account."[3]

On the one hand, and from a practical point of view, this kind of disclosure completes the already extensive and detailed behavioral regime imposed on certain companies; but, on the other hand, and as far as a purely theoretical plan is concerned, they raise some topical questions for corporate law.

This paper offers a brief introduction to a broad topic,[4] and aims to examine the innovations introduced by Directive

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27, 2018, Delaware Governor John Carney signed a law enacting Delaware certification for the adoption of transparency and sustainability standards, in force since October 1, 2018. It is the first law to uphold sustainability practices, equipping Delaware governed entities with a platform to demonstrate their commitment to corporate and social responsibility and sustainability. The initiative serves as part of a long-term commitment to innovation and growth. Furthermore, Senator Warren's disputed Accountable Capitalism Act tackles this issue, focusing on the involvement of workers with a view to longer-term sustainable growth. This idea is based on the belief that thriving companies are effectively measuring shareholder "value" not only in terms of U.S. dollar value, but also looking at sustainability and good governance. Denise Kuprionis, *Will Warren's Accountable Capitalism Act Help? The Answer Is No*, HARV. LAW SCH. FORUM ON CORP. GOVERNANCE & FIN. REGULATIONS (Sept. 10, 2018), https://corpgov.law.harvard.edu/2018/09/10/will-warrens-accountable-capitalism-act-help-the-answer-is-no/.

3. Florian Möslein & Karsten Engsig Sørensen, *Nudging for Corporate Long-Termism and Sustainability? Regulatory Instruments from a Comparative and Functional Perspective*, 24 COLUM. J. EUR. L. 391, 394 (2017).

4. On closer inspection, the subject did not attract much interest among scholars, but introductory notes on the theme can be found in sources from the United States and Europe. *See generally* Iris Barsan, *Corporate Accountability: Non-Financial Disclosure and Liability – A French Perspective*, 14 EUR. COMP. & FIN. L. REV. 399 (2017); Iris H-Y Chiu, *The Paradigms of Mandatory Non-Financial Disclosure: A Conceptual Analysis*, 27 COMPANY LAW. 259 (2006); Angela Ciavarella, *Board Diversity and Firm Performance Across Europe* (Commissione Nazionale per la Società e la Borsa, Working Paper No. 85, 2017); Fang Gao et al., *Determinants and Economic Consequences of Non-financial Disclosure Quality*, 25 EUR. ACCT. REV. 287 (2016); Virginia Harper Ho, "*Comply or Explain" and the Future of Nonfinancial Reporting*, 21 LEWIS & CLARK L. REV. 317 (2017); Francesca Manes-Rossi et al., *Ensuring More Sustainable Reporting in Europe Using Non-Financial Disclosure—De Facto and De Jure Evidence*, 10 SUSTAINABILITY 1162 (2018); Livia Piermattei & Patrizia Giangualano, *L'impatto dell'obbligo di rendicontare le informazioni non finanziarie sui board e la governance*, HARV. BUS. REV. 103 (2018); Snyder, *supra* note 2.

2014/95/EU[5] and its national implementing provisions in order to verify whether and how they can achieve the goals—such as long-term profitability, social justice, environmental protection, the prevention of sustainability risks, and the strengthening of investor and consumer confidence—that will increasingly affect European markets.

This piece attempts to shed light on the evolution characterizing the non-financial disclosure of corporations, with particular regard to the reporting on business risks that—for various reasons such as greater transparency, thoroughness, and exhaustiveness of such disclosure—also interact with corporate governance. In addition, the market and investors themselves have become much more demanding concerning disclosure, requiring, for example, the integration of environmental, social, and governance ("ESG") elements[6] in the analysis of business and risk profiles.[7] Thus, non-financial information is increasingly representative of an integral aspect of the strategic and financial information needed to assess a company and understand its business prospects.[8]

The article therefore describes the main risk categories reported by a sample of Italian companies in the context of the first application of Legislative Decree 254/2016 (the "2016

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5. 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, 2014 O.J. (L 330) 1.

6. Some scholars have provided an example of this recent development:

> Historically, ESG categories factored into the investment process typically consisted of those classified as governance and the issues associated with corporate governance, as these have traditionally been the easiest factors to quantify. It is not a leap of faith to see that governance can impact a company's economic prospects. But what about issues related to environmental and social categories? Would considering these factors diminish an asset manager's focus on generating positive returns on behalf of their clients?

Mike Chen, George D. Mussalli & Yossi Zweibach, *Decoding Quant ESG*, PANAGORA (2018), https://www.panagora.com/wp-content/uploads/2018/10/DecodingQuantESG_v2.pdf. For further illustration of increased disclosure requirements, see also *infra* Part III.

7. *See infra* Section III.B.

8. Without it, there is a lack of both harmony and comparability in non-financial reporting. *See* Pablo Iglesias-Rodriguez, *The Disclosure of Corporate Social Responsibility in the EU After Directive 2014/95*, 37 COMPANY LAW. 319 (2016).

Decree") in light of the findings of the first research on the topic, published in 2018.[9] Moreover, at the governance level, it analyzes the same dataset in order to determine the influence exerted by different corporate governance systems on such statements, considering additional aspects such as the board of directors' composition and the ownership structure, the relevance of listing and previously published sustainability reports, and the role of sustainable investors.[10]

Following this descriptive examination, the paper deals with an empirical study in order to establish, by means of regression, the extent to which non-financial disclosure is impacted by specific governance characteristics and ownership structures.[11] As a complement to the above, Part V analyzes the case studies of three reports issued by three well-known companies.

We then conclude that non-financial disclosure could have a strong impact on the so-called social interest, and that requiring more information is not always the right way to perform an effective, useful, and valuable disclosure; indeed, it would be more appropriate to rethink the manner in which disclosure is performed, perhaps finding room in the soft law, according to the "comply-or-explain" method.

I.
Regulatory Background: The European Framework and the Comparative Scenario

The European regulatory framework is composed of various regulations of different origins and ranks. It is uniform and extensive, but it also permits easy adaptation to specific situations—for instance, through possible exemptions.[12] In or-

9. *See infra* Sections III.A–B. The Italian case is relevant because, despite the fact that it intervened only later than the drafting phase of the Directive, while France and the United Kingdom were very active and, on the contrary, Germany in the first instance was very doubtful and hesitant. *See, e.g.*, Peter Rott, *Directors' Duties and Corporate Social Responsibility Under German Law — Is Tort Law Litigation Changing the Picture?*, 2017 Nordic J. Com. L. 10, 17; Peter Hommelhoff, *Nichtfinanzielle Ziele in Unternehmen von öffentlichem Interesse. Titelzusatz: Die Revolution übers Bilanzrecht.*, *in* Festschrift für Bruno M. Kübler zum 70. Geburtstag 291 (C.H. Beck 2015).

10. *See infra* Sections III.C–F.

11. *See infra* Part IV.

12. This is the so-called "Safe Harbor Principle," which states as follows:

der to explore this topic with a systematic and expositive approach, the preliminary step is to provide a brief framework of the regulatory sources of the matter. In particular, this section will focus on the European reference framework, implemented by the various Member States with certain variations that may lead to possible asymmetries.[13]

A. *European Framework: Amidst Wonderful Expectations and Undeniable Weaknesses*

The starting point for this framework is Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU, which complements the previous legislation, aiming to incorporate non-financial information as well as diversity information of certain companies and some large groups into the information flows

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

Council Directive 2013/34/EU, art. 19a, 2013 O.J. (L 182) 19 (amended by Council Directive 2014/95/EU, 2014 O.J. (L 330) 1).

13. For a discussion of the normative evolution in this field, see William De Catelle, *European Union Directive 2014/95 on Non-Financial Reporting: A Successful Experimentalist Governance Architecture?*, 9 KING'S STUDENT L. REV. 53 (2018); Dániel Gergely Szabó & Karsten Engsig Sørensen, *Non-Financial Reporting, CSR Frameworks and Groups of Undertakings: Application and Consequences*, 17 J. CORP. L. STUD. 137 (2017) (with a major focus on groups of undertakings, which are not systematically regulated in the EU and its Member States); Dániel Gergely Szabó & Karsten Engsig Sørensen, *New EU Directive on the Disclosure of Non-Financial Information (CSR)*, 12 EUR. COMPANY & FIN. L. REV. 307 (2015). For a U.S. perspective, see Constance Z. Wagner, *Evolving Norms of Corporate Social Responsibility: Lessons Learned from the European Union Directive on Non-Financial Reporting*, 19 TRANSACTIONS 619, 643–69 (2018). The achievements and missed opportunities of Directive 2014/95/EU are also dealt with in Janja Hojnik, *Environmental Corporate Reporting Under EU Law: Historic Achievement or Just a Moderate Step Forward?*, 14 J. EUR. ENVTL. & PLAN. L. 41 (2017).

addressed to both consumers and investors.[14] That is the normative expression for an environment in which the playing cards of capitalism and social solidarity are increasingly shuffled.

It is worth pointing out, however, that the issue of non-financial information is not a true innovation within the European schema, given that, as the first commentators already emphasized, the disclosure of such information was introduced on the basis of Commission Recommendation 2001/453/EC of 30 May 2001 from Directive 2003/51/EC of 18 June 2003.[15] In accordance with and as part of the process of standardization[16] and harmonization[17] of accounting standards applicable to certain larger companies operating in certain specific sectors, this disclosure promoted the practice of including information such as that related to the environment and employees, where appropriate,[18] in management reports. This ele-

14. The impact of the information on consumers, however, is beyond the scope of this discussion.

15. *See* Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings 2003 O.J. (L 178) 16, 17. *See also* Romina Guglielmetti, *La Dichiarazione Sulle Informazioni Non Finanziarie: Ruoli e Responsabilità Degli Organi Aziendali*, EFFECTIVE GOVERNANCE OUTLOOK, Jan. 2018, at 5; Federico Riganti, *Disclosure Non Finanziaria e Diritto Delle Società: Aspetti di Corporate Governance e (Possibili) Ricadute in Tema di Interesse Sociale*, LE NUOVO LEGGI CIVILI COMMENTATE (forthcoming 2019) (on file with author) (with specific reference to the role of the board of directors and the internal control system).

16. Peter Kristofik, Marzanne Lament & Hussam Musa, *The Reporting of Non-Financial Information and the Rationale for Its Standardisation*, 19 EKONOMIE A MANAGEMENT [ECON. & MGMT.] 157 (2016) (Czech).

17. The notion of harmonization is extremely relevant in today's European corporate law context. *See* Luca Enriques, *A Harmonized European Company Law: Are We There Already?*, 66 INT'L & COMP. L. Q. 763, 764 (2017). Non-financial disclosure could be considered another "little progress" made in the direction of company law uniformity within the EU, as a form of top-down harmonization. *See* Luca Enriques & Matteo Gatti, *The Uneasy Case for Top–Down Corporate Law Harmonization in the European Union*, 27 U. PA. J. INT'L ECON. L. 962 (2006).

18. In fact, Article 1(14)(b) of Directive 2003/51/EC (amending Directive 78/660/EEC) provides that the Commission is to adopt the measures necessary for the implementation of the directive. First, it provides that Article 46 of Directive 78/660/EEC is to be amended in such a way that the annual report contains at least a fair account of the development and performance of the company's business and of its position, and a description of

ment was then transposed by the Italian national legislator with Legislative Decree 32/2007[19] which amended, among other things, Article 2428(1) of the Civil Code[20] and Article 40 of Legislative Decree 9th April 1991[21] on annual reporting.

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the principal risks and uncertainties facing it. That report is to provide a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the scale and complexity of the company's business. Second, the analysis includes, "to the extent necessary for an understanding of the . . . development, performance or position" of the company's business, both the key financial performance indicators and, where appropriate, the non-financial indicators relevant to the specific business activity of the company, including information relating to the environment and to employees. In addition, the consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, and a description of the principal risks and uncertainties facing them.

19. It is intended to implement Directives 78/660/EEC and 83/349/EEC on company law, relating to annual and consolidated accounts, within the meaning of Article 1(1) of Law No. 69 of 26 March 1990. *See* Decreto Legislativo 2 febbraio 2007, n.32, G.U. Mar. 28, 2007, n.73 (It.).

20. With reference to the directors' report, it specifies that financial statements must be accompanied by a directors' report containing a faithful, balanced and exhaustive analysis of the company's situation and the trend and result of operations, as a whole and in the various sectors in which it has operated, including through subsidiaries, with particular regard to costs, revenues and investments, as well as a description of the main risks and uncertainties to which the company is exposed. *See id.*

21. In accordance with the aforementioned decree, the consolidated financial statements must be accompanied by a directors' report containing a faithful, balanced and exhaustive analysis of the situation of all the companies included in the consolidation and of the performance as a whole in the various sectors, with particular regard to costs, revenues and investments, as well as a description of the main risks and uncertainties to which the companies included in the consolidation are exposed. The analysis carried out as above is consistent with the size and complexity of the business of the undertakings included in the consolidated financial statements as a whole and contains, to the extent necessary for an understanding of the situation of the undertakings included in the consolidation as a whole and of the performance and results of their operations, financial and, where appropriate, non-financial performance indicators relevant to the specific activities of the undertakings, including information relating to the environment and to employees. The report shall contain, where appropriate, references to and additional explanations of amounts reported in the consolidated financial statements. *See id.*

This first step in the direction of facilitating and increasing the dissemination of non-financial information[22] has subsequently led to significant developments in the European Commission's Communication on the "Single Market Act." Twelve levers are needed to boost growth and strengthen confidence. A few initiatives—such as Working Together to Create New Growth,[23] A Renewed EU Strategy 2011–14 for Corporate Social Responsibility,[24] and Corporate Social Responsibility: Accountable, Transparent and Responsible Business Behavior and Sustainable Growth[25]—are intended to shape and share a modern business culture, which becomes the keystone—even through a novel approach to the issue of corporate social responsibility ("CSR")—of a transparent, virtuous and efficient economic system.[26] The transnational pathway at issue there-

22. All this fits into a wider framework of awareness of this issue by the European Union, which is also expressed in the Europe 2020 Strategy, the Circular Economic Package, the EU 2030 Climate and Energy Policy Framework, the EU Cohesion Policy and the EU Policy on CSR and the EC SDG Multi-Stakeholder Platform, as mentioned in CSR EUROPE & GRI, MEMBER STATE IMPLEMENTATION OF DIRECTIVE 2014/95/EU 11–12 (2017). Moreover, the EU also supported some initiatives seeking to increase the enhanced transparent behavior of corporations. On June 26, 2017, the EC released the long-awaited Guidelines on non-financial reporting and on July 13, 2017, the High-Level Expert Group on Sustainable Finance also released an interim report including a set of recommendations to serve long-term goals and growth. On June 29, 2017, the Task Force on Climate-Related Financial Disclosures also released its recommendations for businesses, *inter alia* including a widely-adoptable disclosure approach focused on governance, strategy, risk management, metrics and targets.

23. *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Single Market Act — Twelve Levers to Boost Growth and Strengthen Confidence*, COM (2011) 206 final (Apr. 13, 2011).

24. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011–14 for Corporate Social Responsibility*, COM (2011) 681 final (Oct. 25, 2011).

25. *Report on Corporate Social Responsibility: Accountable, Transparent and Responsible Business Behaviour and Sustainable Growth* (Jan. 28, 2013), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN.

26. European Parliament of 6 February 2013 on Corporate Social Responsibility: Accountable, Transparent and Responsible Business Behaviour and Sustainable Growth, 2013 O.J. (C 2012/2098). It is worth noting the explanatory statement in which the document specifies that the European Parliament: (i) considers corporate governance as a key element of CSR, in

fore concludes with the adoption of Directive 2014/95/EU,[27] whose recitals, as often happens, offer the interpreter a preliminary tool for understanding the rationale behind the intervention by translating and listing the needs and requirements to which the standard intends to respond.

The purpose of non-financial reporting is to redress the insufficient attention to the (extra)social impact of corporations' actions, particularly with regards to certain non-legal topics, such as the environment or gender, which have great political and media impact but pass through the aforementioned CSR. Through the disclosure obligation of certain non-financial information for certain parties[28]—the larger public interest entities ("PIEs")—the European legislator intended to raise companies' "awareness" of their societal roles and responsibilities. Doing so may generate positive effects that go beyond profitability in a capitalist market system. In addition, this may effectively measure, monitor, compare, and manage businesses and their impact on the community, and assist in the transition to a sustainable global economy capable of com-

particular as regards the relationship with public authorities and employees and their representative associations, and as regards the company's policy on bonuses, settlements and pay; and (ii) encourages the Commission to formulate specific measures to combat misleading and false information on CSR commitments and on the environmental and social impact of products and services that go beyond those provided for in the Unfair Commercial Practices Directive.

27. CSR Europe & GRI, *supra* note 22, at 7.

28. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, 2014 O.J. (L 330/1) 4. Article 1 of Directive 2014/95/EU introduces Article 1(1) of Directive 2004/48/EC. Article 19a of Directive 2013/34/EU requires public-interest entities which, at the balance sheet date, have an average of 500 employees during the financial year to include in their annual report a non-financial statement containing at least environmental, social, staff-related, human rights, anti-corruption and active and passive corruption information, to the extent necessary for an understanding of the entity's performance, results, situation, and impact of its activities. The report may include (i) a brief description of the entity's business model; (ii) a short outline of the entity's business model, situation and the impact of its activities; (iii) the primary risks associated with these aspects of the business activities of the enterprise, including with reference, where appropriate and proportionate, to its business relationships, products and services that may have adverse effects in these areas, and the related management practices adopted by the enterprise; (iv) the key non-financial performance indicators pertinent to the specific business activity of the corporation.

bining long-term profitability, social justice, and environmental protection.

