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Regulatory design of corporate anti-corruption transparency under the EU Directive 2014/95/eu: the (in)coherence of regulatory goals and requirements

Proefschrift ter verkrijging van de graad van doctor aan Tilburg University

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Preface

In 2012, in the wake of a corruption scandal in China, the British drugmaker GlaxoSmithKline decided to stop paying its sales representatives bonuses according to the number of prescriptions made by doctors in the representative's scope of responsibility. The company hoped that other pharmaceutical giants would follow its call, but it did not happen. Recently, GlaxoSmithKline announced the return to the prescription-based bonuses (FiercePharma, 2019).

Years ago, I worked as a compliance officer. I have seen the most admired companies and the best people engaging in corruption. Behind beautiful facades of anti-corruption programs, the pro-corruption incentives structures continued to thrive.

As a lawyer by education, I have become interested in the strategies used by the governments to prevent corporate corruption.

Corruption is often seen as a disease of weak governance structures in developing countries. This approach overlooks the role of multinational companies in maintaining corruption. Multinational corporations originate primarily in developed economies, including the United States and the European Union. Many EU multinational companies are active in emerging markets with weaker governance structures (Everett et al., 2007; Vogl, 1998). Due to their size and resources, multinational companies can be more economically powerful than the governments in some countries of their operation (Global Justice Now, 2018). Accordingly, multinational companies have sufficient bargaining power to reject demands for bribes and other favors from the government officials (Everett et al., 2007; Sikka & Lehman, 2015; Vogl, 1998). Yet, the research suggests that multinational companies continue being actively engaged in corruption (Everett et al., 2007; Sikka & Lehman, 2015; Vogl, 1998). The economic (and political) power of large multinational companies suggests that they should not be treated as "innocent parties, forced by ruthless officials to provide kickbacks and do special favours in return for business" (Vogl, 1998). Instead, powerful suppliers of bribes and favours should be seen as active participants of collusion "to defraud the public … and increase human suffering" (Vogl, 1998).

According to former President of the European Commission Jean-Claude Juncker, while the "European Union is built on compromise" there is "no place for compromise … when it comes to respect for the rule of law and fight against corruption" (European Commission, 2019b).

In my research, I look at the development of one particular regulatory strategy used by the European Union to prevent corruption – corporate anti-corruption transparency. I explore qualitatively the EU regulatory goals and instruments throughout the development of the Directive 2014/95/eu on disclosure of non-financial information as well as corporate reporting practices under the Directive. My research indicates a gap between the EU regulatory goals and instruments. It suggests that the EU commitment to fight (corporate) corruption through transparency is subject to multiple compromises.

Acknowledgements

Six years ago I left a corporate career and moved countries to start a new chapter in my life. I was accepted for a PhD position in the Netherlands and I was excited to start an academic career. These six years have been full of hard work, high hopes, great disappointments and new beginnings. I have continued working on my thesis through motherhood, a pandemic and recent political events as well as organizational changes and the usual PhD hurdles.

I look in disbelief at my PhD thesis. I am surprised I finished it and remained (reasonably) sane. I would like to thank everyone who supported me during this journey.

My words of appreciation go to my supervisors, Stavros Zouridis and Pregala (Solosh) Pillay. Stavros, thank you for trusting in the success of this endeavor at the times when I had no trust in it whatsoever. I wish I followed your advice more often. I also wish you had more time to engage with my work. Solosh, thank you for listening to me when I needed it the most and celebrating my small successes.

I would like to thank fellow PhDs, Erkan, Vera, Wendy, Simone, Petra, Ximena, Feie and Irene, for sharing their experiences, lunches and PhD memes. In the first years of my PhD it had also been great to have a PhD housemate – Ivona.

I would like to thank my colleagues at Tilburg University who were patient enough to engage in long discussions and brave enough to offer help when I needed it. Along with my fellow PhDs I mentioned earlier, I would like to express special appreciation to Gaby Coenen, Merlijn van Hulst, Elvira van Vliet and Nik Rajkovic. Please note that this list is not exhaustive as there were more people supporting me throughout these years.

I would like to thank people I met during my years in the University Council. Lately, it has been hard to remain in touch with you due to so many other obligations, but I would like to thank you for unforgettable experiences. Mirjam Siesling, Rien Wijnhoven, Peter Maarleveld, Renée de Reuver, Mark Vitullo and Geert-Jan Peters, thank you for having open discussions and taking PhD matters seriously. I would like to express my gratitude to the Rector Magnificus of Tilburg University for help provided at the times of crisis.

A special acknowledgement goes to the members of the PhD Committee. I would like to thank you for your comments, for taking the time to answer my questions, and for the words of encouragement. I believe that your comments allowed me to improve my thesis.

Turning to my colleagues and students in Fontys, I would like to thank all of you! Mariette, I appreciate the time and space you gave me for finishing this thesis. Robert, may be unbeknownst to you, your willingness to (co-)teach Law and Ethics freed up time for me to make some last minute changes in my thesis in September and October 2022. Nina and Jessica, thank you for agreeing to proofread parts of my PhD thesis. Experts (published in reputable sources such as Quora and Shit Academic Say) advise against asking PhD candidates about subject matter, duration and progress of their work. Nevertheless, a few colleagues and students kept on asking

about my PhD. At times, there had been no good news to share, but contrary to the expert opinions, your sincere interest has encouraged me to persevere. I am grateful to my colleagues Nina, John, Jessica, Kiran, Jeroen, Ingrid and Franny as well as my students Rahela, Elianne, Pola and Suraya for keeping their fingers on the fading pulse of my PhD and reanimating it when necessary. I also want to thank my students Max, Alejandra, Martina and Sebastian for cheering me up during the last year.

Thank you to my family members, whom I do not see often anymore and miss a lot. My grandmothers, Nina and Ludmila, my mother Viktoria, my father Andrey, my brother Yaroslav and my aunt Olga as well as my (late) grandfathers (both of whom were called Mikhail) have supported me through various challenges. I do not think I would be able to finish this thesis without help from my parents-in-law Gaab and Ruud, the best oma and opa in the world, who regularly take care of my daughter allowing me to rest and work.

Among all changes and uncertainties of the last six years, my best friends have remained. Masha and Lena, thank you for being there for me despite being very far away. Just as I was finishing the last sentences of my thesis, comparing the anti-corruption and environmental disclosure and discussing the incorporation of the anti-corruption transparency in the broader ESG framework, Lena sent me the following picture, which represents the core of my PhD in visual form as long as you replace the “compliance officer” with “the EU non-financial transparency”:

I would like to thank my dog Syr (also known as Professor and Mr. Syr), whom I adopted seven years ago, for long walks which allowed me to take a break from writing and come up with new ideas.

Finally, two people merit special acknowledgement – my husband Sven and my daughter Vera. Without you, I wouldn’t be…

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1. Chapter I. Introduction: problem definition, literature review and research question

1.1. Introduction

This chapter places Directive 2014/95/eu on disclosure of non-financial information ("the Directive" or "the NFRD") in the context of the EU anti-corruption efforts. It highlights the importance of studying the Directive as the first large-scale state-led regulatory initiative targeting corporate anti-corruption transparency. The analysis of the Directive is especially relevant in the light of the criticism of the Directive and upcoming change in the regulatory landscape of corporate non-financial transparency presented in the proposal for a new Directive amending the Accounting Directives as regards corporate sustainability reporting (hereinafter – CSRD or CSRD Proposal). Changing regulatory landscape suggests a need to explore how regulators design regulated transparency systems in such a way as to change organizational transparency practices. After presenting the problem, the chapter proceeds to review the literature. Following review of the literature, this chapter articulates a set of research questions.

1.2. Problem background: corruption and the EU anti-corruption efforts

Theoretical literature has long predicted that corruption is detrimental to economic growth and effective operation of the market (Mauro, 1995; Tanzi & Davoodi, 1998). In the mid-nineties, first cross-country measurements of corruption appeared (Kaufmann et al., 2010). Furnished with data, empirical scholarship on corruption has boomed. In line with theoretical predictions, empirical studies have predominantly demonstrated that lower levels of corruption are associated with a range of positive outcomes, including better economic performance and happier citizens (Campos et al., 2016; Mauro, 1995). Scientific endorsement of corruption's negative effects in mid-nineties led to rapid development of initiatives to fight it (Hindess, 2005; Mungiu-Pippidi, 2017; Rothstein, 2011; Sampson, 2014).

While there are significant differences across the EU member states, on average, the EU is characterized by relatively low levels of perceived corruption within the Union (Transparency International, 2022). At the same time, the EU hosts a significant amount of multinational companies, which are active beyond the EU market (Forbes, 2022). Many EU multinational companies are active in emerging markets with weaker governance structures (Everett et al., 2007; Vogl, 1998). Due to their size and resources, multinational companies can be more economically powerful than the governments in some countries of their operation (Global Justice Now, 2018). Accordingly, multinational companies have sufficient bargaining power to reject demands of the government officials for bribes and other favors (Everett et al., 2007; Sikka & Lehman, 2015; Vogl, 1998). Yet, the research suggests that multinational companies continue

being actively engaged in corruption (Everett et al., 2007; Sikka & Lehman, 2015; Vogl, 1998). The economic (and political) power of large multinational companies suggests that they should not be treated as "innocent parties, forced by ruthless officials to provide kickbacks and do special favours in return for business" (Vogl, 1998). Instead, powerful suppliers of bribes and favours should be seen as active participants of collusion "to defraud the public … and increase human suffering" (Vogl, 1998).

The supply side of corruption (i.e. the role of powerful bribe payers) has long been downplayed in the regulatory and research agendas (Everett et al., 2007). Until the late 1990s many countries in the world allowed companies to deduct bribes paid to the foreign public officials from the tax base (Pacini et al., 2002). In 1977, the US introduced the Foreign Corrupt Practices Act, which outlawed bribery of foreign government officials by the US firms. The FCPA established corporate criminal liability for foreign bribery (Schonfelder et al., 2016). The FCPA has been largely dormant until the turn of the century. Since then enforcement has increased in prominence with more actions and larger fines (Stanford Law School Foreign Corrupt Practices Act Clearing House, 2019). In 1997, the OECD Convention against corruption was promoted. The Convention required its signatories to establish criminal liability for corporate bribery and enforce against both companies and companies' officials (Pacini et al., 2002).

The European Union has long proclaimed zero tolerance to corruption (European Commission, 2014). According to former President of the European Commission Jean-Claude Juncker, while the "European Union is built on compromise" there is "no place for compromise … when it comes to respect for the rule of law and fight against corruption" (European Commission, 2019b). Despite strong anti-corruption discourse, the EU's efforts to curb corruption have been increasingly criticized over the last decade. In particular, the European Union has been challenged for the absence of harmonized framework against corruption, lacking enforcement of the OECD Convention, and discontinuation of the EU Anti-Corruption report (euobserver, 2017; Příborský, 2012; Salazar, 2012). In 2019, Transparency International's report on Western Europe and the EU acknowledged "stagnating anti-corruption efforts and weakening democratic institutions" (Transparency International, 2019). The EU enforcement of the OECD Convention has remained low (OECD, 2020).

In 2014, the European Union for the first time included "anti-corruption and bribery" in the list of the non-financial risks that should be managed and disclosed by large companies across the EU (European Commission, 2013a). Prior to 2014, the EU Accounting Directives had addressed the disclosure of employee-related and environmental information by EU companies. Directive 2014/95/eu has explicitly added "anti-corruption and bribery" matters in the scope of non-financial transparency. Amongst weak anti-corruption regulation and enforcement over the last ten years, corporate anti-corruption transparency has been embraced by the European Union as a strategy against (the supply side of) corruption.

1.3. Problem definition: past, present and future of corporate anti-corruption transparency in the EU and beyond

Over the past four decades, environmental and social risks associated with business activities have been widely recognized resulting in multiple attempts to mitigate them (Baldwin et al., 2012; Coglianese & Mendelson, 2010). Companies have started embracing corporate social responsibility (Phillips et al., 2020). Stakeholders demanded better information about social and environmental performance of the companies (Deegan, 2017). Regulators attempted to mitigate non-financial risks and foster sustainability in business, in particular, through multiple transparency initiatives (Graham, 2002). As a result of various pressures, more and more companies have started publishing non-financial, CSR and sustainability reports to communicate their non-financial performance to the stakeholders (Mahoney et al., 2013; Stolowy & Paugam, 2018).

Attempts to regulate transparency of the environmental information date back to the 1980s (Graham, 2002; Wiseman, 1982). Since then, corporate non-financial transparency has evolved to cover multiple other aspects, in particular corporate anti-corruption efforts (Stolowy & Paugam, 2018). Starting from early 2000s, several non-governmental organizations and researchers have advocated for extension of the corporate transparency to include corruption (Eigen, 2006; Hess, 2009; Wilkinson, 2006). Since early 2000, corporate anti-corruption transparency has become a part of multiple voluntary initiatives. In 2004, the 10th principle against corruption was added to the United Nations Global Compact (Branco & Delgado, 2012). In 2009, Transparency International (2009) developed the first comprehensive guidelines on reporting on the 10th principle within the United Nations Global Compact Communication on Progress dedicated to corruption. The Global Reporting Initiative (2018) has increased the amount of the corruption-related indicators within its GRI 205 standard over the last ten years. Yet, these initiatives have attained limited effects (Barkemeyer et al., 2015; Blanc et al., 2016; Vale & Branco, 2019). Increasingly, there have been calls for the mandatory regulation of the corporate anti-corruption transparency (Barkemeyer et al., 2015; Hess, 2009).

Amongst concerns about the lacking attention to corruption, the European Union has adopted the Directive 2014/95/eu. The Directive promoted transparency of corporate non-financial information. The NFRD explicitly referred to “anti-corruption and bribery” as a separate area of non-financial transparency. Before the Directive, non-financial transparency has been largely limited to environmental and employee-related matters. Thus, the Directive introduced the anti-corruption reporting at the European level for the first time. While many EU member states have required disclosure of environmental or employee-related information, only one EU member state (France) has required anti-corruption disclosure as a part of non-financial transparency. French regime has been introduced in 2012, was limited to a small amount of companies and was lacking liability provisions. The Proposal for the NFRD Directive has aimed to cover a large amount of the EU companies across different sectors. The NFRD has promised to become the first large-

scale regulation ensuing multiple calls for state regulation of corporate anti-corruption transparency.

The Directive has been welcomed by the academics and those concerned with business ethics and sustainability (Eccles & Spiesshofer, 2015; Ethical Trading Initiative, 2017). The Directive was expected to “draw attention to important issues beyond the bottom line” (Ethical Trading Initiative, 2017). However, the Directive has not lived up to expectations (Monciardini et al., 2020). According to the public consultations held in 2020, the minority of respondents (26%) have considered the Directive’s requirements to ensure sufficient disclosure by the companies (European Commission, 2020). Furthermore, there have been increasing concerns about the role of Directive in obscuring sustainability reporting and encouraging corporations to maintain an appearance of compliance instead of complying (Biondi et al., 2020). The NFRD has been particularly criticized for its excessive flexibility (Biondi et al., 2020; Monciardini et al., 2020).

In 2021, the European Commission launched a proposal for a new Directive amending the Accounting Directives as regards corporate sustainability reporting (hereinafter – CSRD or CSRD Proposal). The CSRD “introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards” (European Commission, 2021b). The CSRD also extends the coverage of the Directive and clarifies the external assurance standard for sustainability information. The CSRD includes “anti-corruption and bribery” in the broader notion of “governance indicators” within the notion of Environmental, Social and Governance (ESG) indicators. It also provides for a separate reporting on business ethics, political contributions and “management and quality of relationships with business partners”. Nevetheless, similar to NFRD, the CSRD does not explain the notions of corruption and bribery and does not put them within the context of newly introduced indicators (such as business ethics). The standards, developed so far to support CSRD, do not include anti-corruption and bribery indicators (European Commission, 2021c). In comparison with environmental and human rights aspects, “anti-corruption and bribery” remains the least mentioned aspect in the Summary of the Public Consulations and the Impact Assesment for the CSRD (European Commission, 2020, 2021a). Neither of these documents provides clarity with regards to the current state and the future of anti-corruption disclosure. A brief look at anti-corruption provisions of the CSRD suggests that they are not significantly different from the anti-corruption provisions of the NFRD Directive. In the light of development of corporate anti-corruption transparency regulation, this study looks at the regulatory framework for corporate anti-corruption transparency, introduced by NFRD, in search for the reasons for the Directive’s failure and the lessons which can help improving the regulatory design of the CSRD and regulation related to the CSRD.

1.4. Review of the literature

1.4.1. Scope of the literature review

The literature review was conducted in order to establish current knowledge on the role of regulation in promoting corporate anti-corruption transparency.

Two sets of research outputs have informed this study: on the one hand, research on corporate anti-corruption transparency and, on the other hand, research on regulated transparency systems, regulation and regulatory design.

The first set of research outputs included the literature on the antecedents, state and effects of corporate anti-corruption transparency and the literature providing a normative rationale for corporate anti-corruption transparency. These studies have been reviewed in order to establish the role currently assigned to regulation by existing literature on corporate anti-corruption transparency.

Recent studies have characterized the scholarship on the antecedents, state and effects of corporate anti-corruption transparency as "scant" and "counted on the fingers of one hand" (Vale & Branco, 2019). To collect as many studies as possible, the literature review has been performed in a systematic way. The keywords for the search were formulated based on the pilot survey of the literature. The following search request was used: "private OR business OR industry OR company OR firm OR organizational OR corporate, corruption OR bribery, transparency OR disclosure OR reporting OR information". Google Scholar search engine and Scopus database were used to identify the relevant studies based on the names and abstracts. A significant amount of studies have been excluded due to their narrow coverage: essay-based studies promoting anti-corruption transparency (Branco & Delgado, 2012; Hess, 2009; Wilkinson, 2006); studies dedicated to specific sectoral initiatives which included anti-corruption component, for example the US Physician Payments Sunshine Act, The Extractive Industries Transparency Initiative, and similar initiatives (Brennan & Mello, 2007; Eigen, 2006; Fabbri et al., 2018; Furstenberg, 2017); studies which used certain parts of the disclosed accounting information as a proxy for corruption (Tang, 2020); and studies dedicated to transparency of political contributions (Stratmann, 1991). Relevant studies, found using Google Search and Scopus database, have formed the source for a backward snowballing. Snowballing technique is suggested to be useful in cases where terminology may vary (e.g. "corruption", "anti-corruption" and "bribery"; "reporting", "transparency" and "disclosure"). Snowballing technique is shown to outperform other search methodologies in some studies (Greenhalgh & Peacock, 2005). Three consecutive rounds of snowballing were performed, each round focusing on the newly identified outputs, until no new outputs were identified. As a result, forty-five studies have been identified. Studies promoting anti-corruption transparency (Branco & Delgado, 2012; Hess, 2009; Wilkinson, 2006) have been initially excluded from the systematic review due to their broad nature and focus on promotion of transparency rather than its state. However, at the later stage some of these studies have been consulted based on their prominence in the forty-five studies on the state, antecedents and effects of transparency. In particular, studies which referred to the link between anti-corruption transparency and regulation, were explored (Branco & Delgado, 2012; Carr & Outhwaite, 2011; Hess, 2009).

The second set of research outputs included literature on regulated transparency systems and regulatory design. The studies within the first strand extensively referred to regulation and even

called for state regulation of corporate anti-corruption transparency. However, none of the studies actually used literature on regulation extensively. Self-regulation, industry regulation and state regulation have been often confused. To explore the role of regulation in promoting transparency in general, the literature on regulated transparency was explored. As a result, the notion of "targeted transparency system" was identified to link government intervention with transparency. Within targeted transparency system "government compels companies or agencies to disclose information in standardized formats to reduce specific c risks, to ameliorate externalities arising from a failure of consumers or producers to fully consider social costs associated with a product, or to improve provision of public goods and services" (Weil et al., 2013, p. 1410). The literature on targeted transparency systems explains performance of transparency regulations in various fields (Fung et al., 2007; Graham, 2002). In particular, it refers to the flaws in transparency system arising from the mismatch between the regulatory requirements and the scope of the targeted risk.

In the next step the literature on regulation and regulatory design was explored to identify the possible reasons for a mismatch between the regulatory requirements and the goals. The literature on regulation in general has been studied (Baldwin et al., 2012). Given the focus of this study on the design of transparency regulation, special attention was given to the literature pertaining to regulatory design and regulatory coherence (Hood et al., 2001; Howlett, 2009; Rayner & Howlett, 2009) and literature on program theory (Pawson, 2006).

1.4.2. Results of the literature review

The literature review has had two goals. Firstly, it aimed at exploring current knowledge about the role of regulation in fostering corporate anti-corruption transparency. Secondly, it sought to establish gaps in existing literature and narrow down the research problem to refine the research question.

In 2001, the first study dedicated to the state of corporate anti-corruption disclosure highlighted the emerging regulatory framework on corporate anti-corruption as a driving force behind the transparency trends (Gordon & Miyake, 2001). It particularly referred to the legislative effects of the OECD Convention. Since then, virtually every study has mentioned the regulatory landscape as a shaping factor in the development of corporate anti-corruption transparency.

Despite acknowledging the role of regulation and calling for further regulatory efforts, the studies did not always include regulation as a variable. Instead, multiple studies concentrated on the firm-level antecedents of corporate anti-corruption transparency, such as sector of operation, various corporate governance related factors (CEO duality, independence of the Board, Board diversity, etc.) and financial aspects (ROA, leverage, etc.); or country-level non-regulatory variables such as the level of press freedom (Barkemeyer et al., 2018; Blanc et al., 2017; Blanc, Branco, et al., 2019), corruption perception ratings (Barkemeyer et al., 2015; Healy & Serafeim, 2016; Lopatta et al., 2017), and cultural aspects (Barkemeyer et al., 2018; Blanc, Branco, et al., 2019). Two studies have referred to the Directive 2014/95/eu (Alonso Carrillo et al., 2019; Jaggi

et al., 2020). Yet, they concentrated on firm-level corporate governance rather than regulatory antecedents of anti-corruption transparency.

A limited amount of studies included variables related directly to regulation. Due to the absence of specific state regulation of corporate anti-corruption transparency before the Directive 2014/95/eu, the research has primarily referred to general anti-corruption regulation such as FCPA (Healy & Serafeim, 2016), anti-corruption legislation of ASEAN countries (Joseph et al., 2016; Sari et al., 2020) or Gulf countries (Issa & Alleyne, 2018). Alternatively, the scholarship referred to the voluntary initiatives using the notions of self-regulation or "networked governance":

> "Corporate disclosures on combating bribery were closely associated with the combination of media attention and the influence of IGOs–a system of 'networked governance' that has not been fully considered or explored by social accounting researchers to understand disclosures practices of corporations" (Islam et al., 2018).

The studies referring to voluntary initiatives primarily explored participation in the United Nations Global Compact as potential antecedent of the corporate anti-corruption transparency (Barkemeyer et al., 2015; Blanc, Branco, et al., 2019; Branco et al., 2019; Branco & Matos, 2016; Vale & Branco, 2019). Several studies referred to other (semi)-voluntary initiatives such as Partnering Against Corruption Initiative and Wolfsberg Anti-Money Laundering Principles (Barkemeyer et al., 2015; Duho et al., 2020).

The research on the antecedents of the corporate anti-corruption transparency has primarily relied on statistical analysis in establishing correlations between the regulatory efforts and transparency. The regulation has been presented as a number of the enforcement actions or the level of development of legislative acts against corruption in the country (Healy & Serafeim, 2016; Sari et al., 2020). Thus, the research has concentrated on the effects of regulation on the state of transparency rather than on the regulatory design which shapes corporate anti-corruption transparency.

The studies which included regulation as a variable has produced mixed results. Healy and Serafeim (2016) concluded that the US firms which were subject to the US legislation, including the FCPA, have not demonstrated increased levels of transparency. In contrast, Sari et al. (2020) and Joseph et al. (2016) found out that anti-corruption legislation and enforcement played an important role in promoting corporate anti-corruption transparency. As a result, authors concluded that there is a need for "disclosure regulations on corporate corruption that will serve as effective tools to create greater accountability within corporations" (Joseph et al., 2016).

Scholars have also disagreed on the effects of the voluntary initiatives. According to Barkemeyer et al. (2015) participation in the UN Global Compact was not linked to more extensive reporting on anti-corruption engagement. In contrast, Branco et al. (2016), Duho et al. (2020) and Vale et al. (2019) established positive effects of participation in the United Nations Global Compact, EITI and Wolfsberg Principles.

Along with recognizing the role of regulatory efforts, studies on corporate anti-corruption transparency have highlighted the limits of the broader anti-corruption legislation. In particular, the research highlighted that “anti-corruption legislation still suffers from implementation deficits at national and cross-national levels” (Barkemeyer et al., 2015). Furthermore, scholars expressed concerns regarding the reach of voluntary initiatives. Some scholars have explicitly advocated for specific state regulation to promote and support anti-corruption transparency (Barkemeyer et al., 2015; Hess, 2009; Joseph et al., 2016).

To conclude, the literature on corporate anti-corruption transparency has produced limited and incoherent knowledge about the role of regulation in fostering corporate anti-corruption transparency. The researchers disagreed regarding the role of general anti-corruption legislation as well as voluntary initiatives. The research on the corporate anti-corruption transparency did not explicitly explore the role of Directive 2014/95/eu. At the same time, there have been increasing calls for a state-led regulation.

Despite calls for regulation in corporate anti-corruption transparency scholarship, broader literature on regulated transparency systems has challenged the promises of regulation in fostering transparency. It was suggested that most state-led transparency policies fail:

> “We have analyzed 18 important transparency policies. These policies aim to reduce critical public risks and improve government or corporate performance. Some are successful. Many fail” (Harvard Kennedy School, 2016).

Case studies of regulated transparency has documented successes and failures of state-led transparency regulations. As an example, a mismatch between the targeted problem and regulatory requirements have led to the failure of the US regulation on transparency of the information regarding the risk of terrorist attacks (Fung et al., 2007):

> “Philip Zimbardo, the president of the American Psychological Association, suggested that the terrorist threat system had turned the United States into a nation of “worriers, not warriors,” by “forcing citizens to ride an emotional roller coaster without providing any clear instructions on how to soothe their jitters” (Harvard Kennedy School, 2016).

Other case studies of the transparency regulations performed by Graham (2002), Fung et al. (Fung et al., 2007; 2016), Furnas (2013), McGee and Gaventa (2010) and Mol (2010, 2015) suggested that regulatory mechanisms do not only vary per sector and country, but actually unique for each subject area. The regulation of restaurant hygiene transparency has been generally seen as a major success. In regulatory terms, this success has been attributed to several factors such as the presence of clear, verifiable and searchable information and use of clear grading system which has been easily incorporated in users’ decision-making (Fung et al., 2007). In some other areas, coercive regulatory pressure has underperformed other types of pressure. For example, the US Data Quality Act was suggested to “limit and chill transparency” due to its excessive and stringent requirements (Mol, 2015). In other areas (such as campaign finance), none of the pressures seem to produce and adequate result (Harvard Kennedy School, 2016).

Weil, Graham and Fung (2013) argue that “targeting transparency” requires understanding “when and how such targeted transparency works, as well as when it is inappropriate”. Thus, they suggest that transparency systems may fail due to their failure to match the initially targeted risk (Fung et al., 2007; Weil et al., 2013).

Why do regulators design transparency systems which are inappropriate for the originally identified targets? Just like other organizations, regulators do not exist in vacuum. Literature on regulation and regulatory design suggests that regulators are subject to multiple pressures from public, interest groups and other institutions. Regulators adopt different strategies to survive under pressure and keep their legitimacy (Hood et al., 2001). As a result, regulation is shaped by the legitimacy considerations instead of the scope of market failure (Hood et al., 2001). Institutionalists suggest that institutional environment is formed by the processes of displacement, conversion, layering and drift (Thelen, 2004). The changes in the institutional environment are reflected in regulatory design (Hood et al., 2001). Regulatory design (or policy design) can be understood as a combination of the regulatory goals and regulatory instruments (Howlett et al., 2015). According to the institutional accounts, regulation is rarely a product of extreme events (Béland, 2007). Instead, it is being slowly “cooked” by exogenous as well as endogenous institutional changes (Béland, 2007). Due to the institutional pressures, the emergence of certain regulation and its design may be subject to “drift”, “conversion”, “layering” and “replacement” (Kern & Howlett, 2009). Replacement includes “a conscious effort made to re-create or fundamentally re-structure policies through the replacement of old goals and means by new ones so that they both become consistent, coherent and congruent” (Kern & Howlett, 2009). Replacement usually allows to keep the coherence of goals and consistency of the instruments. However, other processes, including layering, drift and conversion, often lead to the incoherence of regulatory goals and/or instruments (Kern & Howlett, 2009). The incoherence of regulatory goals and instruments results in the absence of a clear program theory which explains how the regulation should work to reach its goals (Pawson, 2006). The incoherence of regulatory goals and instruments may lead to the flaws in architecture of corporate anti-corruption transparency and to the failure of the Directive to promote corporate anti-corruption transparency (Howlett, 2009).

Multiple accounts suggest that NFRD failed to meet the initial expectations (Biondi et al., 2020; European Commission, 2020; Monciardini et al., 2020). Can this failure be attributed to the architecture of the Directive? And can the flaws in the Directive’s architecture be explained by the design of the Directive’s goals and requirements? It is not possible to answer these questions based on the existing literature. The scholarship on corporate anti-corruption transparency refers to regulation extensively but provides limited and incoherent insights in how the regulation works to improve transparency. Literature on regulated transparency documents development and performance of multiple transparency initiatives and highlights the need to match the design of transparency to the risk it targets, but does not cover corporate anti-corruption transparency. Finally, the literature on regulation and regulatory design suggests that regulators often fail to design risk-based regulation because of being subject to the pressures. This strand of literature

does not approach corporate anti-corruption transparency. In the light of adoption and developments surrounding the NFRD, it is worth studying the unique regulatory design of the corporate anti-corruption transparency suggested by it in order to identify main design features which may affect performance of similar regulations such as the CSRD.

This study analyzes the design of anti-corruption transparency under the EU Directive 2014/95/eu. This study, thus, bridges the gap between the literature on corporate anti-corruption transparency, which lacks knowledge about regulatory design of corporate anti-corruption transparency system, and broader literature on regulation of transparency and regulatory design in general, which does not cover corporate anti-corruption transparency.

1.5. Research question

This study explores how corporate anti-corruption transparency emerges and develops under the EU Directive 2014/95/eu.

To answer the main question, the following research questions will be answered in the upcoming chapters.

- How can regulation of corporate anti-corruption transparency be explored analytically? (Chapter II)
- How does corporate anti-corruption transparency emerge as a part of the EU regulatory framework? (Chapter III)
- How do the EU institutions and the EU member states design corporate anti-corruption transparency through regulatory goals and requirements? (Chapter III to VIII)
- How is the design of the NFRD reflected into the transparency practices of the EU largest companies after transposition of the NFRD? (Chapter IX)
- What are the practical and theoretical implications of this research? (Chapter X)

1.6. Conclusion

References to transparency have become ubiquitous in the scholarship and regulation of the last decades. Transparency has been increasingly seen as an antipode of corruption (Eigen, 2006; Klitgaard, 1998; Stiglitz, 2002). The recognition of the importance of the supply side of corruption and the development of corporate non-financial reporting have led to the calls for increased transparency of anti-corruption information in corporate reporting (Barkemeyer et al., 2015; Hess, 2009).

As a result, several voluntary initiatives have been developed. Yet, some skepticism has been expressed regarding the outreach of the voluntary initiatives. The research suggested that companies approached voluntary reporting selectively (Barkemeyer et al., 2015; Blanc et al., 2016; Vale & Branco, 2019). Increasingly, there have been calls for mandatory regulation of corporate anti-corruption transparency (Barkemeyer et al., 2015; Hess, 2009).

Despite calls for state regulation of corporate anti-corruption transparency, the scholarship on corporate anti-corruption transparency has produced an incoherent account of the role of regulation. Scholars have disagreed on the role of voluntary industry regulation (Barkemeyer et al., 2015; Blanc, Branco, et al., 2019; Branco et al., 2019; Branco & Matos, 2016; Vale & Branco, 2019) as well as on the role of anti-corruption legislation and enforcement (Healy & Serafeim, 2016; Joseph et al., 2016). Furthermore, the existing research on anti-corruption transparency did not incorporate the insights from the literature on the regulatory design of transparency (Fung et al., 2007; Graham, 2002; Weil et al., 2013).

In 2014, the European Union has promulgated the Directive 2014/95/eu. The Impact Assessment to the Directive aspired to increase corporate transparency by regulating non-financial and, in particular, anti-corruption disclosure. At the time of adoption, the Directive has been described as a "paradigm shift" in academic literature (Eccles & Spiesshofer, 2015). The Directive has been adopted among concerns about lacking attention to the matter of corruption by the European Union (euobserver, 2017; Salazar, 2012; Transparency International, 2019). Aspired harmonized regulation, applicable to the EU large companies across sectors, was unprecedented.

Time has shown that the Directive 2014/95/eu has largely failed to achieve its goals. This realization has urged the European Commission to launch a proposal for a new CSRD. An extensive study of the regulatory design of the anti-corruption transparency under the Directive 2014/95/eu may allow to clarify further the place of "anti-corruption and bribery" within current CSRD Proposal.

Given the lack of knowledge about the role of regulation in advancing corporate anti-corruption transparency, the lack of studies on regulatory design of corporate transparency and the ongoing efforts to increase anti-corruption transparency through regulation, this study aims at exploring the regulatory design of current attempts to advance corporate anti-corruption transparency.

This study proceeds as follows. Chapter II explains key theories and methods employed by this study. Chapters III to VIII analyze the process of transformation of the value of corporate anti-corruption transparency into the state of transparency under the Directive 2014/95/eu by exploring consecutively the following documents: the Impact Assessment for the NFRD (Chapter III), the Proposal for the NFRD (Chapter IV), the final adopted version of the NFRD (Chapter V), the Communication of the European Commission, setting the guidelines for reporting under the NFRD (Chapter VI), and the transposition laws in Germany (chapter VII) and France (Chapter VIII). These chapters review the context of the regulation and its mechanisms. Chapter IX explores the reflection of NFRD in corporate practices by analyzing the annual reports of the largest French and German companies and matching them with the respective legal provisions. Chapter X concludes.

2. Chapter II. Analytical framework, methods and data

2.1. Introduction

This chapter establishes theoretical and methodological foundations of the study. Firstly, it outlines main theories and concepts in existing literature, highlights relevant definitions of the concepts and connects them in a single framework. Secondly, it defines methods and data employed by the study.

2.2. Analytical framework

2.2.1. Concepts and theories in the literature on corporate anti-corruption transparency

2.2.1.1. Transparency

Literature on corporate anti-corruption transparency has primarily operated with the notions of transparency, corruption and regulation. While actively used, these notions have not always been explicitly defined. This section highlights various conceptualizations of transparency and corruption. It also reviews theoretical connection between regulation and corporate anti-corruption transparency suggested by the literature on corporate anti-corruption transparency.

While the notion of "transparency" is widely used, it is rarely defined (Wehmeier & Raaz, 2012). Furthermore, a significant part of the scholarship, especially within the accounting and financial domain, uses the terms "disclosure" and "reporting" as equivalent or partially equivalent to "transparency". The studies on corporate anti-corruption transparency are not exceptional in this regard. Most of the studies on corporate anti-corruption transparency did not define the term "transparency". Various studies used the terms "transparency", "disclosure" and "reporting" as interchangeable.

Multiple conceptualizations of "transparency" coexist in the transparency-related scholarship, making it unclear "what exactly transparency means" (Forssbæck & Oxelheim, 2014, p. 4). Transparency is conceptualized, in particular, as a value, as a process, as a state, and as a discourse.

Transparency as a value is sometimes defined as the "opposite of secrecy" (Ellias, 1999; Florini, 1998). The notion of transparency is conflated with the notions of "ethics" (Piotrowski, 2014) and "good governance" (Bauhr & Grimes, 2017). As a result, transparency is seen as a governing principle in many areas including public empowerment, justice, and sustainability (Erkkilä, 2012; Forssbæck & Oxelheim, 2014; Mol, 2010). Transparency as a value is usually seen in a positive light and is rarely defined (Wehmeier & Raaz, 2012).

Transparency as a state is primarily understood through the notions of quality and quantity of the information (Albu & Flyverbom, 2019). Since the quality of information is difficult to assess, the empirical studies often substitute quality with quantity. As a result, transparency is being

equated with the "frequency of information disclosure" (T. Berglund, 2015). Understanding transparency through the frequency and quantity allows to develop mathematical models of transparency and measure transparency (T. Berglund, 2015).

Transparency as a process is defined as a process of communication of information between the disclosers and the users (Albu & Flyverbom, 2019; Forssbæck & Oxelheim, 2014; Fung et al., 2007). Albu and Flyverbom (2019) define transparency as "complex communicative, organizational, and social processes rife with tensions and negotiations". Transparency process includes four components: disclosers, users, information and access (Forssbæck & Oxelheim, 2014). Understanding of transparency as a process goes beyond provision of information. Fung et al. (2007) refer to the embeddedness of information in the decision-making as the key feature of an effective transparency policy. At first sight, understanding of transparency as a process seems similar to the understanding of transparency as a state. Yet, it shifts focus from information to the parties in the information exchange.

Transparency as a discourse refers to construction and misconstruction of transparency. Scholars suggest that transparency is imminently constructed by certain actors, covers certain subjects, and empowers limited (if any) stakeholders (Albu & Flyverbom, 2019; Coombs & Holladay, 2013; Fenster, 2015). In particular, in relation to corporate reporting, scholars emphasize the strategic use of transparency. Nielsen and Madsen (2009) emphasize the tension between the goal of provision of abundant information to the stakeholders and the emphasis on the "management driven information". As a result, "users of intellectual capital reporting may become victims of management's selected "right" information, by Strathern (2000) described as the "tyranny of transparency" (Nielsen & Madsen, 2009, p. 853). In a similar vein, Coombs and Holladay warn that "the pseudo-panopticon allows corporations to claim transparency in CSR communication and for stakeholders to accept that claim" (2013, p. 213).

Empirical literature on anti-corruption transparency has embraced understanding of transparency as a state. Accordingly, most of the studies applied semi-quantitative analysis to measure the levels of transparency. While understanding of transparency as a state is common and measuring transparency as a number of words or criteria is prevalent in the literature, a narrow focus on information obscures the role of the disclosers and users of the information and leads to the paradoxical results. For example, the number of references to "corruption" has been seen as a proxy for both corruption and anti-corruption. Accordingly, some research has suggested that increased references to "corruption" should be treated as a negative sign, because they mean that the organization is more corrupt (Lopatta et al., 2017). In contrast, a majority of scholarship has seen the number of references to "corruption" as representing company's commitment to anti-corruption.

2.2.1.2. Transparency and corruption

Transparency as a value is sometimes seen as an antipode of corruption (Eigen, 2006; Klitgaard, 1998; Stiglitz, 2002). Furthermore, it is suggested that information disclosure can decrease

information asymmetry. Accordingly, transparency can mitigate principle-agent and collective action problems which are in the core of corruption (Rothstein & Varraich, 2014). Multiple anti-corruption initiatives have appealed to transparency and have used disclosure of information as a regulatory strategy (Eigen, 2006; McGee et al., 2010).

Literature on corporate anti-corruption disclosure uses terms “corruption” and “bribery” without drawing a clear line between them. Multiple studies refer to “corruption” as well as “bribery” (Issa & Alleyne, 2018; Joseph et al., 2016). Furthermore, while studies use terms “corruption” and “anti-corruption”, they often refer to the same phenomenon, measured in the same way (Andrés et al., 2021; Lopatta et al., 2017). A majority of the studies fail to define “corruption” or “bribery”. The studies which define these terms tend to refer to the “public-office centered” definition of corruption. For example, Blanc et al. (2019) provide the following definition:

> “A widely accepted definition of corruption is that given by the nongovernmental organisation Transparency International (TI): ‘corruption is the abuse of entrusted power for private gain’ (Errath et al. 2005: 7)”

On the other hand, Saenz et al. (2018) do not define corruption but refer to a broad scope of practices including “fraud, influence peddling, illicit gain, abuse of authority, nepotism, misappropriation of funds, and embezzlement”.

The “public-office-centered” definition of corruption is commonly used in the literature:

> “The public-office-centered definition should really be understood as a minimal definition with which very few scholars would disagree. It is a ‘least common denominator’ in the sense that all the other definition types presuppose the misuse of some public office for some form of private gain” (Farrales, 2005, p. 25)

At the same time, there are concerns expressed over the ability of the “public-office” definition to capture the practices beyond bribery (Johnston, 2005). Furthermore, scholarship identifies a number of “corrupt” practices which might not fall within the definition, in particular, the institutional corruption, capture, and fraud. If all these practices are included, corruption may be defined in a very broad term as an antipode of the “good governance” (Kaufmann & Vicente, 2011; Mussie, 2016) and “quality of government” (Rothstein, 2011).

The scholarship seems to disagree on the relationship between corruption and practices such as lobbying, political contributions, and revolving doors. While these practices are often considered legitimate as long as they are legal, some authors consider them to be the ultimate manifestations of corruption in developed countries (Campos & Giovannoni, 2007; Kaufmann & Vicente, 2011).

Furthermore, “public-office-centered” focuses on the holder of the public office which abuses his or her power, but it does not mention the one who pays the bribe (or otherwise stimulates the

official to abuse his power). Thus, it overlooks the "supply side" of corruption (Sikka & Lehman, 2015).

Scholarship suggests that failure of multiple anti-corruption initiatives may be attributed to the contestation of the notion of corruption as well as inability of the initiatives to differentiate between different corrupt practices. In particular, corruption is being conceptualized as a "general thing" which makes it difficult to understand specific forms of corruption" (Zhang et al., 2019, p. 519). In contrast, anti-corruption initiatives should be tailored to specific forms of corruption (Jancsics, 2019).

2.2.1.3. Coercive pressure and anti-corruption transparency

The studies aiming to explain the antecedents of the anti-corruption disclosure relied primarily on three theories: legitimacy theory; stakeholder theory; and institutional theory. The legitimacy theory suggests that companies disclose information to legitimize behavior to their stakeholders (Deegan, 2019). According to the stakeholder theory, the organizations are expected to take into account the interests of different stakeholders in order to get legitimacy among them (Freeman et al., 2012; Parmar et al., 2010). The institutional theory suggests that the organizational behavior, including the transparency practices of the companies, is shaped by various institutional forces (DiMaggio & Powell, 1983).

Despite extensively referring to regulation, not all studies on corporate anti-corruption transparency have clearly articulated theoretical connection between regulation and anti-corruption transparency. For example, an extensive study of the antecedents and effects of corporate anti-corruption transparency, conducted by Healy and Serafeim (2016), did not refer to a particular theory to explain the connection between the regulatory environment and corporate anti-corruption transparency despite including variables directly related to regulation.

The studies which attempted to connect regulation and transparency theoretically, referred to the institutional theory. There are three types of institutional pressure for transparency (Clemens & Douglas, 2006; DiMaggio & Powell, 1983; Issa & Alleyne, 2018). Mimetic pressure arises when companies are trying to imitate the behavior of their competitors in order to outperform them (DiMaggio & Powell, 1983). To simplify, if companies get competitive advantage through disclosure of non-financial information, more companies at the market will adopt this strategy. Normative pressure arises from the norms adopted by professional and industry associations (DiMaggio & Powell, 1983). For example, voluntary stakeholder initiatives such as the UN Global Compact and the related Reporting Guidance on the 10th Principle against Corruption issued by Transparency International, can be seen as the sources of normative pressure (DiMaggio & Powell, 1983). Coercive pressure results from the actions of the organizations on which the company depends (DiMaggio & Powell, 1983). Coercive pressure is not limited to state regulation, but state regulation is often seen as the main source of coercive pressure (DiMaggio & Powell, 1983). For example, DiMaggio and Powel (1983) referred to the environmental regulation as a source of coercive pressure.

2.2.2. Concepts and theories in the literature on (transparency) regulatory design

2.2.2.1. Regulated transparency systems and architecture of regulated transparency

The case studies on regulated transparency have developed their own vocabulary. In particular, Fung et al. (2007; 2013) have coined the term “targeted transparency” or “targeted transparency system” to describe government regulation of transparency. Authors emphasized that targeted transparency differs from the “right-to-know” and “open-government” policies because targeted transparency aims “to reduce specific risk” (Weil et al., 2013, p. 1410). Authors referred to “the detailed federal requirements that publicly traded companies disclose their profits and losses” as “the oldest and most trusted transparency system (Fung et al., 2007, p. xi).

Fung et al. (2007; 2013) further used the term “transparency architecture”. The term “transparency architecture” has been originally used by Graham to define the choices made by the regulators regarding “what to reveal, to whom, and how” in the targeted transparency regulation (Graham, 2002). The notion of “architecture” is especially important since Fung et al. (2007; 2013) suggest that “understanding the architecture and distinctive character of targeted transparency provides a basis for understanding where and why policies succeed or fail”.

Literature on transparency has established multiple aspects of transparency architecture. Transparency regulations establish the scope of disclosers and incentives and sanctions in order to compel disclosers to disclose (Fung et al., 2007; Graham, 2002). Transparency regulations promote the quality of disclosed information by articulating the scope of disclosure and metrics and establishing the audit and inspection requirements (Fung et al., 2007; Graham, 2002). Transparency regulations promote availability and accessibility of information through establishing vehicle, timing and language of disclosure (Fung et al., 2007; Graham, 2002). Finally, transparency regulations tailor information to the users’ needs by defining the audience or the users of information, and by acknowledging and incorporating the users’ needs (Fung et al., 2007; Graham, 2002). Clearly, targeted transparency systems and transparency architecture are not limited to improving the state of information but refer to the totality of the regulatory choices within all components of the transparency process.

2.2.2.2. Regulation and regulatory design

Taking into consideration multiple definitions of regulation, Baldwin et al. (2012) differentiate between three “senses” in which the word regulation is being used. The narrowest one confines regulation to the “specific set of commands”, while the broadest includes “all forms of social and economic influence”. Within this broadest approach, the concepts of “private regulation”, “self-regulation”, “industrial best practices” and “networked governance” coexist with public forms of control and influence. Baldwin (2012) eventually suggests that regulation is most commonly defined as “deliberate state influence”. Understood as a state influence, regulation still includes multiple modes of influence, including both traditional “command and control” strategies and incentive-based and information-based strategies (Baldwin et al., 2012). The last ones have

developed rapidly over the last few decades and covered multiple issues from the restaurant hygiene to government procurement (Fung et al., 2007; Mol, 2010).

It is necessary to acknowledge that regulation also does not exist in vacuum. Along with the predictions of the institutional theory, the regulators are subject to coercive, normative and mimetic pressures (DiMaggio & Powell, 1983). Baldwin et al. (2012) differentiate between pressures from public, interest group and other institutions (Baldwin et al., 2012). The regulations emerge and develop under pressure (Hood et al., 2001; Howlett et al., 2015). Regulatory design is "the deliberate and conscious attempt to define policy goals and connect them to instruments or tools expected to realize those objective" (Howlett et al., 2015, p. 291). Regulatory goals represent the strategic objectives that need to be achieved (Howlett et al., 2015). Regulatory instruments are tools developed to achieve the goals (Howlett et al., 2015). Pressures lead to the replacement, layering, drift and conversion of the goals and instruments (Kern & Howlett, 2009). "Replacement" represents a managed rearrangement of goals and instruments (Kern & Howlett, 2009). However, in multiple cases, replacement does not occur. Instead, goals and instruments are moving in less controlled way. Random movement of goals and instruments may be represented by layering, drift and conversion (Howlett & Rayner, 2013). Layering is "a process whereby new elements are simply added to an existing regime without abandoning previous ones, typically leading to both incoherence amongst the goals and inconsistency with respect to the instruments and settings used" (Kern & Howlett, 2009, p. 395). Drift and conversion processes are used to describe situations where either new goals are being introduced without instruments being adjusted or instruments evolve without goals being changed (Howlett & Rayner, 2013; Kern & Howlett, 2009).

The processes of layering, drift and conversion are not exceptional. Due to uncertainty and contestation of regulation, layering, drift and conversion may actually be more common than managed replacement (Howlett & Rayner, 2013; Kern & Howlett, 2009). However, as a result of layering, drift and conversion, the coherence and consistency between the goals and the instruments is often being lost (Howlett et al., 2015). Regulatory coherence and regulatory consistency are the notions used to establish the fitness of regulatory goals and instruments (Hood et al., 2001; van Geet et al., 2019). The combination of regulatory goals is characterized by the regulatory coherence i.e. the "ability of multiple policy goals to co-exist with each other and with instrument norms in a logical fashion" (Howlett & Rayner, 2013). Consistency is "the ability of multiple policy tools to reinforce rather than undermine each other in the pursuit of policy goals" (Howlett & Rayner, 2013). Congruence relates to the ability of goals and instruments to work together (Howlett & Rayner, 2013). According to Kern and Howlett (2009), layering, drift and conversion lead to specific forms of incoherence. Layering leads to inconsistent instruments and incoherent goals (Kern & Howlett, 2009, p. 395). Conversion leads to inconsistent instruments (Kern & Howlett, 2009, p. 395). Drift leads to incoherent goals (Kern & Howlett, 2009, p. 395). As a result of layering, drift and conversion, regulation may lack regulatory coherence at several levels (Kern & Howlett, 2009, p. 395).

According to Howlett (2009), "policy goals and means exist at different levels of abstraction and application". Howlett differentiates between three levels at which regulatory goals and instruments can be studied. At macro-level, regulatory goals and instruments can be studied within "governance arrangements" i.e. the compilations of political actors, ideas and institutional rules prevalent in a specific jurisdiction at the moment when the policy is being made (Howlett, 2009). Howlett refers to the studies of Mark Considine (2001) and Theodore Lowi (1972). At meso-level, regulatory goals and instruments can be studied within policy mixes combining various regulatory strategies (Howlett, 2009). At micro-level, goals and instruments can be explored within "operational plans" i.e. specific regulatory strategies (Howlett, 2009). At this level, "tools should be "calibrated" in order to achieve policy targets, such as, for example, providing a specific number of additional police on the streets within a specified period of time, or a specific level of subsidy to non-profit groups to provide additional hospital beds or other types of health services within the same set period of time" (Howlett, 2009, p. 74). The micro-level is further represented in the notion of a program theory. The program theory "is the overarching theory or model of how an intervention is expected to work" (Maden et al., 2017, p. 2). Accordingly, the program theory connects the goals and the instruments. In the absence of a coherent program theory, there is a risk of regulatory failure (Howlett, 2009; Pawson, 2006).

2.2.3. Theoretical and conceptual framework in this study

This study looks at the regulatory design of the Directive 2014/95/eu and manifestations of the regulatory design in the corporate practices that followed the Directive.

Theoretical link between corporate transparency practices and regulation follows from the notion of coercive pressure (Clemens & Douglas, 2006). Transparency practices, as a part of the organizational behavior, are shaped by mimetic, normative and coercive pressures (Clemens & Douglas, 2006). Coercive pressure is exercised by the organizations on which the company depends (DiMaggio & Powell, 1983). Regulation is seen as a key manifestation of coercive pressure (Clemens & Douglas, 2006; DiMaggio & Powell, 1983). The literature on corporate anti-corruption transparency suggest that "coercive" regulation may help to solve the problem of missing indicators and lacking reporting (Hess, 2009). By calling for state regulation of corporate transparency, the research explicitly or implicitly favors coercive pressure over other types of pressure (Clemens & Douglas, 2006; Issa & Alleyne, 2018; Sari et al., 2020).

This study acknowledges the long history of private regulation of anti-corruption corporate transparency. At the same time, in line with coercive pressure hypothesis, it focuses on the "deliberate state influence" as manifested by adoption of the EU Directive 2014/95/eu (Baldwin et al., 2012). This study sees NFRD as a source of coercive pressure (Clemens & Douglas, 2006; Issa & Alleyne, 2018; Sari et al., 2020).

The existing literature on corporate anti-corruption transparency does not go further than coercive pressure hypothesis in explaining the link between regulation and transparency

practices. This study focuses on regulation. It, thus, integrates theories from the literature on targeted transparency systems and regulatory design in broader theoretical framework.

Literature on targeted transparency clarifies the link between the design of transparency regulations and the ability of such regulations to exercise coercive pressure (Fung et al., 2004; Weil et al., 2013). Literature on targeted transparency sees government transparency regulations targeting specific risks as targeted transparency systems (Fung et al., 2004; Weil et al., 2013). In this study, the NFRD is seen as an example of "targeted transparency" as it aims "to reduce specific risks". Literature on targeted transparency systems suggests that each transparency system has its unique architecture (Fung et al., 2004; Weil et al., 2013). Transparency architecture is not limited to the quality and quantity of the information, but represents the totality of the regulatory choices within four components of the transparency process: the disclosers, the users, the information and the access (communication channel) (Weil et al., 2013). In line with this understanding of transparency architecture, this study looks at all components of transparency as a process of information communication between the disclosers and the users. This understanding allows to analyze the requirements of the Directive structurally within four components. Furthermore, it allows to see the manifestations of the Directive's design in transparency practices beyond the number of references to transparency.

According to the literature on targeted transparency systems, the ability of regulations to exercise coercive pressure depends on the fitness of transparency architecture for the selected risk. Literature on regulated transparency suggests that transparency systems should be targeted i.e. they should match the problem they are supposed to solve (Weil et al., 2013).

The literature on regulatory design suggests that the match between the regulatory goals and instruments is a matter of the regulatory design (Howlett et al., 2015). Regulatory coherence in general depends on coherence of the goals, consistency of the instruments, and congruence between the goals and the instruments (Howlett & Rayner, 2013). Regulatory goals and instruments are often studied at macro- and meso-levels (Béland, 2007; Considine, 2001; Kern & Howlett, 2009; Lowi, 1972; van Geet et al., 2019). The micro-level, however, often remains overlooked. The literature on regulatory design concentrates on higher-level arrangements, and the literature on implementation looks at how the goals and instruments are "dashed in Oakland" rather than designed "in Washington".

In the EU, which is a unique supranational regulatory regime, regulation is being shaped at multiple levels (Kaeding, 2007; Toshkov, 2007; Treib, 2014). This is especially true for the EU Directives. According to Article 288 of the Treaty on the Functioning of the European Union the EU Directive "shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods". The member states implement the EU Directives through the process of "transposition". The results of transposition may vary across the members states (S. K. Berglund, 2009). Article 288, thus, differentiates between the goals ("results"), which are established primarily at the EU level, and precise legal requirements ("forms and methods"), which are devised the member states (Treib,

2014). At the same time, the analysis of the NFRD demonstrates that desired goals and requirements are formulated and reformulated at both European and national level. The desired goals are formulated through defining what needs to be achieved (for example, "comparability of the disclosed information"). The requirements are defined through imposing less or more specific obligations on the participants of the transparency process (primarily disclosers).

Given the multi-level nature of the EU regulation and transposition, it makes sense to analyze the regulatory design within one regulation and application of one regulatory strategy (in this case, "transparency" or "information disclosure") at different level instead of looking at the policy mix within one level of the EU (Tosun & Treib, 2018). Thus, it is appropriate to study the goals and instruments suggested by the EU Directive 2014/95/eu to explore if the processes of the institutional change manifest themselves at the micro-level of the EU regulatory process. In accordance with Howlett (2009), this study sees NFRD as an "operational plan", in which concrete instruments are calibrated to achieve the goals.

Regulatory coherence may be undermined by processes of regulatory change. In line with Kern and Howlett, this study refers to four patterns of regulatory change: replacement, layering, drift and conversion. "Replacement" represents a managed rearrangement of goals and instruments based on the assessment of the market failure and adjustment of the regime components to the scope of market failure (Kern & Howlett, 2009). Layering is "a process whereby new elements are simply added to an existing regime without abandoning previous ones, typically leading to both incoherence amongst the goals and inconsistency with respect to the instruments and settings used" (Kern & Howlett, 2009, p. 395). Drift "occurs when new goals replace old ones without changing the instruments used to implement them" (Kern & Howlett, 2009, p. 395). Conversion involves keeping goals intact while instruments are changing (Kern & Howlett, 2009, p. 395). In contrast to replacement, layering, drift and conversion result from pressures rather than from assessment of the scope of market failure (Howlett et al., 2015; Kern & Howlett, 2009).