However, the admirable expectations and noble functions that dissemination of the information being examined is called to perform are based on support, which, due to certain policy-making choices, reveals several major weaknesses. In particular, the decision to identify a floating threshold for the quantification of the news to be disseminated to the public,[29] absent clear and unambiguous key performance indicators, leads to uncertain interpretations (and consequent possible cost increases). To facilitate a more thorough understanding of the solutions adopted by the Italian legal system, the following section provides an overview of some blatant inconsistencies in the transposition of the European standard in individual national disciplines.

B. *Comparative Scenario: Transposition into National Law in Other Member States (the Normative Framework in France, Germany, Italy, Spain, and the UK)*

This section lays out a comparative analysis of the approaches adopted in other Member States prior to a more detailed examination of the Italian national context.[30] It also aims at assessing an eventual competition between legal systems, due to the overly rigid regime of one domestic discipline as opposed to another.[31]

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29. *See* Directive 2014/95/EU, art. 1, 2014 O.J. (L 330) 1, 4–5, concerning amendments to Directive 2013/34/EU, and the newly enacted Article 19a, concerning non-financial nature, which requires certain institutions to include in their annual report a non-financial statement to the extent necessary for an understanding of the company's performance, results, position and impact of its activities.

30. For detailed country-by-country briefings, see *CSR Europe and GRI Member State Implementation of Directive 2014/95/EU: A Comprehensive Overview of how Member States are Implementing the EU Directive on Non-financial and Diversity Information*, at 16–31 (2017).

31. Due to the limited space given, in this context it was decided to have regard to the regulations of selected countries, such as the United Kingdom, France and Germany, compared to Italy. In order to confirm the meaningfulness of the decision, see also CLAIRE JEFFWITZ & FILIP GREGOR, COMPARING THE IMPLEMENTATION OF THE EU NON-FINANCIAL REPORTING DIRECTIVE IN THE UK, GERMANY, FRANCE AND ITALY (2017), http://www.purposeofcorporation.org/comparing-the-eu-non-financial-reporting-directive.pdf.

In this respect, beyond any general observation, the directive as outlined in Table 1 below has undergone a remarkable adjustment process in the various European countries.

The most striking evidence is the expansiveness of the subjective profile offered, in particular by the Spanish and French legal systems, which together with the Italian system are undoubtedly extensive (and therefore more burdensome) even as far as the object of disclosure is concerned. In contrast, the UK and German regimes look like a pure restatement of the European regulatory framework. Further distinctions then concern the procedures for the transmission of information (a point in relation to which the Italian and German legal systems are more flexible), the procedures for verifying information, and the related sanctions.

On the one hand, the European framework includes reinsurance companies within the scope of the regulation. On the other hand, it transposes the legislation in an unfortunate manner, which calls for an interpretive effort to be correctly and meaningfully applied. Albeit trivial in certain respects, it may result in regulatory uncertainty.[32] It resembles a jigsaw puzzle, as briefly sketched and more clearly illustrated in the following tables.[33] It does not permit the establishment of a strong judgment on the existence of a more favorable system for business operators. Nevertheless, it still allows for an objective evaluation of the analytical features—and the consequential greater cost—of certain models (France and Italy) when compared to other ones (United Kingdom and Germany).

32. The reference is made to the fact that the Italian law defines among the EIPs, *inter alia*, the Italian companies issuing securities authorized to trade on regulated markets both in Italy and in the European Union, although the conjunction "and" must be understood as "or" (otherwise, the discipline will be applicable in extremely limited cases, if any).

33. *See infra* Tables 2, 3.

TABLE 1

Transposition into National Disciplines

Country	definition of Large undertaking	definition of public interest entity	reporting framework	Disclosure format	auditor's involvement	non-compliance penalties	Safe Harbor Principle
France	EU	State	EU	State	State	State	NA
Germany	EU	State	EU	State	EU	State	EU
Italy	EU	State	EU	State	State	State	EU
Spain	EU	State	State	State	EU	NA	EU
UK	State	EU	EU	State	State	State	EU

TABLE 2

Subjective Profile—Conditions of Applicability

	FRANCE	GERMANY	ITALY	SPAIN	UK
EMPLOYEES	> 500	> 500	> 500	> 500	> 500
NET TURNOVER (EUROS)	> 40 MILLION	> 40 MILLION	> 40 MILLION	> 40 MILLION	
BALANCE SHEET TOTAL (EUROS)	> 20 MILLION	> 20 MILLION	> 20 MILLION	> 20 MILLION	
PUBLIC INTEREST ENTITIES	- Listed companies - Credit institutions - Insurance undertaking - Insurance providers - Non-listed sociétés anonymes and non-listed investment funds shall comply if they have a net turnover over 100 million	- Listed companies - Credit institutions - Insurance undertaking	- Listed companies - Banks - Insurance and reinsurance undertaking	- Listed companies - Credit institutions - Insurance undertaking - Payment and electronic money institutions - Pension funds which, during two consecutive years, at the closing date of each year, have at least 10,000 participants - Investment services and collective investment institutions, with have more than 5000 clients or 5000 shareholders	- Listed companies - Credit institutions - Insurance undertaking

TABLE 3

Transposition into National Disciplines

<table>
<tr><th></th><th>FRANCE</th><th>GERMANY</th><th>ITALY</th><th>SPAIN</th><th>UK</th></tr>
<tr><td>TOPICS</td><td colspan="5">• Environmental performance
• Social and employee matters
• Human rights performance
• Corruption and anti-bribery matters</td></tr>
<tr><td>CONTENTS</td><td colspan="3">• A description of the undertaking's business model
• Company policies relating to non-financial matters and the outcomes of those policies
• Principle risks related to non-financial matters and business activities
• Any non-financial KPIs which are used</td><td>For the following matters:
• Environmental
• Social and employee matters
• Respect for human rights
• Anti-corruption and bribery matters
The report shall contain:
• A description of the undertaking's business model
• Company policies relating to non-financial matters</td><td>• A description of the undertaking's business model
• Company policies relating to non-financial matters and the outcomes of those policies
• Principle risks related to non-financial matters and business activities
• Any non-financial KPIs which are used</td></tr>
</table>

	FRANCE	GERMANY	ITALY	SPAIN	UK
				and the outcomes of those policies • Principle risks related to non-financial matters and business activities • Any non-financial KPIs which are used • An explanation of the sums indicated in the financial statement which are relevant to corporate social responsibility	
PRESENTATION METHODS	• Annual report, within 8 months of the end of the financial year and made available on the internet for 5 months	• Annual report or separate non-financial report within 4 months of the filing of the financial statements	• Annual report or separate report	• Annual report or separate report	• Separate report (strategic report)
RELYING UPON	• International, European, or National		• International, European or national•	• International, European or national: EMAS,	• International, European or national.

	FRANCE	GERMANY	ITALY	SPAIN	UK
			Possible "mixed" reporting.	UNGC, UNGP, OCDE, ISO260000, ILO Declaration o GRI	Possible "mixed" reporting.
ADDITIONAL ASPECTS	• Comply or explain principle • Diversity statement • Auditor's involvement • No fine is imposed unless an interested party asks for disclosure of the non-financial information, if not available, financial penalties can be imposed by a judge	• Comply or explain principle • Safe harbor principle • Diversity statement (large listed corporations only) • Auditor's involvement • Up to the amount of the fee which is the highest of the following: Eur 10 million or 5% of the total annual turnover of the company or twice the amount of the profits gained or losses avoided because of the breach	• Comply or explain principle • Safe harbor principle • Diversity statement (large listed corporations only) • Auditor's involvement • Sanctions	• Comply or explain principle • Safe harbor principle • Diversity statement (large listed corporations only) • Auditor's involvement • Sanctions	• Comply or explain principle • Safe harbor principle • Diversity statement (large listed corps only) • Auditor's involvement • Sanctions

II.
ITALIAN CONTEXT: VICES AND VIRTUES OF THE NEW NFS'S RULES

A. *Troublesome Issues*

The Italian laws, while careful to provide a comprehensive and updated reference framework, raise some remarkable issues. The following sections analyze those specifically related to (i) the identification of those who are required to submit an NFS; (ii) the duties of directors (and their related responsibilities); (iii) the impact on the system of internal controls; and (iv) the issue of CSR.

B. *Subjective and Objective Aspects: Scope of the NFS Regulation and its Contents*

The NFS obligation concerns[34] some limited categories of entities: PIEs whose features are likely to be qualified as large and "significant," and/or those parent companies of a large group, the so-called relevant public interest entities ("EIPRs").[35] With exemptions or possible omissions,[36] and without prejudice to the flexibility of such a comply-or-explain regime, it intended to strike a balance between excessively binding solutions and voluntary regulation.[37] In particular, the obligation to issue an NFS[38] is addressed to (i) Italian companies issuing securities (including, therefore, also those issuing bonds or other debt securities) authorized to trade on Italian and European Union regulated markets; (ii) banks; (iii) insurance companies (referred to in Article 1, paragraph 1, letter u) of the Italian Private Insurance Code); (iv) reinsurance undertakings (referred to in Article 1, paragraph 1, letter cc) of the Italian Private Insurance Code), with their registered office in Italy and Italian branches of non-EU reinsurance undertakings (referred to in Article 1, paragraph 1, letter cc-*ter* of the Italian Private Insurance Code).

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34. It does not prejudice the possibility of voluntarily submitting an NFS. *See* Decreto Legislativo, 30 dicembre 2016, n.254, art. 7 (It.).

35. *See id.* art. 2.

36. *See, e.g.*, *id.* art. 3, para. 8.

37. *See id.* art. 3, para. 6.

38. *See, e.g.*, *id.* art. 1, para. 1(a) (referencing Decreto Legislativo, 27 gennaio 2010, n.39, art. 16, para. 1 (It.)).

While the legislative policy decision is to refer to the regulations set out in Legislative Decree No. 39/2010 in an attempt to draw a continuum between separate disciplines, these areas—even if connected—suffer from certain weaknesses. Amongst the many weaknesses, one can cite to the improper use of language and terminology: for example, the unfortunate use of the conjunction "and" instead of "or,"[39] or of the term "banks" instead of "credit institutions" (as witnessed in other European countries). Similarly, one can point to general policy issues. Since it seems legitimate to ask whether it is appropriate to exclude a very large portion of commercial companies from such a matter and from such important disclosures (in any case free, as mentioned above, to spread an NFS) which certainly also plays a key role in achieving important legislative goals.

Such interpretative difficulties also extend to the regulation, in relation to which—given (i) a list of the three areas about which a specific description must be issued[40] and (ii) of the precise object of information[41]—information dissemina-

39. An excessively rigid interpretation of the text could, in fact, lead to the inclusion in category (i) of only those issuing companies indexed on at least two markets, one of which is Italian. The definition is in fact taken from the Consob Regulation, which specifies that listed issuers should be understood as Italian companies issuing securities authorized to trade on regulated markets in Italy and the European Union.

40. Pursuant to Article 3 of the Legislative Decree under discussion, these areas are: (i) the business model for the management and organization of the company's activities; (ii) the policies applied by the company and the related fundamental performance indicators of a non-financial nature; and (iii) the main risks, generated or incurred, associated with the aforesaid issues. *See* D.Lgs. n. 254/2016, art. 3, para. 1 (It.).

41. *Id.* It is linked at least (Article 3 of above-mentioned Legislative Decree) to: (i) the use of energy resources, distinguishing between those produced from renewable and non-renewable sources, and the use of water resources; (ii) greenhouse gas emissions and polluting emissions into the atmosphere; (iii) the impact, where possible on the basis of realizable hypotheses or scenarios even in the medium term, on the environment, as well as on health and safety, associated with the risk factors referred to in the standard or other relevant environmental and health risk coefficients; (iv) social and personnel management aspects, including actions implemented to ensure gender equality, measures to enforce the relevant international and supranational organizations' conventions, and the way in which dialogue with the social partners is established; (v) respect for human rights, steps taken to prevent violations of human rights, including actions taken to prevent any discriminatory attitudes and actions; and (vi) the fight against

tion is required (without there being objective criteria to refer to) to the extent necessary to ensure the understanding of the business, its performance, its results, and its impact (the so-called "principle of materiality"). Such lack of foresight, at least from a theoretical point of view, and without prejudice to the regulation about the necessary inclusion in the threshold of all the information profiles, not only brings uncertainties among the operators but also brings a different approach to the NFS issue. Of course, this is not functional to a straightforward comparison of distinct situations and business models.[42]

After a more in-depth examination of the relevant phases of production, presentation (there are two available options: a separate report or an inclusion in a specific section of the management report), reporting, and publication of the NFS, it is also worth recalling some other challenging aspects, such as: (i) the interpretation that would arise in the hypothetical case that a relevant EIP terminates at the closing date of the financial year to be reported, from covering this qualification (for example, consider if admission to trading fails for those who are neither banks nor insurance or reinsurance companies); (ii) the right configuration of the notion of turnover for banks and insurance companies; and (iii) with regard to the scope of consolidation of the statement.

C. *NFS and Role of the Board — A Few Comments on Two Issues: Board Diversity and the Risk of an Excessive "Comitology"*

The board of directors receives special attention from the NFS regulations primarily in two respects: (i) with reference to the approval process if it is contained in a separate report, and (ii) with regards to the potential link with some of the recommendations mentioned in the Code of Corporate Governance. These points were both addressed in the first commentary on the Consob regulatory provision and do have practical and theoretical implications even for scholars or for professionals

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both active and passive corruption, indicating the instruments adopted for this purpose.

42. Without prejudice to the consideration, it is likely to find a uniform tendency of structures and goals between companies operating in the same fields, even more so if under supervision. *See* Guidelines on Non-Financial Reporting, 2017 O.J. (C 215) 1.

who are not interested in soft law and of non-FTSE MIB corporations. It is also undoubtedly central to the issue, as discussed below, concerning the decision of directors to omit the disclosure of certain information under the openings granted by the European and national regulations.

Among the various issues related to the Board, the possible recurrence of an endo-conciliar committee to be entrusted with the care of issues related to "sustainability" is also essential. This may be an optimal choice, both theoretically and structurally, albeit it may generate possible short circuits and undue operational distinctions, in terms of responsibility, between the various components of the plenum.

According to Article 4 of the Italian Code of Corporate Governance,[43] for companies in the FTSE MIB index, the board shall assess the viability of setting up a special committee to supervise sustainability issues related to the performance of corporate activities and companies' interactions with all stakeholders. Alternatively, the board may consider grouping together or distributing these functions among the other committees. Some major issues emerge with this provision.

More specifically, some of the critical elements are: (i) the "cost" of setting up a new committee; (ii) the possible and potentially excessive burden of tasks on the existing committees that are not yet familiar with matters regarding sustainability but are otherwise competent (with the possible exception of the already "troublesome" risk committee); and (iii) the need for expertise of (at least a few) directors in the (very many) fields covered by the NFS—this also implicates the existence of potential problems in terms of board diversity[44] and the appointment of managers.

These shortcomings, however, should be added to the core concern of committee procedure, or "comitology."[45] The

43. Codice di Autodisciplina art. 4 (2018).

44. *Id.* at 11 (board must pay particular attention to diversity in its various forms (including gender), which is not discussed exhaustively but is covered by the rule).

45. The term 'comitology' refers to the set of procedures through which the European Commission exercises the implementing powers conferred on it by the EU legislator, with the assistance of committees of representatives from EU countries. Such comitology committees are chaired by a Commission official and give an opinion on implementing acts proposed by the Commission.

sometimes merely "formal" nature of the preliminary investigation of the internal committees and the application of the sanctioning case-law have become increasingly rigid and "punitive," as they might not distinguish between the so-called delegating directors and delegates. Therefore, the solution offered by the Corporate Governance Codes, aiming at creating ad hoc powers for the Board in matters then covered by the NFS, is undoubtedly oriented towards achieving the best-possible result.

D. *Impacts on the Internal Control System*

By specifying the relationship between the board of directors and the board of statutory auditors, the rules under review have an impact on internal control systems. The 2016 Decree has influenced two distinct operational spheres. On the one hand, the responsibility—hence, the task—of ensuring that the report is drawn up and published in accordance with the provisions of the decree itself falls into the directors of the company, who must act professionally and diligently.[46] On the other hand, the board of statutory auditors, in carrying out its legal duties, must comply with the provisions laid out in the decree and report at the shareholders' meeting. The latter, however, do not have a specific view on its necessary (or not) involvement in the drafting of a report, with reference to the non-financial statement ("NFS") contained in a separate document. On the basis of the instructions provided by the Supervisory Authority itself[47], it is related to the financial statements

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Glossary of Summaries — Comitology, EUR-LEX, http://eur-lex.europa.eu/summary/glossary/comitology.html (last visited Feb. 27, 2019).

46. Without prejudice to the fact that, as specified in the Consob Consultation Document, the system of competences and controls thus outlined does not differ from or is innovative with respect to the rules and general principles governing the allocation of powers between the Board of Directors and the Internal Control Committee. *See* C.c. art. 2381bis; see also articles 2403 and 149 of the Consolidated Law on Finance for listed companies, which are rules and principles that, on the contrary, must be considered as fully referred to and applicable also in the context of the preparation, publication, and supervision of non-financial information. C.c. arts. 2403, 149.

47. Decreto Legislativo, 30 dicembre 2016, n.254, art. 5 (It.). The Consob Consultation Document specifies that no further competence or voice assumption was introduced by the legislator for the general shareholders' meeting, although the terms and conditions of publication of the NFS—as will be explained later—clearly place such information in the wider set of

and to the phase preceding the general shareholders' meeting, in respect of which the right to vote and voice of individual shareholders would be excluded.

The involvement of the Board of Statutory Auditors or an alternative control body is also addressed in other parts of the 2016 Decree[48] and in the Consob Regulation.[49] Notwithstanding other legal disclosure obligations, those regulations require the control body of the companies that draws up the NFS to promptly forward to Consob findings of any violations of the provisions while carrying out functions outlined in Article 3, paragraph 7 of the 2016 Decree. Overall, the provisions confirmed that the primary role of a company's internal controls system is not to verify the correctness of NFS, but to oversee the company's compliance with relevant provision[50] and monitor the adequacy of any organizational, administrative, reporting, and control system prepared by the EIPR. The goal is to allow an accurate and complete representation to the NFS of its business activity, results and impacts on environmental, social, and human rights aspects.[51] A central issue is the appropriate internal coordination between the control body and the so-called supervisory body (in particular, the committee that may be in charge of NFS-related issues).