Regulation of corporate corruption may be especially challenging due to the lack of a single definition and a variety of corrupt practices (Farrales, 2005). It might be difficult to formulate and assess the risk of corporate corruption (Jancsics, 2019). Furthermore the risk of corporate corruption may be contested (Sikka & Lehman, 2015). The assessment of the corporate corruption risk and the pressures on regulators affect the regulatory design of corporate anti-corruption regulation (Kern & Howlett, 2009). In order to incorporate multiple definitions and manifestations of corruption, this study does not focus on a particular notion of corruption, but rather looks at how NFRD defines and delineates corruption.

Figure 1 demonstrates the links between the concepts and theories which informed current study. As demonstrated by Figure 1, assessment of the risk of corporate corruption and pressures on the regulators define the design of corporate anti-corruption transparency regulation. Regulatory design affects the transparency architecture of a specific transparency system. Transparency architecture to a large extent conditions success of regulated transparency in exercising the coercive pressure.

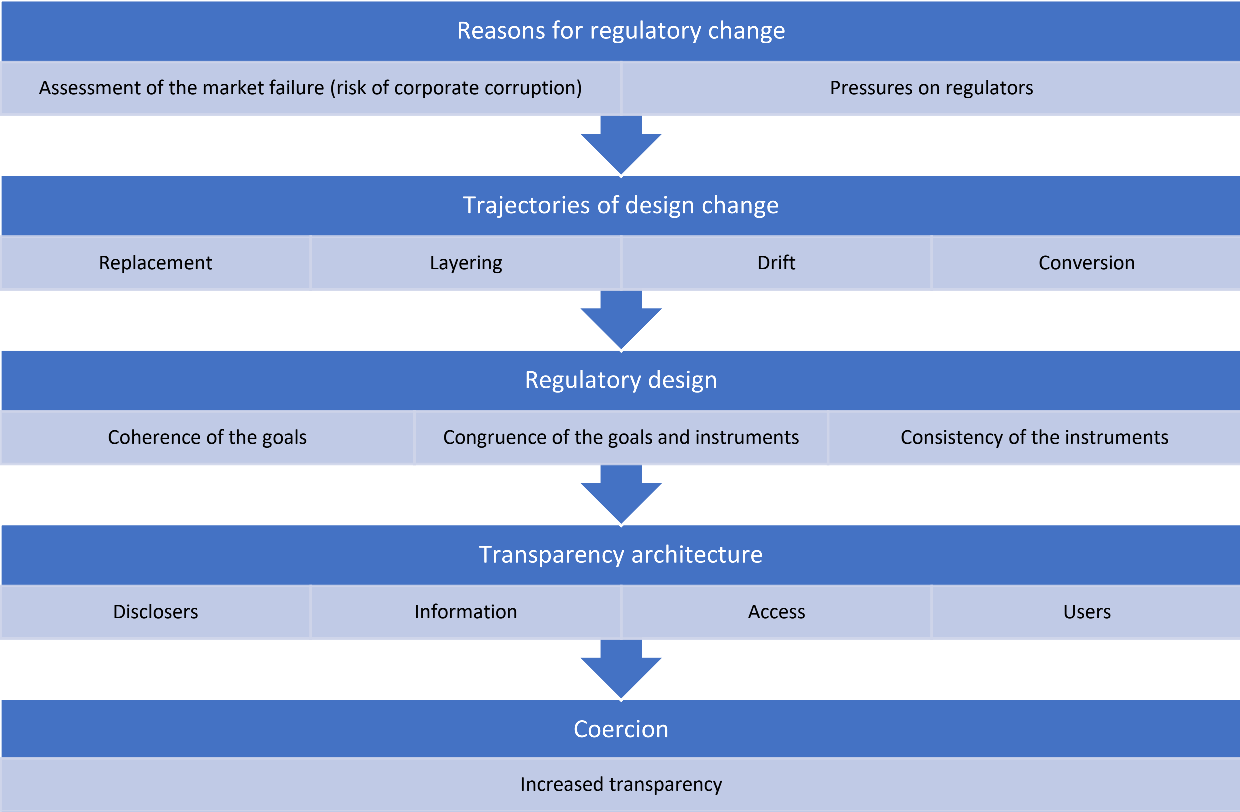


Figure 1. Theoretical framework

Since the Directive-based regime includes both the goals ("results") and precise legal requirements ("forms and methods"), transparency architecture of the NFRD differentiates between these two dimensions. As a result, the transparency architecture of the NFRD Directive is analyzed in this study by referring to four components of the transparency process: disclosers, information, access and users; and two dimensions of the regulatory framework: goals and requirements. Table 1 demonstrates the integration of components and dimensions in a single framework.

	Goals (what)	Requirements (how)
Disclosers (senders)		
Information (message)		
Access (channel)		
Users (recipients)		

Table 1. Conceptual framework. Components and dimensions of corporate anti-corruption transparency system

2.3. Methods of data analysis

2.3.1. Methods in the literature on corporate anti-corruption transparency

Existing corporate anti-corruption transparency research has concentrated on exploring correlation between the state of corporate anti-corruption transparency, its antecedents and effects. The research has operationalized the variables primarily in quantitative terms.

To operationalize regulation, Healy and Serafeim (2016) used quantitative indicators such as home country enforcement (measured by the number of prosecutions in the home country in 2005 and 2006, deflated by its share of world exports based on the OECD enforcement report on bribery and corruption) and country disclosure index (La Porta et al., 2006). Day and Chambers (2011), Schonfelder et al. (2016), Islam et al. (2018) and Joseph et al. (2016) relied on the case studies of regulation. Their analysis was limited to the description of the state of general anti-corruption legislation and enforcement. Due to the use of quantitative measurements of regulation and brief overview of legislation to operationalize regulation current corporate anti-corruption transparency literature did not reveal the development and design of regulation of corporate anti-corruption transparency.

To operationalize transparency, the majority of the studies applied various forms of content analysis methodology. There are different approaches within content analysis methodology (Krippendorff, 2004). In the narrowest way, the content analysis methodology is equated to the frequency analysis. Content analysis as described by Krippendorff (2004) is primarily a quantitative method. It is based on (a) identification of the keywords; (b) counting of words, sentences and/ or paragraphs that include the identified keywords; (c) reporting on the frequencies of appearance of the resulting frequencies i.e. number of words, sentences and paragraphs related to the identified keyword (hence, Schreier uses the term "frequency analysis" to describe the quantitative variation of the content analysis). In the broader sense, the content analysis includes not only counting, but also differentiating between different categories of the information based on defined criteria. It is necessary to acknowledge, however, that criteria-based content analysis is also often quantitative as it concentrates on the number of completed criteria rather than on their nature. At the same time, content analysis in the broadest sense includes the analysis of the meaning of the reported information and its interpretation. Qualitative approach to content analysis is sometimes associated with the thematic analysis and document analysis (Bowen, 2009; Boyatzis, 1998; Nowell et al., 2017).

Out of analyzed forty-five studies, several studies used existing measurements of transparency (primarily created by Transparency International) and keyword-based content analysis. The studies applying keyword-based methodology developed lists of keywords and reported on the frequency of their appearance. The majority of studies (32) used the criteria-based approach. The studies applying these methods developed lists of categories (criteria) and reported on either a) the presence/ absence of a certain category of the information in the report and the number of the categories reported; or b) the number of words/ sentences/ paragraphs dedicated to a

specific category/ criteria. The criteria-based approach varied significantly across the studies. Some studies (27) focused on the (partial) presence of the criteria while others (5 studies) reported the number of words/ sentences/ paragraphs dedicated to a certain criteria. In two studies, the use of criteria remained unclear. Different studies used significantly different number of criteria (from a single criteria to over 40 criteria with a median of 13 criteria and an average of around 20 criteria). The nature and the scope of the criteria also varied. The studies usually referred to the reporting frameworks developed by Transparency International and the Global Reporting Initiative, but application of these frameworks varied. A few studies combined several frameworks to develop a list of criteria. Finally, a few studies engaged in more profound qualitative review and comparison of the disclosed information and interpretation of its substance (thematic and document analysis, interpretative analysis) (Day & Chambers, 2011; Gordon & Miyake, 2001; Schonfelder et al., 2016).

The use of (semi-)quantitative criteria analysis to operationalize transparency has led to several limitations of the current research. In particular, the analysis of the quality of the information has been largely substituted with analysis of the quantity. By counting the number of words or criteria, the researchers assumed that every new reference to corruption is meaningful. The use of varying criteria suggested varying interpretation of corporate anti-corruption transparency. Furthermore, some paradoxical interpretation of the quantity of disclosed information occurred: some studies suggested that increased references to "corruption" should be treated as a negative sign, because they demonstrate that the organization is more corrupt (Lopatta et al., 2017). In contrast, most studies have considered increased references to "corruption" as a positive sign of the companies' increased commitment to anti-corruption.

2.3.2. Methods in the literature on (transparency) regulatory design

In contrast to the literature on corporate anti-corruption transparency, the literature on regulated transparency systems have primarily employed case studies to reveal the architecture of transparency systems. Graham (2002) has performed case studies of transparency systems in three different fields: toxic pollution, medical errors and food labeling. Graham (2002) demonstrated the unique architecture of each transparency system by tracing the emergence and development of each system and the practice that each system created. Later, Fung, Weil and Graham (2007; 2016) performed eighteen case studies of transparency systems in various fields. By carefully tracing the origination and development of transparency systems, authors suggested that transparency presented an extremely powerful regulatory strategy, but it often failed due to the gaps in transparency architecture. Fung, Weil and Graham (2007; 2016) demonstrated that architecture of each transparency policy is unique. Nevertheless, they also established several principles that can guide each transparency system. In particular, transparency systems should closely match the matter that they address, establish clear metrics and quality assurance mechanisms to enhance accuracy and comparability, incorporate feedback mechanisms and be supported by sanctions and enforcement.

Scholarship on the regulatory design explores how the regulatory change occurs and design develops in time. To answer "how" question, case studies are the most appropriate method of data analysis (Yin, 2003). Studies on regulatory design also often follow case study methodology in order to uncover the patterns of the policy change. Single-case study designs are a common practice in this field (Béland, 2007; Kern & Howlett, 2009; van Geet et al., 2019).

2.3.3. Method of data analysis in this study

2.3.3.1. General approach to data analysis: case study and qualitative document analysis

In comparison to the previous literature on corporate anti-corruption transparency, this study shifts the focus from measuring correlations between various antecedents of transparency and the state of transparency to analyzing the specific regulatory design of corporate anti-corruption transparency, proposed by the EU in the NFRD. The study looks at how regulation is designed to advance transparency. The emphasis on "how" dictates a need for qualitative analysis in the form of a case study (Yin, 2003). The case study approach is appropriate for capturing the complexity of the goals and instruments in the EU and national laws and explain rather than just measure the design and the effects the Directive 2014/95/eu (George & Bennett, 2005). Accordingly, this study is performed in the form of a qualitative case study where the main case is the EU Directive 2014/95/eu. This approach is in line with qualitative case-based approach of the literature on regulated transparency systems (Fung et al., 2007; Graham, 2002; Mol, 2015).

Within the single case study, two smaller case studies are embedded. These embedded case studies pertain to the transposition of the NFRD in the member states. The EU Directive, as opposed to the EU Regulation, does not have an immediate direct effect i.e., it does not create rights and obligations for the private parties. The EU Directive sets out the goals to be achieved by the member states in the process of transposition. Therefore, the member states shape the final rules of the Directive (Weatherill, 2012). Furthermore, the main case study includes six case studies pertaining to the corporate anti-corruption transparency practices of six major EU companies after the adoption of the Directive. Corporate anti-corruption transparency practices are included to explore whether the Directive's regulatory design is reflected in the annual reports. The study eventually demonstrates that corporate reports reflect major issues with the design of the Directive. In particular, companies fail to incorporate and/ or align major notions such as transparency and corruption, leading to limited materiality, accuracy and comparability of the information.

This study uses document analysis (or thematic analysis) as its primary method (Bowen, 2009). Documents analysis includes coding of the documents according to the specific themes and qualitative analysis of the meaning of the coded information (Bowen, 2009). Unlike content analysis, which is currently used in the literature on corporate anti-corruption transparency, document analysis concentrates on the meaning rather than frequency (Bowen, 2009). Both regulation and transparency exist on paper. Thus, both regulation and transparency manifest

themselves in the documents. Documents serve as the ultimate evidence of regulatory and corporate construction of the anti-corruption transparency. Furthermore, the documents allow tracking the change in the design of transparency regulation (Bowen, 2009). There is a huge potential in researching the attitudes of stakeholders to the regulation of corporate anti-corruption transparency and the corporate reports. Yet, before such research is performed, it is necessary to understand the design proposed by regulation and reflected in the corporate reports. This study focuses on the analysis of the regulatory design and related transparency practices.

This study relies on qualitative and systematic document analysis in all chapters. The data in the regulatory documents as well as in the corporate documents is coded based on the pre-defined themes. These themes are based on previously identified components and dimensions of transparency. Thus, methodology of the research is directly connected to the earlier proposed analytical framework.

All documents in this study are manually collected, coded and analyzed based on the coding scheme. The coding combines deductive and inductive approach. The analytical framework is used to develop the first set of codes. However, the lower-level codes are added based on the analysis in order to differentiate between different matters within one theme.

2.3.3.2. Analysis of the regulatory documents

The regulatory documents are coded manually. In the beginning, eight codes are used based on four components of the transparency process/ transparency architecture and two dimensions. However, to manage complexity, at the later stages additional lower-level codes are used to differentiate between topics within eight existing themes. For example, in relation to the disclosing entities, at least three lower-level codes are used: (1) range of disclosing entities, (2) clarity regarding the scope of reporting entities, and (3) and enforcement and compliance. Table 2 demonstrates main lower-level codes pertaining to each theme.

	Goals	Requirements
Disclosers (senders)	Targeted range of disclosers	Criteria for identifying the disclosers
	Clarity concerning the range of disclosing entities	Criteria for identifying the disclosers
	Mandatory transparency system, compliance	Established sanctions, incentives, and enforcement
Information (message)	Materiality, relevance	Requirements to the scope of disclosed information and metrics

	Accuracy, clarity, comparability, consistency	Requirements to the scope of disclosed information and metrics Requirements to the quality assurance and audit
Access (channel)	Availability, usability, understandability, accessibility, comparability, consistency	Requirements regarding the vehicle, structure, language and language of disclosure
	Timeliness	Requirements regarding the timing of disclosure
Users (recipients)	Users' satisfaction	Identification of users and tailoring of scope, metrics, vehicle and structure of disclosure to the users' needs

Table 2. Codes used for analysis of the regulatory documents

2.3.3.3. Analysis of the corporate reports

Corporate reports are analyzed to explore the reflections of the regulatory design in the corporate anti-corruption transparency practices. The study traces main concepts introduced by the Directive within the corporate reports, such as the concepts of "certain large undertakings", "materiality", "quality assurance", "policy" and accessibility. The study of corporate reports allows to map the whole "lifecycle" of the Directive and explore how coercive pressure is actually implemented in practice.

For this study the reports of the companies are manually collected from their websites. This is necessary since the Directive 2014/95/eu does not establish a vehicle of reporting. The reports are also analyzed manually due to the absence of provisions regulating the place of information about corruption in the corporate reports.

The study of the corporate reports presents a challenge due to the volume of the information and the lack of systematic approach by the companies (which will be discussed later in more detail). Interestingly, the companies pay limited attention to the accessibility of the information and the users (these findings will be discussed later and mentioned here only to explain the role of the coding scheme in the organization of data within the "information" theme). Within the corporate reports, the process of transparency is largely manifested within the achieved state of transparency i.e., within the "information" or "message" theme.

To systematize the data within the "information" theme, a coding scheme is developed. In the development of the coding scheme, special care is taken a) to integrate the provisions of the

Directive; b) to exclude bias towards a particular private framework; c) to integrate all information from the reports (subject to limitations indicated in the section on data collection).

Accordingly, the coding scheme is built upon the provisions of the Directive. The Directive broadly formulates the reporting items: a brief description of the undertaking's business model; a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; the outcome of those policies; the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; non-financial key performance indicators relevant to the particular business.

The Directive-based codes represent the first level of the coding scheme. The second level of the coding scheme is based on the indicators used by voluntary reporting standards as well as the information from the reports. The reporting standards suggested by the Directive and the Commission's Communication are used to develop the coding scheme. The indicators are further presented in the most neutral ways (most of the frameworks focus on the positive developments in anti-corruption and neglect negative ones). The resulting codes are compared and refined inductively based on the information which actually appears in the reports. As a result, it is possible to assign code to almost all the information from the reports. Nevertheless, the "Other" code captures everything beyond the developed codes.

As a result, an extensive coding scheme is elaborated for the analysis of the reporting items. Table 3 demonstrates the coding scheme:

Code	Explanation of the code and example
Business model and corruption risk: antecedents of corruption risk	The information about the aspects of the business model which may create corruption risks. "TOTAL is present in more than 130 countries, some of which have a high perceived level of corruption according to the index drawn up by Transparency International" (Total, 2018, p. 208).
Business model and corruption risk: principal risks	The information about the high-risk regions and operations. "Our risk-minimization measures focus in particular on sales companies in high-risk countries and business relationships with wholesalers and general agencies worldwide" (Daimler AG, 2017, p. 232)
Business model and corruption risk: risk assessment and risk management tools and processes	The information about risk management and risk assessment tools, processes, and resources. "The Group Compliance function undertakes an annual Compliance Risk Assessment exercise via which entities are required to identify

	the most significant compliance risks to which they are exposed" (AXA, 2017, p. 159)
Policies and due diligence: information about compliance and anti-corruption commitments	The information about anti-corruption commitments expressed both as company commitments and management commitments "Compliance is an indispensable part of the culture of integrity at Daimler" (Daimler AG, 2017, p. 133)
Policies and due diligence: Information about general anti-corruption policy and prohibition of corruption	The information about the presence of a compliance program and general anti-corruption policy (policy prohibiting corruption). "Our compliance activities focus on adhering to all applicable anti-corruption regulations, the maintenance and promotion of fair competition…" (Daimler AG, 2017, p. 133)
Policies and due diligence: information about risk-specific policies and procedures (e.g., policies on sponsorships and policies on gifts, etc.)	The information about policies and procedures for regions and operations identified as high risk. "Early 2020, a rule was also adopted to deal with the recording and accounting of expenses covered by the anti-corruption compliance rules" (Total, 2019, p. 239).
Policies and due diligence: Information about awareness raising, including training and communication	The information about communication and awareness-raising for both employees and other parties. "…the employee training programme: the Group's employees have an essential role in managing the reputation risk…" (Total, 2017, p. 398);
Policies and due diligence: information about (internal and external) human resources allocated to the anti-corruption compliance and responsibilities	The information about human and material resources dedicated to compliance and anti-corruption, including fully dedicated employees as well as managers and Board members with oversight responsibilities, explanation of responsibilities. "On a regular basis, the Group Compliance function reports to the Group Audit Risk & Compliance Committee, the Audit Committee, and to the Board of Directors (as required) on significant compliance matters" (AXA, 2017, p. 159).
Policies and due diligence: information about monitoring and control, including used technical tools	The information about processes used for monitoring and control of operations for identification and prevention of corruption "The Group Compliance function has implemented a number of monitoring processes" (AXA, 2017, p. 159)
Policies and due diligence: information about	The information about policies and processes regarding raising concerns and obtaining advice.

whistleblowing, advice, and feedback mechanisms	“Employees are able to obtain advice on compliance issues by writing to dedicated e-mail addresses” (Volkswagen AG, 2017a, p. 45)
Policies and due diligence: Information about investigation-related policies and processes	The information about measures taken by the company to investigate possible violations identified via whistleblowing or monitoring. “An investigation is only initiated after very careful review of the information and where there are concrete indications of a breach of the rules” (Volkswagen AG, 2019b, p. 28).
Policies and due diligence: Information about the incentives, sanctions, and contract clauses supporting the anti-corruption rules.	The information about incentives and sanctions available to stimulate/ discourage compliant behavior. “With regard to those cases that are closed “with merit,” appropriate response measures are decided in line with the principles of proportionality and fairness. Such measures are only taken if the investigation of the case in question leaves no doubt of misconduct on the part of the accused individual(s)” (Daimler AG, 2017, p. 229).
Outcomes: information on public legal cases	The amount and nature of official legal and court cases related to corruption. “Pursuant to a judgment issued on April 4, 2016, the Potenza Criminal Court found four employees to be guilty of corruption, with two of these employees also being found guilty of misappropriation in connection with the purchase of land” (Total, 2018, p. 86).
Outcomes: information on the outputs of the awareness raising and training;	The quantitative and qualitative outputs of the awareness and training “In 2017, around 219,549 employees throughout the Group were given various forms of compliance training…” (Volkswagen AG, 2017a, p. 45)
Outcomes: information on the outputs of controls, checks, audits, external assurance	The quantitative and qualitative outputs of controls. “In our recently introduced sustainability rating we determine suppliers’ sustainability performance by means of self-disclosures and on-site audits” (Volkswagen AG, 2019a, p. 142)
Outcomes: Information on the incidents of corruption	The amount of the incidents of corruption, identified via monitoring and other channels, and investigated, and their nature. “A total of 44 cases in which 72 individuals were involved were closed “with merit.” In these cases, the initial suspicion was confirmed. Seven of these cases were in the category “Corruption”,

	while five related to "Technical compliance" and five concerned "Reputational damage" (Daimler AG, 2019, p. 213).
Outcomes: Information on the changes in operations to minimize the risk of corruption	The information about changed and abandoned operations due to the heightened risk of corruption. No information is present in this category.
Outcomes: Information on the sanctions and incentives application;	The information about the number of cases where sanctions and incentives were applied in relation to corruption and the nature of sanctions and incentives. "Measures taken in 2017 included the issuing of verbal and written warnings and final warnings, as well as separation agreements and extraordinary terminations" (Daimler AG, 2017, p. 229).
Outcomes: assessments	The information about the results of internal and third-party assessments. "TOTAL received the "Responsible supplier relationships" label in 2014 (maintained in 2015, 2016 and 2017) for its Holding and Marketing & Services activities in France..." (Total, 2017, p. 199).
Other: quality assurance	The information about corruption provided in the statements of the auditors for annual reports/ non-financial reports. "Appendix: List of the information we considered most important … corruption and tax evasion: tax expense of the consolidated financial statements" (AXA, 2019, p. 432).
Other: reporting and indexing	The mentions of corruption in the description of the reporting methodology and indexes. "The information provided in this report is presented in conformity with the GRI Standards of the Global Reporting Initiative, insofar as this complies with applicable law" (Daimler AG, 2017, p. 215).
Other: not applicable	The mentions of "corruption" which do not relate to corruption as defined in this thesis (e.g. "data corruption") as well as other sampled information unrelated to corruption. "…failure of IT systems or which could cause the loss or corruption of data" (Daimler AG, 2019, p. 143).

Table 3. Codes used for analysis of the corporate documents

2.4. Methods of data collection

2.4.1. Sampling

2.4.1.1. Choice of the Directive 2014/95/eu

The choice for a comprehensive qualitative approach dictates a limitation of the number of cases included as well as a purposeful selection of the cases (Patton, 2015).

The main reasons for selection of the Directive 2014/95/eu relate back to the problem definition. Adopted in 2014, the Directive is the first large-scale regulated transparency system which explicitly includes anti-corruption and bribery (French regime, which was the only one to precede the Directive, has existed for less than two years and was replaced by the Directive). Thus, the Directive presents a unique case of state-led regulation in the field of corporate anti-corruption transparency, which the scholars of corporate anti-corruption transparency have called for (Barkemeyer et al., 2015; Hess, 2009; Sari et al., 2020). Despite high expectations, the Directive failed to achieve major changes and significant concerns (Biondi et al., 2020; Monciardini et al., 2020). Currently, corporate non-financial transparency regime is being reviewed at the EU level based on CSRD proposal. However, CSRD proposal does not present significant changes in terms of anti-corruption transparency. Furthermore, it puts "anti-corruption and bribery" within broader governance and business ethics areas. The study of the NFRD may allow to formulate the lessons for the better design of CSRD.

2.4.1.2. Choice of the member states for the analysis of the implementation/ transposition

For the embedded case studies, two EU member states are selected, France and Germany. The limited number of the selected member states is in line with the approach existing in the qualitative transposition research (S. K. Berglund, 2009; Kaeding, 2007). Being the largest EU economies, France and Germany possess the necessary regulatory resources and economic power to promote the best regulatory practices (Briegel & Bruinshoofd, 2015; OECD, 2010b, 2010a). At the same time, France and Germany have demonstrated contrasting attitudes to the Directive 2014/95/eu (Kinderman, 2020). By selecting both Germany and France this study captures the process in both pro-Directive and anti-Directive member states (Kinderman, 2020). The choice of Germany and France is common in the transposition research due to their economic and regulatory excellence on the one hand and their varying administrative systems and positions towards the EU policies on the other hand (S. K. Berglund, 2009; Deville & Verduyn, 2012; Schumann & Widmaier, 2003).

2.4.1.3. Choice of the companies and corporate reports

Six largest French and German companies are selected for review of the corporate reports. Most studies on corporate anti-corruption transparency operate with larger sample sizes including samples of 933 companies (Barkemeyer et al., 2015), 480 companies (Healy & Serafeim, 2016), 97 companies (Branco et al., 2019), and 79 companies (Lopatta et al., 2017). Yet, the samples of 20 (Day & Chambers, 2011), 8 (Schonfelder et al., 2016), 4 (do Nascimento Ferreira Barros et al., 2019), 2 (Islam et al., 2018), and even 1 company (Blanc, Cho, et al., 2019) are less common but still present. In particular, studies by Day and Chambers (2011), Schonfelder et al. (2016), and Do

Nascimento Ferreira Barros et al. (2019) put more emphasis on the quality of the reported information rather than the quantity.

The Directive 2014/95/eu does not prescribe a single vehicle for reporting of corporate non-financial information. The companies were able to select the reporting channel subject to the provisions of the national law. Given the variation in the vehicles, for this study corporate reports have to be selected and downloaded manually. Furthermore, the reports had to be analyzed manually taking into account focus on the meaning rather than the frequency of information occurrence. It was necessary to take into account that corporate reports varied in volume from one hundred fifty to six hundred pages. Given methodological choices and practical considerations arising from the variation and length of the reporting vehicles, a relatively small sample of companies was selected. The sample consisting of six companies is in line with the previous studies which, similar to this study, opted for a more qualitative approach.

Neither in France nor in Germany, there is an official list of large public companies/ companies covered by the Directive. Therefore, Forbes 2000 (the year 2019) is used for sampling. Forbes 2000 is a list of the world's largest listed companies. The companies in Forbes 2000 list meet the financial criteria, identified by the Directive. The selection, based on Forbes 2000 includes credit and insurance institutions in both France and Germany (in France these are BNP Paribas and AXA Group, in Germany – Allianz). Accordingly, the companies within Forbes 2000 certainly fall under the NFRD.

Six companies are selected based on their size including sales, profits, assets, and market value. The research on corporate anti-corruption transparency provides mixed evidence of a correlation between the size of the company and the state of transparency it achieves. In particular, the studies by Healy and Serafeim (2016), Masud et al. (2019), and Jaggi et al. (2020) demonstrate a positive correlation between the company's size and the level of anti-corruption transparency. Nevertheless, many other studies report insignificant relationship (Barkemeyer et al., 2015; Lopatta et al., 2017) and even slightly negative relationship (Branco et al., 2019). Nevertheless, it is standard for the literature in the domain to sample the companies by size based on the theoretical prediction that the large companies are more visible and, thus, are more likely to be transparent (Barkemeyer et al., 2015; Healy & Serafeim, 2016). This study concentrates on the largest companies in line with the goals and requirements of the Directive 2014/95/eu which cover only the EU largest listed companies and largest companies in specific sectors (e.g. the financial institutions).

Table 4 below summarizes the sampling criteria.

	Sample	Sampling Criteria
Primary case	European Union Directive 2014/95/eu	Unique case: a unique state-led mandatory anti-corruption transparency regulation
Implementation cases	Germany and France	Most likely cases, maximal variation: biggest economies with good regulatory practice and varying attitudes towards the Directive

Corporate reports cases	Six companies: Axa, BNP Paribas, Total; Allianz, Volkswagen, Daimler	Most likely cases: presumably more visible due to being the largest listed companies (Forbes Global 2000 2019)

Table 4. Sampling criteria

2.4.2. Data collection

This study is based on a review of seven sets of documents within a period of seven years:

1. The Impact Assessment hereinafter referred to as the Impact Assessment or the IA (European Commission, 2013a);
2. The Proposal hereinafter referred to as the Proposal for the Directive or the Proposal (European Commission, 2013b);
3. The Directive hereinafter referred to as the Directive or the NFRD or the Directive 2014/95/eu (European Parliament and the Council of the European Union, 2014);
4. The Commission's Communication hereinafter referred to as the Commission's Communication or the guidelines (European Commission, 2017);
5. The French Commercial Code (Le Conseil d'Etat, 2017; Ministère de l'Économie et des Finances, 2017b);
6. The German Commercial Code (Deutscher Bundestag, 2017a);
7. 24 non-financial/ annual reports (the reports are analyzed over a period of three years).

These documents are analyzed together with those inherently related to them, forming a set of more than forty documents. For example, French law delegates a large part of transparency regulation to the government, which promotes orders and decrees. As a result, six different documents are explored only for France.

The documents are collected from the official websites of the respective institutions. The Impact Assessment, the Proposal, and the Commission's Communication are collected from the website of the European Commission. The Directive is obtained from the official EU law database. French and German commercial Codes are assessed using the databases in the respective countries i.e. https://www.legifrance.gouv.fr and https://www.gesetze-im-internet.de. Additional country documents are obtained from the websites of the respective state institutions. The reports of the companies are obtained from their websites.

The data for the analysis is derived from the respective annual and non-financial reports, collected from the websites of the companies. The French Law obliges the companies to include the non-financial statement in the management reports. Thus, for France, only management reports are analyzed. The German Law allows the companies to separate the non-financial report from the financial reporting subject to the reference to the non-financial report being provided in the management report. For Germany, the management reports as well as the non-financial reports, to which the management reports refer as the sources of information under the Directive, are collected and assessed. In the case of the separate reports, only the reports, which

are explicitly referred to by the management reports as being drafted under Section 289b of the German Civil Code (which transposes the Directive 2014/95/eu), are taken into account.

The Directive and related documents lack any provisions related to the placement of the anti-corruption disclosure within the respective vehicles of disclosure. Therefore, the annual reports are analyzed manually by reading the parts pertaining to corruption and bribery and identifying Directive-related documents within these parts.

2.5. Conclusion

This chapter has set theoretical and methodological foundation of the study.

By calling for state regulation of corporate transparency, the research explicitly or implicitly favored coercive pressure over other types of pressure (Barkemeyer et al., 2015; Hess, 2009; Sari et al., 2020). The literature on regulated transparency systems suggest that coercive pressure does not always lead to better transparency practices (Fung et al., 2007). Performance of the regulated transparency systems depends on the coherence of regulatory goals and instruments (Fung et al., 2007). Regulatory design literature further points that transparency architecture is a part of the larger regulatory design (Howlett & Rayner, 2013). The literature predicts negative implications of incoherent regulatory designs (Howlett & Rayner, 2013). Achieving coherent regulatory designs is especially difficult in multi-level environments like the European Union. Accordingly, this study looks at the regulatory design of the NFRD within all stages of its development at three theoretical levels: (1) the level of regulatory design; (2) the level of transparency architecture; and (3) the level of coercive pressure represented by corporate reuptake of the Directive's concepts.

The research questions are approached qualitatively by looking at all stages of the Directive's lifecycle and tracing the key components of transparency. This study looks at how the Directive's goals and instruments are designed and formulated. "Formulation" is the primary part of the regulatory design (Howlett et al., 2015). Formulation and design are essentially the processes of qualitative wording. Thus, the case study strategy is selected, which is limited to one case with embedded units of analysis. The limitations of the single case study design are apparent, but it is considered the most appropriate for the purposes of in-depth exploration. The analytical framework for the study builds upon four components of the transparency process (the discloser, the user, the information, and the access) and two dimensions of regulatory design (goals and requirements).

3. Chapter III. From acknowledging the value of transparency in the Single Market Act to the Impact Assessment

3.1. Introduction

In April 2013, the European Commission published the Proposal for the NFRD, accompanied by the Impact Assessment. This chapter starts by reviewing the Impact Assessment. The Impact Assessment describes the targeted problem and puts the Proposal in the context (European Commission, 2019a). This chapter addresses the emergence and initial development of anti-corruption transparency. Section 3.2. describes the background of the EU NFRD. Section 3.3. explains the role and the structure of the Impact Assessment. This is necessary to highlight the importance of the Impact Assessment and to prepare the readers for the analysis of a long document. Section 3.4. explores the goals and requirements, articulated by the Impact Assessment. Section 3.5. summarizes the key findings.

3.2. The context and the emergence of corporate anti-corruption transparency in the NFRD Directive

Already in 1999, a member of the European Parliament Richard Howitt proposed to mandate corporate reporting on social and environmental performance (The Guardian, 2014). Yet, this idea had stagnated for a long time due to considerable business opposition (Kinderman, 2020; Monciardini, 2016). In 2003, the Modernization Directive introduced amendments to the Accounting Directives, prescribing the companies to include in their annual reports non-financial information “where appropriate and to the extent necessary for an understanding of the company's development, performance or position”. The companies, however, regarded mentioned provision as being voluntary in nature (European Commission, 2013a; Szabó & Sørensen, 2015). Accordingly, the provision failed to produce considerable results with only 6% of companies reporting on their non-financial performance at the beginning of 2010 (European Commission, 2013a). At the time of the promotion of the Modernization Directive, more substantive provisions had been “manifestly captured by the regulatory target, large companies” (Monciardini & Conaldi, 2019, p. 6). At the same time, a few European countries (primarily France and Denmark) started mandating non-financial reporting in the mid-2000s (European Commission, 2013a).

In the late 2000s, the financial crisis occurred suggesting a failure of the voluntary CSR approach to drive long-termism among the managers (Kinderman, 2020). The realization of this failure together with pressure from the “enlightened” member states and institutional investors pushed the European Commission to come back to the idea of regulated non-financial transparency in 2008 (Monciardini, 2016).

In 2010, after some preliminary workshops with the expert group, the Commission launched the public consultations on the new regulatory regime. The public consultations turned in 260 responses. The respondents from the three biggest EU economies – Germany, France and the

UK, dominated the consultations. The consultations were also dominated by three categories of stakeholders – NGOs (28%), "users" ("organizations mostly using such information, including investors, analysts, rating agencies, etc.", 26%), and companies ("preparers", 24%), followed by a relatively small amount of accountants and auditors (8%), academics/ individuals (9%) and public authorities and standard setters (5%). The stakeholders were, thus, diverse and unevenly represented.

For the consultations, the Commission came up with a set of relatively specific questions, for example it inquired if companies "should be required to disclose the risks they face and the policies they have in the field of corruption and bribery" (European Commission, 2011b). Public consultations demonstrated a significant disagreement between the stakeholders on almost all the matters, put forward by the Commission. The investors and NGOs largely supported the proposal of the Commission but varied significantly in their approach to specific aspects of transparency. In contrast, most the companies and public authorities considered the pre-Directive regime "at least sufficient" and rejected proposed changes.

The stakeholders disagreed on the disclosers and information aspects of transparency. In relation to the disclosers, some stakeholders (primarily potential disclosers) argued for the application of the new regime only to the largest companies or even making the regime voluntary. Other stakeholders (primarily NGOs and academics) advocated for the extension of the regime to at least all large companies and possibly to medium-sized companies.

In relation to the information, the users, NGOs, and academics were mostly positive regarding the inclusion of the anti-corruption. In contrast, the majority of the companies, auditors, and public authorities insisted on keeping disclosure on this matter more flexible and even voluntary. In terms of the information, the stakeholders also disagreed on the level of details expected in the disclosure and on the quality assurance standard.

The access and the users aspects of transparency have not been explicitly discussed in the public consultations.

An analysis of the summary of the public consultations prepared by the European Commission demonstrated that the Commission had dealt with the stakeholders' disagreement by appealing to the "majority" or the "most" of stakeholders.

Apart from the disagreement in the public consultations, the corruption/ anti-corruption received relatively scarce attention in the process of Directive preparation. The European Commission separated questions regarding human rights and the fight against corruption from the reporting on the "CSR policy" and business model. Question 4 addressed "CSR policy", its implementation, results of its implementation, principal business risks and opportunities with regard to "social and environmental issues" and key information such as employee engagement and environmental policies. Questions 5 and 6 explored preferences with regard to principle-based versus KPI-based disclosure, suggesting that these questions relate only to "social and environmental issues" so far addressed in the consultations. Questions 7 and 8 then proceeded

to human rights and anti-corruption. The topics were seen as "other issues" in contrast to the "core" social and environmental issues (European Commission, 2011b, p. 9).

The spreadsheet with the results of the public consultations contained a few references to corruption, usually in combination with other topics. The nature of corruption, in particular, its inherent negative nature and sensitivity and the implications of those for transparency were not separately discussed (Barkemeyer et al., 2015; Everett et al., 2007). Monciardini (2016) quoted Yolaine Delaygues from the European Coalition for Corporate Justice (ECCJ) reporting the agreement between ECCJ and EUROSIF (an association of sustainable investors) on the need for mandatory disclosure on "human rights and the environment" but not mentioning anti-corruption.

Along with the consultations, the European Commission has educated itself on the related research. However, the research the Commission cited in the Impact Assessment was not related directly to anti-corruption. The Commission used the research related to environmental and social transparency in relation to corruption. Furthermore, while stating the interests of the investors in the non-financial information, such research did not explain the scope of transparency required by them.

The decision to include the anti-corruption information was not much discussed in the Impact Assessment, except for two rather general statements suggesting the interest of the stakeholders in the anti-corruption transparency, for example:

> "In general terms, topics considered as most important by stakeholders and covered by existing international frameworks include, inter alia, social, environmental, human rights, and anti-corruption aspects" (European Commission, 2013a, p. 25).

The Impact Assessment referred to two documents which formed the cornerstone of new non-financial transparency regime: the Single Market Act and the Green Paper on Corporate Governance (European Commission, 2013a). The Single Market Act and the Green Paper on Corporate Governance have invoked the idea of transparency of the non-financial information. However, none of these two documents referred to corruption. Only reference to corruption occurred in the Renewed Strategy for CSR, which mentioned corruption on a single occasion.

To conclude, the history of the EU non-financial transparency began in 2003 with provisions of the Modernization Directive. The Modernization Directive, however, did not include the anti-corruption transparency provisions. Furthermore, the companies interpreted such provisions as voluntary. Later, the Commission started recognizing the need to "increase" transparency. It started the public consultations with a certain understanding of the upcoming regime, reflected in the wording of the questions. The public consultations demonstrated a lack of consensus between the stakeholders about the limits and nature of transparency. The inclusion of anti-corruption was not substantiated by the scholarship on either corruption or transparency. Within the public consultations, anti-corruption focus received little attention, being treated as "other issue" in contrast to the "core" environmental and social matters.

3.3. The role and the structure of the Impact Assessment

The Impact Assessments play a crucial role in ensuring the quality of the EU regulation (European Commission, 2019a). The Impact Assessment to NFRD specifies the context and the problem and weights regulatory solutions against the goals. The Impact Assessment contains the introduction, seven chapters and ten annexes.

Chapter I of the Impact Assessment sums up the results of consultations and procedural matters. Chapter II describes the policy context. Chapters III and IV present the problem definition and the objectives. Chapters V and VI describe the policy options and their impacts and chapter VII deals with the monitoring and assessment. A significant part of the Impact Assessment, in particular, chapters on the policy context, objectives, and impacts deal largely with the external effects of the behavioral change, caused by the increased transparency, in particular on accountability and trust as well as the market efficiency and sustainable economic growth. These parts are briefly explored in the preceding section on the context.

Despite the seemingly clear structure of the Impact Assessment, it does not easily fit within the chosen analytical framework. The discussion of goals and requirements appears primarily in Chapters III "Problem Definition and Subsidiarity" and Chapter V "Policy Options". At the same time, other chapters contain pieces of additional information in this regard. Chapters III and V overlap significantly but do not match each other precisely. For example, Chapter V on policy options does not only describe the requirements of the new regime but also the goals. In a discussion of the policy options, Chapter V returns to the problems described in Chapter III but expresses them differently. Furthermore, multiple layers of goals and requirements appear from the analysis. This study aims to reveal the complexity and, thus, explores the approaches to transparency throughout the chapters and highlights similarities and differences.

3.4. Four components of transparency in the Impact Assessment

3.4.1. Disclosers

3.4.1.1. What are the goals?

The Impact Assessment uses the terms "company", "enterprise", "preparer" and others to refer to disclosers. These terms seem to have almost the same meaning. The goals pertaining to the disclosers are articulated with a reference to the quantity and clarity. The Impact Assessment associates transparency with the quantity of the reporting entities and targets large companies.

The quantity of the disclosers is an important part of the newly introduced regime. Chapter III acknowledges the growth in the global non-financial reporting. However, it also suggests that "the pace of progress towards more transparency ... remains slow": only 2500 out of 42000 large EU companies (6%) disclose the non-financial information (European Commission, 2013a, p. 9). Furthermore, Chapter III highlights an uneven spread of reporting companies, as 50% of the reports are published in four member states (the UK, Germany, Spain, and France). It further

underlines the need to ensure that the EU companies operating in the developing countries are subject to disclosure (European Commission, 2013a, p. 19). Chapter III does not set a specific amount of companies to be covered, but it highlights the importance of covering large companies, especially those operating outside of the EU.

Chapter IV of the Impact Assessment also refers to the quantity and aspires to "increase the number of companies disclosing non-financial information (quantity of information)". Despite this goal being classified as "operational" by the Impact Assessment itself, the goal does not provide a clear number or features of the companies to be covered, except for mentioning a need to avoid "undue administrative burden on companies, especially on the smallest ones" (European Commission, 2013a, p. 19).

In the discussion of the policy options in Chapter V, the Impact Assessment refers repeatedly to the quantity of the covered companies. However, Chapter V does not compare the policy options based on the number of covered disclosers.

The number of targeted companies appears in the description of the chosen policy option. Section "Scope of Application" of Chapter V estimates the new standard to "cover approximately 18000 large companies operating in the EU" (European Commission, 2013a, p. 35). The same amount appears in the discussion of the primary impacts of the Directive. This number signifies an increase of seven times (from ~2500 to ~18000), but covers less than 50% of the EU large companies. As such, the solution proposed by Chapter V does not fully align with the scope of the problem defined by Chapter III which mentioned all large companies.

The goal of providing clarity is inherently connected to the "quantity goal". Chapter III of the Impact Assessment provides that stakeholders lack sufficient clarity regarding the expected disclosures (European Commission, 2013a, p. 11). The need to ensure "sufficient clarity on what disclosures should be expected" presupposes a need to know who is disclosing the information.

Chapter III of the Impact Assessment qualifies the pre-Directive EU regime as a "regulatory failure" due to the perceived voluntary character of the Accounting Directives' provisions, "multiplicity" and "fragmentation" of existing regimes, and prevalence of "principles" rather than "standards". Thus, the "Problem Definition and Subsidiarity" section of the Impact Assessment deems "harmonization" of the regulatory requirements to be necessary to overcome the "failure" of the existing regimes. The problem definition chapter does not specify the scope of harmonization. The "harmonization" goals is, therefore, equally applicable to all components of transparency. The Impact Assessment names the "harmonization" as the *raison d'etre* of the new EU intervention, which is in line with the general goal of the EU law (Weatherill, 2012).

The scope of "harmonization" is refined by Chapter V, which refers to "minimum harmonization". The "minimum harmonization" approach manifests itself in the choice of a Directive rather than a Regulation. Chapter V considers Regulation to be disproportionate to the identified problem (European Commission, 2013a, p. 35).

The Impact Assessment recognizes the need for an increased transparency and harmonization, but it also articulates the need to limit the cost of transparency and keep flexibility for the companies. In the Impact Assessment the goal of increased transparency is being weighed against the increased costs. The Impact Assessment realizes the difficulties with assessment of the costs of the new regime. However, it is able to report quite specific costs. Accordingly, it considers some regulatory options not to be "cost-effective on the basis of the high administrative burden" (European Commission, 2013a). In particular, the Impact Assessment limits the number of covered disclosers in order to avoid undue regulatory burden and to satisfy the requirements of the stakeholders (European Commission, 2013a, p. 35). While the regulatory options are being weighed against clear costs, the effect of the regulatory options on transparency remains underexplored. This is because the Impact Assessment compares regulatory options against different sets of transparency-related goals.

The considerations related to harmonization, flexibility and costs are important for all four components of transparency, despite not being explicitly connected to each of them in different chapters of the Impact Assessment.

3.4.1.2. How are the goals to be achieved (requirements)?

Chapter III of the Impact Assessment recognizes that "the filters provided in the current wording (information to be disclosed only "where appropriate" and "to the extent necessary for an understanding of the company's development, performance or position ") fail to provide a clear legal obligation" (European Commission, 2013a, p. 12). Accordingly, companies considered pre-NFRD regime as voluntary.

Yet, Chapter V is reluctant to let the "voluntary" regime go. Chapter V considers "voluntary" disclosure at least three times – in the description of option 0 (where nothing changes), option 2c (voluntary disclosure guided by the EU), and "self-regulation" approach to transparency. Chapter V eventually favors a mix of "mandatory (statement) and voluntary (detailed reporting) disclosure requirements (option 1 and option 2c)" (European Commission, 2013a, p. 30).

Section "Scope of Application" of Chapter V further reveals the following details of the "mandatory" standard. The introduced requirement limits the coverage of the new regime to less than 50% of the EU large companies. The amount of covered companies (18000) is dictated by the 500 employee threshold and the need to avoid "undue administrative burden" rather than the assessment of the impacts performed in Chapters I and III of the Impact Assessment (European Commission, 2013a, p. 35). The 500 employee threshold introduced by the Impact Assessment is higher than the one applied in the EU Accounting Directives to qualify "large companies". In this case, the requirement is driving the goal instead of the goal navigating the requirement.

The definition of reporting entities at the EU level certainly improves the understanding of who should report. At the same time, the Impact Assessment itself does not define the notion of a "large" company apart from the reference to the number of employees.

The Impact Assessment does not discuss the enforcement of the “mandatory” rules. The latter chapters of the Impact Assessment discuss “monitoring and evaluation” and “incentives” to ensure compliance with the requirements. Monitoring and evaluation of the implementation include the “sample reviews of non-financial statements or reports”, “workshops” and “data collection” for the evaluation.

The Impact Assessment attempts to make a business case for transparency. The Impact Assessment recognizes that the disclosers fail to disclose the information because of incentive structures:

> “The reason for such failure is to be found in the insufficient and uneven incentives provided by the market: on the one hand, the cost of transparency is certain, measurable and short term, particularly as regards externalities. On the other hand, the benefits related to increased non-financial transparency are often perceived as uncertain, longterm, or external to the company” (European Commission, 2013a, p. 11).

At the same time, the Impact Assessment mentions the disclosers (“preparers”) as one category of users to benefit from transparency via improved performance. According to the Impact Assessment, the preferred regulatory option “provides a limited but useful incentive to improve the quality of those reports” (European Commission, 2013a, p. 53).

The preferred policy option partially covers the identified problem, associated with the risks produced by the large companies, especially those operating in the developing countries, – it covers a subset of the large companies and does not warrant that the EU companies operating in the developing countries are covered. Somewhat contrary to the aspired clarity outcome, an analysis of two criteria is required to establish the reporting obligations of each discloser. The “minimum harmonization” approach also does not extend to clarification of the enforcement and monitoring rules at the EU level. The reliance on the “incentives” seems to be incongruent with the problem definition, where the Impact Assessment recognizes the lack of appropriate incentives (the “market failure”). The analysis demonstrates that the scope of the problem and requirements proposed by the Impact Assessment are not fully aligned.

For reference, the Table 1 below summarizes the provisions regarding the disclosers chapter by chapter.

	Goals	Requirements
Introduction	No	No
Procedural Issues	No	No
Policy Context	No	No
Problem Definition	Limit the risks produced by large companies, especially in developing countries Create clarity regarding expected disclosures Overcome “regulatory failure”, “market failure” and lack of harmonization	

Objectives	Increase the “quantity” of information Avoid burden for “smallest” companies Keep flexibility and limit compliance costs	No
Policy Options	Increase the number: cover 18000 out of 42000 large companies (based on the application of criteria) Keep flexibility and limit compliance costs Minimum harmonization	Criteria: large company (not further defined), number of employees (500 employees), parent company Enforcement/ sanctions: mentioned, not specified Incentives: mentioned, not specified
Impacts	Cover 18000 out of 42000 large companies Keep flexibility and limit compliance costs	No
Evaluation and Monitoring	No	Monitoring and evaluation are mentioned but not in relation to compliance/ enforcement

Table 1. Goals and requirements within the disclosers component in the Impact Assessment

3.4.2. Information

3.4.2.1. What are the goals?

The Impact Assessment defines transparency through reference to the quantity and quality of information. The quantity is understood purely as the number of disclosers (European Commission, 2013a, p. 10). Thus, it is analyzed in the previous section. This section concentrates on the information aspect of transparency through the lens of the “quality of non-financial information” criteria, as described by the Impact Assessment.

The Introduction, Chapters I and II of the Impact Assessment do not indicate the goals with regards to the information. Chapter III of the Impact Assessment “Problem Definition and Subsidiarity” describes the problem, in particular “insufficient” quality of the information (European Commission, 2013a, p. 9). Chapter III uses the “quality” as an umbrella concept to describe the “specific issues” and “specific information gaps”. Among the “specific issues” Chapter III pinpoints that the “information is often not sufficiently material, accurate, timely, clear, comparable, and reliable” (European Commission, 2013a, p. 9). Among the “information gaps”, the Impact Assessment mentions lack of information about performance, focus on positive performances, inconsistency of reports, lack of disclosure on “material negative externalities”, lack of information “as regards risk-management aspects, human rights, and corruption matters”, poor use of key performance indicators (KPIs), and absence of independent verification of reports (European Commission, 2013a, p. 11). The Impact Assessment does not associate the gaps explicitly with any of the mentioned “issues” such as “materiality” or “accuracy”.

Chapter IV, “Objectives”, provides another account of the “information” problem. It aims to “increase the quality, relevance and comparability of the information disclosed”. Thus, the

“quality” component represents only a part of the objectives along with comparability and relevance. Chapter III and Chapter IV define information quality in different terms.

Chapter V and the Annex to it assess the “policy options” in relation to different components of the information dimension. Chapter V uses different aspects of the “quality” to assess different policy options. It derives the aspects from the previous chapters and adds new ones. It uses “quality” as both an umbrella concept and as one of the sub-concepts. As a result, the definition of “quality” varies from one policy option to another and a direct comparison of the options in terms of information quality is impossible.

For example, the “disclosure in the annual report” requirement “would benefit the quality and comparability of the disclosure, and improve companies' sustainability awareness” (European Commission, 2013a, p. 28).

In relation to the “detailed reporting” option, the Impact Assessment mentions that it makes information “more comprehensive and granular, and the use of KPIs could have a positive effects on comparability”, but it may also result in “‘tick-the-box exercise”.

Thus, Chapter V does not compare the policy options on equal grounds, such as, for example, “granularity” or “comparability”. Instead, for each policy option the quality outcome is articulated differently. New aspects, related to the information appear in the Annex to Chapter V. For the “disclosure in the annual report” option, the Annex mentions such information-related principles as materiality, exhaustiveness, coverage of specific aspects, demand from the stakeholders, alignment with the international frameworks, accuracy, comprehensiveness, conciseness, consistency over time, comparability. These features only partly correspond to the quality issues indicated in Chapters III, IV, and V. In particular, the Annex adds exhaustiveness/ sufficiency and comprehensiveness but does not reflect on relevance and KPIs. Other options are analyzed through different sets of quality features such as the level of detail, accuracy, comprehensiveness, alignment with the international frameworks, reliability, comparability for the option “mandatory detailed reporting” or comparability, flexibility, materiality, and usefulness for the option “mandatory EU-based standard”. These different quality outcomes are weighted against the costs, acceptability to stakeholders and competitiveness of the companies i.e. goals outside of transparency.

Furthermore, the Impact Assessment mentions degrees with regards to some outcomes, such as the “increase” as well as “partly” and “limited effects”, but a single measurement system is absent and the comparison between the degrees is, therefore, not possible. For example, the statement in the annual reports is expected to “contribute to increase comparability amongst companies”. A detailed EU-based standard on the other hand would “optimize the comparability”. The difference between “contribution” to the “increase” and “optimization” degrees is not obvious. Furthermore, the IA does not establish whether “sufficient” quality can be attained through the “increase” or “optimization”.

Chapter V eventually explains that preferred regulatory option "will provide limited but useful incentive to improve the quality of those reports" (European Commission, 2013a, p. 30).

Thus, the discussion returns to the concept of "quality", but this concept is blurred by its different presentations across the chapters. The Impact Assessment suggests that the quality will be "improved" without specifying the attained quality as "sufficient" or "adequate".

Chapter V does not consistently reflect on the effects of the policy option on the "information gaps", but the scope of the preferred policy option suggests that the "information gaps" are partially addressed. For example, the preferred policy option addresses the lack of performance-related information and risk management information by requiring disclosing the risks and results of the policies rather than only policies. The lack of information on anti-corruption is addressed by adding corruption (or anti-corruption or bribery – the Impact Assessment is very unclear in this respect) to the reporting themes. Some issues are partially addressed – the "consistency" check is expected to provide for the independent verification and the notion of "material" information seems to address the lack of attention to "negative externalities", presence of the irrelevant and anecdotal information, unsubstantiated claims and inaccurate figures. Some information gaps are not covered or almost not covered, for example, the preferred option does not explicitly state the effects in relation to the KPIs and quantitative information.

Chapter VI discusses the impacts of the preferred regulatory solution:

> "Moreover, the requirement is designed in a way to meet the key needs identified by the users as regards both the content of the disclosure (i.e. material information concerning policies, performance and risk management aspects on social, environmental, human rights and anti-corruption aspects). This lead to a further improvement in the quality of the information disclosed, compared to the baseline scenario. The reference to internationally accepted frameworks is meant to raise the level of materiality, accuracy and comparability across companies as well as of one company over time. The requirement for companies to give a reasoned explanation in case they do not have a specific policy in place may also increase peer pressure and encourage best practices, while retaining flexibility. Finally, should companies also decide to voluntarily provide a non-financial report, the level of detail of information disclosed would necessarily increase" (European Commission, 2013a, p. 37).

Furthermore, concerning "increased accountability", Chapter VI states that "material non-financial information would be made publicly available on a regular basis" (European Commission, 2013a, p. 38). It also mentions the "qualitative window in the management practices", "mainstreaming the information available" and "clearer expectations regarding its [information] materiality and completeness".

The final chapter of the Impact Assessment suggests that monitoring should focus on consistency (European Commission, 2013a, p. 43).

To conclude, the information-related goals undergo multiple transformations in the Impact Assessment. The problem definition chapter (Chapter I) refers to the quality of the information. Chapter I defines quality by references to the a) set of principles ("specific issues") such as materiality, accuracy, etc.; b) "information gaps", which represent more defined, lower-level issues, including the research results based on the stakeholders' demands and research. Two parts of the quality concept overlap, but the Impact Assessment does not reconcile them. In later chapters (Chapters II, III, and IV), the information is defined through reference to "quality, relevance and comparability" as objectives. Thus, "comparability" leaves the "quality" and becomes a separate principle and relevance appears as a separate principle instead of being a part of the "gap". The Impact Assessment does not define any of the notions used. The assessment of the policy options (Chapter V) uses a large set of characteristics, which partially overlaps with the previously discussed principles and gaps. The discussion over the policy options does not clearly differentiate between the goals and requirements, for example, when the Impact Assessment states that companies will disclose "material" information. All policy options (except for option 0) seem to contribute to the goals, but there is no single set of quality characteristics and measures used for all the options consistently. The final chapters of the Impact Assessment (Chapters VI and VII) return to the "quality" concept but also incorporate other principles, which partially overlap with those mentioned in the previous chapters. Comparability and consistency as well as materiality seem to be the most discussed information-related goals, while relevance, accuracy, and comprehensiveness are mentioned less often. While all chapters refer to the "quality" of the information, its meaning is lost within multiple different interpretations the chapters provide.

3.4.2.2. How are the goals to be achieved (requirements)?

According to the Introduction to the Impact Assessment "the Accounting Directives already address the formal disclosure of employee-related and environmental information", but transparency still needs to be improved. Chapter II of the Impact Assessment discusses existing non-financial transparency initiatives, including the Accounting Directives and the global initiatives.