The rules governing non-financial information on external situations further reinforce the control issue, resulting in two further verification steps with respect to the internal operation of a corporation: (i) the control of the preparation car-

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the pre-meetings documentation, typically intended to firstly inform the shareholders and then the market. Therefore, in light of the provisions about the competence of the general shareholders' meeting, the EIPR must not submit the NFS to the shareholders' vote. *See* C.c. art. 2364, para. 1, no. 5.

48. *See* D.Lgs. n. 254/2016, art. 3, para. 7 & 8, art. 5, para. 1 & 3 (It.); for the issue of sanctions, see *id.* art. 8, para. 3 & 4.

49. *See id.* art. 7, para. 1, 3.

50. For example, methods and timing of NFS publication, objective and subjective scope of application, compliance with the comply-or-explain principle on implemented policies.

51. The decree also states how the correct drafting of the NFS represents the outcome of an accurate assessment process, which allows, on the basis of the principle of materiality, the control functions assigned to the Board of Statutory Auditors on NFS completeness and compliance with the law will mainly consist in monitoring the adequacy of all procedures that govern the production, reporting, measurement and representation of results and non-financial information. *See* D.Lgs. n. 254/2016, art. 8 (It.).

ried out by the person in charge of the statutory audit; and (ii) the conformity control exercised by the person implicated in (i) or by another qualified person selected on ad hoc basis. The latter clause, to which Article 5 of the Consob Regulation pays particular attention, emphasizes the discretionary nature of the certification methodology that can be adopted.

E. *Is CSR Still a Topical Issue? The Human Centered Business Model*

With respect to the general CSR—which permeates, directly and indirectly, the subject matter at issue—it seems reasonable to raise the question of topicality, or otherwise, of a subject which seems to have become obsolete and overwhelmed by new concepts. The entrepreneurial environment has increasingly gravitated towards values beyond mere profit.[52]

This topic is extremely critical not only because of its timeliness,[53] but also because, in our view, it reflects a new trend where non-financial reporting could well be a cornerstone,[54] with a pivotal role in creating alternative and innovative models of "doing business." One such example includes

52. The theme falls outside the scope of this paper. On this issue, among the most recent contributions, see Mario Stella Richter Jr., *Corporate Social Responsibility, Social Enterprise, Benefit Corporation: Magia Delle Parole?*, VITA NOTARILE, May–Aug. 2017, at 953 and HOLGER FLEISCHER ET AL., *Corporate Social Responsibility: Vermessung eines Forschungsfelds aus rechtlicher Sicht*, *in* CORPORATE SOCIAL RESPONSIBILITY, 1–38 (2018), for an introduction on the topic, a comparison between Germany and the United States, with references also to the Codes of corporate governance on this topic.

53. It is worth mentioning, in this context, the recent initiative held in Rome on November 12 and 13, 2018, organized by the OECD Development Center, the Unidroit and the University of Florence. *See Human Centered Business Model: A Holistic Approach to a Sustainable Business Ecosystem*, UNIDROIT (Nov. 16, 2018), https://www.unidroit.org/h-events/20181112-human-centered-business-model.

54. *See* Andrea Zorzi & Diletta Lenzi, *The Human-Centred Business Model: Legal Framework and Corporate Governance Issues* 14–15 (Glob. Forum on Law, Justice & Dev., Working Paper No. 2018-10-20), https://www.unidroit.org/english.news/2018/181112-hcbm-workshop-guiding-principles-rome/zorzi-lenzi-hcbm-legal-framework-e.pdf (effectively and correctly emphasizing how public information can reassure investors and consumers or customers about the 'humanly-centered' company behavior, which is so precious in terms of corporate economic sustainability).

the "human-centered business model,"[55] within which the "human-centered enterprises" become one of the keystones.

With regard to the specific obligations—and corresponding responsibilities—imposed by the non-financial disclosure requirement, it is thus fair to recall the intrinsic link between the transparency rule imposed by Directive 2014/95/EU and the companies' responsibility towards society. This should not be read as the end point of CSR's path, but rather understood as the starting point for a potential reinterpretation of the conventional categories of commercial law, which becomes increasingly mindful of stakeholders' needs (and, perhaps, too careless with those of shareholders).

F. *CSR Evolution*

This section will briefly evaluate the CSR issue in a transnational scope that goes beyond the Italian context. It is worth highlighting some evolutionary macro-phases in the CSR's history. Toward the end of the 1990s, international standards for conduct and reporting began to emerge, drawing on both the Codes of Corporate Governance from the 1980s and similar regulations in the early 1990s.[56] But earlier company reportings were essentially limited to philanthropic programs or declarations of intent).[57] Around the 2000s, with the contribution of the United Nations and of non-governmental organizations such as the United Nations Global Compact, Principles for Re-

55. GLOB. FORUM ON LAW, JUSTICE & DEV., THE HUMAN-CENTERED BUSINESS MODEL (HCBM): A HOLISTIC APPROACH TO A NEW MODEL FOR DOING BUSINESS (Jan. 31, 2017), http://asvis.it/public/asvis/files/HCBM_Project_Proposal_Jan_31_2017.pdf.

56. After all, prior to the regulatory intervention considered herein, the Italian regulations also called for the non-financial results relating to the company's activities to be dealt with in the report on the management of joint-stock companies pursuant to art. 2428, paragraph 2, of the Italian Civil Code and in those of companies required to draft consolidated financial statements), as well as pursuant to the Corporate Governance Code, in art. 1.C.1 (which concerns the risk profiles to be considered by the board) and Article 4.C.2 (which recommends that companies listed on the FTSE MIB establish an internal committee within the board to evaluate the sustainable choices of the company).

57. Sandra Waddock, *Building a New Institutional Infrastructure for Corporate Responsibility*, 22 ACAD. MGMT. PERSP. 87, 88 (2008).

sponsible Investment,[58] the Global Reporting Initiative,[59] Sustainability Accounting Standards,[60] and the specific ISO se-

58. Elroy Dimson, Oguzhan Karakas & Xi Li, *Coordinated Engagements*, SSRN, Dec. 24, 2018, at 2–3, 13–19, http://ssrn.com/id=3209072.

59. This initiative was founded in 1997 by the collaboration between the pre-existing *Coalition for Environmentally Responsible Economies* and the *United Nations Environment Program*. These guidelines are much more structured and precise than the ISO ones, with a choice between the "core" and "comprehensive" options, respectively containing only the essential elements of the sustainability report and the inclusion of information on strategies, governance, business ethics and business integrity. However, they also contain some incorrect details: the adoption of a single system of standards for all non-financial reporting risks being insufficient, instead it is advisable to achieve greater integration between standards with a focus on different issues. *Cf.* Laurence Vigneau, Michael Humphreys & Jeremy Moon, *How Do Firms Comply with International Sustainability Standards? Processes and Consequences of Adopting the Global Reporting Initiative*, 131 J. BUS. ETHICS 469 (2015); Ruth Jebe, *Corporate Sustainability Reporting and "Material Information": An Empirical Study of Materiality under the GRI and Frameworks*, 33 CONN. J. INT'L L. 95, 104 (2017).

60. They were developed by a non-profit organization founded in 2011 in the United States, which over the years has benefited from the participation of distinguished academics and industry, as well as two former chairmen of the SEC. The primary merit of the SASB standards has been to promote a transition to integrated reporting, i.e., the integration of non-financial reporting into traditional mandatory financial reporting, thus providing a significant output and at the same time avoiding costs, duplications and inefficiencies in preparation and publication. The state-of-the-art of integrated reporting in the United States has been recently sketched in IRRC, STATE OF INTEGRATED AND SUSTAINABILITY REPORTING 2018 (2018), https://irrcinstitute.org/wp-content/uploads/2018/11/2018-SP-500-Integrated-Reporting-FINAL-November-2018.pdf. An interesting first assessment of the impact of the SASB standards on non-financial reporting of U.S. listed companies dates back to 2016, when the institution led an analysis of the non-financial disclosure of the ten largest companies in terms of turnover for each of the 79 industries considered, as reported in the disclosure for the year 2015. SASB, *2016 Symposium Roundtable, Analysts' Roundtable on Integrating ESG into Investment Decision-Making*, 29 J. APPLIED CORP. FIN. 44 (2017). This information has been classified into four categories according to the degree of detail. Arturo Rodriguez, Henrik Cotran & Levi Stewart, *Evaluating the Effectiveness of Sustainability Disclosure: Findings from a Recent SASB Study*, 29 J. APP. CORP. FIN. 100 (2017). The analysis showed that out of the total of more than 4000 possible disclosure topics for all companies, only 19% did not have any relevant disclosure. The result could be looked upon with optimism, considering the non-mandatory nature of the disclosure in question and the relative novelty of the introduction of relevant standards. Moreover, about 70% of the entities surveyed had provided information on at least three quarters of the topics identified as materials by the SASB for their

ries,[61] International Organization for Standardization introduced and promulgated the standards of accountability reporting.[62] At the same time, legitimacy theory scholars proposed the theory of sustainability disclosure: "where managers perceive that the organization's operations are not commensurate with the social contract, then, pursuant to legitimacy theory, remedial strategies are predicted. Because the theory is based on perceptions, in order to have any effect on external parties, any remedial measures implemented by the manager must be accompanied by disclosure."[63]

This theory states the reasons that make disclosure essential, but does not explore the problems regarding the material-

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industry. Furthermore, almost 40% of the sample had provided some degree of information on all the issues indicated by the standards for the relevant industry. Although, as said, the coverage of the information provided could be considered satisfactory, its quality—although with significant deviations according to the various sectors and industries—turned out to have room for improvement. In fact, about half of the issues covered were addressed with a standard language. When commenting on the study cited, slight deviations in the coverage and quality of disclosure can be noticed: in particular, companies with greater capitalization (large caps are over $10 billion) tend to use quantitative indicators more frequently than mediums and small caps and are less inclined to use a standard language. Overall, therefore, it can be argued that the standards produced by SASB have been successful in their efforts to "codify" and guide companies, obtaining significant coverage results.

61. The intention was that ISO standards should create value for the organization and its stakeholders; increase financial, human and social capital; emphasize business performance; enhance credibility and attract investors. Mihaela Herciu, *ISO 26000 — An Integrative Approach of Corporate Social Responsibility*, 11 STUD. BUS. & ECON. 73, 76 (2016); Lars Moratis, *The Credibility of Corporate CSR Claims: A Taxonomy Based on ISO 26000 and a Research Agenda*, 28 TOTAL QUALITY MGMT. & BUS. EXCELLENCE 147, 149 (2017). However, two elements of significant weakness in these standards cannot be ignored: (i) their development process, defined as consensus-based, is in itself unsuitable to stimulate a real improvement in the conditions that the standards are intended to influence; (ii) standards end up representing the lowest common denominator of the plethora of needs considered, discounting the excessive and totalizing scope of the purpose. S. Prakash Sethi, Janet L. Rovenpor & Mert Demir, *Enhancing the Quality of Reporting in Corporate Social Responsibility Guidance Documents: The Roles of ISO 26000, Global Reporting Initiative and CSR-Sustainability Monitor*, 122 BUS. & SOC. REV. 139, 146 (2017).

62. Wagner, *supra* note 13, at 649.

63. Craig Deegan, *Introduction: The Legitimising Effect of Social and Environmental Disclosure — A Theoretical Foundation*, 15 ACCT. AUDITING & ACCOUNTABILITY J. 282, 296 (2002).

ity of the information produced. Thus, it does not distinguish an individual who performs a transaction for reputational reasons from an individual with a strategic commitment to sustainability.[64]

Sir Adrian Cadbury's corporate vision is, in this sense, explicative. He regarded it not so much as an isolated entity, but as part of a wider social system, from which it is influenced and on which it has some impacts and consequences. The strategies and behavior of a company are in line with its decisions and actions by virtue of the density of relationships that increase the level of interdependence and affect decision-making.

Another view contends that larger companies are able to influence the company's reputation from different angles and, as a result, are entrusted with social obligations that transcend the traditional economic functions of production and distribution of goods and services.[65] Certainly, as the CSR logic becomes more popular, economic responsibility will be flanked by social and environmental responsibility, and communication will move from the sphere of the business-to-market to that of the business-to-company relationship.

As noted by other authors,[66] the ability of a company to produce sustainable wealth over time coincides with the capacity to manage relationships with stakeholders. Business connections are in fact fundamental assets, which managers must handle adequately, given their potential contribution to the wealth production. The Dow Jones Sustainability Index, which measures and evaluates an approach to business management that creates long-term value for shareholders through management of risks arising from economic, environmental, and social development, bears witness to its significance. Recent studies have shown that, "collaboration in ESG engagements facilitates risk-sharing among active owners" and, in doing so, "leadership is decisive [since] success rates are elevated sub-

64. In this sense, the most advanced companies already adopted these non-financial disclosure policies. Robert G. Eccles, Ioannis Ioannou & George Serafeim, *The Impact of Corporate Sustainability on Organizational Processes and Performance*, 60 MGMT. SCI. 2835, 2873–74 (2014).

65. HOWARD R. BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN 3–6 (1st ed. 1953).

66. James E. Post, Lee E. Preston & Sybille Sachs, *Managing the Extended Enterprise: The New Stakeholder View*, 45 CAL. MGMT. REV. 6, 8 (2002).

stantially, and financial and accounting performance are improved, when there are lead investors who head the dialogue and there are supporting investors collaborating with the lead."[67]

G. *Insights from the (Blurred) Border between CSR and Non-Financial Disclosure: Inputs from the Economic and Financial Literature*

By reviewing the literature, this section identifies some potential determinants of the quality and extension of non-financial disclosure.[68] In investigating the relevant factors influencing CSR disclosure, developing and advanced economies approach the subject differently.[69] In the latter, the concerns of specific stakeholders (regulators, shareholders, creditors, investors, environmentalists, and the media) are deemed highly relevant in disclosing CSR information. In the former, however, CSR reporting is affected by external forces and powerful stakeholders, such as international buyers, foreign investors, international media concerns, and international regulatory bodies such as the World Bank.[70]

Some authors studied the impact of the new regulatory framework on the European Union's financial markets and on the global economic and financial environment.[71] The study also investigates the rationale behind investors' behavior, i.e., both the financial motivation, which can be summarized as the ability of companies with better CSR policies to more effectively react to crises, and the social motivation, determined by the cultural and social environment of the country or that of the institutional investor's stakeholder base.

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67. This is the so-called "two-tier engagement strategy" according to Dimson, Karakas & Li, *supra* note 58, at 4.

68. The usefulness of using economic literature is also underlined by the fact that other studies in the legal field have not ignored its significant contributions, which constitute an indispensable background to evaluate the ability of social disclosure to "deliver its promises." *See* Snyder, *supra* note 2.

69. *See* Waris Ali, Jedrzej George Frynas & Zeeshan Mahmood, *Determinants of Corporate Social Responsibility (CSR) Disclosure in Developed and Developing Countries: A Literature Review*, 24 CORP. SOC. RESP. & ENV'T. MGMT. 273 (2017).

70. *Id.* at 289.

71. *See* Alexander Dyck et al., *Do Institutional Investors Drive Corporate Social Responsibility? International Evidence*, 131 J. FIN. ECON. 693 (2019).

Other authors also looked at voluntary non-financial reporting and observed its potential benefits in terms of reducing equity costs.[72] They found that CSR disclosure, combined with superior CSR performance, is associated with a decrease in the cost of equity capital. The effect of this disclosure on institutional investors is stronger where disclosing firms performed better (in terms of CSR) than their industry peers.[73]

Our study also investigates the increased coverage of analysis for companies with an above-average CSR performance and companies that provide voluntary disclosure. The remark is in line with the results of another analysis regarding better funding perspectives connected with better CSR performance.[74] Companies with better CSR performance have less trouble self-financing and face a less steep capital supply curve. There are two main factors that contribute to this effect: (i) the close relationship that links the most suitable CSR policies with an effective stakeholder engagement process, which in itself entails the establishment of trust, thereby reducing monitoring costs; and (ii) the fact that the most performing companies tend to, and have incentives to, produce better disclosure, thereby increasing transparency and trust in the reporting process. From the perspective of the capital markets, the interest of investors in sustainability reporting is clear.[75] From the research presented, it appears that, following the publication of a sustainability report, there was a significant stock market reaction. At the same time, this can be separated from the signaling effect, since it is the content of the report that is relevant, rather than its mere output. This contribution also provides evidence to support the significance of sustainability reporting for investors.

The financial analysts' report with disclosures on CSR issues is a subject of great importance, since it is a sign of effec-

72. Dan. S. Dhaliwal et al., *Voluntary Non-Financial Disclosure and the Cost of Equity Capital: The Initiation of Corporate Social Responsibility Reporting*, 86 ACCT. REV. 59 (2011) (examining the potential benefit associated with the initiation of voluntary disclosure of CSR activities—a reduction in the cost of equity capital).

73. *Id.* at 79–80.

74. Beiting Cheng, Ioannis Ioannou & George Serafeim, *Corporate Social Responsibility and Access to Finance*, 35 STRATEGIC MGMT. J. 1 (2014).

75. Shuili Du et al., *The Business Case for Sustainability Reporting: Evidence from Stock Market Reactions*, 36 J. PUBLIC POL'Y & MARKETING 313 (2017).

tive consideration of investors. While the signing of sustainable investment protocols and adherence to other "institutional" initiatives are relevant at a theoretical level, it is difficult for interpreters to understand where the end of greenwashing is[76] and where the actual engagement begins.