Chapter III of the Impact Assessment acknowledges the "inadequate" and "insufficient" transparency, manifested by problems with the "quantity" and "quality" of the information. Describing the quality problems, Chapter III discusses how the problems came to existence. Chapter III attributes the quantity and quality problems to the "market failure" and "regulatory failure". Firstly, the "companies don't have sufficient incentives to disclose non-financial information". An analysis of the "regulatory failure" incorporates three levels. Firstly, it suggests that voluntary initiatives do not work due to "voluntary nature"; excessive reliance on "guidelines (rather than a standard)"; and "multiplicity" of the voluntary frameworks. Secondly, it diagnoses "fragmentation" at the level of the Member States. Thirdly, it criticizes the existing EU approach, rendered by the Accounting Directives (as amended by the Modernization Directive) because "filters provided in the current wording" fail to establish obligation to report. Based on the

analysis of the “regulatory failure”, the regulatory solution seems to be mandatory (as opposed to “voluntary”) EU level (as opposed to national) single (to prevent “multiplicity” and “fragmentation”) standard (rather than a guideline), excluding “filters”. Chapter III establishes the EU right to act, suggesting that “diverging approaches” to the non-financial information warrant “harmonization”.

Chapter IV “Objectives” discusses the objectives (the outcomes) but not how the objectives can be achieved (the requirements)

Chapter V, “Policy Options”, extensively deals with the information-related requirements. It constructs the policy options based on the following characteristics: form of disclosure; narrative or KPI-based disclosure; content of disclosure; and third-party verification (European Commission, 2013a, p. 25).

Chapter V further discusses six regulatory options: (option 0) no regulatory change; (option 1) disclosure of the main non-financial aspects in the annual report; (option 2) detailed reporting based on: (option 2a) mandatory EU rules, (option 2c) voluntary approach or (option 2b) report or explain principle; (option 3) mandatory EU standard.

Option 1 aims at strengthening the “existing requirement to disclose a statement on non-financial information in the Annual report” (European Commission, 2013a, p. 25). It modifies the “baseline scenario” in two aspects by requiring the companies to provide:

Option 2 suggests a “detailed report ... in accordance with existing international frameworks” The detailed report “would be more detailed than a disclosure in the form of a statement” suggested by Option 1. Option 2, thus, develops and adds to Option 1. Among variations of Option 2, Option 2c exempts the companies from disclosure in other forms if they published a detailed separate report, to which they refer in the Annual Report, Accordingly, “there would be no mandatory obligation to provide a detailed report, nor to give an explanation if a report is not provided” (European Commission, 2013a, p. 26).

Option 3 suggests a mandatory EU requirement to “disclose information complying with a set of EU-based KPIs” (European Commission, 2013a, p. 26).

All options include a standard verification for “consistency with financial statements”, which is already a part of the Accounting Directives.

Eventually, the Impact Assessment makes a choice towards “a smart mix of mandatory (statement) and voluntary (detailed reporting) disclosure requirements (option 1 and option 2c)”. Companies would be required to disclose information in the statement in their annual report. Companies would be encouraged to report detailed information voluntarily (European Commission, 2013a, p. 30).

The remaining parts of the Impact Assessment do not extensively describe how the information-related outcome can be achieved, reserving occasional references to “material information” and “content of disclosure”.

As a result of the discussions, the Impact Assessment contours the preferred regulatory approach by referring to four aspects: (1) the reporting themes; (2) the reporting items and KPIs; (3) the international frameworks; and (4) the quality assurance. Furthermore, the fifth aspect – the inclusion criteria (the “filter”) – is emerging from the Impact Assessment.

Firstly, the Impact Assessment defines the reporting themes: “at least social human rights, anti-corruption and bribery matters is disclosed, in addition to environmental and employees-related matters” (European Commission, 2013a, p. 26). The reference to “corruption” and “bribery” is not supported by any definitions or explanations of the covered practices.

Secondly, the Impact Assessment proposes the reporting items: “(i) the companies' policies, (ii) performance, and (iii) risk-management aspects”(European Commission, 2013a, p. 26). The Impact Assessment does not describe these items further. The Impact Assessment mentions KPIs, but it considers the imposition of KPIs compatible only with policy option 3.

Thirdly, the preferred policy option relies on the international reporting frameworks. Option 1 (“Require a statement in the Annual Report”) provides that the companies should be “relying on existing international frameworks” (European Commission, 2013a, p. 26).

Fourthly, the Impact Assessment introduces the quality assurance requirement. Chapter III of the Impact Assessment establishes that “reports are often not subject to independent verification, with prejudice for the reliability of the information”. Chapter V applies general provisions of the Accounting Directive to the non-financial information which requires that “as any other aspect of the annual report, non-financial information would have to be checked for consistency with the financial statements” (European Commission, 2013a, p. 27).

Along with the four sets of requirements (themes, items, reference to the international frameworks, quality assurance), one more emerging requirement deserves mentioning. Despite rather inconsistent and limited attention to them in the Impact Assessment, the inclusion criteria are emerging in the Impact Assessment. The inclusion criteria define which information should be included in the report. They will be very important in the further discussion of the Directive’s provisions.

Chapter III of the Impact Assessment, “Problem Definition and Subsidiarity”, refers to the criteria for the inclusion of the non-financial information in the annual reports, existing under the Accounting Directives, which was not very successful in promoting disclosure (European Commission, 2013a, p. 48). Chapter III identifies the existing inclusion criteria as a part of the regulatory failure, which contributed to the perceived voluntary nature of the Accounting Directive as “the filters provided in the current wording (information to be disclosed only "where appropriate" and "to the extent necessary for an understanding of the company's development,

performance or position ") fail to provide a clear legal obligation" (European Commission, 2013a, p. 11). However, Chapter III does not propose any new criterion for the inclusion of the information.

Chapter IV refers to "relevance" and "materiality" as the outcomes of the new regime but does not explore their role in the inclusion of the information.

Chapter V, "Policy Options", also refers to the materiality and relevance. In this case, "material" and "relevant" are discussed as a part of the respective policy options rather than outcomes.

For example, Chapter V suggests that regulatory option 1 (Require a statement in the Annual Report) "would modify the baseline scenario by requiring that *material* information relating to at least social human rights, anti-corruption and bribery matters is disclosed, in addition to environmental and employees-related matters". Eventually, the Impact Assessment suggest that companies would be required to disclose material non-financial information (European Commission, 2013a, p. 30).

Together with the "inclusion criteria" the Impact Assessment introduces the "comply or explain" principle as a part of the decision over the inclusion of the information. The annex to Chapter V mentions that "Option 1 provides also companies with the possibility to give a reasoned explanation, in case information is not available or cannot be disclosed for any reasons". The Impact Assessment, thus, provides for a "reasoned explanation" of the absence of the policies.

For reference, the Table 2 below summarizes the provisions regarding the information chapter by chapter.

	Goals	Requirements
Intro	No	Existing regime is not sufficient
Procedural Issues	No	No
Policy Context	No	Existing initiatives are not sufficient
Problem Definition	Overcome "issues" and "gaps": Issues: the information is not sufficiently material, accurate, timely, clear, comparable, and reliable Gaps: companies focus only on their positive performances; reports are inconsistent; performance-related information is not reported; material negative externalities are often not disclosed; do not cover aspects of significant relevance for both internal and external stakeholders, particularly as regards risk-management aspects, human rights, and corruption matters; poor accuracy use of KPIs; poor reliability	Regulatory failure: Voluntary nature: "filters provided in the current wording fail to provide a clear legal obligation" A multiplicity of reporting frameworks, extensive reliance on guidelines, no single standard-setter Fragmentation of the member states' legislation

	Meet stakeholders demands to quality Overcome "regulatory failure", "market failure" and lack of harmonization	
Objectives	Increase the quality, relevance, comparability Keep flexibility and limit compliance costs	No
Policy Options	Different sets of quality features are mentioned to assess the options Keep flexibility and limit compliance costs Minimum harmonization	Materiality Items: policies, performance, and risk-management Themes: social human rights, anti-corruption and bribery matters, environmental and employees-related matters Reference to international frameworks Quality assurance: consistency
Impacts	Different "quality" features are mentioned: materiality, accuracy, comparability, regular basis, mainstreaming Keep flexibility and limit compliance costs	No
Evaluation and Monitoring	Consistency, quality, (comparability (?): the verb "compare" is used) Keep flexibility and limit compliance costs	No

Table 2. Goals and requirements within the information component in the Impact Assessment

3.4.3. Access

3.4.3.1. What are the goals?

The Impact Assessment repeatedly refers to the "availability" of information or information being "available"/ "publicly available", for example, it suggest that new regime will ensure that "material non-financial information would be made publicly available on a regular basis" (European Commission, 2013a, p. 38). The Impact Assessment refers to "access" only once, in Annex VI. It suggests that under the Directive the "users would have access to this information in a consistent manner".

This wording, related to "availability" and "access" suggests that some of the principles, indicated in Chapter III "Problem Definition" in relation to the "quality" of the information may actually relate to the way it is provided rather than with its content or to both. In particular, the "comparability" and "consistency" of the information can refer to the comparability of the content as well as the comparability of the vehicle, timing, and structure of the information.

The "materiality", "accuracy" and "balance", mentioned in Chapters III and V, may also refer to the content as well as to the presentation of the information. The "timeliness" and "regularity" are likely to reflect the features of the system rather than the features of the content. However,

in the absence of definitions of these notions in the Impact Assessment, it is somewhat difficult to establish their relevance for either information or access component of transparency.

To conclude, the availability seems important for the Impact Assessment, but goals with regards to the access is difficult to establish. The “comparability”/ “consistency” and “regularity”/ “timeliness” may partially refer to availability and access.

3.4.3.2. How are the goals to be achieved (requirements)?

It is not easy to differentiate between the “information” and the “access” requirements in the Impact Assessment.

Overall, Chapter V of the Impact Assessment seems to refer to three access-related aspects: 1) the vehicle (form) and timing of disclosure; 2) the format; 3) the language of disclosure.

In Chapter V, the Impact Assessment considers the “form of the disclosure”. It differentiates between the “statement, to be included in the Annual Report” and the “detailed, stand-alone non-financial report, which could be published as a separate document or annexed to the Annual Report” (European Commission, 2013a, p. 24).

The vehicle of disclosure eventually seems to inform the regulatory options. Options 1 and 2 directly refer to the “form” in their names: “Require a statement in the Annual Report” and “Require a Detailed Report”. However, Chapter V does not consider how and who is going to use a particular vehicle, but rather how much non-financial information can fit within a particular vehicle. For example, it suggests that detailed information can be published in a separate report, while annual report may only include a short non-financial statement (European Commission, 2013a, p. 24). As a result, the Impact Assessment does not explore the effects of the vehicle for access to the information. It only considers how much information is supposedly going to fit within a vehicle. The “preferred” regulatory option combines the “vehicles”: mandatory disclosure should appear in the annual report and voluntary “detailed” disclosure may appear in a separate statement or the annual report. In any case, a “minimum” mandatory statement should be included in the annual report – the main document of financial reporting.

The references to the time of disclosure appear throughout the text. By requiring disclosure in the annual report, the Impact Assessment creates a regular disclosure and aligns the timing with the presentation of the yearly financial performance (European Commission, 2013a, p. 40).

The rest of the Impact assessment does not add more to the discussion of the vehicle (“form”).

The annexes to the Impact Assessment refer three times to the “format” of the information and twice to the “structure” of the information. There is a subtle notion that the “format” and “structure” may increase comparability, which appears from the discussion of the member states’ approaches. Chapter V, however, sees the format or the structure as only possible under the mandatory EU standard (regulatory option 3) (European Commission, 2013a, p. 70).

The preferred regulatory option incorporates two sets of “aspects”: themes (human rights, anti-corruption and bribery matters, environmental and employees-related matters) and items (“within these areas, the disclosure should include a description of (i) the companies' policies, (ii) performance and (iii) risk-management aspects, relying on existing international frameworks”). The wording “within these areas” suggests a structure, where three items are disclosed under each of five themes. However, Chapter V does not explicitly establish that the information should be provided in a particular order of themes and items.

The Impact Assessment does not discuss the language of disclosure.

For reference, the table below summarizes the provisions regarding the access chapter by chapter.

	Goals	Requirements
Intro	No	Different vehicles are mentioned but no preference for a specific vehicle
Proc. Issues	No	No
Policy Context	Available information (Annex) Access (Annex) Consistent and coherent format (Annex)	No
Problem Definition	Information available Access in a consistent manner to improve comparability (Annex) Achieve sufficient materiality, accuracy, and comparability (?) Overcome “information gaps”: lack of timeliness, poor use of KPIs (?) Overcome “regulatory failure”, “market failure” and lack of harmonization	No
Objectives	Potentially: comparability Keep flexibility and limit compliance costs	No
Policy Options	Potentially: comprehensiveness, conciseness, accuracy, comparability, regular Minimum harmonization Keep flexibility and limit compliance costs	Vehicle/ time: annual reports (plus a possibility of a voluntary separate statement) Format: themes and items in relation to them Language: not established
Impacts	Information publicly available	No
Evaluation and Monitoring	No	No

Table 3. Goals and requirements within the access component in the Impact Assessment

3.4.4. Users

3.4.4.1. What are the goals?

Overall, the Impact Assessment uses over dozen of terms to refer to the users e.g. “users”, “stakeholders”, “citizens” and “consumers”, “society at large”, “NGOs”, “local communities”, “Socially Responsible Stakeholders” and “mainstream investors”, “shareholders”, “internal and external stakeholders”, “public authorities”, “employees”.

The first reference to the users appears in the Introduction to the Impact Assessment, which mentions transparency as a "smart lever to strengthen citizen and consumer trust and confidence in the Single Market and to encourage sustainable economic growth” (European Commission, 2013a, p. 2).

Chapter I of the Impact Assessment mentions introduces the notion of “stakeholders”. The chapter itself does not define “stakeholders” but it refers to “companies, investors, consumer organisations, trade unions, auditors, international guidelines-setting organisations and academia” (European Commission, 2013a, p. 4). The Annex to Chapter I, which summarizes the public consultations, refers to “stakeholders”, “respondents”, “users”, and “contributors”. While Chapter I and its Annex often refer to the generic notions, they provide two important insights. Firstly, the Annex mentions major categories of “stakeholders” (preparers/ companies, users – mainly investors, NGOs, auditors and accountants, public authorities, academics). Secondly, the Annex highlights a lack of alignment in the interests of those i.e. a “diverse pattern of opinions depending on the category of respondents” (European Commission, 2013a, p. 45). Notably, neither citizens nor consumers, mentioned in the Introduction, appear explicitly among the categories of “stakeholders” in Chapter I.

Chapter II, “Policy context”, mentions that CSR supports “collaboration with stakeholders”. In particular, CSR benefits the “company’s owners/shareholders”, “other stakeholders”, “society”, “consumers”, “customers” and “job market”.

Chapter III, “Policy Options”, deals with the interests of “stakeholders” and “users” extensively. Section 3.1. refers to some particular categories of users for example “Socially Responsible Investors (SRIs)” (European Commission, 2013a, p. 10). The Impact Assessment aspires to overcome the “market failure” by satisfying both “investors’ and societal demand”. Section 3.3. of Chapter III addresses the impact that insufficient non-financial transparency has for different groups of stakeholders. The Impact Assessment discusses the interests of three groups of “stakeholders”. Firstly, the interests of the managers and boards of the disclosing companies in improving their performance. The Impact Assessment makes a “business case” for the non-financial transparency suggesting that better non-financial information can improve financial performance. Secondly, the Impact Assessment looks at the interests of the NGO and public authorities in improving accountability. Despite naming only NGOs and public authorities among

the users, the section delves into discussing the impacts on “society at large”, “local communities” and “consumers’ trust”. Public consultations demonstrated disagreement between the NGOs and public authorities and, thus, it is not clear which of the groups actually represents “society at large”, “local communities” and “consumers”. Thirdly, the Impact Assessment discusses the interests of investors. The Impact Assessment considers that the existing disclosure practices do not allow investors to benchmark the companies and, thus, prevent the most effective capital allocation.

Chapter IV does not extensively deal with the users of the information. Chapter V on policy options introduces a notion of “acceptability to stakeholders”. Annex to Chapter V discusses the “acceptability” of different options and eventually comes to the conclusion that all options are acceptable for some “stakeholders” and scrutinized by others.

The Impact Assessment returns to the discussion of the outcomes for the users in Chapter VI related to the impacts. Here, the Impact Assessment suggests that the preferred option will meet the “key needs identified by the users” (which somewhat contradicts the analysis in Chapter V which shows that none of the options is actually universally acceptable and that users *per se* do not explicitly support Option 1). Therefore, the option will have multiple “primary impacts” on the users. For the companies, it “is expected to bring benefits both at internal (i.e. better employee relations, improved management systems and internal processes, etc.) and external level (i.e. enhanced reputation, better perception by and dialogue with stakeholders, easier access to capital)” (European Commission, 2013a, p. 37). Furthermore, it will increase “accountability towards society” as the information “could be used by civil society organizations and local communities” (European Commission, 2013a, p. 38). Finally, it will satisfy the demands of investors. As “other impacts”, the preferred option will create “shared value” that benefits both business and society at large”, and will have “positive impact on the worker’s right to information” (European Commission, 2013a, pp. 40–41).

To conclude, the notions of “stakeholders” and “users” overlap and change their meaning throughout the Impact Assessment. The Impact Assessment extensively discusses positive outcomes of transparency for various categories and groups of users. Both the groups of users and the outcomes change from one chapter to another.

3.4.4.2. How are the goals to be achieved (requirements)?

The Impact Assessment does not establish the targeted audience of the Directive. The “Problem Definition” section of the Impact Assessment somewhat differentiates between the various categories of “stakeholders” and “users”, but even this section is not clear on the composition of the users. The Impact Assessment fails to specify how the outcome can be achieved for all users with extremely diverse interests. For example, the Impact Assessment considers the public authorities and the NGOs within one group of users despite their contrasting views on transparency, demonstrated by the public consultations. The Impact Assessment does not establish any requirements to ensure that the various capacities of the users are taken into

account. The Impact Assessment also does not establish the link between the "investors'" and "NGOs" access to the information and the "citizen and consumer trust and confidence in the Single Market".

The Impact Assessment extensively discusses the outcomes of established transparency for various categories and groups of stakeholders but it almost does not discuss the participation of the users in the transparency process. As a result, the Impact Assessment does not specify who are the primary users of the information, what are their needs within the transparency (i.e. what information they need and how they can access it), and how the new regime will benefit the large groups of "citizens" and "consumers" mentioned in the Introduction. The Impact Assessment's approach to the users suggests that users are seen as passive beneficiaries of the transparency as a state rather than active participants of the transparency process.

For reference, the Table 4 summarizes the provisions regarding the users, chapter by chapter.

	Goals	Requirements
Intro	Strengthen citizens' and consumers' trust Encourage sustainable economic growth	No
Procedural Issues	Satisfy interested parties (users – mostly investors, NGOs, auditors and accountants, academicians, public authorities, mentioning separately consumers organizations)	No
Policy Context	Maximize the creation of shared value Prevent and mitigate possible adverse impacts which companies may have on society Full exploitation of the Single Market potential for sustainable growth and employment	The Directive is considered to be a part of the accounting rules
Problem Definition	Overcome different problems the lack of transparency poses for different users Meet the needs of users (including in particular investors, NGOs, and other civil society organizations, public authorities) Respond to "users and societal demand" Overcome "regulatory failure", "market failure" and lack of harmonization	No
Objectives	More transparency for internal and external stakeholders Provide for a better-informed decision making (e.g. of investors) Enhance the citizens' trust Keep flexibility and limit compliance costs	No
Policy Options	Annex: meet the users' minimum needs in terms of transparency Minimum harmonization	The non-financial disclosure is a part of the companies' reporting to their investors – the annual

	Keep flexibility and limit compliance costs	reports. Remaining reliance on the market in the "voluntary" policy option
Impacts	Key needs satisfied (mentions NGOs, local communities, investors, capital markets) Information could be used by civil society organizations and local communities Keep flexibility and limit compliance costs	No
Evaluation and Monitoring	No	No

Table 4. Goals and requirements within the users component in the Impact Assessment

3.5. Conclusion

This chapter provided a few insights into the context, which generated the NFRD. The idea of non-financial transparency was not new to the EU, but the business had largely seized the regulation. As a result, the Modernization Directive introduced empty shell requirements. The financial crisis of the late 2000s highlighted the lack of a long-term perspective in business. The idea of non-financial transparency picked up momentum as a possible solution for strengthening the citizens' and consumers' trust and promoting sustainable growth.

In public consultations, the stakeholders demonstrated diverging opinions in relation the non-financial transparency. While app. 60% of the respondents supported the idea of anti-corruption transparency, there was a significant difference in the levels of support among different categories of the respondents. The stakeholders also disagreed on the scope of application of the Directive. The Commission resolved the disagreement primarily through appealing to the "majority" of stakeholders. The Impact Assessment formalized the results of the public consultations and formal and informal meetings. The Impact Assessment contained "the Commission's initial analysis of the problem, policy objectives and different solutions as well as their likely impacts" (European Commission, 2019a). The Impact Assessment named "anti-corruption" among the "topics considered as most important by stakeholders and covered by existing international frameworks" (European Commission, 2013a, p. 25).

The analysis of the goals and requirements in the Impact Assessment was performed using four dimensions of transparency.

Firstly, the analysis within the components (disclosers, information, access, users) suggested that the European Commission took into account all four components of transparency in its analysis of the problem and the solution. However, the Impact Assessment did not equally address the four dimensions.

The information component was covered the best. The Impact Assessment defined transparency primarily through the reference to the information and its quality. Chapter III referred to the

insufficient “quality” of the information. The “quality” served as an umbrella concept that included “specific issues” and “specific information gaps”. Specific issues highlighted that the information was “not sufficiently material, balanced, accurate, timely and comparable”. The information gaps included: (1) irregularity and lack of consistency between the reports; (2) lack of performance-related information, risk management information, and information on the “negative externalities”; (3) lack of anti-corruption information; (4) poor use of KPIs and lack of quantitative information; (5) absence of independent verification of reports; (6) presence of the irrelevant and anecdotal information, unsubstantiated claims and inaccurate figures. The problems were associated with the market and regulatory failures, in particular the fragmentation of the member states’ regulations and multiplicity of the reporting frameworks, based on the guidelines in the absence of the “standard”.

The Impact Assessment suggested a need for “harmonization”. The Impact Assessment also criticized the provisions of the Modernization Directive for the presence of the filters such as “necessary” and “appropriate”. The Impact Assessment proposed six options to address the transparency. All options were assessed based on the “quality” criteria. However, the understanding of the “quality” varied. Eventually, each policy option was assessed against a particular set of quality characteristics. These quality characteristics have been different for each option. The same situation occurred with the degrees. The Impact Assessment actively used degrees such as “sufficient”, “improved”, “increased”, “contribute” and others to describe the effects of the policy options. The Impact Assessment did not use one degree applicable to all regulatory options.

The Impact Assessment opted for “a smart mix of mandatory (statement) and voluntary (detailed reporting) disclosure requirements”. The combination of two options included a set of five regulatory instruments: the reporting themes (including corruption or anti-corruption); the reporting items; the international frameworks; the quality assurance requirement; and the emerging inclusion criteria.

The choice of the preferred option was explained by its “limited but useful incentive to improve the quality of those reports”. Despite the Impact Assessment returning to the notion of “quality”, the meaning of “quality” was blurred by multiple iterations. The Impact Assessment did not consistently reflect on the effects of the policy option on the “information gaps”. The preferred policy option addressed “information gaps” partially. For example, the preferred policy option addressed the lack of performance-related information and risk management information by requiring disclosing the risks and results of the policies rather than only policies. The lack of information on anti-corruption was addressed by the adding of corruption/ anti-corruption and bribery to the reporting themes.

The disclosers component was also well covered by the Impact Assessment as the Impact Assessment associated the “quantity” of the information explicitly with the quantity of the reporting companies. With regards to disclosers, Chapter III of the Impact Assessment, “Problem Definition and Subsidiarity”, placed transparency in the context of sustainable growth and

highlighted the main deficiencies of the pre-Directive regime. In particular, it highlighted the risks created by the EU large companies, especially those operating in developing countries. Chapter III emphasized the "insufficient" and "inadequate" transparency created by the large companies. It suggested the need to overcome the "market" and "regulatory" failure by stepping away from the voluntary standard and achieving harmonization. Chapter III provided that only 6% of the EU 42000 large companies reported non-financial information. Chapter III also mentioned a need for clarity regarding the expected disclosures. The Impact Assessment revisited the "quantity" goals several times. In the beginning, the "quantity" goal was formulated "qualitatively" i.e. through the reference to the large companies and the risks they created. Later, it was "quantified" by imposing the limiting criteria of 500 employees. The later chapters of the Impact Assessment limited the amount of the covered companies to 18000 (app. 42% of the EU Large companies). The Impact Assessment defined the covered companies by referring to the number of employees (500) and companies' "large size". The preferred regulatory option combined the mandatory and voluntary disclosure. The Impact Assessment did not discuss sanctions (probably, delegating those to the member states) and relied on the "incentives", despite recognizing the market failure.

The access component was less explicit in the Impact Assessment. The Impact Assessment referred to the "availability" and "access", but these notions have not been further defined. At the same time, the notions describing the "quality" of the information seemed to apply also to the access. The Impact Assessment established a set of co-related reporting themes and items, but it did not explicitly mention the requirement to apply any particular format. The Impact Assessment appealed to "flexibility" and did not establish any KPIs. The KPIs were required only if "appropriate" and "necessary". The Impact Assessment did not discuss the language of disclosure.

From the first sight, the fourth component of transparency, the users, seemed to be well covered by the Impact Assessment. The Impact Assessment referred to different categories of users in different chapters. Chapter III, "Problem Definition" used the term "users" to refer to NGOs, public authorities, and investors. This wording suggests that other "stakeholders" benefit from the disclosure indirectly. But multiple references to users primarily outlined how the users will benefit from an increased state of transparency instead of defining how users participate in the transparency process. The Impact Assessment treated users as passive beneficiaries of the transparency as a state rather than active participants of the transparency process.

The analysis revealed the problem-solution thinking behind the Impact Assessment. In its analysis, the Impact Assessment relied on four key components, which can be found primarily in Chapters III ("Problem Definition") and Chapter V ("Policy Options"), even though smaller pieces are spread across the whole document. The Impact Assessment: 1) described the problem; 2) identified the regulatory reasons for such a problem; 3) defined the new regulatory provisions; 4) reflected on the achievement of the goals by the new regulatory provisions. As a result of this four-component structure, the Impact Assessment created two pairs of causal links: (1) problem

– failure in regulatory requirements; and (2) new regulatory requirements – goal link. A comparison of the two tables demonstrates the difference between them.

The scope of the regulatory and market failure, described in Chapter III, is only partially covered by the regulatory requirements, provided by Chapter V. For example, Chapter V did not create a standard and did not overcome the fragmentation. It applied minimal harmonization. Chapter V harmonized the scope of application of the transparency regime, but it did not cover all large companies, which Chapter III qualified as problematic. Chapter V created a mandatory regime but did not support it with sanctions or enforcement. Chapter V harmonized the reporting items, reporting themes, and the quality assurance standard, but it did not harmonize the KPIs. Chapter V, furthermore, relied on the international reporting frameworks, identified by Chapter III as a part of the regulatory failure due to their multiplicity. Chapter V also reintroduced some filters, rejected by Chapter III, such as "appropriate" and "necessary", but in relation to specific parts of the disclosure – e.g. KPIs. Chapter V provided for harmonization of the vehicle and timing of disclosure, but it did not harmonize the format and the language. Finally, Chapter V concentrated on the "key" or "minimal" needs of the users. Thus, Chapter V reduced the requirements that Chapter III discussed as necessary to overcome the regulatory failure.

The difference between the requirements that the Impact Assessment considered to be appropriate for solution of the problem and requirements eventually proposed, can be explained by considerations of costs and flexibility. The Impact Assessments referred to the "cost-effectiveness" of the different policy options. While Impact Assessment changed the description of transparency, the "cost" goal remained stable within the Impact Assessment.

The dynamic of requirements was not aligned with the dynamic of the desired goals with regards to "increased transparency. Rather, the development of the goals has been characterized by accumulation of various goals. Goals discussed in earlier chapters of the Impact Assessment have not been explicitly abandoned, but the new goals appeared. Accordingly, it was not clear which set of goals was leading. The goals relating to flexibility and costs have been kept rather stable, while the parameters of transparency have been changing.

	Problem	How did it appear? (Regulatory/ Market Failure)
Disclosers	Inadequate (insufficient) transparency by the EU large companies, esp. operating in the developing countries: 6% of the EU large companies are reporting NFI Lack of clarity regarding the expected disclosure Lack of harmonization	"Voluntary" nature of the Modernization Directive Fragmentation and lack of harmonized requirements
Information	Issues: information is "not sufficiently material, balanced, accurate, timely and comparable" Information gaps: (1) irregularity and the lack of consistency between the reports; (2) lack of performance-related information, risk management information, and information on the "negative externalities"; (3) lack of anti-corruption information; (4) poor use of KPIs, lack of quantitative information, inaccurate; (5) absence of independent verification of reports; (6) presence of the irrelevant and anecdotal information, unsubstantiated claims Lack of harmonization	Fragmentation and lack of harmonized requirements: member states' requirements vary to a great extent in terms of content and scope Filters: filters provided in the current wording ("where appropriate" and "to the extent necessary") fail to provide a clear legal obligation The multiplicity of voluntary frameworks which define principles and guidelines, rather than reporting standards
Access	Presentation is not accurate, timely and comparable, there is a lack of consistency Lack of harmonization	Fragmentation and lack of harmonized requirements, multiplicity of approaches
Users	The needs of the users are not met Lack of harmonization	Reliance on the market in the circumstances of market failure

Table 1. Problem Definition (Chapter III): problem – failure in regulatory requirements

	Goal	Requirements
Disclosers	Cover 18000 of the EU large listed and non-listed companies (app. 42%) Reduce the legal uncertainty Minimum harmonization Keep flexibility and limit compliance costs	Harmonized scope: the EU large companies with over 500 employees, only parent company Not harmonized: sanctions
Information	A limited but useful incentive to improve the quality of those reports. Information would be disclosed in reference to high quality, generally accepted international frameworks, and verified for consistency due to the inclusion in the Annual Report Minimum harmonization Keep flexibility and limit compliance costs	Semi-harmonized inclusion criteria: e.g. required to disclose *material* non-financial information subject to reasoned "comply or explain" Harmonized reporting items: (i) policies, (ii) performance and (iii) risk-management Harmonized reporting themes: environmental and employees-related matters, social matters, human rights, anti-corruption and bribery matters (or corruption) Semi-harmonized reference to the international frameworks Harmonized "consistency" check Not harmonized: KPIs not established, required if "appropriate" and "necessary" Not harmonized: the possibility of a voluntary detailed reporting
Access	Increase comparability amongst companies, as users would have access to this information in a consistent manner Minimum harmonization Keep flexibility and limit compliance costs	Harmonized vehicle of reporting and timing (annual reports) Semi-harmonized structure of reporting Not harmonized: language
Users	Satisfy users' "key" or "minimal" needs Minimum harmonization Keep flexibility and limit compliance costs	The target audience is not harmonized but framed within the accounting provisions, remaining reliance on the "market" in the introduction of the "voluntary" option and "business case" for transparency

Table 2. Policy Options (Chapter V). New regulatory requirements – goal link

4. Chapter IV. From the Impact Assessment to the Proposal

4.1. Introduction

The Proposal for the NFRD was published in April 2013 together with the Impact Assessment. The context discussed in Chapter II is the same for both documents. In fact, the key provisions of the Proposal are similar to the key provisions of the Impact Assessment. Yet, the Proposal formalizes the regulatory requirements which were described by the Impact Assessment. It is, thus, more precise regarding the requirements. The Proposal also introduces some peculiar changes to the goals. Thus, the Proposal is briefly analyzed in this chapter.

4.2. The context

The context was the same as described in section 3.2. of this study for the Impact Assessment.

4.3. The role and the structure of the Proposal

The Proposal formalizes the requirements, discussed in the Impact Assessment and the public consultations. The Proposal is supported by an explanatory memorandum. The explanatory memorandum contains four chapters: 1) Context of the Proposal; 2) Results of the Consultations with the Interested Parties; 3) Legal Elements of the Proposal; 4) Budgetary Implications. The explanatory memorandum is obviously much shorter than the Impact Assessment, but seven pages of the memorandum present an ample opportunity for the analysis of the goals and requirements.

The text of the Proposal contains nineteen recitals and five articles. Articles 1 and 2 contain the main provisions, amending the “Accounting Directives” i.e. Directives 78/660/EEC and 83/349/EEC. Directive 78/660/EEC on the annual accounts of certain types of companies ("Fourth Company Law Directive") contains requirements for the annual reports of the EU large companies. The Directive 83/349/EEC on consolidated accounts ("Seventh Company Law Directive") contains requirements for the annual reports of the groups of companies. Similar to the Impact Assessment, the Proposal places the non-financial transparency within the financial reporting requirements.

Two Directives to be amended i.e. the Directive 78/660/EEC and the Directive 83/349/EEC are quite similar in the content, but the latter Directive establishes the rules for the group of companies instead of the individual companies. The amending provisions are virtually the same for the two Directives. To avoid repetitions the analysis in this chapter targets primarily Article 1 of the Proposal, amending the Directive 78/660/EEC. Provisions of Article 2 are used if they add to the text of Article 1, primarily in the section on disclosers.

Articles 3 to 5 of the Proposal are transitory. This chapter refers to them only when they are relevant for answering the research question.

4.4. Four components of transparency in the Proposal

4.4.1. Disclosers

4.4.1.1. What are the goals?

According to the explanatory memorandum, "it is estimated that only ~ 2500 out of the total ~ 42000 EU large companies formally disclose non-financial information on a yearly basis" (European Commission, 2013b, p. 4). The memorandum explicitly associates transparency with the increased quantity of the reporting companies. The memorandum emphasizes the need to cover all large companies in all sectors "in order to ensure a level playing field" (European Commission, 2013b, p. 2). The explanatory memorandum mentions large companies but invokes the need to avoid "undue administrative burden", especially for the "smallest" companies. Despite referring to the "SMEs" and "smallest" companies, in line with the Impact Assessment, the explanatory memorandum and the Proposal exclude large companies with less than 500 employees from the scope of application.

The explanatory memorandum mentions the lack of "legal certainty" but does not establish what it means for the identification of disclosers. The discussion of the "clarity" in the memorandum does not explicitly extend to the clarity regarding the disclosing entities. The Proposal itself does not mention "certainty" or 'clarity".

A reference to harmonization appears in the text of the explanatory memorandum along with the notion of flexibility. The memorandum provides that "over and above a harmonised requirement of consistent information common across the Single Market, Member States should have a degree of flexibility as far as additional reporting requirements are concerned" (European Commission, 2013b, p. 6).

In contrast to the single reference to "harmonization", the explanatory memorandum refers to "flexibility" five times. The memorandum refers once to "non-intrusiveness" and five times to "avoidance of the administrative burden". Some chapters of the Impact Assessment also contained occasional references to "flexibility" and "undue burden". However, they referred to the flexibility for the companies, rather than the regulatory flexibility on the side of the member states, to which the memorandum is referring.

The main text of the Proposal does not mention harmonization per se. Recital 17 of the Proposal refers to proportionality and subsidiarity (European Commission, 2013b, p. 11).

Apart from general considerations of the regulatory flexibility, the explanatory memorandum and the Proposal establish the requirements for the scope of application. The explanatory memorandum and Recital 11 of the Proposal indicate the scope of application of the Proposal by referring to the average number of employees, total assets and turnover.

4.4.1.2. How are the goals to be achieved (requirements)?

A careful reading of Articles 1 and 2 of the Proposal exposes their multilayered structure. The articles are formulated in such a way, that a large part of the new provisions applies to all

companies, covered by the amended Directives. In case of the Article 46 of the Directive 78/660/EEC, only paragraph 1(b) is limited to the "companies whose average number of employees during the financial year exceeds 500 and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million". The rest of amended Article 46 does not have limitations in the scope of application, suggesting that all companies, falling under the Directive, should "include [in their annual reports] a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that [they face]". Furthermore, "to the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business" (European Commission, 2013b, p. 11).

The Proposal, thus, maintains the general obligation for *all companies* to report comprehensive non-financial information. Furthermore, it seems to require the inclusion of both financial and non-financial KPIs "to the extent necessary" as well as an explanation of amounts in the financial reporting from *all companies* covered by the amended Directive.

At the same time, it provides a new obligation to include information on particular aspects. This obligation applies to companies as well as groups of companies, that (separately or together in case of a consolidated group): (1) exceed an average number of 500 employees during the financial year; and (2) on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million.

The Proposal does not establish specific rules regarding the enforcement. Article 3 of the Proposal relies on the discretion of the member states which "shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive" (European Commission, 2013b, p. 14). Similar to the Impact Assessment the explanatory memorandum claims benefits of the non-financial transparency for disclosers.

4.4.2. Information

4.4.2.1. What are the goals?

Similar to the Impact Assessment, the explanatory memorandum establishes that the transparency provisions of the Accounting Directives have not been sufficient and recognizes the need to "enhance transparency". The memorandum aspires "to increase the transparency of certain companies, and to increase the relevance, consistency, and comparability of the non-financial information currently disclosed, by strengthening and clarifying the existing requirements" (European Commission, 2013b, p. 3).

Later on, the memorandum refers to the quantity and quality of the information as the main dimensions of transparency. The memorandum and the Proposal use other adjectives to describe information but they are not explicitly connected to the concept of "quality".

The explanatory memorandum mentions materiality as a requirement rather than a goal as it suggests that the proposal will require certain large companies to disclose a statement including material information.

The memorandum also refers to usefulness, relevance and consistency of the information. In particular, the memorandum aspires "flexibility to disclose information in a useful and relevant way" (European Commission, 2013b, p. 2). It suggests that "disclosure of non-financial information needs to be made more available, useful, and consistent at EU level, as the activities of these companies are often EU-wide and relevant to investors and other stakeholders throughout the internal market" (European Commission, 2013b, p. 6). It also states that "business-relevant information, useful for decision-making purposes".

It can be observed, that the explanatory memorandum partially uses the notions earlier used in the Impact Assessment such as materiality and consistency. It also introduces new notions to describe the information such as usefulness and business relevance.

Recital 6 of the Proposal itself contains a reference to "comparability and consistency". Recital 17 refers to the "relevance, consistency and comparability" of the information. Furthermore, recital 5 refers to the notions of "fairness and comprehensiveness". Later, Articles 1 and 2 of the Proposal refer to the notions of "fairness", "comprehensiveness" and "consistency" as part of the requirements for the information (the inclusion criteria) (European Commission, 2013b).

The Proposal itself does not contain any mentions of "materiality", which has been crucial in the Impact Assessment and appeared in the explanatory memorandum.

The memorandum and the Proposal aspire to "enhance" and "improve" transparency. They also articulate a need for an "increase" in "relevance, comparability and consistency". While these features are represented through a continuum, the Proposal, similar to the Impact Assessment, does not use the degrees consistently.

As discussed in section 4.4.1.1., the explanatory memorandum explicitly prioritizes regulatory flexibility on the side of the Member States over harmonization.

4.4.2.2. How are the goals to be achieved (requirements)?

The Proposal has a binary structure. Part of the Proposal's requirements applies to all companies. The other part applies only to the large companies only. It is not always possible to determine the scope of application of each provision. The numbering and structure of the amending Articles suggest that only the requirements, establishing the mandatory reporting on the themes and items, are confined to the large companies. In contrast, the requirements to disclose comprehensive information, KPIs, and explanation of amounts in the annual report are applicable across all companies.

Inclusion criteria and comply and explain approach

Recital 5 refers to fairness and comprehensiveness. Article 1 of the Proposal explicitly incorporates "fairness", "comprehensiveness" and "balance" into the regulatory requirements.

> "The annual report shall include a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces. The review shall be a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business" (European Commission, 2013b).

Interestingly, while the amendments to the two Directives are identical in other aspects, the requirement in Article 2, amending Article 36 of the Directive 83/349/EEC does not feature a reference to the "comprehensiveness" (European Commission, 2013b).

Since the meaning of comprehensiveness is not described, its inclusion and exclusion cannot be explained. It is even harder given that Article 2 still refers to a "comprehensive report" further in the text of the exceptions.

The new general requirement so far does not include "filters", e.g. "where necessary" and "if appropriate" but relies on a set of "positive" inclusion criteria such as "fair", "comprehensive", "balanced" and "consistent with the size and complexity of the business". In such a way, the Proposal incorporates the goals directly into the requirements. However, the regulatory provisions are rather selective in incorporating the different notions. While "fairness", "balance" and "comprehensiveness" appear explicitly in the main text of the Proposal, the notions of "materiality", "comparability" and "consistency" do not. The reference to "relevance" is limited to the KPIs.

The Proposal also provides for the inclusion of the non-financial KPIs in the annual report. However, here multiple filters are used similar to those in the Accounting Directives, in particular "to the extent necessary for an understanding of the company's development, performance or position" and "relevant to the particular business". Another standard of inclusion is used for the "references to and additional explanation of the amounts in the annual accounts". Article 1(a) requires these to be disclosed only "where appropriate".

Recitals 6 and 7 of the Proposal as well as Article 1(a) virtually repeat those requirements with one important difference. The Proposal does not refer to the "materiality" at all. It is not clear what happens to the notion of materiality. Several possibilities exist. In particular, other requirements such as the "fair and comprehensive", "to the extent necessary for an understanding of the company's development, performance or position" and "where appropriate" may be interpreted as manifestations of materiality. These requirements, however, are not indicated as relating to materiality. Secondly, materiality might be implied. Thirdly, materiality might be not considered at all. In any case, the Proposal does not mention materiality explicitly among the requirements.

The Proposal maintains the “comply or explain” approach suggested by the Impact Assessment (European Commission, 2013b, p. 12).

Reporting themes and reporting items

The Proposal mentions “anti-corruption and bribery but does not define either “corruption” or “bribery”. It is also not clear if “anti-corruption” is the same as “corruption” and “bribery” is the same as “anti-bribery”.

International frameworks and KPIs

In relation to the international and national frameworks, Article 1b of the Proposal provides a possibility to publish a “comprehensive report” under one of the reporting frameworks. Unlike the Impact Assessment, the Proposal allows the companies to use not only international but virtually any framework for reporting if it results in a “comprehensive report”.

The Proposal provides for the inclusion of the KPI only “to the extent necessary for an understanding of the company's development, performance or position”. The Proposal actually keeps a part of the “filters” in the new regime as it generally keeps the approach of the “old” paragraph 1(b) of the Article 46.

Quality assurance

As earlier suggested by the Impact Assessment, the Proposal refers to the provisions of Directive 78/660/EEC, and requires auditors to confirm consistency or otherwise of the non-financial information with the annual accounts for the same financial year (European Commission, 2013b, p. 10).

Overview of the requirements

To conclude, the Proposal relies on five groups of regulatory requirements.

Firstly, the Proposal specifies the inclusion criteria. In its general requirement, the Proposal relies on the “positive” notions of “comprehensiveness”, “balance” and “fairness” in contrast to the Accounting Directive’s filters “where appropriate” and “if necessary”. These filters are, however, still used in relation to the KPIs and links between financial and non-financial information. Secondly, the Proposal establishes the reporting themes, including the “anti-corruption and bribery”. Thirdly, the Proposal moves to the requirement for the large companies and indicates the reporting items: (i) a description of the policy pursued by the company in relation to the reporting themes; (ii) the results of these policies; (iii) the risks related to these matters and how the company manages those risks. These two notions are not defined and the use of negation “anti-” is not explained. The Proposal does not establish any KPIs. The requirement to include KPIs and additional explanation of the amounts in the annual accounts is specified in the general requirement and limited by the use of the inclusion criteria (see above). Fourthly, the Proposal relies on the reporting frameworks, which can be international, national or EU-based. The Proposal specifies that companies “may rely” on the frameworks and should specify the

framework if relied upon. Fifthly, the Proposal refers to the consistency check as a quality assurance requirement.

4.4.3. Access

4.4.3.1. What are the goals?

The explanatory memorandum provides that "disclosure of non-financial information needs to be made more available, useful, and consistent at EU level…" (European Commission, 2013b, p. 9). Here, the memorandum treats availability as separate from usefulness, consistency, and relevance. "Comparability" is not mentioned in this case, leaving the relationship between "availability" and "comparability" unclear.

The Proposal mentions "access" and "availability" in relation to the disclosed non-financial information a few times.

Recital 5 considers that non-financial information "should be made available to the public by undertakings across the Union" (European Commission, 2013b, p. 9). It is not clear from the Recital 5, whether "availability" in this context refers to the information or the access component of transparency:

The Proposal and the explanatory memorandum together contain two references to the "access", which is more than the Impact Assessment, despite the latter being much longer. The explanatory memorandum aspires to ensure "easier and more widespread access" to the non-financial information, but, only for the investors (European Commission, 2013b, p. 3). Recital 9 of the Proposal also refers to the investors' access only (European Commission, 2013b, p. 9).

It is still not clear if notions of "comparability", "consistency", and "relevance" apply to the access. The Proposal does not explain these notions, which opens the possibility of applying these notions to both the "information"/ "message" and the "access"/ "system" components of transparency. Due to the lacking definitions or explanations of the notions, the interpretations may vary.

The role of harmonization and flexibility is described in previous sections on the disclosers.

4.4.3.2. How are the goals to be achieved (requirements)?

The access requirements, established by the Proposal, generally reflect the provisions of the Impact Assessment. In particular, the Proposal requires the disclosure in the annual report or in the separate report, which, however, shall be included in the annual report. Ultimately, this requirement results in a need to access each company's website individually, but it is rather clear in relation to the vehicle of reporting. Along with the vehicle of disclosure, the requirement to include the non-financial information in the annual report standardizes the timing of disclosure.

The Proposal contains the same provisions regarding the format, as the Impact Assessment. It established five thematic areas, which the companies should cover in their reports. The text of

the Proposal, as well as the text of the Impact Assessment, suggests a five to three format, where each thematic area includes reporting on the three aspects.

The Proposal does not establish the language of disclosure.

4.4.4. Users

4.4.4.1. What are the goals?

The explanatory memorandum to the Proposal refers to the users in almost every paragraph, but there is no order in the description of the targeted audience. The memorandum uses the terms “stakeholders”, “users”, “investors”, “civil society organizations and local communities”, “preparers”, and “non-governmental organizations”. The explanatory memorandum does not mention “citizens” or “consumers” and refers to the interests of the society in the passing, through the definition of “Corporate Social Responsibility”.

In some cases, the “stakeholders” and “investors” are separated into two separate categories (European Commission, 2013b, p. 3). In other cases, “stakeholders” seem to cover all affected parties (European Commission, 2013b, p. 3).

The term “interested parties” is used as an addition to “stakeholders”. The explanatory memorandum, thus, describes “consultations of stakeholders and interested parties”. The term “interested parties” seems to include, at least partially, those previously mentioned as “stakeholders”. On the other hand, the term “users” seems to exclude non-governmental organizations (this approach is similar to the terminology of the public consultations and opposite to the approach of the Impact Assessment):

> “The objective was to gather views from all interested parties, including preparers, users, non-governmental organisations, etc.” (European Commission, 2013b, p. 3).

The Proposal itself mentions “society” in the passing, does not refer to the “users”, does not mention “civil society organizations and local communities” and “non-governmental organizations”, but refers to “investors” twice in the preamble. At the same time, the Proposal mentions “consumers”, which are not mentioned in the explanatory memorandum.

The Proposal also separates the “stakeholders” from the “shareholders”. The relationship between the terms “user”, “investor” and “shareholder” remains unclear (European Commission, 2013b, p. 8).

In relation to the users’ goals regarding the information, the explanatory memorandum contains three types of provisions. The first type of provision relates to all stakeholders. The second type of provision seems to differentiate between the investors and other stakeholders:

> “However, consultations have shown that only a limited number of EU large companies regularly disclose non-financial information, and the quality of the information disclosed varies largely, making it difficult for investors and stakeholders to understand and compare companies’ position and performance” (European Commission, 2013b, p. 3).

And, finally, the third type of provision refers to the investors' interests only:

> "… this proposal aims at ensuring a level playing field, at limiting costs for enterprises operating in more than one Member State, and ensuring easier and more widespread investors' access to key, useful information" (European Commission, 2013b, p. 4).

Despite referring to the interest of the investors, neither the Proposal nor the explanatory memorandum explains why the "investors' access" is mentioned separately and why the "access" is not mentioned as a goal for other users.

To conclude, the Proposal fails to identify consistently the users of the proposed disclosure. The provisions of the explanatory memorandum and the Proposal are focused on the investors.

4.4.4.2. How are the goals to be achieved (requirements)?

The memorandum and the Proposal mention different sets of users (e.g. the Proposal mentions the "consumers", but not the "users" or "civil society organizations", mentioned in the memorandum). The documents do not identify particular information needs and capacities of different groups. Where specific categories of users are mentioned (e.g. the investors), it is not clear why their interests are considered different from the other groups.

The explanatory memorandum and the Proposal do not suggest instruments that are specific to the groups of identified users and tailored to their needs.

Similar to the Impact Assessment, the Proposal incorporates the Directive within the accounting provisions. The choice of the annual report as a vehicle of disclosure and the requirement to connect "where appropriate" the non-financial information to the financial information indicates some tailoring towards the investors' needs, however, it is not explicit. The Proposal does not address the special needs and capacities of the weaker groups of users e.g. "local communities" or "consumers".

4.5. Conclusion

This chapter described the Proposal for the Directive 2014/95/eu. The Proposal was published at the same time as the Impact Assessment and shared its background. To a large extent, the Proposal formalized the requirements discussed by the Impact Assessment. However, there have been differences between the Proposal and the Impact Assessment. These differences pertained to all the four components of transparency. The provisions of the Proposal and the differences between the Proposal and the Impact Assessment have been highlighted in this chapter.

The "disclosers" component of transparency was represented by the reference to the 18000 companies in the explanatory memorandum. The Proposal itself did not mention the number of covered companies. The explanatory memorandum also referred to the "legal certainty" but it was unclear whether legal certainty implied the clarity regarding the disclosing entities. For all components, the explanatory memorandum prioritized flexibility and non-inclusiveness over harmonization. Part of the Proposal's requirements applied to all companies subject to the

respective Accounting Directives. More specific provisions applied to the "large companies". The Proposal defined the notion of the large company in its provisions by referring to the (1) financial results (a balance sheet total of EUR 20 million or a net turnover of EUR 40 million); (2) and the number of employees (over 500). In the case of the group of companies, only (3) the parent was subject to reporting. The Proposal did not define the sanctions for the companies in case of the failure to follow its requirements. The member states were required to do so.

There were multiple descriptions of the information-related goals: the explanatory memorandum started with the notion of "quality". It further mentioned "materiality", "relevance" and "comparability", but it did not mention "balance", "accuracy" or "reliability". The preamble of the Proposal aspired the "comparability", "consistency" and "relevance" as well as a "fair and comprehensive view of an undertaking's policies, results, and risks". The main text of the Proposal also referred to "fairness" and "comprehensiveness", "relevance" and "balance" in its requirements. The Proposal itself did not mention "materiality", "accuracy" or "quality". The information-related requirements of the Proposal included the (1) inclusion criteria, (2) the reporting themes, (3) the reporting items, (4) the reference to the frameworks, and (5) the quality assurance standard (mentioned only in the recitals). The Proposal did not refer to "materiality" in its requirements. Instead, it has used "fair and comprehensive" as the inclusion criteria for all information in general. For some aspects (such as KPIs and explanations for the amounts in the financial reports) special inclusion criteria were used (such as "where appropriate"). Similar to the Impact Assessment, five reporting themes were mentioned (at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters). Notably, the Proposal used "anti-corruption and bribery" instead of "corruption" used in the Impact Assessment. The Proposal included three reporting items which it required to be disclosed in relation to the "matters" it established (i) a description of the policy pursued by the company; (ii) the results of these policies; (iii) the risks related and how the companies manages the risks. The Proposal allowed companies to use or refrain from using any reporting framework. The companies were supposed to report on the used frameworks. In terms of quality assurance, the Proposal provided for the "consistency" check.

The explanatory memorandum referred several times to the access. It also specifically mentioned "easier and more widespread investors' access". The memorandum also articulated a need for "more available" information, which was, however, weighed against "flexibility". The Proposal contained two references to the access goals. Recital 5 mentioned the need "to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public by undertakings across the Union". Somewhat contrary to the "public" availability, Recital 9 referred to the "investors' access". The Proposal established a harmonized vehicle of disclosure (annual report). The Proposal also provided a semi-structure (a set of themes such as environmental, social and anti-corruption matters and a set of items such as policies, risks and results). The Proposal mentioned KPIs and references pertaining to the financial statement separately, in no relation to reporting themes. The Proposal did not harmonize the language of disclosure.

The “users” dimension was represented by multiple references and terms. The explanatory memorandum mentioned multiple groups of users (or stakeholders). It concentrated on the goals of the stakeholders beyond the transparency regime (e.g. accountability, trust) and did not recognize the differences in the interests and capacities of the stakeholders. On multiple occasions, the investors were mentioned separately from the other stakeholders: However, such separation did not result in more specific consideration of the investors’ roles or goals.

The Proposal mentioned some separate categories of users. The Proposal specifically referred to the “investors’ access” to the information and “public availability”. The provisions of the Proposal, however, were not explicitly taking into account the different interests and capacities of the users.

The table below represents the goals and the requirements of the Proposal. An analysis suggested that the explanatory memorandum and the Proposal revisited the goals several times, especially in the “information”, “access” and “users” components. The information goals were characterized differently in the memorandum and the Proposal. In particular, the Proposal did not use such notions as “material” and “quality”, but referred to “comprehensiveness”, “balance” and “fairness”. The access-related goals were represented by the notions of “access” and “availability”, which were characterized differently across the text. The user-related goals were virtually impossible to summarize due to the constant change in the terminology.

The requirements were characterized by deprioritization of harmonization which the Proposal deemed secondary to flexibility.

	Goals	Requirements
Disclosers	Cover certain large companies Increased legal certainty Flexibility "over and above" harmonization	Harmonized scope: general provision for all companies, specific provision for large companies: Not harmonized: the member states can decide on the sanctions; member states can introduce stricter provisions
Information	Different approach to the information in the explanatory memorandum (refers to quality, materiality, usefulness as well as comparability, consistency and relevance) and the Proposal itself (refers to comprehensiveness, balance and fairness as well as comparability, consistency and relevance; does not refer to quality, materiality, usefulness). Flexibility "over and above" harmonization	Harmonized inclusion criteria: balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business; subject to the "comply or explain"; filters specific to some items: KPIs required if "appropriate" and "necessary"; additional explanation of the amounts in the annual accounts "where appropriate" Harmonized reporting items: a description of (i) a description of the policy; (ii) the results of these policies; (iii) the risks and how the company manages those risks Harmonized reporting themes: environmental and employees-related matters, social matters, human rights, anti-corruption and bribery matters Semi-harmonized reference to the international frameworks Harmonized "consistency" check Not harmonized: KPIs not established, required if "appropriate" and "necessary"
Access	Easier and widespread access for the investors Available to the public by undertakings across the Union Comparability, consistency Timeliness Flexibility "over and above" harmonization	Harmonized vehicle of reporting and timing (annual reports) Semi-harmonized structure of reporting through establishing themes and items to be disclosed "in relation" Not harmonized: language
Users	Satisfy users' needs Flexibility "over and above" harmonization	The target audience is not harmonized but framed within the accounting provisions, remaining reliance on the "market" in the introduction of the "voluntary" option and "business case" for transparency

Table 1. Goals and requirements in the Proposal

5. Chapter V. From the Proposal to the Directive 2014/95/eu

5.1. Introduction

The Proposal for the Directive 2014/95/eu was published in April 2013, but the Directive was adopted one and a half years later, in October 2014. Between the publication of the Proposal and the adoption of the Directive, the Directive was contested in the EU parliamentary procedures with significant implications for its goals and requirements. This chapter analyzes the Directive. It starts with providing some information about the period, preceding the adoption of the Directive, and proceeds by reviewing the provisions of the Directive.