Some authors studied the change in analysts' considerations which, according to them, occurred when the perception of CSR initiatives moved from the management perspective, focusing on agency cost, to the stakeholders' point of view, focusing on effective engagement.[77] In fact, "the shifting institutional logic from an agency to a stakeholder perspective is much more likely to affect pro-active CSR initiatives that are undertaken to meet the needs and expectations of a wider range of stakeholders and are therefore perceived as potentially mitigating risks or even generating firm value."[78] Around the early 2000s, analysts began to provide better recommendations for companies with high CSR ratings, moving away from the skepticism that characterized their consideration of these metrics in the early 1990s.

With respect to the availability of sustainability data from an investor's perspective, specialized media and magazines compared various sustainability rankings and criticized the continuing absence of a common framework that results in a generation of information uncertainty.[79] In the Italian literature on this subject, there have been some studies on the dis-

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76. The risks of true green washing façade maneuvers have been immediately taken into account.

77. Ioannis Ioannou & George Serafeim, *The Impact of Corporate Social Responsibility on Investment Recommendations: Analysts' Perceptions and Shifting Institutional Logics* (Harv. Bus. Sch. Division of Res., Working Paper No. 11-100, 2011), https://www.hbs.edu/faculty/Publication%20Files/Manuscript_CA_March_SSRN_69697c30-7c99-4206-be6e-44ac72554f75.pdf.

78. *Id.* at 24. *See also* Allen Ferrell, Hao Liang & Luc Renneboog, *Socially Responsible Firms* 17 & 32 (Eur. Corp. Governance Inst. (ECGI), Finance Working Paper No. 432/2014, 2016) (showing that good governance causes high CSR and that a firm's CSR practice is not inconsistent with shareholder wealth maximization, which induces a positive stance on CSR. Therefore, well-governed firms that suffer less from agency concerns (less cash abundance, positive pay-for-performance, small control wedge, strong minority protection) engage more in CSR. Further, a positive relation exists between CSR and value and that CSR attenuates the negative relation between managerial entrenchment and value).

79. Silvia Romero et al., *Using ESG Ratings to Build a Sustainability Investing Strategy*, 88 CPA J. 36 (July 2018).

semination of GRI indicators in the sustainability reports of Italian listed companies. They stress the role of ROE and the sector to which it belongs in determining the number of topics presented. In order to ascertain whether or not there is a lack of information that such legislation would have eased, a recent study compared the information provided by 223 large companies with that required by the framework of the NFS before its implementation. Contrary to expectations, the result showed that there is lack of disclosure on many issues.[80]

III.
Descriptive Analysis

This section will provide a brief overview of the scenario under examination and report the results that have been processed and summarized in the first report produced by the National Observatory on Non-Financial Reporting pursuant to Legislative Decree No. 254/2016 by Deloitte & Touche and SDA Bocconi in October 2018.[81] We will focus on issues related to governance and the risks identified in these reports,[82] the structure of the Board,[83] and the ownership structures of the companies under examination.[84] The research will then delve into unpublished data in greater details, which have been developed in two selected directions.[85]

A. *Dataset: Description of the Sample and Preliminary Observations*

The scope of this analysis includes all the 194 Italian companies that published the NFS by July 15, 2018, pursuant to the

80. Andrea Venturelli et al, *Directive 2014/95/EU: Are Italian Companies Already Compliant?* 9 Sustainability 1385 (2017) (the authors developed an assessment model, named "Non-Financial Information Score", capable of capturing and measuring a percentage of the required information. The result, with an average of 49%, shows that the implementation of the directive is not really the panacea of all evils, but rather that an information gap remains, for the time being at least).

81. Deloitte & Touche, *Osservatorio Nazionale sulla Rendicontazione Non Finanziaria ex D.Lgs.* 254/2016 (2018) (It.), https://www2.deloitte.com/content/dam/Deloitte/it/Documents/audit/Osservatorio%20DNF_I%20Report_Ottobre%202018_Deloitte%20Italia.pdf.

82. *Id.* at 21. *See infra* Section III.B.

83. Deloitte & Touche, *supra* note 81, at 31–32. *See infra* Section III.C.

84. Deloitte & Touche, *supra* note 81, at 33–35. *See infra* Section III.D.

85. *See infra* Sections III.E–F.

2016 Decree. It was also the subject of study by the National Observatory. 191 of the 194 companies closed their financial year on December 31, 2017. There are 150 listed companies (77%), thirty-one of which are part of the FTSE MIB index. According to the data collected as part of the research, 142 companies are part of non-financial sectors compared to 52 of the financial ones.[86] According to the 2005 Basel Committee for the Supervision of the Banking System, as well as shown in the literature,[87] disclosure is an inherent part of corporate governance, as more transparent corporate communication to the outside world can reduce information asymmetries, mitigate the conflict of interests between shareholders and management, and empower those involved in the management and in the company's direction and activities.

The NFS may comprise a section of the Annual Report or stand as a separate report, despite the obligation to be marked with a similar wording. The location of the non-financial information is therefore a matter of mere communication. It should be noted that 78% of the companies have published the NFS separately from the Report, while only 22% of the companies have decided to integrate it into the Report. Among those companies, two of them chose to refer only to the other sections of the Report containing the information required by the Decree in the paragraph dedicated to the NFS. However, we found no significant correlations between the maturity of reporting and the choice of location of the

86. Adopting the industry classification adopted by Borsa Italiana, the banking sector is the most represented (forty-one banks have formulated the NFS, which is equal to 21% of the total sample), followed by Industrial Products and Services, Consumer Business, Construction and Energy & Utilities (E&U). DELOITTE & TOUCHE, *supra* note 81, at 7. A sizeable slice of the sample (57%) comprised first-time reporters, companies that for the first time published a non-financial disclosure document to comply with the provisions of the Decree under review, thus pointing out the significant impact of this regulatory intervention, without significant deviations between the macro-financial and non-financial sectors. However, the maturity of the FTSE MIB companies compared to the others in relation to the issue is not negligible: 84% of these, in fact, can be considered as long-standing reporters, since they had already presented a sustainability report with regard to the 2016 fiscal period. *Id.* at 10.

87. Sandeep A. Patel, Amra Balic & Liliane Bwakira, *Measuring Transparency and Disclosure at Firm-Level in Emerging Markets*, 3 EMERGING MKTS. REV. 325, 326 (2002).

NFS. In fact, the percentage of long-standing reporters who published the NFS as a separate document goes from 78% (referring to the entire sample) to 81%, while 19% integrated the NFS in the Report despite the fact that in the past they had already developed a specific document for non-financial reporting (Sustainability Report).

In the FTSE MIB segment, we observe a similar percentage breakdown as that for the NFS location. Companies that chose to publish their NFS as a stand-alone paper other than the Annual Report represent the majority (88%).[88]

The information constituting the NFS must be provided in accordance with the methods and principles laid down by the reporting standard used as a reference or by the independent reporting technique used to draft the statement. The guidelines or standards for sustainability reporting defined by the Global Reporting Initiative ("GRI") are the standard adopted by all companies in the sample, making it a first step towards the comparability of the information and performance mentioned.[89]

Other frameworks have also been used in combination with the GRI. Ten companies have referred to the International Integrated Reporting Framework, six companies have referred to the guidelines published by the Study Group for the social report (the "GBS Standard"), mainly for the data relating to the prospectus for the determination and distribution of added value, and three companies have cited the UN Global Compact principles.[90]

88. DELOITTE & TOUCHE, *supra* note 81, at 10.

89. *Id.* at 12. *See* Snyder, *supra* note 2, at 569–71, 571 n.26.

90. DELOITTE & TOUCHE, *supra* note 81, at 12. For further analysis on the issue, see *id.* at 13–14. A recent report by Davis Polk & Wardwell LLP focused on the recent guide for integrated reporting, GRI & U.N. GLOBAL COMPACT, INTEGRATING THE SDGS INTO CORPORATE REPORTING: A PRACTICAL GUIDE (2018), https://www.globalreporting.org/resourcelibrary/GRI_UNGC_Reporting-on-SDGs_Practical_Guide.pdf. *See* Betty Moy Huber, Michael Comstock & Hilary Smith, *UN Sustainable Development Goals — The Leading ESG Framework for Large Companies*, HARV. LAW SCH. FORUM ON CORP. GOVERNANCE & FIN. REGULATIONS (Oct. 4, 2018), https://corpgov.law.harvard.edu/2018/10/04/un-sustainable-development-goals-the-leading-esg-framework-for-large-companies/.

B. *Disclosing Risks*

To investigate the impact of certain characteristics of the governance system on the number and type of risks disclosed in non-financial statements, we classified the risks listed in the non-financial statements prepared by the companies in the sample,[91] specifically, risks related to the external environment,[92] to the structural process[93] and to the decision-making process.[94]

1. *State-of-the-Art*

The analysis of the non-financial statements leads to the identification of 1670 risks, about nine for each company on average, mainly grouped in the "process risks" category. Environmental threats represent 15% of the process risks, while 11% concern reputation and integrity in the conduct of business respectively. Governance risks (e.g., organization, ethical

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91. *See also* Rui Albuquerque, Yrjo Kokskinen & Chendi Zhang, *Corporate Social Responsibility and Firm Risk: Theory and Empirical Evidence* (Eur. Corp. Governance Inst., Finance Working Paper No. 359/2013, 2018), https://ecgi.global/sites/default/files/working_papers/documents/ssrn-id1961971.pdf.

92. As to the external environment, they may not be linked to business strategies or activities, but rather to competitive profiles (e.g., technological innovation), to the financial environment (prices, rates, indices, etc.), and to external conditions (regulatory and political frameworks).

93. As to the structural process, the risks related to the structural process originate from the company's operations, potentially resulting in the risk that the company's processes are not clearly defined or are rather poorly aligned with the goals and strategies of the company. These risks include financial (price, liquidity and income risks), delegation (related to leadership, i.e., lack of orientation, customer location, motivation, management credibility, and speed of adaptation to change, which is the inability to implement processes or develop products quickly enough to cope with changes in market conditions), information technology (risks associated with the access, authorization, completeness and accuracy of transactions entered, processed, summarized and reported by the systems used), governance processes (when the board of directors does not provide adequate monitoring and supervision for executive management activities), and reputation. Further facets of this typology include those related to process efficiency (business continuity), compliance (with respect to customer requirements and established organizational procedures), human resources (competence, capacity and experience), supply (choice of partner and adequacy of execution), and health and safety of the working environment.

94. As for the decision-making process, the risks may be present in the allocation of resources (e.g., obsolete organizational model).

conduct, human resources, health and safety in the workplace) are also frequent. About 9% of risks are attributable to business activities. Other risk categories (e.g., efficiency, supply chain, delegation, IT, etc.) represent less than or equal to 5% of the total ones observed within this framework.

In addition, around 14% of the risks identified reflect companies' concerns about events, pressures, or changes within the environment in which they operate. More specifically, companies' attention in this regard is primarily focused on competitive environment risks. Also, about 50% of the risks related to the external environment are related to perils originating from changes or evolutions in the political and regulatory context of reference, while only 10% is related to the financial context and 6% to information to support the decision-making process.

In an attempt to address the needs of stakeholders for greater transparency with respect to financial risks and ESG topics, companies appear to be very attentive to the preparation of non-financial statements and to the communication of information certifying the integration of the concept of social responsibility into the business of the company.[95] As for the mean of risks listed for each category by the selected firms, the average number of environmental and governance risks is 1.7, the average number of risks relating to image and reputation is 1.8, and the average number of non-financial ones is 2.7. The most-frequently reported types differ for different types of companies. Larger companies pay greater attention to external risk communication (e.g., about the competitive environ-

95. For example, in one article, the authors observe that:

> Directors report that changes in the regulatory climate, the prospect of an economic slowdown, growing cybersecurity threats, business-model disruptions, and worsening geopolitical volatility will most significantly impact their organizations in 2019. These often interconnected risks have increased business uncertainty as management finds their likelihood difficult to anticipate and their impacts difficult to mitigate . . . . Although environmental, social, and governance (ESG) issues are currently a relatively low priority for many boards, most directors would like their boards to take more action and enhance ESG oversight.

Friso van der Oord & Barton Edgerton, *NACD Public Company Governance Survey*, HARV. LAW SCH. FORUM ON CORP. GOVERNANCE AND FIN. REGULATION (Jan. 6, 2019), https://corpgov.law.harvard.edu/2019/01/06/nacd-public-company-governance-survey/.

ment, the financial context, changes in the regulatory framework and political systems, etc.), whereas smaller companies tend to be particularly sensitive to threats related to reputation, environment, health, safety in the workplace, and external conditions.

2. *Reasons for Risk-Taking*

A well-known neurosurgeon once said, "[i]f we set as our priority 'the removal of all risk,' we'll soon have sterile, stagnant, and unstimulating [business] environments."[96] A more transparent communication of business risks can certainly be beneficial for organizations, investors, and, in general, all users of corporate reporting. It shall focus not only on financial aspects, but also on the multiple dimensions of the business management, including the relationships a company establishes with its stakeholders and with the social and environmental context in which it operates.

Actually, the disclosure of information on corporate risks helps investors to better evaluate their investment choices, verifying the extent and certainty of future cash flows and analyzing the risk potential of the structure.[97] Therefore, clearer risk communication can reduce adverse selection problems, boost stakeholder confidence in the business, or highlight any practices or policies to reduce exposure to them. Moreover, disclosing business risks would help manage changes more effectively, reduce the cost of capital, provide information on the future evolution of the business model, and allow companies to convey their commitment to stakeholders.

96. BEN CARSON, TAKE THE RISK 120 (2008) (actually referring to "learning" environments, rather than "business" ones).

97. *Cf.* Francesca Manes-Rossi et al., *Ensuring More Sustainable Reporting in Europe Using Non-Financial Disclosure — De Facto and De Jure Evidence*, 10 SUSTAINABILITY 1162, 1164–65 (2018); Yan Qiu, Amama Shaukat & Rajesh Tharyan, *Environmental and Social Disclosures: Link with Corporate Financial Performance*, 48 BRIT. ACCT. REV. 102, 110 (2016); Santhosh Abraham & Paul Cox, *Analysing the Determinants of Narrative Risk Information in UK FTSE 100 Annual Reports*, 39 BRIT. ACCT. REV. 227, 227 (2007); David Monsma & John Buckley, *Non-Financial Corporate Performance: The Material Edges of Social and Environmental Disclosure*, 11 UNIV. BALT. J. ENVTL. L. 166, 167–68 (2004).

C. *Board of Directors*

Recall that the agency theory also states that a greater presence of independent directors in the boardroom results in a greater propensity to disclose information and fosters transparency. The idea assumes that executive directors would not have adequate incentives to share information with the public, particularly regarding threats, because their actions and behavior would thus be subject to control and scrutiny.[98]

1. *Correlation between Independent Directors and Risks*

It should be premised that the companies in the sample have been divided into three macro sectors, based on whether the independent directors represent an absolute majority, a simple majority or simple minority of the board. The definition of independence adopted to this end is contained in Article 147-ter (referring to Article 148, paragraph three) of the Consolidated Law on Finance[99] and Article 3 of the Code of Corporate Governance for Listed Companies.[100]

TABLE 4

	INDEPENDENT DIRECTORS (CODE OF CORPORATE GOVERNANCE)	**INDEPENDENT DIRECTORS (TUF)**
INDEPENDENT DIRECTORS (PROPORTIONALLY)	**MEAN TOT SASB**	**MEAN TOT SASB**
< 0.25	8.42	9.42
0.25 <= x < 0.5	9.92	9.65
0.5 <= x < 0.75	9.65	9.85
0.75 <= x < 1	10.15	9.84

98. Eugene F. Fama & Michael C. Jensen, *Separation of Ownership and Control*, 26 J.L. ECON. 301, 315 (1983).

99. Decreto Legislativo 24 febbraio 1998, n.58, G.U. Mar. 23, 1998, n.71, art. 147-ter, paras. 3–4 (It.).

100. CODICE DI AUTODISCIPLINA art. 3 (2018). The large number of unlisted companies in the sample, who are therefore not required to comply with the directives contained therein, suggests a comparison of the results of the application of both definitions.

Using the definition provided in the Code of Corporate Governance, it is evident the number of independent directors increases as the level of disclosure rises, from an average of 8.42 for companies with less than a quarter of independent directors to more than 10 for companies with more than three quarters.[101]

However, given the slight differences among the three ranges after the first, as well as the slight turnabout between the second and the third, the data provided seem to indicate that the proportion of independent directors required is around 25% in order to have a beneficial effect on the level of the declaration.[102] Another attempt at segmentation, which took into account three thresholds, with the first at 33% (corresponding to the minimum proportion of independent directors recommended by the same Code of Corporate Governance), did not result in any significant value for this study. This result would therefore confirm that the "useful threshold" beyond which positive effects are obtained is in this case a bit lower than one-third.[103]

The independence degree under the Consolidated Law on Finance was introduced to mitigate the possible discriminatory effect on unlisted companies, which are not required to follow the recommendations of the Code. However, the definition provided by the Consolidated Law on Finance probably leads to an overly broad inclusion of independent directors. In fact, the observed trend of using the definition provided in the Code for computing statistics is much milder in this case than that reported with the first Consolidated Law on Finance classification, leading to less significant results: the average ranges from 9.42 for the first group to 9.84 for the fourth.[104]

For control purposes, the effect of the proportion of independents on companies with different ownership structures should be tested (data not presented in the table). The findings are generally consistent with the results presented so far. Among the companies in the "other" cluster, the same trend occurs as that seen in the sample, with a slightly more significant improvement in the average materiality reported (from

101. *See supra* Table 4.
102. *See supra* Table 4.
103. *See supra* Table 4.
104. *See supra* Table 4.

6.50 to 8.71) when more than 25% of the board are independent directors.