5.2. The context

In October 2014, the European Parliament and the Council have adopted the Directive 2014/95/eu amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

The analysis of a pre-Proposal stage has indicated three trends. Firstly, the companies have not been supportive of the Directive. For a long time, the idea of non-financial transparency has stagnated due to the business opposition (Monciardini, 2016). Secondly, most of the "public authorities and standard-setters" did not support the Commission's initiative by stating that the pre-Directive disclosure regime was sufficient (European Commission, 2011b). Thirdly, the sustainable investors and NGOs generally supported the Directive (Monciardini & Conaldi, 2019), but did not agree on multiple aspects of transparency.

The abovementioned trends intensified after the publication of a Proposal (Monciardini & Conaldi, 2019). In particular, businesses resisted the Proposal and the governments of some countries supported the business (Kinderman, 2020). In July 2013, BusinessEurope, an association of the EU business, has published a Position Paper, in which it opposed mandatory non-financial transparency (BusinessEurope et al., 2013, p. 4). BusinessEurope also worked hard on reducing the requirements of the Proposal:

> "In addition to this strategy of blanket opposition, BusinessEurope also made a number of specific recommendations, such as restricting the scope to publicly listed companies, eliminating any requirements for external auditing or reporting on risks, and allowing a separate non-financial report, as well as a broader comply or explain approach than was proposed by the Commission (BusinessEurope 2013). The response of EuroChambres – which represents local and regional Chambers of Commerce across the EU – was similar" (Kinderman, 2020, p. 6)

Sustainable investors and NGOs, in particular, CSR Europe and European Coalition for Corporate Justice (ECCJ) continued supporting the Directive. Eventually, the Proposal was negotiated in the European Parliament. During the negotiation, the members of the European Parliament proposed a significant number of amendments to the Directive. As demonstrated by these

amendments, the EU member states have had different views on the Directive (Committee on Legal Affairs of the European Parliament, 2013). German Members of the European Parliament (MEPs), in particular, were concerned with the necessity for regulatory adjustments and strongly opposed the Directive (Committee on Legal Affairs of the European Parliament, 2013; Kinderman, 2020). Other MEPs, in particular from the UK and France, supported the Directive and even proposed to strengthen its provisions (Committee on Legal Affairs of the European Parliament, 2013). Some MEPs have demonstrated neutrality regarding the proposed Directive (Committee on Legal Affairs of the European Parliament, 2013). The negotiation affected goals and requirements within four components of transparency.

5.3. The role and the structure of the Directive

The Directive 2014/95/eu is an EU legal act, which initiates changes in the EU non-financial transparency regime. The EU Directives, as opposed to the EU Regulations, do not directly create rights and obligations for the private parties unless they fulfill the requirements of the Van Gend en Loos judgment (Rasmussen, 2014). Instead, the Directives oblige the EU member states to implement (in the terminology of the EU law – transpose) their requirements into the national law. Therefore, the NFRD addresses member states and imposes transposition obligations on them. The member states are obliged to follow the EU scope. In case of the "minimum harmonization", the member states can also establish stricter rules than those of the Directive. Finally, the Directive may allow member states to make some decisions within the national scope.

The NFRD contains a preamble, which includes 23 recitals; and six articles.

Article 1 of the Directive contains Amendments to Directive 2013/34/EU as opposed to the Directives 78/660/EEC and 83/349/EEC. During one and a half years period between the publication of the Proposal and adoption of the Directive, the Directives 78/660/EEC and 83/349/EEC have been revised and merged in the Directive 2013/34/EU. The requirements, introduced by the Modernization Directive into the Directives 78/660/EEC and 83/349/EEC have migrated to the Directive 2013/34/EU. Article 19 of the Directive 2013/34/EU, accordingly, already established the obligation of the companies to disclose non-financial key performance indicators "to the extent necessary for an understanding of the undertaking's development, performance or position"(European Parliament and the Council of the European Union, 2013). Article 29 of the Directive 2013/34/EU establishes the same provision for the group of companies. It can be observed that Articles 19 and 29 do not cover corruption-related information.

The Directive 2014/95/eu has not changed Articles 19 and 29 of the Directive 2013/34/EU. This chapter does not discuss Articles 19 and 29 as they are part of the regime existing before the NFRD and they do not include references to corruption. Instead, new articles 19a and 29a have been added by the Directive 2014/95/eu. Articles 19a and 29a mandate the disclosure of corruption-related information. They are analyzed in this chapter.

The Directive 78/660/EEC governed annual reports of the EU "large companies" and the Directive 83/349/EEC governed the consolidated reports of groups. The rudiments of the two Directives

remained in the Directive 2013/34/EU, which contains a set of norms for the companies and a set of norms for the groups. Thus, the NFRD introduced two main changes – one change related to the reports of the large companies, and another – to the consolidated reports of the groups. Article 1 of the Directive contains two sets of amendments respectively for Article 19a and 29a. Articles 19a and 29a are virtually identical. Article 19a "Non-financial statement" applies to large undertakings and virtually identical Article 29a "Consolidated non-financial statement" applies to parent undertakings of the large groups. Article 1 of the Directive also amends Articles 20 (on diversity requirements), 33 (on the obligations of member states regarding the boards' reporting responsibilities), 34 (on audit requirements), and 48 (on the possibility of member states' regulation on reporting on taxes). The text, establishing Article 19a, is used for the analysis. The text of Article 29a is virtually identical to the text of Article 19a and articles on auditing and boards' responsibilities are discussed in relevant sections. Articles 2 to 6 of the Directive are short. Article 2 obliges the Commission to provide the guidelines on methodology for reporting. This Article together with respective guidelines will be discussed in the next chapter. Articles 3 (Review), 4 (Transposition), 5 (Entry into force) and 6 (Addressees) are transitory and discussed only where appropriate to address the research question.

5.4. Four components of transparency in the Directive

5.4.1. Disclosers

5.4.1.1. What are the goals?

The Directive does not refer to the quantity of the information and does not establish the number of covered companies. Recital 6 of the Directive refers to the "certain large undertakings". Both Recitals 8 and 13 of the Directive indicate the need to avoid the administrative burden for small and medium-sized undertakings: "in accordance with the 'think small first' principle" (European Parliament and the Council of the European Union, 2014). The Directive does not mention the goal of clarity or certainty.

Recital 1 of the Directive identifies a need to "raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors". At the same time, Recital 17 and Article 2 aspire to tailor the disclosure rules to the sector. They provide for the "general and sectoral" key performance indicators to be adopted by the Commission as a part of guidelines under the Directive.

To summarize, the Directive does not establish a number of covered companies. The Directive does not refer to clarity. The goals related to the sectoral tailoring are somewhat contradictory.

The Directive does not mention "harmonization" as a goal. Recitals 4, 5 and 21 aspire to improve "coordination of national provisions" and establish "certain minimum legal requirement ... across the Union". Recital 3 aspires "allowing for high flexibility of action, in order to take account of the multidimensional nature of corporate social responsibility (CSR) and the diversity of the CSR policies implemented by businesses".

5.4.1.2. How are the goals to be achieved?

Recitals 14 and 15 refer to the refined scope of coverage of the Directive. In particular, Recital 14 suggest that Directive should cover "only to those large undertakings which are public-interest entities". The recitals neither explain the reasons for reduction of the scope, nor the effects of reduction on the goals initially announced in the Impact Assessment. The respective provisions appear in Article 1(1). The Directive, thus, introduces four requirements for the disclosers: (1) number of employees; (2) financial results; (3) public interest entity (PIE) status; (4) parent/ consolidating entity (in case of the group).

At the EU level, the following entities are considered PIEs:

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;

(b) credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council (16), other than those referred to in Article 2 of that Directive;

(c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or

(d) entities designated by the Member States as public-interest entities, for instance, undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees (Accountancy Europe, 2017)

The Directive, thus, limits itself to the listed entities, banks and insurance companies. The PIE criterion is partially defined at the level of member states. The member-state-based definition of PIEs leads to the fragmentation of the scope of application requirements.

The Directive does not contain the enforcement mechanisms. Recital 10 of the Directive expects the member states to ensure compliance with the Directive by establishing "adequate and effective means to guarantee disclosure of non-financial information". Moreover, the Directive contains a standard clause, requiring member states to "bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 December 2016", which refers to transposition rather than to enforcement. The provisions regarding the enforcement are, therefore, not harmonized by the Directive.

Article 2 obliges the Commission to prepare "non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral".

To conclude, the Directive relies on four criteria to define the scope of disclosers. Among these, the PIE criterion limits the scope of the Directive to the listed and financial/ insurance companies. The PIE criterion is partially defined at the member states' level, which results in the fragmentation of the scope. The Directive does not establish the enforcement mechanisms. The

member states are requested to incorporate "adequate and effective means" "to guarantee disclosure of non-financial information". Article 2 delegates the Commission with the need to establish guidelines, including sectoral guidelines.

5.4.2. Information

5.4.2.1. What are the goals?

The recitals of the Directive repeat the "need to raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors". However, the Directive does not define transparency through reference to the quantity or quality of the information.

The Directive describes information through references to "fairness" (Recital 5), "comprehensiveness" (Recital 5), "relevance" (Recital 21), "consistency" (Recital 6), "adequate information" (Recital 8) and "comparability" (Recital 6). In particular, Recital 8 uses a new notion of the "adequate information".

Article 2 of the Directive prescribes the Commission to develop the "guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings". The provisions of Article 2 partially overlap with the provisions of the preamble to the Directive, which focuses on the "increase in relevance, consistency and comparability" (recital 21), "fairness and comprehensiveness" (recital 5) and "adequate information" (recital 8). The notions of relevance and comparability remain in Article 2, but the notions of "consistency" as well as "fairness and comprehensiveness" are dropped. On the other hand, Article 2 adds "usefulness".

5.4.2.2. How are the goals to be achieved (requirements)?

Five sets of information-related requirements in the Directive

The remaining information-related requirements appear in Article 1(1) and Article 2 of the Directive. In relation to the scope of reporting, Article 1(1) provides:

> "Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:
>
> a) a brief description of the undertaking's business model;
> b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;

c) the outcome of those policies;
d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;
e) non-financial key performance indicators relevant to the particular business

Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.

The non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

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

In requiring the disclosure of the information referred to in the first subparagraph, Member States shall provide that undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon".

Article 2 mandates the European Commission to prepare a set of guidelines for reporting.

The Directive, thus, relies on five sets of requirements: 1) the inclusion criteria, 2) the reporting themes, 3) the reporting items, 4) the reporting frameworks, and 5) the quality assurance/ management requirements. The Directive does not harmonize the latter two sets of requirements, but it delegates the decision-making to the member states.

Inclusion criteria

The inclusion criteria form the first set of the Directive's requirements. The Directive requires to provide "a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity". The Directive, thus, reintroduces one of the "filters" that the Impact Assessment qualified as a part of the "regulatory failure":

"In particular, it appears that the filters provided in the current wording (information to be disclosed only "where appropriate" and "to the extent necessary for an understanding

of the company's development, performance or position ") fail to provide a clear legal obligation" (European Commission, 2013a, p. 9).

The Directive does not explain the "necessary" criterion. While recital 3 of the Directive mentions "undertakings' performance and their impact on society", the amendments do not qualify the "development, performance, position and impacts of its activity" as financial or non-financial. It is, thus, not clear if impacts should be measured as the negative effects on society or as potential financial losses which follow from the non-financial developments. The Directive also does not explain whether the undertaking is obliged to disclose information about five themes if it deems none of such information is "necessary for an understanding of the undertaking's development, performance, position and impact of its activity".

The absence of the provisions regarding the nature of the "impacts" led to vastly varying interpretations of the Directive. The ECCJ interpreted the provisions of the new Directive as mandating disclosure "regardless of what a company considers being relevant, i.e. material, to the interests of its shareholders, which was the organising principle of the accounting law until now" (ECCJ, p.1). Similarly, but less radically Kinderman (2019) assumed that the regulator implied "a redefined "materiality test" that includes consideration of impacts of companies' activities on society" (Kinderman, 2019, p. 7). Szabó & Sørensen, in contrast, suggested that the regulator referred to impacts of non-financial information "which are important to understand how the undertaking is performing and developing" i.e. which affect the interests of the shareholders rather than stakeholders (Szabó & Sørensen, 2015, p. 326). They suggested "a narrow interpretation of non-financial information"(Szabó & Sørensen, 2015, p. 324). Despite the ECCJ's interpretation, the final wording of the main text of Article 1(1) does not refer to non-financial or social impacts and allows the companies to concentrate on the financial impacts of non-financial information rather than on impacts on society.

The literature equates the "to the extent necessary" criterion with materiality, but the Directive itself does not refer to materiality (apart from recital 8, which refers to the "materialization" of the risks – the notion which never before and never after appears in the documents).

Along with the "necessary" criterion, the Directive introduces two possible exception clauses, applicable to all information.

Firstly, the Directive applies the "comply or explain" principle. The Directive provides that the companies should provide a clear and reasoned explanation for the absence of the policies" (Article 1(1)).

Secondly, the Directive introduces the possibility for the member states to allow "in exceptional cases" the omission of information "relating to impending developments or matters in the course of negotiation". The exception, though, is limited to the cases when the "disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity". The later provision creates another layer of the uncertainty of the inclusion standard. It introduces the notions of

“fairness” and “balance”, even though these notions do not form a part of the “where necessary for an understanding of the undertaking's development, performance, position and impact of its activity”. The wording of an exception suggests that “fairness” and “balance” are still parts of the inclusion criteria. At the same time, the core requirement Directive does not contain them.

While “to the extent necessary for an understanding” criterion, the “comply or explain”, and the “prejudicial exception” applies to all information, the Directive also creates additional layers of inclusion criteria by applying filters targeted at particular parts of the disclosure. For example, Recital 8, introduced above, seems to limit the risk reporting to the “most likely” risks with “severe impacts”. Article 1 introduces the “where relevant and proportionate” criterion in relation to the reporting on the risks related to the “business relationships”. The reporting on “KPIs” is limited to the “indicators relevant to the particular business”. Finally, the “where appropriate” criterion applies to the “references to, and additional explanations of, amounts reported in the annual financial statements”.

Reporting themes

The reporting themes form the second set of the Directive’s requirements. The Directive refers to the “environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”. The Directive does not explain the difference between “corruption” and “bribery”. Therefore, “corruption and bribery” are commonly treated as the same “theme”. In contrast, Szabó & Sørensen (2015) counted “six CSR-related topics”, suggesting that “anti-corruption” and “bribery” require separate reporting. This example highlights potential differences in interpretation of the Directive.

Recital 7 highlights the subthemes for reporting on environmental, social and employee-related matters. It, furthermore, provides some clarity regarding the “impacts” to be covered in relation to the environment by referring to the “impacts of the undertaking's operations on the environment”. At the same time, in relation to human rights and corruption/ bribery, Recital 7 only introduces a new notion of “instruments” which seem to at least partially overlap with notions of “policies” and “due diligence”. The use of “could” creates further confusion. It is unclear from the provision of recitals 6 and 7 whether mentioned “instruments” could be reported together with other items, such as risks, policies and outcomes, in which of these items the instruments fall, why the instruments “could” but not “should” be reported and, eventually why the reporting on bribery and corruption is seen as an alternative to reporting on human rights, demonstrated by the use of “or” between them. The wording of recital 7 may further suggest that some items are not mandatory for particular themes.

Reporting items

The reporting items represent the third set of the Directive’s requirements. The Directive combines five reporting items in one list: 1) a brief description of the undertaking's business model; 2) policies pursued by the undertaking including due diligence processes implemented; 3) outcome of those policies; 4) principal risks related to the operations and “where relevant and proportionate” business relations; 5) KPIs.

It can be observed that the Directive amends the wording of the Proposal. Firstly, the Directive requires a “business model” to be disclosed in relation to the themes of disclosure (in particular, corruption). Secondly, the Directive includes the notion of “due diligence”. Thirdly, the Directive refers to the “principal risks” instead of “risks”. Fourthly, the Directive includes the KPIs in the list of items if they are “relevant to the particular business”.

Some additional information about these amendments is available from the recitals and the interpretations by the stakeholders.

In particular, concerning due diligence Recital 6 of the Directive explains:

> “The non-financial statement should also include information on the due diligence processes implemented by the undertaking, also regarding, where relevant and proportionate, its supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts”.

The ECCJ highly suggested that the Directive established the rights principles by embedding the concept of (human rights) due diligence” (ECCJ, p.2). Moreover, Eccles and Spiesshofer suggested that the inclusion of due diligence and extension of the requirements to the “supply chain” manifested a “paradigm shift”(Eccles & Spiesshofer, 2015, p. 16). At the same time, just like other provisions of the NFRD Directive, the “due diligence” notion is only explained in the recitals and lacks clarity (Szabó & Sørensen, 2015, p. 325).

The Directive refers to “the outcome of those policies” rather than the results. This amendment is not further clarified in the Directive or the accompanying documents.

The Directive extends the wording related to the risk reporting. Instead of risks, it refers to “principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks”. Additional explanations concerning risks appear in recitals 3 and 8. Recital 3 suggests that “the European Parliament acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust”. Here, the Commission explicitly uses the notion of “sustainability risks”. However, the main text of the Directive does not provide similar clarity. Thus, the Directive does not define the nature of risks (as it does not define the nature of impacts). Recital 8 introduces explanations regarding the risks:

> “The undertakings which are subject to this Directive should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity” (Recital 8).

The Directive does not establish KPIs but mentions KPIs as a separate reporting item. The first four “items” are defined based on their content. The KPIs may be used to report on any of the

previous items, including the business model, the policies, and, especially, the outcomes. Yet, the Directive includes them at the same level.

The Directive also refers to “the references to, and additional explanations of, amounts reported in the consolidated financial statements”. They should not be disclosed in relation to each “theme”, but only “where appropriate”. However, such references may present special value in relation to corruption.

Reporting frameworks

The reference to the reporting frameworks is the forth information-related requirement of the Directive. The Directive does not establish the provisions regarding the frameworks directly. Instead, it includes the relevant requirements in the national scope of the member states: i.e. “Member States shall provide that undertakings may rely on national, Union-based or international frameworks”. Recital 9 of the Directive contains a list of the frameworks, which is explicitly not exhaustive in this case. The Directive, furthermore, promotes a new reporting framework. Article 2 of the Directive mandates the Commission to “prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral” in consultation with stakeholders.

Quality assurance

The fifth set of instruments includes quality management/ quality assurance requirements. The Directive mandates the proof of provisions of the non-financial statement. The member states may require more profound assurance based on the national scope.

The Directive also introduces provisions regarding the responsibility of the management of the companies in ensuring that the non-financial statements is published in accordance with the Directive. By this provision, the Directive extends the “responsibility and liability for drawing up and publishing the financial statements and the management report” to the non-financial statement. The boards have been already responsible for the content of the annual reports. The need for a new rule results from the possibility of separation of the annual report and the non-financial report, introduced by the final version of the Directive.

Overview of the information-related requirements

To conclude, the Directive relies on one general inclusion criteria and two general exception clauses as well as several other filters. The Directive proposes five reporting themes i.e. the “environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”. It creates a single list of five reporting items and introduces a notion of “due diligence” as well as the description of the business model and the KPIs as parts of the items. The Directive does not establish KPIs. Sixth reporting item, “references to, and additional explanations of, amounts reported in the consolidated financial statements” appears separately from the themes. The Directive limits reporting on risks to “principal risks”. The Directive requires the state auditors to confirm the presence of the non-financial statement. Other questions

related to the use of the reporting frameworks and quality assurance are assigned to the member states.

5.4.3. Access

5.4.3.1. What are the goals?

Recital 3 of the Directive recognizes the need for “sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on the impact of businesses on society” (Recital 3). In contrast, recital 12 refers only to “investors’ access”. Recital 5 refers to the “availability” of the information for the “public and authorities by undertakings across the Union”.

The Directive, thus, aims at providing “access” to investors and “easy access” to consumers and at making the information “available” to the public and authorities. The difference between these terms is unclear. The Directive does explicitly apply principles of “comparability”, “consistency” and “comprehensiveness” to the access dimension.

5.4.3.2. How are the goals to be achieved (requirements)?

The Directive delegates the member states with the decision regarding the reporting vehicle and the timing of reporting within the limits established by the Directive (e.g. the Directive required the separate report being published “within a reasonable period of time, not exceeding six months after the balance sheet date”. Thus, the Directive does not fully harmonize the requirement for the vehicle and the timing of disclosure. It leaves the possibility to allow the separate late provision of the non-financial information to the member states.

The Directive in general keeps the structure, established by the Proposal. Furthermore, it consolidates the reporting items in one list:

> “There is little evidence why the EU legislator chose to adopt the reporting requirement in this form, but it may give a better structure to the disclosure and make the non-financial disclosure more closely tied to the undertaking’s business activities and thereby even more relevant to the undertaking and to its investors and other stakeholders” (Szabó & Sørensen, 2015, p. 324).

The intentions of the legislator concerning the structure are not explicit. The Directive indicates five themes (or six if bribery and corruption are seen as different themes) to five items structure but the general “flexibility” of the Directive and lack of prescription to provide information in a certain order are not conductive to the structured disclosure.

The Directive neither defines the language of the disclosure nor establishes a database for disclosure.

To conclude, the Directive does not fully harmonize any of the access aspects. The vehicle and timing are partially harmonized, the format is not explicit, and the language is not established.

5.4.4. Users

5.4.4.1. What are the goals?

The Directive does not use the notion of "user". The recitals use the notion of "stakeholders", but do not define its scope.

The Directive sometimes indicates specific goals for a certain category of users. As discussed earlier, it suggests the need to provide consumers with an "easy access", investors with "access", and make information "available" for the "public and authorities". Despite these categories of users being separately mentioned, there are no clear explanations regarding their needs and differences in the goals of "easy access", "access" and "availability".

With regards to the information needs of the users, the Directive mentions "investors and other stakeholders". While the Directive wants to satisfy all stakeholders, it does not return to the differences in the needs of stakeholders, indicated in the public consultations. The "investors" and "stakeholders" are mentioned separately, but the general approach to their interests does not vary.

The reference to stakeholders appears also in the provisions regarding the enforcement and the Commission's guidelines on disclosure. In these cases, the Directive also mentions "stakeholders" as a homogeneous group.

Despite mentioning different groups of "stakeholders", the Directive does not explain the differences in the interest of these groups for specific information or access provisions.

5.4.4.2. How are the goals to be achieved (requirements)?

The Directive does not indicate any user-specific requirements. The Directive uses terminology such as "financial statement" and "management report", which seem to be more familiar to the professional users. Furthermore, the provisions of the Directive regarding the access and disclosers, require considerable efforts for identifying the reporting entities and the documents, where information is contained, creating an advantage for users with more resources. The Directive provides for an "easy access" for the consumers but frames its requirements within the accounting law and requires the information to be included in the management report, which traditionally forms a part of the company-shareholder relationships.

5.5. Conclusion

The text of the Proposal was contested during the parliamentary negotiation. In particular, the business rejected the new requirements. The governments of some countries supported the business. The contestation and negotiation led to significant changes in all components of transparency.

The analysis of the Directive within four components demonstrates that different components featured different amounts of attention.

Concerning the disclosers, the Directive did not establish specific goals further than the need to cover “certain large undertakings”. The scope of application of the Directive was defined via reference to four criteria. The public-interest entity (PIE) criterion limited the scope of the Directive to the listed and financial companies. The PIE criterion was partially defined at the member states’ level, which results in the fragmentation of the scope. The Directive did not establish the enforcement mechanisms. The Directive aspired to some sectoral adjustment, but the respective rule-making was delegated to the European Commission.

Concerning the information component, the Directive relied on several definitions of the information: “a fair and comprehensive view”; “relevance, consistency and comparability of information”; “adequate information”; “relevant, useful and comparable disclosure”. The Directive established three sets of requirements: one general inclusion criteria and two general exception clauses as well as several other filters; five reporting themes; and five reporting items to be reported for each theme and one separate item (explanations of the financial information). The Directive assigned most of the decision-making related to the use of the reporting frameworks and quality assurance to the member states.

Concerning the access, the Directive aimed at providing “access” to investors and “easy access” to consumers and at making the information “available” to the public and authorities. The Directive did not explicitly apply principles of “comparability”, “consistency” and “comprehensiveness” to the access dimension but they might have been relevant. The Directive did not fully harmonize any of the access aspects. The decision-making on the vehicle and timing of disclosure was largely delegated to the member states, the format was not explicit and upset by the recitals, and the language was not established.

Concerning the users, despite mentioning different groups of “stakeholders”, the Directive did not explain the differences in the interest of these groups for specific information or access provisions. The Directive did not adjust the requirements to the needs of the various users.

The table below summarizes the analysis of the Directive within two dimensions. The goals of the Directive within the disclosers and the users components are rather scarce. In contrast, the “information” and “access” components still feature multiple different goals. The regulatory response is characterized by the relative harmonization of reporting items and themes. There is also partial harmonization of the scope of application, inclusion criteria, quality assurance, vehicle, timing, and format of disclosure. There is no harmonization in relation to the KPIs, language of disclosure and the users’ specific interests and capacities.

	Goals	Requirements
Disclosers	Raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors Sectoral adjustment Coordination of the provisions	Harmonized three criteria for the scope of application: balance/ turnover, 500 employees, parent company, **not harmonized PIE criterion** Not harmonized enforcement
Information	"A fair and comprehensive view"; "relevance, consistency and comparability of information"; "adequate information"; "relevant, useful and comparable disclosure"	Partially harmonized inclusion criteria subject to reasoned comply or explain, limited by not harmonized "prejudicial" exception Multiple filters: general inclusion criteria subject to reasoned "comply or explain", limited by not harmonized "prejudicial" exception; plus at least four inclusion criteria localized for specific items (risks: "adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts", "principal risks at least four inclusion criteria localized for specific items Harmonized five reporting items (of different nature) + one special item "references to, and additional explanations of, amounts reported in the annual financial statements" Harmonized reporting themes: environmental and employees-related matters, social matters, human rights, anti-corruption and bribery matters Not harmonized: KPIs Not harmonized: reference national, international and EU frameworks Not harmonized: quality assurance
Access	"Access" to investors and "easy access" to consumers. Making the information "available" to the public and authorities. Potentially, other quality-related features.	Not harmonized vehicle of reporting and timing Semi-harmonized structure of reporting through establishing themes and items to be disclosed "in relation" Not harmonized: language
Users	Satisfy various groups of stakeholders	Not harmonized targeted audience

Table 1. Goals and requirements in the Directive 2014/95/eu

6. Chapter VI. The Directive explained by the European Commission: The Commission's Communication "Guidelines on non-financial reporting (methodology for reporting non-financial information)"

6.1. Introduction

Article 2 of the NFRD obliged the European Commission to establish "non-binding guidelines on methodology for reporting non-financial information". In 2017, the Commission adopted the "Communication from the Commission — Guidelines on non-financial reporting (methodology for reporting non-financial information)" (hereinafter, the Communication or the guidelines).

Due to the "soft law" nature of the Communication, its provisions cannot change the provisions of the Directive and do not directly affect the level of harmonization. Nevertheless, Communication is included in the analysis due to three reasons. Firstly, the Communication provides the interpretation of the Directive's goals which facilitates the assessment of the annual reports in Chapter IX. Secondly, the Communication interprets the requirements of the Directives and this interpretation may affect the member states' and companies' interpretations. Accordingly, Communication may promote harmonization indirectly. Lastly, Communication adds some important aspects to the analysis of the voluntary reporting frameworks which form a part of the Directive's arsenal of instruments.

6.2. The context

In its briefing, the European Coalition for Corporate Justice noted that "the Directive does not provide clear instructions as to the reporting on risks and impacts" (ECCJ, p.2). Accordingly, the EECJ promoted the idea of the Commission's guidelines to "clarify the responsibilities and expectations of companies under the Directive" (ECCJ, p.4).

In the process of the negotiations of the Directive, some Members of the European Parliament supported the idea of establishing more detailed disclosure requirements to increase the comparability of disclosure. Amendments proposed by different MEPs differed in two interrelated aspects. Firstly, opinions differed regarding the source of the more detailed requirements. Some MEPs suggested that the Directive itself should contain more specific provisions and KPIs. In particular, Evelyn Regner suggested including in the Directive KPIs related to a business model and tax matters (e.g. number of employees on a full-time equivalent basis, sales and purchases, profit or loss before tax, public subsidies received). Other MEPs supported the idea of referring companies to one of the existing reporting frameworks, developed by the UN, OECD, Global Reporting Initiative, or other organizations. Still other MEPs insisted on special guidelines to be published by the Commission.