Among family-owned companies, the positive effect of the inclusion of independent directors is likely to occur from proportions above 50% (the average for the second range is 10.23 compared to 11.06 for the next range); however, the average disclosure is higher than that of the other groups, even in the first range (due to the aforementioned effects). As far as state-owned companies/local entities are concerned, this statistic is insignificant, due to the small number of observations.

Omitting the disclosure results for the time being, the ratio between the proportion of independent directors and the ownership structure can be summarized according to the table below. The proportion is, on average, rather similar for both the cluster of family businesses and the residual category. We can only notice how the variability is accentuated within the category "other," undoubtedly due to its heterogeneity. Also, the proportion is remarkably high in the public-owned cluster.

TABLE 5

OWNERSHIP STRUCTURE	**MEAN PROP. INDEP. DIR. (CORP. GOVERNANCE CODE)**	**STANDARD DEV. (CORP. GOV. CODE)**	**MEAN PROP. INDEP. DIR. (TUF)**	**STANDARD DEV. (TUF)**
Family Firm	0.43	0.15	0.45	0.15
State or Local Entity	0.64	0.12	0.63	0.19
Other	0.46	0.25	0.50	0.26

For those companies in which independent directors represent the absolute majority of the board (33% of the companies in the sample), there is a greater focus on strategic risks (10%), governance and reputation (10%), health and safety in the workplace (9%), and environmental activities (8%).

Where independent companies represent a simple majority (33% of the companies in the sample), non-financial statements focus on the risks associated with the environmental implications of business activities (12%), the integrity of business conduct (12%), and compliance risk (10%). These categories of risk are found in 63% of the first, and 50% of the second and third of the statements of companies belonging to this sub-group, respectively.

Even in those companies where independent companies represent a minority (57% of the companies in the sample), careful attention is paid in the non-financial statement to the environmental impact of the corporate activities (14% of the total risks listed).

The first category, i.e., the one with the absolute majority of directors, reports the highest average number of risks and the highest average number of: delegation risks, equal to 3 (governance, integrity and reputation); efficiency, equal to 2.7; and compliance, equal to 2. Therefore, the observation suggests that where independent directors represent an absolute majority, non-financial communication is articulated more in terms of the number of risks faced in general and of individual categories.

2. *Correlation between Independent Directors and Disclosure*

The correlation between the board size and the quality of disclosure has already been examined in the literature,[105] and a high number of board members could lead to lower effectiveness in the coordination of the board's activities and in the decision-making process, thus making it easier for the CEO to influence and control it. In the meantime, conflicts arise more frequently in large boards, and therefore it is important to ensure that the number of directors is manageable but still allows diverse viewpoints. The analysis verifies that the minimum and maximum value of the members of the board in the companies in the sample is 3 and 22 respectively, with an average of 10 and a median of 9. If the companies are divided into two groups, depending on whether they have a lower or higher number of directors than the median, there are no significant differences in the average number of risks observed or in the types of risk, both of which occur with similar frequencies. Note that, with reference to governance risks, they represent 10% of the total amount of risks reported by those with the highest number of directors. In the latter group of companies, the relevance of strategic risks and risks associated with part-

105. *See supra* Section III.C.

ner conditions is greater than that of companies with fewer directors.

3. *"Minority Directors," Board Characteristics, and Sustainability Committees*

41% of companies in the sample have directors appointed from lists submitted by the minority of shareholders. There are no particular differences between the sub-groups, but in companies where directors are chosen from such lists, the category of risks connected with integrity occurs in 56% of the company's statements, while, in the second group, it occurs only in 46% of the cases. The non-financial statements drafted by the two corporate classes show no substantial differences with regard to the communication issues or the risk categories. In detail, both clusters show that most of the issues addressed in the NFS focus on environmental, integrity, governance, and reputational issues. In addition, there is a slightly higher average number of risks identified for companies in which "minority directors" (mentioned in the lists presented by minority shareholders) are present only with regard to strategic risks, external (political and normative) conditions, and efficiency. As far as the total number of board members is concerned, data suggest a progressive decrease in the number of topics, after certain thresholds, suggesting that having too many directors has a negative effect on disclosure.

TABLE 6

NO. OF BOARD MEMBERS	MEAN TOTAL – SASB MATERIALITY
< 9	9.70
9 – 12	9.83
13+	9.00

Another factor to consider is the presence or absence of a Lead Independent Director ("LID"), the figure responsible for coordinating independent-director action. Our data show that the companies with a LID have slightly higher disclosure, with an average of 9.90 issues inserted, compared to 9.40 of those in which it is not present.

From the data available, there is an event that can be interpreted as an approximation of a company's commitment to sustainability: the approval or disapproval of a materiality analysis by a specific meeting of the Board of Directors. The number of companies that met this condition is tiny: just 26 out of 194. In terms of disclosure, it does not seem to exert the positive effects one would expect: companies whose Board of Directors has approved the materiality analysis report an average of SASB issues of 8.73 versus 9.73 for the others. When the age of the CEO increases, the level of disclosure rises, but the average age of board members seems not to be correlated with disclosure.

TABLE 7

AVERAGE AGE OF CEO	**TOT. SASB – MEAN**	**AVERAGE AGE OF BOARD**	**TOT. SASB – MEAN**
< 45	8.93		
45 – 55	9.53	45 – 55	9.69
55 – 65	10.19	55 – 60	9.95
> 65	10.08	60 +	9.72

Gender diversity cannot be ignored. We divide data into clusters and observe that there is a remarkable gap between the average recorded by the first group (women < 20%), which is equal to 8.14, and the average recorded by the second group (20% < women < 30%), in which the average is 9.88. Further increases in the proportion of women do not seem to have any effect, given that the average for the other two groups remains unchanged. The proportion of female advisers that seems to bring beneficial effects on NFS is around 20%.

TABLE 8

% WOMEN IN THE BOARD	**TOT SASB – MEAN**	**TOT SASB – NO.**
0 – 20	8.14	28
20 – 30	9.88	40
30 – 40	9.83	92
40+	9.85	34
Total amount	9.59	194

Many boards have decided to create more committees, in line with the recommendations of the Code of Corporate Governance, than those required of publicly traded companies on the FTSE MIB. Specifically, several companies set up internal committees to deal with CSR issues and to monitor the risks associated with their mismanagement, as well as to detect any opportunities or benefits arising from the implementation of responsible business actions. The presence of individuals with relevant expertise has proven to be helpful in ensuring a sounder quality of non-financial disclosure.

Delegating to a dedicated committee would also seem to positively affect disclosure levels: we calculated that the aforementioned 28% of companies include an average of 10.16 SASB issues in their statements, in contrast to the 9.37 of those that made no clear delegation to any committee. This difference remains even if the analysis is restricted to listed companies only, although the gap is narrower.

Furthermore, companies with a sustainability committee and with an above-the-median number of directors on the board report more risks than do companies whose governing body is composed of more than nine directors but does not have a sustainability committee (with respectively 11.5 and 7.5 risks reported). The difference generated by the presence of an ad hoc committee is less significant if only companies with a simple majority of independent directors are selected (9 and 8.7 risks communicated, respectively).

In companies where such a committee is established, all companies tackle issues associated with environmental risks and compliance with the existing applicable rules. On the contrary, in companies without such a committee, these issues are found in 60% and 40% of the declarations respectively.

In companies with a number of independent directors who constitute the simple majority of the board, the most common risk categories are environment (78%) and health and safety (70%), which are also the most frequent risk categories in the company's statements without a sustainability committee (with slightly lower percentages: 73% and 50% respectively).

D. *Ownership Structure, Listing Effects and Role of Sustainable and Responsible Investments*

The paper also identified several other variables relating to corporate governance in the context of disclosure analysis, such as ownership structure. Among the companies analyzed, 100 companies are family-owned, 35 are controlled by state or local authorities, and the remaining 59 are controlled by banks, insurance companies, funds, and business coalitions, as well as branches of foreign companies, foundations and cooperatives.[106] Within family companies, most of the risks communicated in the non-financial statement are related to environmental issues related to their activities (13%), image and reputation (10%), integrity (9%), and human resources management and workplace health (9%). State-owned enterprises pay particular attention to risks related to the impact of economic activity on the environment, workers' health and safety, and governance (12% of the total risks reported for each category). By dividing up the third category, we note that public companies link 14% risk to external conditions, such as regulatory developments and political system instability, while companies that are primarily owned by banks, insurance companies, funds, or other companies concentrate their non-financial statements around issues of the environment, integrity, reputation, and financial risks.

64% of family businesses report human resources risks in their statements, which departs from other types of businesses, for which human resource risks are not as frequent (50% respectively for state-owned enterprises and 25% for public companies). Public companies find that the major risk is reputa-

106. For the purpose of this paper, the ownership structures are identified in accordance with the definition of the AUB Observatory (prepared annually by Bocconi University and the Italian Association of Family Enterprises). *See* AUB Observatory, Report on Italian Family Businesses (10th ed. 2018). Family enterprises are therefore defined as: 1) those controlled for a percentage corresponding to at least 50% by one or two families and unlisted; 2) those controlled for 25% by one or two families and listed; 3) companies controlled by a legal entity attributable to cases 1) or 2). The same criteria have been used to define state/controlled enterprises by public entities. Finally, the sum of all other cases is comprised in the residual category "other," including, within the sample, public companies, companies controlled by banks, insurance companies, funds (including private equity funds), cooperatives, consortia, foundations and, finally, foreign subsidiaries.

tional (82%), but a high percentage of such companies also deal with strategic risk in their declarations (45%). The content of the non-financial statements is designed to reduce information asymmetries and meet investors' information needs. It provides information about the political and regulatory environment to which the company's business is exposed in order to better contextualize financial information, integrity in the conduct of business, governance, and the impact of its activities on the environment. It is conceivable that the relationship between ownership and the level of disclosure involves family businesses disclosing, on average, more than the other two identified macro-categories. In reality, however, the disclosure of the former seems to be well aligned with the latter, if not slightly lower.

TABLE 9

CLUSTER OWNERSHIP	MEAN ENV.	MEAN SOCCAP	MEAN HUMANCAP	MEAN BM&I	MEAN L&G	TOTAL SASB
Family Firms	2.09	2.24	2.98	0.88	2.38	10.57
State or Local Entities	1.91	2.17	2.51	0.77	1.97	9.34
Other	0.66	2.42	2.51	0.66	1.85	8.10
Sample	1.62	2.28	2.75	0.79	2.14	9.59

However, the influence of the ownership structure in this case risks distortion by the sector-specific distribution of these assets. In the following table, where for the sake of brevity we limit the analysis to the core industries (representing 135 companies out of a total of 194), family businesses are clearly dominant in Construction, Industrial Products, and Consumer Business, which offer extensive statements. Among banks, "other" ownership structures—particularly public companies—dominate, which explains the low level of environmental disclosure of the category (which is however not very relevant for the financial sector in general).

TABLE 10

CLUSTER	**NO. CORPORATIONS**	**TOT. SASB MATERIALITY**
Banks	41	8.00
Family Firms	7	10.14
State or Local Entities	2	5.00
Other	32	7.72
Consumer Business	26	10.65
Family Firms	23	10.70
Other	3	10.33
Construction & Infrastructure	19	11.00
Family Firms	14	12.00
State or Local Entities	4	7.25
Other	1	12.00
Energy & Utilities	17	10.88
Family Firms	1	10.00
State or Local Entities	14	11.14
Other	2	9.50
Products & Industrial Services	32	10.13
Family Firms	22	10.59
State or Local Entities	5	9.40
Other	5	8.80

E. *Role of Listing in Determining Disclosure Policies*

Another important factor to take into account is listing. On average, listed companies provide significantly more disclosure than unlisted companies, reporting an average of 9.93 vs. 8.45. However, it is worth highlighting that in all listed companies, the 31 FTSE MIB companies in this sample score an average of around 9, compared to slightly more than 10 for companies that are not part of the index. Larger companies would be expected to have a higher (at least not lower) level of disclosure, even if the theory has not reached unambiguous conclusions.[107] We investigate this by looking once again for an explanation in the industry distribution of the companies.

TABLE 11

LISTING	MEAN TOT SASB	NO. OF CORPORATIONS
FTSEMIB	9.00	31
Financial	7.82	11
Non-Financial	9.65	20
Listed	10.17	119
Financial	8.50	14
Non-Financial	10.40	105
Non-Listed	8.45	44
Financial	7.15	27
Non-Financial	10.53	17

While the incidence of companies in the financial sector is higher in the FTSE MIB than in other market segments, the average level of disclosure of its companies is still below that of listed companies for both financial and non-financial sectors. Even more surprising is the distribution by industry of all unlisted companies; the average calculated for the entire group hides, because of the prevalent presence of local banks, the disclosure performances of the non-financial sector which are in line with those of listed companies.

Membership of the FTSE MIB does not *per se* enhance disclosure and, even more significantly, listing does not impact NFS (although, to be honest, the number of unlisted companies issuing NFS is still very limited: 17 only), with the only exception of the financial services.

107. *See, e.g.*, Laura Sierra-Garcia, Maria Antonia Garcia-Benau & Helena Maria Bollas-Araya, *Empirical Analysis of Non-Financial Reporting by Spanish Companies*, 8 ADMIN. SCI. 29 (2018); Chiara Mio & Andrea Venturelli, *Non-Financial Information About Sustainable Development and Environmental Policy in the Annual Reports of Listed Companies: Evidence from Italy and the UK*, 20 CORP. SOC. RESP. & ENVTL. MGMT. 340 (2013); Peter Jack Gallo & Lisa Jones Christensen, *Firm Size Matters: An Empirical Investigation of Organizational Size and Ownership on Sustainability-Related Behaviors,* 50 BUS. & SOC'Y 315 (2011).

F. *ESG Investors*

The presence of investors who implement a policy adopting medium-term investment strategies (the so-called "Sustainable and Responsible Investments"), combining the financial objectives of investors with their commitment and involvement in such issues as social justice and economic development, is not negligible in the current study. And it is not merely relevant as to the quantitative description of the issue. Recently, repeated studies by scholars, who focused on different shades of the theme,[108] showed *inter alia* that "activism is more likely to succeed for companies with a good *ex ante* ESG track record, and with lower ownership concentration and growth."[109]

The economic reasons behind the adoption of environmental and social criteria are connected to marketing and optimization of the portfolio allocation process. Companies that want to attract institutional investors are encouraged to devote more attention to non-financial communication and disclosure of information related to ESG risks. The presence of such investors would induce companies to more closely monitor and sharpen their focus on disclosure of these issues.[110]

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108. *Cf.* Rajna Gibson & Philipp Kruger, *The Sustainability Footprint of Institutional Investors* (Swiss Finance Institute, Working Paper No. 17-05, 2017); Luc Renneboog, Jenke Ter Horst & Chendi Zhang, *Is Ethical Money Financially Smart? Nonfinancial Attributes and Money Flows of Socially Responsible Investment Funds,* 20 J. FIN. INTERMEDIATION 562 (2011); Luc Renneboog, Jenke Ter Horst & Chendi Zhang, *The Price of Ethics and Stakeholder Governance: The Performance of Socially Responsible Mutual Funds*, 14 J. CORP. FIN. 302 (2008); Stuart L. Gillan & Laura T. Starks, *Corporate Governnace, Corporate Ownership, and the Role of Institutional Investors: A Global Perspective*, 13 J. APP. FIN. 4 (2003).

109. Tamas Barko, Martijn Cremers & Luc Renneboog, *Shareholder Engagement on Environmental, Social and Governance Performance* (ECGI Finance, Working Paper No. 509, 2017), https://ecgi.global/sites/default/files/working_papers/documents/5092017_1.pdf (concluding that investor activism (i) promotes CSR, as reflected in ESG practices, in a "rather modest" way, if firms do not have a good ESG track record prior to engagement; and (ii) affects corporate performance and investment results mainly in the long run, while, at best, modest financial returns in the short-term).

110. The importance of the ESG issue is shown by the fact that ESG rating agencies were created to assist investors in understanding the current situation, considering some elements such as disclosure limits and lack of standardization, lack of transparency and recourse to unaudited data, corporate size, geographical and industry sector bias, as well as the failure to identify risk and warning signs for investors in companies with severe mismanage-

This has led to concerns as to whether the presence of such investors facilitates the identification of risks and in which categories of risk this difference is more evident, or if there is a higher number of risks identified among shareholders than for companies without such investors. Then, referring to companies in which investors are sensitive to the issues under discussion, the question arose whether there were similar results to those described also with regard to the variation in their participation in the company's share capital.

We have collected the data on shareholding in each of the listed companies by investors who are signatories to the United Nations Principles of Responsible Investment, but have only taken into account investors who cumulatively hold no less than 1% of the share capital. Then, the disclosure of companies where these investors are present was compared to companies where they are not. The data on equity investments are as follows, extrapolated from AIDA on July 15, 2018.

Considering the 150 companies listed on the stock exchange, the presence of "responsible" investors, attentive to sustainable issues, was found in 56% of cases (84 companies). Among the companies listed on the FTSE MIB, the percentage rises to 84%, while, among the companies listed on other indices, the percentage falls to 49%.

Then, we can verify the relationship between the presence of ESG investors and two indicators of sustainability commitment, namely the presence of a delegated committee within the Board of Directors and the publication of the voluntary disclosure in fiscal year 2016, which took place within the framework of the Sustainability Report.

As many as 46% of the companies in which ESG investors are present have a sustainability committee, whether pre-existing or specifically appointed. This percentage drops to 24% for companies where institutional investors are not present. Moreover, 60% of all companies in which ESG investors are present published this report, compared to 30% of group publications in which investors are not present (only listed companies are included in the analysis). Although the presence of

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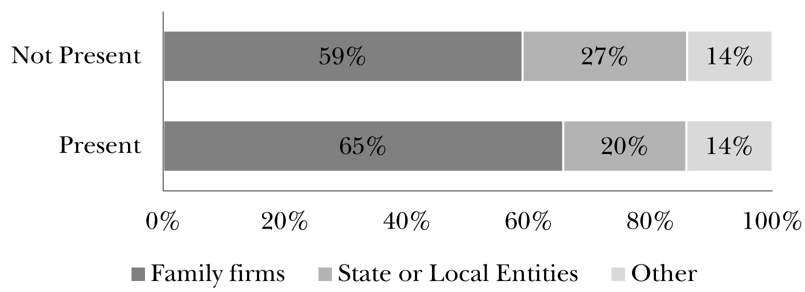
ment problems. *See* TIMOTHY M. DOYLE, AM. COUNCIL FOR CAPITAL FORMATION, RATINGS THAT DON'T RATE: THE SUBJECTIVE WORLD OF ESG RATINGS AGENCIES (2018), http://accfcorpgov.org/wp-content/uploads/2018/07/ACCF_RatingsESGReport.pdf.

ESG investors does not seem, at least for the moment, linked to disclosure level, it is consistent with the commitment of the companies involved in sustainability, at least at the institutional and formal level.

It is worthwhile to finally examine any asymmetries in the presence of ESG investors, as determined by the ownership structure. This concern cannot be confirmed by the data; the proportion of ownership structures between the two groups is remarkably comparable.

FIGURE 1



IV. EMPIRICAL ANALYSIS

After the descriptive study, we undertake an empirical investigation to understand the extent to which the governance and ownership specs of the company influence non-financial disclosure. This analysis covers the Italian environment and is based on the same dataset used in the descriptive examination.[111]

A. *Structure of the Analysis: Regression Model and Variable Selection*

To this end, we retain the same dataset already described and adopted for the descriptive analysis, while the data of fi-

111. For an assessment of various geographical contexts (English, German, and Danish respectively), see Cristiana Bernardi & Andrew W. Stark, *On the Value Relevance of Information on Environmental and Social Activities and Performance: Some Evidence from the UK Stock Market*, 37 J. ACCT. & PUBLIC POL'Y 282 (2018); William De Catelle, *European Union Directive 2014/95 on Non-Financial Reporting: A Successful Experimentalist Governance Architecture?*, 9 KING'S STUDENT L. REV. 53 (2018).

nancial statements are derived from the Aida-Bureau van Dijk database.

The linear regression model adopted is as follows:

FIGURE 2

$$\text{Disclosure level} = \beta_0 + \beta_{\text{ESG Investors}} + \beta_{\text{Ownership Structure}} + \beta_{\text{Sustainability Statement}} + \beta_{\text{Sustainability Committee}} + \beta_{\text{Board's Approval}} + \beta_{\text{D(Board Dimension)}} + \beta_{\text{Ind(Independent Directors)}} + \beta_{\text{LID}} + \beta_{\text{L(Listing)}} + \beta_{\text{1(Dimension)}} + \beta_{\text{2(Employees)}} + \beta_{\text{3(Intangibles)}} + \beta_{\text{I(A\&C)}} + \beta_{\text{II(Construction)}} + \beta_{\text{III(Products)}} + \beta_{\text{IV(Transports)}} + \beta_{\text{V(Consumer Business)}} + \beta_{\text{VI(Insurance Comp.)}} + \beta_{\text{VII(Banks)}} + \beta_{\text{VIII(Holding)}} + \beta_{\text{IX(Other)}} + \beta_{\text{X(Media)}} + \beta_{\text{XI(Tec.\&Com.)}} + \beta_{\text{XII(Energy)}} + \varepsilon$$

The dependent variables used as the level of disclosure are the total SASB materiality (i.e., the sum of all the issues subject to disclosure of the individual company that are consistent with the thirty themes identified by the SASB framework) and the SASB Score (calculating an index relating to a sector for which the SASB has developed the Materiality Map, so as to obtain a performance parameter that—albeit roughly—can be used to compare the results obtained by various companies). Using the SASB total materiality data as a basis, each of the themes has been multiplied by 0 (if the theme is not material for any industry within the sector), 1 (if the theme is material for less than 50% of the industries of the sector), or 2 (if it is material for at least 50% of the industries of the sector). We then compared this result to the "expected materiality" for the reference sector: again, referring to the Materiality Map, assigning as a score 0, 0.5, or 1 (half of the numerator's calculation, to discount the consideration of 50% as the threshold of "intensity" of materiality) depending on the topics, the expected score is calculated for a company in that specific sector. On average, the ratio between the SASB themes and the Score numerator is 88.13%. Therefore, the SASB themes initially classified also withstand the application of the industry-specific criteria.

Among the independent variables, we can recall:

ESG Investors: dummy variable, which takes on the value of 1 in the presence of investors signing the United Nations Principles for Responsible Investment for at least 1%. We should expect the presence of "responsible" institutional investors to positively influence the level of disclosure, drawing on literature that attributes a favorable effect in terms of sustainability to the presence of institutional investors;

Ownership structure: dummy variable that takes on the value of 1 in the presence of family control (as defined by the AUB Observatory), 0 in all other cases. The descriptive analysis recommended that family ownership should not be a worsening factor in disclosure; on the contrary, in the same area, family companies apparently disclose non-financial information better;

Sustainability Statement: dummy variable that is worth 1 if the company has published voluntary non-financial reporting for fiscal year 2016 in the Report framework. This variable will allow us to understand whether, and to what extent, the favorable predisposition to this disclosure suggested by voluntary participation in the previous year, may lead to a higher level of disclosure in the field;

Sustainability Committee: dummy variable related to the presence of a Sustainability Committee, or, alternatively, of another committee to which the topic has been assigned. The presence of this and other governance mechanisms in the companies that perform best in terms of sustainability has also been pointed out in the literature;[112]

Board's Approval: dummy variable that indicates whether or not the Board of Directors (and/or the delegated committee within it) has approved the materiality analysis at a specific meeting prior to the approval of the non-financial statement. In this case, the variable aims to investigate the commitment of the company organization to non-financial reporting;

Board's Dimension: variable considering the number of directors in absolute terms. A larger Board is often the result of a combination of numerous interests, thus potentially contributing to greater attention to stakeholders and a proactive attitude towards disclosure;

Independent Directors: this variable measures the proportion of independent directors, as defined in the Code of Corporate Governance, to the total number of members of the Board;

LID: dummy variable indicating the presence of a coordinator of independent directors whose presence is recom-

112. *See* Eccles, Ioannou & Serafeim, *supra* note 64.

mended, particularly when other recommendations are not respected (for example, in the case of Duality CEOs).

Control variables include:

Listing: dummy variable with a value of 1 in the case of listing (without distinguishing between presence in the FTSE MIB or not) and 0 in the opposite case. The presence of unlisted companies in the sample would risk, for example, distorting the effect of the ownership structure or the presence of ESG investors. Including this variable will take into account these possible effects:

Size: approximated by the use of the natural logarithm of total assets;

Employees: log(TotalAssets) and log(total number of employees);

Intangibility: proportion of intangible assets, excluding goodwill, to total assets, to account for the greater care that companies with a high level of intangible assets generally take of potential problems concerning their reputations. We exclude goodwill to limit the scope of the analysis to some intangible assets (brands, customer lists, etc.);

Twelve dummy variables: indicating affiliation to one of the sectors within the sample, following the classification of Borsa Italiana (Automotive and Components, Construction and Infrastructure, Industrial Products and Services, Transport, Consumer Business, Insurance and Other companies, Banks, Holding, the residual category Other, Media, Technology and Communications, Energy and Utilities).

B. *Regression and Results of Its Application*

This section details analysis of the first model, which represents the total SASB materiality as a dependent variable. As a starting point for the study, and to better consider the estimated values related to the independent variables, we begin by contemplating the intercept (significant at 1%), which provides an initial comforting result favoring the significance of the entire model. The intercept's estimated value is over 13. The variable Ownership Structure (significant at 1%) has an estimated positive value of 2.43. This means that a family-owned company, according to the model, on average and on a like-for-like basis all other variables, will include more than two material issues in addition to companies with a different ownership structure. We can therefore state that this model seems to confirm the findings of the descriptive analysis: family-controlled companies tend to include a greater number of material issues under the SASB framework in their non-financial statements.

The presence of ESG investors does not reach satisfactory levels of significance. The same applies to the variable related to the presence of a Sustainability Committee within the Board. Among the investigated variables, the presence of a Lead Independent Director (significant at 1%) does not provide a meaningful and predictable indication (at -2.06). None of the other governance variables discussed reach an acceptable level of significance.

Turning to the analysis of the control variables, the proportion of intangibles on the asset (significant at 5%) is relevant (at 4.57). However, recall that this value must be proportionately multiplied, thus reducing its influence. Both the variables that we considered as a proxy for the size of a company are significant at 1%. However, their impact on the model could not be more different: the logarithm of the total employees in fact has a positive value slightly higher than the unit, as opposed to the negative logarithm of the total assets. Perhaps this is due to the high assets of banks and insurance companies, which do not have the same levels of disclosure. In any case, we can confirm on the basis of the present model that there is no clear evidence of a significant impact of the size on disclosure. The variable that we have used to account for listing effects is not significant and, even if it were, the estimated value would be significantly diminished to have a major influence on the model. This is not unexpected. It is more than reasonable to think that, given the large number of variables both subject to investigation and control, the effect of the quotation is no longer relevant.

Regarding the variables related to the sector, three of them are significant (two of them at 5%, i.e., Banks and Holdings, and one at 10%, i.e., Energy and Utilities). These results are consistent with our expectations: a small number of holding companies recorded the highest average SASB materiality of all fields, with an estimated value of 5.78. The significance of the banking sector is also easily justifiable: it is the most represented segment in the sample in terms of numbers and has relatively more homogeneous characteristics than the others, both with respect to business and sustainability issues which might be relevant. Finally, the E&U sector, even though only significant at 10%, is among those with the highest average and is particularly sensitive to environmental issues. The fit of the model (R-squared: 0.30) appears satisfactory for the specific research undertaken.

TABLE 12

	Estimated Value
Intercept	13.6786 **
ESG Investors	-0.1458
Ownership Structure	2.4356 **
Sustainability Committee	1.0678
Sustainability Statement	0.4154
Independent Directors	1.5025
Lead Independent Directors	-2.0647 **
Board Size	-0.0463
Board's Approval	-1.1231
Listing	0.0333
Intangibles	4.5703 *
log(tot. employees)	1.1355 **
log(tot. assets)	-1.1750 **
A&C	1.2997
Construction	2.8189
Products	2.4163
Transports	1.8115
Consumer Business	1.9963
Insurance Companies	2.9672
Banks	4.4305 *
Holding	5.7776 *
Other	1.0495
Media	1.8346
T&C	-0.7395
E&U	4.4529
No.	**194**
R-squared	**0.3002**

*** significance at the 1% level, ** at the 5% level and * at 10% level.

The second model differs solely in that it uses a distinct dependent variable, the purpose-built SASB Score. The first annotation to be recorded concerns the different order of magnitude of the values estimated in this model compared to the previous one: the intercept, significant at 1%, is slightly higher than 1. In this second model, the Ownership Structure variable shows even higher levels of significance than the other model presented (at 0.1%).

None of the corporate governance variables considered attain satisfactory levels of significance except for the dummy representing the presence of a Lead Independent Director (significant at 5%). However, its estimated value within the regression is rather low (-0.12). The other variables under investigation, such as the presence of ESG investors, the publication of the Sustainability Report, the size of the Board of Directors, are not significant even at 10%. The variable Board's approval reports a level of significance of 10% in this case, but accompanied by an estimated negative value, contrary to what we would expect.

Turning to the control variables, we can see that the quotation, even in this case, does not reach meaningful levels relevant to the research. In contrast, both the variables we included in the model as a proxy for the size of a company are significant at 1%. Nevertheless, even in this case, their impact on the model is reversed. The logarithm of the total number of employees in fact has an estimated positive value of about 0.10, as opposed to the logarithm of the total number of activities (which, as we have already seen in the case of the first regression studied, shows a comparable absolute value to the total number of employees, but with the opposite sign). The behavior of these two variables is similar between the two models: in fact, given the way we calculate it, the dependent variable already considers, in part, the intrinsic differences in terms of disclosure.

In the same way, four sector-specific control variables are statistically meaningful: those relating to Insurance (10%), Banks (1%), Holdings (5%), Energy & Utilities (5%). The results regarding the magnitude of belonging to one of these sectors should be interpreted in a slightly different way in the second model; in fact, the dependent variable can be considered as a performance index in sustainability disclosure, as opposed to the group of peers aggregated in macro-sectors. Therefore, in addition to what we already stated in the case of the first model regarding sector affiliation, we imagine that companies in the aforementioned four sectors tend to perform better (given their higher estimated value) than others in proportion to the disclosure "recommended" by the SASB for this sector. Also in this case, the value of adaptation of the model is satisfactory and equal to 0.25.

TABLE 13

	Estimated Value
Intercept	1.0061**
ESG Investors	-0.0033
Ownership Structure	0.2272 ***
Sustainability Committee	0.0719
Sustainability Statement	-0.0044
Independent Directors	0.1101
Lead Independent Directors	-0.1197 *
Board Size	-0.0013
Board's Approval	-0.1157
Listing	-0.0298
Intangibles	0.1652
log(tot. employees)	0.0965 **
log(tot. assets)	-0.0955 **
A&C	0.1983
Construction	0.2257
Products	0.1338
Transports	0.2424
Consumer Business	0.1856
Insurance Companies	0.3971
Banks	0.4849 **
Holding	0.4864 *
Other	0.2502
Media	0.1682
T&C	0.1061
E&U	0.4473 *
No.	**194**
R-squared	**0.2484**

*** significance at the 1% level, ** at the 5% level and * at 10% level.

C. *Pearson Correlation Coefficient*

As indicated by the correlation matrix, the correspondence between the independent variables of the regression model is rather low. Considering the number of governance variables introduced, we could expect that the values would be much higher. We therefore only analyze a few statistically relevant and significant correlations (all those at the level of 0.1%), shown in bold in the matrix.

IPOs show a low level of correlation with the ownership structure and the presence of ESG investors. This justifies inserting the listing variable as a control ex post, in order to discount the different proportion of ownership structures between listed and unlisted companies. It is interesting to note how the correlation between the number of employees and total assets is, on the whole, reduced (0.64). This confirms the incidence of banks and other companies in the financial sector: if companies, although intrinsically endowed with a high level of activity, operate locally, they will employ a limited number of people.

The Lead Independent Director variable has a certain positive correlation with the ownership structure (therefore, given the codification of the dummies, family businesses tend to have a Lead Independent Director more often), with the listing and a negative relationship with the total assets (so as to imagine that the Lead Independent Directors are more often present between non-financial and mid-small companies with respect to the sample).

The Board Size variable is (moderately) positively connected to total assets; this could be partially due to the particularly large Boards of some major banks and insurance companies.

Finally, we note that the banking sector shows a significant positive correlation, compared to the other reported activities, with total assets, and a negative correlation with the variable listing, reasonably due to the presence of several local unlisted banks in the sample. Finally, we note a slight negative correlation with the presence of a Lead Independent Director and the family ownership structure.

1. *Remarks on the Operation Procedures*

The quantitative analysis was carried out by two different linear regressions, using the least-square method. The statistical software used is RStudio. Three main assumptions underpin the least-squares method: (1) errors follow the normal distribution and are characterized by a statistical independence, i.e., absence of autocorrelation; (2) a linear relationship between the dependent and independent variables; and (3) the error variance is constant (homoscedasticity). As a result, the regression models have been subjected to the same amount of robustness tests. As is well known, the violation of the first assumption can lead to distortions in the regression model's results, both in terms of estimated coefficients and significance levels.

The Shapiro–Wilk and Jarque–Bera tests provide a p-value. If that p-value is greater than 0.05, then it is possible to reject the alternative hypothesis of non-normal distribution. Both tests, carried out on the two models, provide reassuring answers. The Shapiro–Wilk test yields a p-value of 0.93 and 0.68, using as the dependent variable the total SASB and the calculated Score, respectively. The Jarque–Bera test yields a p-value of 0.89 and 0.98, using the total SASB and the calculated Score as the dependent variable respectively. Thus, the errors of both are normally distributed.

In order to test the non-correlation hypothesis, the Durbin–Watson test looks at its own output (the d-value, ranging between 0 and 4), with low values suggesting positive correlation between residuals and high values indicating negative correlation. Values approaching 2 (total absence of autocorrelation) lead to the conclusion that the model is not affected by autocorrelation. In this case, the value is less than 2. There is no autocorrelation among errors.

To understand a possible multicollinearity, we apply the VIF (Variance Inflation Factor) test, whose results (1.4 and 1.3) do not reveal any sign of multicollinearity. To exclude also the constancy of the variance of errors (homoscedasticity), the Breusch–Pagan test is applied, according to which a p-value lower than 0.05 would indicate the need to reject the homoscedasticity null hypothesis. The p-values are sub-threshold in the case at hand (0.40 and 0.39), thus concluding in favor of the residual homoscedasticity of the presented models.

D. *Highlights*

Given the freshness of the subject matter, this whole article was carried out in an exploratory effort, aiming at providing an overview of the first application of the mandatory non-financial statement in Italy. The application of SASB criteria for mapping the material issues contained in the submitted statements was used with an investor-driven outlook, in order to avoid the inclusion of non-viable issues of interest to investors that could distort the analysis of a document primarily dedicated to them.

The research query can now be answered: studying the two models presented, we can conclude that the ownership structure affects the level of non-financial disclosure more than any other variable relating to corporate governance and Board composition, among those analyzed.

In particular, the relevant ownership structure for the purposes of this research is the family one. In fact, the relative independent variable has been set in such a way as to represent the family/non-family dichotomy. The positive influence for the purposes of disclosure of the family ownership structure may be surprising at first: it is therefore necessary to provide some clarifications. First of all, it is worth remembering that the sample is made up of companies that are certainly not small in absolute terms; at the workforce level, only about a quarter of companies within the sample have fewer than 1000 employees (the minimum amount to be included within the scope of the mandatory non-financial declaration is 500).

Second, the ownership structure of the non-family enterprises included in our sample is very diversified. Remember that, following the AUB classification, a rather small cluster of enterprises under public control has been identified. The residual category is extremely heterogeneous. Consequently, the initial skepticism about whether it would be reasonable to accept the conclusion of family ownership structure as favorable to disclosure is mitigated. What is infrequent within the sample is not necessarily more transparent at a theoretical level: the public companies, in fact, are very few, accompanied by companies controlled by funds, banks, consortia, foundations, etc. In addition, the significance of the ownership structure was tested in two alike but different models, and the structure passed the test in both cases. The positive influence of family ownership is not a one-off result.[113]

In a comparative view, the model using the sum of the SASB materiality as the dependent variable is more descriptive: the dependent variable is deliberately simple, not influenced by further assumptions about SASB issues. The dependent variable has not been cleaned up by the effect of the industry to which it belongs (a task carried out instead by the sectoral control variables), as happened in the second proposed model. This second method in fact aims to further restrict the scope of what is material, including in the construction of the dependent variable the consideration of the segment to which it belongs (the skimmed matters are on average approximately 12%). The second model therefore provides more performance-oriented indications: two companies belonging to separate macro-sectors, with a different total number of materiality (i.e., the dependent variable of the first model), can obtain the same score: 0.6.

In short, the presentation of two models that differ only in terms of the chosen dependent variable and the interpretation of the estimated value of some independent variables allows a comparison and a mitigation of the weak points of either of the two. In fact, the model in which the total of materiality operates as a dependent variable risks being too simplistic, just as the other suffers from the simplification of the scoring method.

In any case, in terms of the significance of the variables investigated, the results offered by the two different models are not very different: the ownership structure in the second model is statistically more significant and shows a proportion-

113. *Accord* Giovanna Campopiano & Alfredo De Massis, *Corporate Social Responsibility Reporting: A Content Analysis in Family and Non-family Firms*, 129 J. BUS. ETHICS 511 (2015); Jose-Manuel Prado-Lorenzo, Isabel Gallego-Alvarez & Isabel M. Garcia-Sanchez, *Stakeholder Engagement and Corporate Social Responsibility Reporting: The Ownership Structure Effect*, 16 CORP. SOCIAL RESP. & ENVIRON. MGMT. 94 (2009). Other studies, while not concluding in favor of family ownership, do not even observe an effect opposite to that highlighted here. *See, e.g.*, Venkataraman Iyer & Ayalew Lulseged, *Does Family Status Impact US Firms' Sustainability Reporting?*, 4 SUSTAINABILITY ACCT, MGMT & POL'Y J. 163 (2013); Astrid Rudyanto, *State Ownership, Family Ownership, and Sustainability Report Quality: The Moderating Role of Board Effectiveness*, 2 ACCT. & FIN. REV. 15 (2017).

ally larger estimated value than the first. Consequently, it probably has a relatively greater importance in the model using the SASB score as a dependent variable.

Based on the outcomes of the above analysis, none of the corporate governance variables introduced are significant, with the only exception of the presence of the Lead Independent Director, who, ex ante, would not appear to be the most influential in the group. However, the latter provides an estimated unexpected negative value, the presence of a director in charge of coordinating the action of the independent directors, in theory, should strengthen the tendency of corporate governance to be more transparent, or at least not less so. There are two possible explanations. On the one hand, the figure of the Lead Independent Director could be established in companies otherwise characterized by a lack of governance best practices, in order to operate as a partial "adjustment," an aesthetic embellishment through a figure with little relevance. On the other hand, the LID could moderate family ownership (since there is a certain correlation between the two variables, as highlighted above), statistically justifying within the model the presence of underperforming family businesses with respect to their counterparts within the same model.

Therefore, contrary to the numerous empirical research findings in favor of board's independence, numerosity, and the presence of governance mechanisms oriented towards sustainability, these variables have not had significant results according to our models. The three variables included in the financial statements—proportion of intangible assets to total assets, natural logarithm of total assets, and natural logarithm of total employees—are all significant in the first regression; in the second, the last two are significant. The non-significance of the intangibles in the second model can be explained by the lower relevance of the segment differences: this is clearly the strongest difference between the two regressions described.

As discussed in the quantitative section, the two variables that approximate the size of a company, i.e., total assets and total employees (both in the form of natural logarithm), have an opposite effect: this can be explained by the different scale in terms of balance sheet activities that distinguish financial and non-financial sectors.

The rationale for the estimated values of the sector variables is different for the two models. In the latter, the estimated amount of sector variables, if significant (as in the case of banks, holding companies and the E&U), attests that its companies exceed the expected materiality results for the given sector, on average. In the former, the banking sector instead reports a high coefficient compared to other sectors. This is especially so if we consider that the field has the lowest number of issues included in the absolute value of disclosure, which can be explained as balancing the negative effect determined by the log variable (TotAssets), particularly relevant for the banking section.

TABLE 14

	ESG Investors	Ownership structure	Sustainab. Committee	Sustainab. Statement	Indep. Directors	Lead Indep. Director	Board Size	Board's Approval	Listing	Intangibles	Log (tot. employees)	Log (tot. assets)	A&C	Construction	Products	Transports	Consumer Business	Insurance Companies	Banks	Holdings	Others	Media	T&C	E&U
ESG Investors	1																							
Ownership Structure	0.25	1																						
Sustainab. Committee	**0.39**	0	1																					
Sustainab. Statement	0.28	-0.13	0.26	1																				
Indep. Dir.	0.24	-0.08	0.3	0.3	1																			
Lead Indep. Director	0.32	**0.6**	0.7	0.01	0.03	1																		
Board Size	0.25	0	0.17	0.26	0.11	-0.11	1																	
Board's Appr.	0.02	-0.19	0.15	0.13	0.11	-0.08	0.04	1																
Listing	**0.49**	**0.41**	0.34	0.13	0.4	**0.44**	0.12	0	1															
Intangibles	0.03	0.01	0.14	0.13	0	0.02	0.06	0.05	0.08	1														
Log (tot. employees)	0.26	-0.03	0.35	0.36	0.35	-0.01	0.33	0.06	0.16	0.02	1													

	ESG Investors	Ownership structure	Sustainab. Committee	Sustainab. Statement	Indep. Directors	Lead Indep. Director	Board Size	Board's Approval	Listing	Intangibles	Log (tot. employees)	Log (tot. assets)	A&C	Construction	Products	Transports	Consumer Business	Insurance Companies	Banks	Holdings	Others	Media	T&C	E&U
Log (tot. assets)	0.13	-0.4	0.26	0.36	0.19	**-0.42**	0.49	0.02	-0.22	-0.11	**0.64**	1												
A&C	0.08	0.06	0.02	0.08	0.03	0.1	-0.03	0.01	0.11	0.02	0.06	-0.08	1											
Construction	0.05	0.15	0.02	0.13	0.1	-0.13	0.01	-0.08	0.11	0.03	0.09	0.05	-0.06	1										
Products	0.1	0.14	-0.03	-0.06	-0.07	0.18	-0.11	0.14	0.14	-0.1	-0.08	-0.3	-0.08	-0.15	1									
Transports	-0.12	-0.2	-0.06	0.05	0.02	-0.1	-0.19	0.24	-0.16	0.12	0.06	-0.03	-0.03	-0.06	-0.09	1								
Consumer Bus.	0.1	0.29	0.09	-0.19	-0.03	0.3	-0.08	-0.07	0.21	0.02	-0.01	-0.27	-0.07	-0.13	-0.17	-0.08	1							
Insur. Comp.	-0.03	-0.16	-0.02	0.08	-0.04	-0.12	0.21	-0.08	-0.14	-0.14	-0.01	0.21	-0.04	-0.07	-0.09	-0.04	-0.08	1						
Banks	-0.17	**-0.36**	-0.13	-0.05	-0.16	-0.39	0.25	-0.03	**-0.41**	-0.34	-0.05	**0.51**	-0.09	-0.17	-0.23	-0.1	-0.2	-0.11	1					
Holdings	-0.02	0.16	-0.03	-0.01	0.09	0.13	-0.04	-0.07	0.09	0.03	0.07	-0.03	-0.03	-0.05	-0.07	-0.03	-0.06	-0.03	-0.08	1				
Others	0	0.14	0.01	0.01	0.04	0.16	-0.05	-0.11	0.1	0.01	-0.01	-0.15	-0.05	-0.09	-0.12	-0.05	-0.11	-0.06	-0.14	-0.04	1			
Media	0	0.07	-0.03	-0.05	-0.06	0.07	0.08	-0.09	0.06	0.32	0	-0.09	-0.04	-0.07	-0.1	-0.04	-0.09	-0.05	-0.11	-0.04	-0.06	1		
T&C	0.07	0.1	0.04	-0.08	0.01	0.1	-0.03	0.07	0.11	-0.02	-0.05	-0.14	-0.04	-0.07	-0.09	-0.04	-0.08	-0.04	-0.11	-0.03	-0.06	-0.05	1	
E&U	-0.06	-0.28	0.13	0.24	0.13	-0.14	-0.11	0.09	-0.09	0.35	-0.01	0.13	-0.06	-0.1	-0.14	-0.06	-0.12	-0.06	-0.16	-0.05	-0.08	-0.07	-0.06	1

V.
CASE STUDIES

The groundbreaking Directive 2014/95/EU is a watershed towards a more sustainable way of doing business. Its primary objective is to enhance transparency, comparability, and the trust of stakeholders.[114] In the long term, it aims to propel companies to commit themselves to being bold and transformative, supporting the process of building a resilient business model that can positively impact society and the environment. This paper focuses on three examples of Reports that have been recently published: on the one hand, the 2017 Sustainability Report of Campari Group[115] and Prysmian Group;[116] and, on the other hand, the 2017 Deutsche Group Report.[117]

No pyramid-shaped corporate structures are included among the examples; however, it should be noted that it is difficult to define the tasks of the parent company required to draw up the consolidated non-financial declaration in accordance with Article 4(2) and the functions of the corporate bodies of the subsidiary companies. Contrary to what happens in other regulatory areas, the legislator has not expressly established any secondary obligation for subsidiaries to cooperate. In theory, the mother company should set the standards to be used, by assessing which subsidiaries are subject to line-by-line accounting consolidation and which should be excluded due to the limited importance of the activity carried out; as well as regulating the methods for collecting and circulating information within the group.

It should be noted, however, that this regulatory problem related to intra-group relations could tend to lead to a lack of

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114. Council Directive 2014/95/EU, 2014 O.J. (L330) 1.

115. CAMPARI GRP., SUSTAINABILITY REPORT 2017 (2018), https://www.camparigroup.com/sites/default/files/downloadspage/008896_sustainability_cg_interno_eng_digital.pdf.

116. PRYSMIAN GRP., CONSOLIDATED DISCLOSURE OF NON-FINANCIAL INFORMATION OF THE GROUP PURSUANT TO LEGISLATIVE DECREE 254/2016: 2017 SUSTAINABILITY REPORT (2018), https://www.prysmiangroup.com/sites/default/files/atoms/files/Prysmian_Bilancio%20di%20Sostenibilità-DNF%202017_ENG.pdf [hereinafter PRYSMIAN GROUP 2017 SUSTAINABILITY REPORT].

117. DEUTSCHE BANK, NON-FINANCIAL REPORT 2017 (2018), https://cr-report.db.com/non-financial-report/2017/servicepages/downloads/files/dbcr2017_entire.pdf.

application or, at least, to a less accurate application of the regulation at stake. The matter, which is merely raised here, is indeed very tricky and it confirms the challenge of reconciling the law of business (and of intra-company affairs), which is selfish by nature, with the values of CSR; and the prevailing predominance, at the end of the day, of profit-making goals.

A. *Campari*

Campari Group is an Italian company in the global beverage industry; listed on the Italian Stock Exchange since 2001, it operates in twenty countries with fifty different brands. Since 2016, Campari has adopted the GRI Standards for its non-financial disclosure, which Campari itself describes as "the most advanced framework for sustainability reporting."[118] The adoption of GRI Standards makes the whole report easily comparable, especially by less sophisticated users and investors, and ensures the overall high quality of the Report. In fact, the choice of international standards is itself an added value of Campari's non-financial disclosure, as suggested by the EU guidelines on non-financial reporting.[119]

1. *Continuity with Previous Sustainability Reports*

In 2013, Campari issued its first sustainability report, anticipating most of the topics addressed by the more recent EU legislation, specifically environmental and health issues, social impact and community involvement, employees, and human rights.[120] When Campari faced the need to sketch the first mandatory non-financial disclosure in 2017, it decided to value continuity with previous reports and performed an extensive gap analysis to adapt the existing structure to the provisions of the Italian Legislative Decree under discussion. This decision had two main consequences.

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118. CAMPARI GRP., SUSTAINABLE CAMPARI 2016 (2017), https://www.camparigroup.com/sites/default/files/downloadspage/web_booklet_eng_02_minimizer.pdf.

119. *Communication from The Commission: Guidelines on Non-financial Reporting*, 2017 O.J. (C215), https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_on_non-financial_reporting.pdf. *See also* Wagner, *supra* note 13, at 650–53.

120. CAMPARI GRP., SUSTAINABLE CAMPARI 2013 (2014), https://www.camparigroup.com/sites/default/files/downloadspage/sustainablecamparibookletl2013.pdf.

First, Campari's investors and analysts benefits from the higher degree of comparability with previous years. In fact, the structure remained unchanged since 2013 and minor aspects—for example, brief descriptions of projects and activities, and the introductions to some paragraphs—are exactly as reported in the 2016 Sustainability Report. However, the 2017 Report generally shows a higher degree of detail, notably with regard to risk management policies and risks faced by the company, which are disclosures now required by the new EU Directive; the Report also offers a significantly wider breadth of quantitative information for the various environmental issues covered.

Second, the description of the social impact of Campari's activities is significant. For a complete picture, the Sustainability Report and the Annual Report[121] should be read together, while also looking at the GRI content index at the end of the Report itself. Campari provided a comprehensive correlation table, which stated where the relevant information can be found; however, the Report could have benefitted from a structure that would have offered a more cohesive set of information.

Campari's commitment to ethics and social issues was sustained by five pillars: creating value for their people (e.g., shareholders, stakeholders, employees, etc.); responsible marketing and practices; quality, health, safety and environmental standards; responsible sourcing and distribution; and commitment to communities. These support eleven of the seventeen Sustainable Development Goals provided by the United Nations.[122] Considering that all of them must be achieved by 2030,[123] Campari is extremely up-to-date and committed. Campari also promoted value creation for its community and customers, as shown in the Code of Ethics, Business Conduct

121. CAMPARI GRP., ANNUAL REPORT AT 31 DECEMBER 2017 (2018), https://www.camparigroup.com/sites/default/files/docs/annual_report_31_12_2017_0.pdf.

122. The assessment of these elements (the set of SDGs and the principles of the European Parliament's Directive 2014/95/EU) is undeniably and strongly interconnected, as demonstrated by Victoria Shoaf, Eva Jermakowicz & Barry Epstein, *Toward Sustainability and Integrated Reporting*, 38 REV. BUS. 1 (2018).

123. *Id.* at 1. *See also Sustainable Development Goals*, UNITED NATIONS, https://sustainabledevelopment.un.org/sdgs (last visited Apr. 7, 2019).

Guidelines, Supplier Code and from the recent creation of a specific Employees and Human Rights Policy. Their effects were strongly reflected in the employee-satisfaction indicators: 92% of them believe in the future of the company and 82% would stay in the company for a long period. A great indicator of Campari's attractiveness as an employer is the rate of return among employees after parental leave and the decreasing turnover rate (5.5% in 2017). Training was also continuously offered and represents a great deal of the Group's investments (€3.4 million in 2017).

2. *Uneven Disclosure*

Reading Campari's 2017 Sustainability Report, one might observe that not all the issues are addressed with the same level of detail. It is possible to identify some topics that are disclosed with a level of detail above the average of the whole report and other topics whose disclosure is clearly below the average. Campari stresses the importance of its brands, charity foundations, marketing initiatives, product innovation, and community involvement. When it deals with these topics, it delves into abundant details, which seem to be in excess with respect to "the breadth and depth of information that will help stakeholders understand its development, performance, position and the impact of its activities," as outlined in the guidelines on non-financial reporting.

As a consequence, the attention of the reader is drawn to these paragraphs and distracted from other topics that are disclosed in less detail. Among them, there is corruption and bribery. Anticorruption policies are listed as one of the essential elements of the non-financial disclosure, both in the Legislative Decree and in the EU Directive. Moreover, anticorruption is one of the most important topics according to the materiality analysis performed by Campari itself. However, corruption is only mentioned at the end of the paragraph on risk management, citing some examples of anticorruption practices from the Code of Ethics. The same exact words are used in the Correlation table and in the GRI content index, without providing any additional information. Peculiarly, the Code of Ethics only incidentally deals with corruption, while stating principles for business relations with different parties. A contrasting example can be taken from one of Campari's competitors, Pernod Ricard. Pernod Ricard has issued a comprehensive anticorruption code, where all the anticorruption practices are clearly stated in a standalone document. In conclusion, it is difficult to assess the real extent of Campari's anticorruption practices and information on prevention of adverse impacts, allocation of resources and their monitoring. Campari could provide more detailed disclosure on anticorruption.

3. *Social Issues*

The consistency between the corporate business and the actual involvement of the company towards social issues concerning employees and communities is relevant because it underlines that disclosure at Campari is not just a form of greenwashing.

First, the considerable number of training and professional development programs provide coherence about values such as team philosophy and cross-skills interaction at different levels. Indeed, the company provides programs that enhance knowledge of company divisions such as marketing, finance, and sales, as well as personal development courses like empowerment, coaching, and people management. Such activities—held across all the different subsidiaries of the company—are accompanied by employees' volunteer activities that are beneficial also to the community.

Second, the attention towards human capital is also demonstrated by the fact that, in the remuneration system, the average standard pay for new hires is well above the minimum wage locally; sometimes it even doubles the minimum pay. As a result, the voluntary turnover has decreased in the last three years to a rate below 6%.

Finally, the depth of information related to social issues is also demonstrated by the gender-specific employee data. This is important because it is possible to make assessments on the quality of the diversity policies of the company, especially the policy and practice related to gender equality, as well as their results on tangible aspects such as salary, permanent contracts, turnover, and hours of professional development programs among men and women. Moreover, the strong focus on social issues is represented by the commitment in responsible-drinking marketing and advertising, as well as by the responsible-serving training programs for bartenders held in Italy, designed to reduce the negative impact of alcohol on communities.

B. *Prysmian Group*

The Report of Prysmian Group S.p.A. is worthy of attention because it shows how the sustainability strategy not only focuses on investor-related matters but also aims to satisfy the expectations of a wide range of stakeholders. Indeed, its completeness can be assessed by looking at the breadth of needs considered: the document responds to the interests of employees and communities, addresses the issue of the environmental impact of its business, and informs customers and partners about the sustainability of its supply chain.

First, the company underlines its commitment towards human capital by presenting a set of initiatives such as "Prysmian People Performance Potential"[124] and recruiting programs as "Make It" and "Sell It,"[125] which promote meritocracy both for current and aspiring employees. Extra attention is also given to remuneration policies and employee-welfare policies, made up of a wide range of benefits such as smart working, health insurance, and study grants. This analysis is supported by providing the ratio of standard salary to the minimum salary specified in the national contract, which is greater than one for the great majority of countries. The Report also addresses the issue of diversity and equal opportunity, especially through the "Side by Side" program, which aims to increase women's presence in the Group, which currently is lower than 16%.[126] However, if compared to other topics, little disclosure is provided on any initiatives that the entity would be willing to undertake to improve gender balance, and even less is said about the presence of policies that value and preserve diversity.

Significantly, less space on the disclosure form is given to the disclosure of the responsibility toward communities, which is only presented through a list of initiatives promoted during the year to support economic, social, and cultural development in both advanced and developing nations. Contributions are mainly made up of pecuniary and non-pecuniary dona-

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124. PRYSMIAN GROUP 2017 SUSTAINABILITY REPORT, *supra* note 116, at 92.
125. *Id.* at 80–82, 90–91.
126. *Id.* at 88, 102.

tions; for the latter, the company underlines how, especially in third-world countries, it has joined different projects where it used its own cables and know-how to improve public facilities.

Government's interests are also taken into account through the enforcement of an anti-bribery policy and an anti-trust code of conduct.[127] Measures to prevent misbehaviors include the implementation of an online platform where employees can anonymously report alleged illicit activities and of a customer privacy safeguard policy.[128]

As a cable manufacturer, a critical issue Prysmian faces is to prove to stakeholders the sustainability of its production. The analysis stresses the many initiatives to lower environmental impact that have been undertaken during the year, including improvements in water management and process waste, together with a wide range of data about environmental performances. Indicators focus on six parameters considered significant by the company. To provide a faithful representation, the Report shows energy consumption and waste generated by each category of products (optical fiber, accessories, telecom cables, and power cables), measured in tons and km of product and compared with past performances. Regarding emissions, the report calculates the figures in accordance with "The Greenhouse Gas Protocol" standard and provide different accounting methods for an easier interpretation.[129]

Last but not least, Prysmian explains how sustainability is promoted through the whole supply chain. Not only are suppliers required to approve the Group's Code of Ethics, but they are also qualified via a formal process on topics like environment, human rights, and working conditions, with a real possibility of being suspended if negative conduct is proved.

As previously mentioned, the company puts great effort into providing accurate information that is of interest to different groups of stakeholders. To this end, the data collection process is crucial, where the commitment to provide a faithful representation is visible in the several internal and external surveys carried out during the year. Among these initiatives,

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127. *See* PRYSMIAN GRP., PRYSMIAN ANTI-BRIBERY POLICY 2, https://www.prysmiangroup.com/sites/default/files/atoms/files/Anti-Bribery-Policy_EN_new.pdf.
128. PRYSMIAN GROUP 2017 SUSTAINABILITY REPORT, *supra* note 116, at 54.
129. *Id.* at 118.

stakeholders' ESG requirements are directly collected through engagement events and through a newly introduced Customer Satisfaction Survey System. Concrete actions can especially be found in data regarding the production's environmental impact. The company has very recently developed an instrument dedicated to the calculation of important parameters, such as Carbon Footprint and recyclability for each cable produced in any given factory. Its dedication is also evidenced in the depth of information provided about the suppliers' examination processes, where data on sustainability and ethical values are collected through internally generated platforms as well as partnerships with specialized agencies.

The Report also offers an inter-temporary view on Prysmian's performance. Comparison with past measurements is mainly used to underline the achievements in reducing the production's environmental impact, among which the most remarkable are a decrease in CO_2 emissions by 7.2% compared to 2016 and an overall reduction in hazardous waste. Nevertheless, the company also reports its drawbacks, such as a slight increase in energy (+1.1%) and total water (+4%) consumption. Moreover, analogies to past situations are also made from quality indicators, including the number of work accidents and costumer claims, which show attention to the wellbeing of employees and a consistent commitment to performance improvement.

For the reasons highlighted above, the Report can be considered complete from different angles because it meets all the requirements laid out by the Legislative Decree and provides sufficient disclosure on each topic, with continuous reference to actual initiatives and performance indicators. It is also worth noting that the Report uses plain language; the document is addressed to and designed to be easily understood by non-institutional investors, such as employees and communities.

However, there is still room for improvement. The Report offers very few relative estimations to competitors. Those comparisons are indirectly mentioned at the beginning of the document through the awards and ranking positions gained by the Group, but are rarely considered again. Especially in relation to environmental indicators, a closer reference to market benchmarks would enable a better understanding of Prysmian's actual performance. Furthermore, relatively little attention is given to the disclosure of future commitments, which are mainly presented as supplementary improvements to existing projects, whilst a clearer view on future sustainability goals would certainly be interesting for readers and valued by investors.

C. *Deutsche Bank*

Deutsche Bank is one of the largest banks in the world, but has lost ground against its rivals in the last few years and has reported net losses for three consecutive years starting in 2015. So, its stock price has dropped from about 33 euros at the beginning of 2014 to less than 9 euros in 2019. A series of scandals involving Deutsche Bank added to these immense losses and the decline in stock price. For example, during the financial crisis, the bank was part of a cartel that manipulated the LIBOR interest rate. More recently, Deutsche Bank was charged with money-laundering and financing terrorism. The bank was simultaneously involved in more than a thousand legal disputes and was fined tremendous amounts, which burdened the Bank's overall financial performance and resulted in unprecedented CEO turnover.[130]

It is crucial to have this background in mind when analyzing this year's non-financial report, which replaced the Corporate Responsibility Report of previous years. The bank needed to rebuild trust among investors and clients concerning its corporate culture and compliance with the Code of Corporate Governance. Therefore, in addition to the compulsory topics required by the Directive, the report largely focused on client satisfaction and risk minimization. The topics discussed include clients, conduct and risk, people and society, and the environment. Deutsche Bank uses the Global Reporting Initiative's ("GRI") international sustainability standard as a guideline for the report. The report includes the results of the GRI materiality analysis, which has been carried out by the bank in recent years. Moreover, the report details topics that were discussed at the last annual shareholder meeting. Some topics

130. After the era of Josef Ackermann, who made Deutsche a leading investment bank, the former investment banker Anshu Jain was involved in the LIBOR scandal, and so John Cryan became CEO with the objective to restructure the bank. However, since Cryan did not implement a promising long-term strategy, the influential Chairman Paul Achleitner replaced him with a new CEO, Christian Sewing, in April 2018.

changed from the 2016 report because of new legal requirements dictated by the German Code ("HGB").

During these crises, officials have made several announcements that the corporate culture at Deutsche Bank has moved from the Anglo-Saxon view of banking back to the European view. The change in CEO to Sewing, who represents the classic banking business in the European tradition, is evidence of this phenomenon.[131] Therefore, the report is relevant to the bank's directors because they have to confront the failures of the past few years and thereby identify potential weaknesses in their own corporate governance structure. The comprehensive non-financial report names the company's values, which are also enshrined in the Code of Business Ethics and Conduct: integrity, sustainable performance, client centricity, innovation, discipline, and partnership.[132] However, because values and corporate culture are difficult to assess, the bank is implementing a dashboard of metrics to indicate progress as compared to central standards. Hence, next year's report should entail more qualitative as well as quantitative information on these topics.

The report stresses that it is the responsibility of all employees to achieve better governance and corporate culture, even though the CEO is primarily responsible. Each board member is accountable for the implementation of culture-related initiatives developed by the Executive Committees. Moreover, the Culture Integrity & Conduct ("CIC") working group was established to ensure that culture-related activities pursued in each area align with the overall vision for the firm's culture. The CEO chairs the CIC, which consists of representatives from each division who were nominated by the management board. The non-financial report aims to highlight the

131. The Anglo-Saxon view supposes that large-scale market participants will meet liquidity needs through use of capital markets, whereas the European view assumes that bank loans will be the major source of market liquidity. A bank will correspondingly adjust its business strategy. *See, e.g.*, Iain Hardie & Sylvia Maxfield, *What Does the Global Financial Crisis Tell Us About Anglo-Saxon Financial Capitalism?* 6–8 (Oct. 1, 2010) (paper prepared for Workshop on the Financial Crisis, EMU and the Stability of Currencies and the Financial System, University of Victoria), http://web.uvic.ca/jmc/events/sep2010-aug2011/2010-09-financial-crisis/pdf/Oct2,2010-Panel_A-Iain_Hardie,Sylvia_Maxfield-UVic-Financial_Crisis.pdf.

132. DEUTSCHE BANK, *supra* note 117, at 37.

efforts made to establish a new corporate culture and minimize the risk of misconduct and future scandals.[133]

Another large part of the report deals with environmental, social, and governance ("ESG") aspects. The bank stresses its ESG efforts by showing a variety of green investments, employee development programs, and diversity initiatives.

The non-financial report and the Annual report, in addition to the HR Report and the Management Report, must be read in the context of the bank's past few years. Therefore, the non-financial report is relevant because it provides a comprehensive assessment to ameliorate internal procedures. The extensive explanations aim to regain existing customers' trust and attract new investors to improve its overall standing.

Concluding Remarks: Non-Financial Information As a Way to Re-Read the Social Interest Issue and the Role of Comply-or-Explain

A. *Effectiveness of the NFS and Impact on the Social Interest Issue*

The study and the arguments above show the breadth of a regulation that is certainly driven by first-rate goals, and yet is still marked by several weaknesses and uncertainties that can cause—at least in this early stage of application—difficulties that should not be underestimated. In other words, the NFS rules, whose shortcomings may well be remedied in the near future, appear to contribute to the achievement of long-term profitability, social justice, environmental protection, sustainability risk prevention, as well as the enhancement of investor and consumer confidence. However, the achievement of such an ambitious undertaking cannot be assured by the mere implementation of a law and regulation that, in addition to limiting itself to certain bodies, must always be combined with behavioral and sensitivity changes that go beyond the scope of the strict law and even transcend several generational boundaries to be effective.

Over the concrete realization of the cited European and national sustainability objectives, it is also worth focusing on the impact of NFS rules on company law and, more specifi-

133. An entire chapter deals with policies against financial crime: from employee training and engagement over know-your-customer policies to fraud prevention. *See id.* at 41–44.

cally, on the issue of social interest.[134] This is because it should not be excluded, *a priori*. The aforementioned ideas imply a gradual repositioning of some enterprises, defined as EIPRs, in a market that, after being informed about every aspect of social action, is capable of extending its influence on an entrepreneurial activity. Such influence, being both a paradox and a provocation, would almost seem to prioritize other needs—perhaps not included among the predominant aims pursued by the shareholders—before profit.

The topic is of the utmost interest since it asks specific practical questions or calls for a reflection on the ultimate reason for doing business, hanging between the ideas of "contract" and "institution" and hence between the needs (or, rather, the expectations) of shareholders and those of third parties (i.e., stakeholders), who are increasingly crucial in intra-corporate dynamics and investment policy choices. Regardless of the answer, the information disclosure regime required today in Europe undoubtedly represents a milestone in the path of re-shaping certain distinguishing aspects of the legal-economic reference system. This step, however, also entails an additional compliance cost for stakeholders, who are potentially not recipients—at least in the short run—of any concrete and real profit for their renewed and somehow virtuous work.

B. *Implications in the Field of Soft Law and Applicability of the Comply-or-Explain*

As the empirical analysis of the risk typology highlighted, non-financial statements are focused on the risks related to the impact of corporate activity on the environment and natural resources, as well as on the integrity of business conduct, corporate name and reputation, and corporate governance.

When assessing the interaction of risks with corporate governance systems, especially the board composition and the ownership structure, there is a more exhaustive version of non-financial reporting, in terms of the number of issues addressed in general and in individual categories, when boards are mostly made up of independent directors. The size of the board was a less significant factor, as it does not seem to cause

134. This is based on the assumption that these are distinct. For an analysis of the social interest issue, see generally Paolo Montalenti, *L'interesse sociale: una sintesi* (2018), RIVISTA DELLE SOCIETÀ 303 (It.).

material changes in the average number of risks reported in non-financial statements. Likewise, considerable differences were noted regarding the relevance of the various risk categories in defining the content of the statement related to the board's size. The substance of the statement was also examined with respect to the tendency to create committees within the board specifically designed for CSR issues to identify any opportunities arising from the implementation of responsible conduct.

On this point, it was considered whether the presence or absence of the Sustainability Committee in companies with a larger or smaller board generated any meaningful changes in the statement's content. It is also worth highlighting the incentive induced by setting up a committee devoted to CSR aspects to pay greater attention to non-financial reporting, in terms of the number and size of (mainly ESG) disclosed risks.

The influence of ownership variables on the drafting of the document was also considered, concluding that, while the statements of family companies are largely linked to reputation and prestige, the content of public companies' disclosures mainly relates to the political and regulatory context to which the company's activities and governance are exposed. Finally, a more exhaustive exploration of environmental issues, governance, and integrity was observed in the presence of investors who adopt investment strategies oriented towards the medium-to-long term.

In conclusion, the remark highlighted the importance of certain characteristics pertaining to governance and ownership structures in addressing the content and completeness of the financial statement, promoting a more transparent non-financial disclosure of information, and complementing the multiple dimensions of value creation. The results of the descriptive analysis permitted a narrowing of the range of variables to be included in the regression model, which was then presented in two variations. In addition, significant trends emerged concerning the disclosed performance of the various sectors: the sharp and necessary distinction between financial and non-financial sectors; the outstanding performance of the energy, infrastructure, and consumer business industries; and the weaker performance in technology and transport segments.

As seen in the review of the relevant case studies, Campari's 2017 Sustainability Report presents many positives, and none of the negatives are related to a lack of compliance with the 2016 Legislative Decree or GRI standards.[135] Therefore, one might challenge the appropriateness of the "comply-or-explain" principle, in favor of a stricter rule-based approach. In fact, although the role of the "comply-or-explain" approach today is constantly reaffirmed, the Commission Recommendation of April 9, 2014—regarding the quality of corporate governance reporting—noticed that some shortcomings exist in the way the principle is applied in practice, especially relating to the quality of explanations provided.[136]

The flexibility offered by the "comply-or-explain" approach is an invaluable characteristic when dealing with corporate governance matters, and this flexibility would disappear under a rule-based approach. Therefore, it seems to be appropriate that the ESG disclosure still relies on the "comply-or-explain" procedure,[137] but a set of more binding principles should be provided in order to enhance the quality of the reports and limit the possibility of deceiving users of non-financial information.

To be more effective, ESG disclosure should be regulated under a "comply-or-explain" approach rather than a "rule-based" one. Firstly, the environment and the community in which a company operates vary across different industries and countries. As a consequence, introducing a rule-based, one-size-fits-all system would fail because of different risk materiality, which alters among cases. For example, comparing a bank and a manufacturing company for the level of wastewater produced annually clearly makes little sense. Thus, regulators should be flexible enough to recognize basic rules over core

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135. *Linking the GRI Standards and the European Directive on Non-financial and Diversity Disclosure*, GLOB. SUSTAINABILITY STANDARDS BD., (2017), https://www.globalreporting.org/standards/resource-download-center/linking-gri-standards-and-european-directive-on-non-financial-and-diversity-disclosure/.

136. Commission Recommendation of 9 April 2014 on the Quality of Corporate Governance Reporting, 2014 O.J. (L 109) 43, 44.

137. Maria Elisabeth Sturm, *Corporate Governance in the EU and U.S.: Comply-or-Explain Versus Rule* (Stanford-Vienna Eur. Union Law Working Paper No. 16, 2016), https://law.stanford.edu/publications/no-16-corporate-governance-in-the-eu-and-u-s-comply-or-explain-versus-rule/ (explaining the U.S. counterpart).

issues they believe to be material to all firms, while also relieving the compliance burden for firms that determine such issues are not material to them.

Furthermore, cost efficiency is also relevant when choosing an appropriate approach to ESG disclosure. Therefore, a comply-or-explain method will probably result in a less expensive burden, because companies may diverge from expensive best practices, which end up not being material for them, in favor of more efficient policies. This aspect may also result in an incentive to develop better solutions not yet implemented as best practices.

Moreover, because ESG voluntary disclosures—along with community concerns over CSR matters—are relatively new concepts, the ESG materiality assessment on the effects of the company's activities over environment and communities has to rely on the Board's subjective expectations rather than on objective historical data collected throughout the history of the company. Therefore, a flexible regulatory approach may be more appropriate to respond to such a new and developing need.