Secondly, MEPs disagreed on the legal nature of the detailed provisions. Several MEPs advocated for mandatory or semi-mandatory approaches in various forms. Obviously, the inclusion of certain KPIs in the Directive (or, better, adoption of the Regulation) would have made them

mandatory. Alternatively, Amendment 73 by Sergio Gaetano Cofferati and Evelyn Regner and Amendment 184 by Sergio Gaetano Cofferati suggested that "undertakings should rely on the guidelines adopted by means of delegated acts by the European Commission" (Committee on Legal Affairs of the European Parliament, 2013, p. 20). The delegated acts are binding for the undertakings concerned. The use of "should" highlighted the suggested mandatory nature of the guidelines. Alternatively, the UK representative Sharon Bowles proposed to oblige companies to use specific international frameworks for reporting on particular themes (Committee on Legal Affairs of the European Parliament, 2013, pp. 18–19).

As a result of the negotiations, Article 2 was added to the Directive, requiring the Directive to prepare the guidelines in consultation with stakeholders. The Articles of the Directive did not further indicate the scope of the guidelines. A few clarifications were provided in recitals 7 and 17. Firstly, recital 17 provided that when preparing the guidelines the Commission "should take into account current best practices, international developments and the results of related Union initiatives". Secondly, recital 7 provided some additional content requirements. In relation to corruption, recital 7 referred to an undefined new notion of "instruments" and contained a confusing "and/or" provision:

> "With regard to human rights, anti-corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery".

As required by the Directive, in January 2016, the Commission started public consultations on the guidelines. The Commission received 355 responses with the majority of responses coming from companies and business organizations (47%), nearly a quarter (23%) from civil society and other organizations, and the remaining quarter from auditors, accountants and others (13%), public authorities (5%), and individuals (12%)" (European Commission, 2016, p. 4). There was, therefore, a considerable interest of the disclosers who formed a majority. There was rather low input by the civil society organizations and even lower from the investors. Similar to the public consultations on the Directive, a significant amount of responses came from the biggest economies of the EU, including Germany (more than 50), the UK (more than 30), and France (more than 30).

The public consultations demonstrated a lack of consensus among the stakeholders. In particular, NGOs/ civil society organizations continuously argued for detailed prescriptions, a comprehensive list of KPIs, and inclusion of sectoral issues. In contrast, the companies have argued actively for the principle-based and flexible approach. The prevalence of the companies in the public consultations was important. Similar to the earlier public consultations, the Commission often referred to the "most respondents" and "most commonly mentioned" issues in making its choices. In particular, such important matters as "flexibility" of the guidelines in general and "flexibility" of the KPIs were highly influenced by the "majority" consideration. In both cases, the Commission highlighted the choice for flexibility, supported by most respondents. A majority of the respondents suggested that the guidelines should set "principles and ideas"

rather than being “neutral” or “detailed/ prescriptive”. The respondents also advised the Commission to “identify key principles, provide flexibility for companies to exercise judgment, and/or make reference to other frameworks” when approaching KPIs. Despite a clear requirement of Article 2 of the Directive to include “non-financial key performance indicators, general and sectoral”, the majority of stakeholders suggested that the guidelines “should not include guidance on specific sectoral issues, but be geared towards general principles” (European Commission, 2017, p. 19).

6.3. The role and the structure of the Communication

The Commission’s communications are qualified as the “soft law”. The effect of such acts is debatable (Kovács et al., 2016) . In the case of the Communication, the Directive and the Communication highlighted its non-binding character on multiple occasions, making it indeed the “softest” version of the EU soft law. The provisions of the Directive did not significantly restrain the Commission. The Commission was also not restrained by the need for approvals (even though the Directive mentioned a need for the “consultation with stakeholders”. Thus, the Commission had a possibility of covering all the aspects that the Directive did not cover due to the lack of support, but in a voluntary form. Furthermore, the Directive guided the Commission to collect the best practices and build up on the existing frameworks.

The Communication contains six sections: (1) Introduction; (2) Purpose; (3) Key Principles; (4) (Content), (5) Reporting Frameworks; (6) Board diversity disclosure.

The first section “Introduction” refers to the key rationales for non-financial transparency. It makes connections to sustainability and corporate governance, similar to those made by the Impact Assessment and the Directive. In particular, the Introduction refers to the UN Sustainable Development Goals, the Paris agreement, and the work of the Financial Stability Board. Further, the Introduction infers Article 2 and recital 17 of the Directive and the public consultations. The Introduction repeatedly emphasizes the non-binding character of the guidelines. Importantly, the Introduction of the Communication contains a list of 21 “national, EU-based, international frameworks” that the Commission “reviewed” and “built on”. The frameworks, which contain corruption-related reporting requirements (in particular, the Global Reporting Initiative, the UN Global Compact, the EFFAS KPIs for ESG, the UK Guidance on Strategic Report, and the German Sustainability Code) are used in this chapter to contrast some of the Communication’s provisions. The Directive allowed the companies to use any of the frameworks and the Communication repeatedly underlines this flexibility.

The second section of the Communication, “Purpose”, establishes the objectives of the guidelines.

The third section “Key Principles” contains six sets of guidelines on six “principles”: (1) Disclose material information; (2) Fair, balanced and understandable; (3) Comprehensive but concise; (4) Strategic and forward-looking; (5) Stakeholder orientated; (6) Consistent and coherent. An “Example” or an “Example and KPIs” section supports each principle.

The fourth section "Content" contains six subsections. The first five subsections refer to five reporting items, indicated by the Directive i.e. "Business Model", "Policies and due diligence", "Outcome"; "Principal risks and their management", and "Key Performance Indicators". The sixth subsection refers to the "Thematic aspects" i.e. five themes, which the Directive established: "Environmental matters", "Social and employee matters", "Respect for human rights", "Anti-corruption and bribery matters", as well as "Others" referring to the supply chains and conflict minerals. This section provides some "Examples" and "KPIs" as well. The Directive articulated reporting items and the themes separately due to their varying nature: items referred to the depth of reporting, while themes to the breadth of reporting. Logically, Szabó and Sørensen concluded that the Directive established "six CSR–related topics, which should be disclosed and five items in relation to which they should be disclosed" (Szabó & Sørensen, 2015). However, instead of demonstrating how five items can be related to six themes, the Commission's Communication provides guidelines on five items separately from guidelines on six themes (or "thematic aspects" as the Communication called them).

The fifth section, "Reporting Frameworks", repeats some of the previously discussed provisions regarding the reporting frameworks.

The sixth section relates to the board diversity reporting and will not be discussed here.

6.4. Four components of transparency in the Communication

6.4.1. Disclosers

6.4.1.1. What are the goals?

The non-binding, flexible character of the guidelines did not render the scope of application to be of significant importance. At the same time, Article 2 of the Directive bound the Commission to tailor the guidelines to the sectors by including "non-financial key performance indicators, general and sectoral".

Despite the direct prescription of the Directive to include the sectoral indicators, in the course of the public consultations, the Commission repeatedly asked the stakeholders about the need for the sectoral coverage (European Commission, 2017, p. 10). The responses to this and similar questions reflected general trends, in particular, the disagreement between the respondents and a preference for flexibility and a "principle-based approach". In the executive summary of the consultations, the Commission stated:

> "Companies and business organisations consider that the GUIDELINES should be oriented towards general principles, and not be detailed on specific sectoral or thematic issues. On the other hand, other respondents would prefer a higher level of detail" (European Commission, 2017, p. 2)

The "Purpose" section of the Communication suggests that "these guidelines should help ensure comparability across companies and sectors" (European Commission, 2017, p. 5)

To conclude, Article 2 of the Directive mandated the Commission to include sectoral indicators. Yet, the Directive did not prescribe the exact coverage of the indicators. In the course of the public consultations, the stakeholders failed to agree on the role of the sectoral indicators. At the same time, the majority of the stakeholders argued against sectoral-specific guidelines. The Communication, thus, relies on the principles applicable to all sectors.

6.4.1.2. How are the goals to be achieved (requirements)?

Despite the predefined non-finding character of the guidelines, the Commission inquired about the general scope of application of the guidelines in the public consultations. Based on the consultations, the guidelines are addressed to the companies required by the Directive to disclose non-financial information in their management report and serve as a best practice for other companies. Given the non-binding nature of the Communication, it did not create any specific sanctions or incentives. The Communication repeats the "business case for transparency", by highlighting the benefits it brings to disclosers.

The Communication repeatedly notes that the materiality assessment, the KPIs and other factors can vary across the sectors. Sectoral specific is also occasionally mentioned in the examples. Despite the provisions of Article 2 of the NFRD, the Communication does not create sectoral performance indicators for reporting on corruption.

6.4.2. Information

6.4.2.1. What are the goals?

The "Introduction" and "Purpose" sections of the Communication articulate multiple goals both in the interpretation of the Directive's provisions and in the setting of the purpose of the guidelines. The goals include achieving high quality, relevant, useful, consistent, comparable, concise, material, consistent, coherent disclosure, and avoiding boilerplates and box-ticking.

The "Key Principles" section of the Communication uses a "principle-based approach". It refers to principles that explain some of the goals. Section 3 "Key Principles" of the Communication provides explanations of six "principles" (1) Disclose material information; (2) Fair, balanced and understandable; (3) Comprehensive but concise; (4) Strategic and forward-looking; (5) Stakeholder orientated; (6) Consistent and coherent.

Among six principles, the Communication focuses on the "Disclose material information". The Communication explains materiality by referring to three strongly interrelated matters: the notion of "impact", indicated in the NFRD; the context in relation to materiality; and the process of the materiality assessment. The Communication provides for disclosure of both "positive" and "negative" impacts without explaining whether they should be assessed in financial or non-financial (or both) terms. The Communication also expects the companies to incorporate sectoral specifics in the assessment of the context. It establishes that materiality depends on both external and internal factors. The context also includes such points as the business model, strategy and principal risks, main sectoral issues, interests and expectations of the relevant

stakeholders, the impact of the activities and public policy and regulatory drivers. In this way, the notion of materiality is supposed to define the scope of reporting on the business model, strategy and principal risks, and at the same time materiality is supposed to be defined through reference to these factors. The Communication also encourages the companies to reassess materiality regularly.

The frameworks, indicated by the Directive and the Communication (e.g. the Global Reporting Initiative, the UK Guidance on Strategic Report, the German Sustainability Code, and the EFFAS KPIs for ESG) contain different understandings of materiality.

The Global Reporting Initiative and the German Sustainability Code understand the notion of materiality to encompass both financial and non-financial impacts. At the same time, the UK Guidance on Strategic Report refers to the financial decision-making in the discussion of materiality and scope of reporting:

> "Information is material if its omission or misrepresentation could reasonably be expected to influence the economic decisions shareholders take on the basis of the annual report as a whole. Only information that is material in the context of the strategic report should be included within it" (Financial Reporting Council, 2018, p. 18).

Furthermore, some of the frameworks establish the guidelines for assessing the materiality, which seems to differ from the Communication.

The analysis of the scholarship and the reporting frameworks demonstrates significant differences in the understanding of the materiality of the non-financial information (Baumüller & Schaffhauser-Linzatti, 2018). The Communication does not define materiality in either financial or non-financial terms to resolve the difference.

The remaining principles partially repeat the outcomes, mentioned in the "Disclose material information" section. Some sections feature additional explanations.

In the section "Fair, balanced and understandable", the Communication advises the companies to fairly disclose both favorable and unfavorable aspects of performance. The Communication largely repeats the content of the guidelines on materiality but uses the term "performance" instead of an "impact" and (un)favorable instead of positive (negative). Several recommendations target understandability. Firstly, the understandability requires an appropriate context (which the Communication already mentioned in relation to materiality). Secondly, the Communication expects the companies to explain the "scope" and "boundaries" of the information disclosed, as well as the internals of the information e.g. measurement methods, underlying assumptions and sources. Thirdly, the Communication connects understandability to plain language, avoidance of boilerplates and consistent terminology with definitions of technical terms. The Communication also suggests distinguishing the facts and the views and interpretations. Fourthly, the Communication connects understandability to the balanced use of qualitative and quantitative information. Concerning the key performance indicators, the Communication advises providing qualitative and quantitative information in

combination. The Communication suggests that qualitative information (narratives), quantitative information (KPIs), and visual presentations should be combined to make disclosure more effective and transparent. Finally, the section also advises using the "customary business language" for disclosure. Descriptions of both "fairness" and "understandability" partially repeat the description of materiality.

Section "Comprehensive but concise" describes comprehensiveness largely through the notion of materiality. The section contains three main goals. Firstly, the material information beyond the five themes should be disclosed to form a "comprehensive picture of a company in the reporting year". Secondly, the companies should avoid immaterial information, boilerplates, repetitions, details, and generic information (this provision repeats the section on fairness). Thirdly, the companies should provide insights into their business model as well as strategy and its implementation (overlaps with content requirements).

Section "Strategic and forward-looking" requires the companies to indicate the short-term, medium-term and long-term implications of the reported information. In line with the strategic approach, the Communication suggests disclosing "what a company does, how and why it does it" as well as targets, benchmarks, and commitments. The Communication does not place this new content requirement within the scope of the Directive.

The "Stakeholder-oriented" section of the Communication expects the information to be "stakeholder-oriented". Firstly, the Communication prescribes to satisfy various stakeholders, while focusing on the informational needs of all large groups of stakeholders. This principle and the new list of "stakeholders" will be discussed later in relation to the users of the information. Secondly, the Communication advises disclosing relevant, useful information on how the companies engage with stakeholders and how the information needs are taken into account.

The "Consistent and coherent" section addresses three aspects of consistency/ coherence. Firstly, the Communication prescribes to ensure the consistency of information within the management report as "making clear links between the information presented in the non-financial statement and other information disclosed in the management report makes the information more useful, relevant and cohesive". Secondly, the Communication prescribes the information to be consistent over time.

Finally, the Communication requires the methodology of reporting to be explained and to be consistent over time.

To conclude, the Communication describes the desired information-related outcomes mostly in the sections "Introduction", "Purpose" and "Key Principles". The Communication uses over 40 different notions to describe the outcomes. The Communication does not explain such goals as "comparable" or "relevant". It explains the following notions: material; fair, balanced and understandable; comprehensive, concise; strategic and forward-looking; stakeholder orientated; consistent and coherent. The explanations overlap with each other.

6.4.2.2. How are the goals to be achieved (requirements)?

6.4.2.2.1. Four sets of information-related requirements in the Communication

The Communication provides some additional explanations regarding four sets of requirements, identified by the Directive. The Communication repeats and/ or explains the inclusion criteria, in particular "to the extent necessary for an understanding" criterion, "relevant and proportionate" criterion in combination with the "comply or explain" approach. The Communication also provides explanations regarding the reporting items, including the KPIs, and the corruption as a theme. Finally, the Communication lists the reporting frameworks. The "external assurance" is only mentioned in the passing by the Communication. The Communication does not contain special provisions related to the quality assurance requirements. Importantly, the Communication generally relies on principles in articulating the requirements.

6.4.2.2.2. Inclusion criteria

The Communication uses multiple inclusion criteria. In particular, the Communication refers to the "to the extent necessary" criterion eight times. The "Introduction" of the Communication provides that "to the extent necessary" criterion "keeps administrative burden to a minimum" (European Commission, 2017, p. 2)

The explanations regarding the criterion are concentrated in the sections "Disclose material information" and "Comprehensive but concise". As earlier discussed, the guidelines connect the "to the extent necessary" criterion to the materiality. The Communication fails to define the nature of the "impact" and establish whose "understanding" is relevant for the criterion. The sections on KPIs and thematic aspects refer to the "necessary" criterion but do not explain it.

The Communication refers to the "appropriate" criterion twenty-one times. In particular, the Communication uses the "appropriate" criterion to describe the disclosure in general, disclosure on due diligence, governance arrangements, business model, policies, outcomes, risks and KPIs. Furthermore, "appropriate" is used in the description of four "principles": "Disclose material information", "Strategic and forward-looking", "Fair, balanced and understandable", and "stakeholder-oriented". The Communication does not define "appropriateness" in any of these cases.

The Communication refers to "relevant" fifty-one times, six of which in combination with "relevant and proportionate". The Communication does not define the "relevance" criterion. There might be an implied connection of the notion with materiality due to their conceptual proximity and use, but the Communication uses the notions separately and inconsistently.

The Communication refines the "comply or explain" approach by encouraging companies to report on material risks and outcomes despite having no policies related to such risks and outcomes (European Commission, 2017, p. 12)

To conclude, the Communication relies on multiple inclusion criteria, which it rarely explains.

6.4.2.2.3. Reporting items and KPIs

The reporting items represent the second set of the Communication requirements. The Communication includes a separate section for (1) Business Model; (2) Policies and due diligence; (3) Outcome; (4) Principal risks and their management; (5) Key Performance Indicators. The Communication does not mention "references to, and additional explanations of, amounts reported in the annual financial statements". Instead, the "Purpose" section provides:

> "The guidelines recognise the importance of linkages and inter-relations of information (connectivity), whether it is between different aspects of non-financial information or between financial and non-financial information" (European Commission, 2017, p. 5)

Business model

The Communication describes the business model in four ways. Firstly, the Communication repeats a set of principles. The companies are expected to provide "clear, understandable and factual" information and "avoid immaterial disclosures of promotional or aspirational nature which distract attention from material information". The Communication uses principles, which it already discussed, together with some new principles. The requirement to provide "factual information" about the business model conflicts with the requirement to provide "forward-looking information", indicated in the principles section.

Secondly, the Communication defines the business model to describe "what a company does, how and why it does it" (European Commission, 2017, p. 10).

Thirdly, the Communication attempts to describe reporting on "business model". The "companies may consider including appropriate disclosures relating to "such aspects as their business environment, their organisation and structure, the markets where they operate, their objectives and strategies; and the main trends and factors that may affect their future development. The companies "may consider using KPIs" (European Commission, 2017, p. 10).

Fourthly, the Communication provides that "the business model provides context for the management report as a whole". This explanation detaches the business model from specific themes of disclosure.

The description of the business model, provided by the Commission, does not connect to the non-financial aspects. In particular, the notion of "value" is not qualified as including the non-financial aspects. The examples, provided by the Commission do not connect to any of the reporting themes and, in particular, to anti-corruption. Furthermore, the explanation that "the business model provides context for the management report as a whole" promotes a general approach to the business model, rather than theme-based approach, suggested by the Directive. For example, Communication recommends disclosing such important aspects as markets and strategies. The markets and strategies are of utmost importance for the understanding of non-financial risks. However, the Communication does not require to report on these matter in relation to (anti-)corruption specifically.

Policies and due diligence

With regards to the policies the Communication explains:

> “Companies should disclose material information that provides a fair view of their policies. They should consider disclosures on their approaches to key non-financial aspects, main objectives, and how they are planning to deliver on those objectives and implementing those plans. Any disclosures would take into account the company's specific circumstances. In these disclosures a company may explain its management and board's responsibilities and decisions, and how resource allocations relate to objectives, risk management and intended outcomes. For example, a company may explain relevant governance aspects, including board oversight” (European Commission, 2017, p. 10).

In the description of the “policies”, the Communication refers to some of the “principles”. The definition of “policies” relies on the notion of “approaches”. It is not possible to identify how broad or deep the “approaches” should be. The Communication also focuses on the governance arrangements and resources, which the Directive did not mention as a part of the “policies”.

The Communication continues with a definition of due diligence processes as processes which help to identify, prevent and mitigate potential adverse impacts and ensure that the company delivers against a concrete objective (European Commission, 2017, p. 10).

The subsection on policies and due diligence contains a few “Examples” and “Example and KPIs” subsections. None of them refers to corruption. The examples and KPIs vary significantly in terms of depth and granularity of reporting. In some cases, the examples are concentrated on specific policies (e.g. policies aiming at avoiding the use of hazardous chemicals, substances of very high concern or biocides in its products, operations and supply chain), while in the others they target broader notions such as “climate-related risks and/or natural capital”.

Outcome

The subsection on “outcome” does not explain the notion of the outcome. In general, this subsection repeats previously articulated principles. The “Example and KPIs” provided in the section on outcomes relate solely to the environmental matters and demonstrate different granularity and content. Some of the “examples” and “KPIs”, provided in this section, also go beyond the notion of the outcome as the Communication includes both the “actual carbon emissions” and “plans to reduce carbon emissions”.

Risks

The Communication refers to the “short, medium and long-term principal risks” and includes “supply and subcontracting chains” in the definition of risks. The Communication focuses on the “principal risks” (European Commission, 2017). The Communication, however, does not define the notion of “principal” risk, which appeared in the final version of the Directive. The Communication also repeats filters from the Directive’s recitals such as “where relevant and proportionate”, but does not define them. The description of risks relies on the notion of

materiality and partially repeats the section on the policies with regard to risk management. The description does not define the "impacts" in either financial or non-financial terms:

The example and KPIs in this section do not relate to corruption and do not further clarify the notion of "principal" risk.

Key performance indicators

Section 4.5. "Key performance indicators" discusses the use of the narrative and indicator-based disclosure. The Communication opposes the "narratives" to the "indicator-based disclosures". Further, the Communication promotes "quantitative information as it helps them measure progress, check consistency over time and draw comparisons" (European Commission, 2017, p. 14). Thus, the Communication understands KPIs primarily through the notion of quantitative information. It suggests that the use of KPIs can improve the "usefulness", "relevance", and "comparability" of the disclosure and make disclosure more "understandable".

Subsection 4.5. establishes no KPIs itself and largely repeats previously indicated principles, in particular, the "materiality" notion in combination with "balance" and "context-dependence": Furthermore, the subsection provides that the KPIs should be useful according to the context and consistent "with metrics actually used by the company in its internal management and risk assessment processes". It provides that KPIs should preferably be high-quality and commonly recognized and can be presented in the context of targets, past performance, and comparison with other companies, as appropriate.

The Communication contains "Example and KPIs" tabs related to the requirements. However, only a few "Examples" and "KPIs" deal with corruption. They are discussed in the relevant subsection on corruption.

There are no additional explanations in the Communication about the explanations of the financial information in the non-financial report.

To conclude, the Communication attempts to explain the broad notions used by the Directive to define the reporting items. However, the Communication does not include definitions of each item. For example, the definition of the "outcome" is absent as well as the definition of "risk". The recommendations largely repeat previously discussed principles and goals. The related examples and KPIs do not deal with corruption and differ in nature, scope and depth. The Communication separates the "business model" from the list of theme-specific items and omits guidelines on the "references to, and additional explanations of, amounts reported in the annual financial statements".

6.4.2.2.4. Reporting themes: corruption

The Directive established "six CSR–related topics, which should be disclosed and five items in relation to which they should be disclosed" (Szabó & Sørensen, 2015). However, instead of demonstrating how five items can be related to six themes, the Communication provides guidelines on five items separately from guidelines on six themes (or "thematic aspects" as the

Communication called them). Contrary to the Directive, the Communication does not relate "thematic aspects" to the items. Each subsection provides a separate set of explanations and KPIs. The explanations and KPIs, related to corruption, represent the third part of the regulatory requirements related to the information.

For "anti-corruption and bribery", the Communication provides the following guidelines:

> "Companies are expected to disclose material information on how they manage anti-corruption and bribery matters and occurrences.
>
> Companies may consider making disclosures on organisation, decisions, management instruments, and on the resources allocated to fighting corruption and bribery.
>
> Companies may also consider explaining how they assess fighting corruption and bribery, take action to prevent or mitigate adverse impacts, monitor effectiveness, and communicate on the matter internally and externally.
>
> Companies may find it useful to rely on broadly recognized, high quality frameworks, for instance in the OECD Guidelines for Multinational Enterprises, or ISO 26000.
>
> Examples and KPIs:
>
> A company may consider disclosing material information and KPIs relating to aspects such as:
>
> - anti-corruption policies, procedures and standards;
> - criteria used in corruption-related risk assessments;
> - internal control processes and resources allocated to preventing corruption and bribery;
> - employees having received appropriate training;
> - use of whistleblowing mechanisms;
> - the number of pending or completed legal actions on anti-competitive behaviour" (European Commission, 2017, p. 17).

The core provision of the Communication introduces several new elements, which have never appeared in the Directive, such as "organization", "decisions" and "management instruments". At the same time, the core provision related to anti-corruption and bribery does not cover all the reporting items indicated by the Directive. The core provision does not refer to risks and outcomes at all. The example does not match the core provision. The example does include reporting on the business model in relation to anti-corruption and bribery (even though the example in item 3.6. provides that "[a] company may identify relationships and linkages between its business model and corruption and bribery aspects"). The example includes disclosure of risk assessment criteria instead of the risks (the Directive required disclosure of "principal risks" rather than risk assessment criteria). The reporting on outcomes is represented by the number of completed trainings mentioned in the example since "legal actions" refer to competition rather than corruption.

To conclude, the provisions of the Communication in relation to reporting on corruption omit several items prescribed by the Directive, including reporting on the business model and risks and provide a very limited understanding of reporting on outcomes.

6.4.2.2.5. Reporting frameworks

The reporting frameworks form the fourth set of information-related requirements. The Communication mentions frameworks extensively in the introduction as well as in the separate section. It reiterates the provisions of the Directive and contains a list of twenty-one frameworks, which it is "built on" and which it recommends to the companies. Among the listed frameworks, six frameworks contain anti-corruption indicators. These six frameworks provide an extremely diverse picture of the anti-corruption reporting. They differ in multiple aspects, in particular, in the definition of materiality, in the scope and definition of other principles, in the use of narrative and quantitative indicators, in the definition of corruption, and in the scope of the anti-corruption indicators.

Firstly, the international frameworks vary in the definition of materiality. As discussed above, some frameworks, such as the UK Guidance on the Strategic Report primarily refer to the shareholders and financial aspects in the definition of materiality, while others highlight non-financial impacts or both (GRI, the German Sustainability Code).

Secondly, some frameworks contain a considerable amount of principles, while others contain almost none. The UK Guidance on the Strategic Report contains a list of "communication principles", similar to those in the Communication e.g. such principles as "clear and concise yet comprehensive" reporting and "information in the strategic report should have a forward-looking orientation". On the other hand, the EFFAS KPIs for ESG framework contains a few short mentions of "comparability" with "benchmarks" without any definitions and extensive explanations.

Thirdly, some frameworks rely on narrative disclosure while others suggest extensive sets of quantitative KPIs and narrative items. The UK Guidance on the Strategic Report contains the following recommendations on the anti-corruption reporting:

> "Anti-corruption and anti-bribery: How does the entity's business model ensure adequate regard is given to anti-corruption and anti-bribery requirements? How does the entity's culture ensure that this is effective throughout the organisation? What are the areas of risk to the entity? How does this vary in the different geographical locations in which the entity operates and the different sectors in which it operates?" (Financial Reporting Council, 2018)

All indicators, suggested by the UK Guidance on Strategic Report, suggest a narrative disclosure. In contrast, the EFFAS KPIs for ESG provide only quantitative indicators for the anti-corruption disclosure. The GRI and the German Sustainability Code provide both narrative and quantitative indicators.

Fourthly, the frameworks vary a lot in the definition of "corruption". To be precise, some of the frameworks (just as the Communication itself) lack the definition of corruption. For example, EFFAS KPIs for ESG and the UK Guidance on Strategic Report contain no definition of corruption. The Transparency International's reporting guidelines, the GRI 205 standard, and the German Sustainability Code contain the definitions of corruption which basically converge around the "abuse of public power for private gain definition".

While the definitions of corruption somewhat converge in the frameworks, some frameworks combine reporting on corruption with reporting on lobbying and political contributions and, thus, include these topics in the anti-corruption perimeter. For example, criterion 19 of the German Sustainability Code belongs to the "Anti-corruption and bribery matters". It includes reporting on the political influence, in particular "significant input relating to legislative procedures, all entries in lobby lists, all significant payments of membership fees, all contributions to governments as well as all donations to political parties and politicians" (German Council for Sustainable Development, 2011, p. 63).

Other frameworks, however, tend to separate reporting on corruption from reporting on political contributions, political influence, and lobbying.

Fourthly, the frameworks provide significantly different numbers and scope of indicators for reporting on corruption. The EFFAS KPIs for ESG contain one general anti-corruption indicator and one indicator dedicated to political influence. EFFAS sectoral guidelines contain a few additional indicators. The GRI, on the other hand, contains more than ten indicators. Transparency International's reporting guidelines for reporting under the UN Global Compact Communication on Progress framework contain seven "basic indicators" and fifteen "desired indicators" and for each of these indicators, three to four examples which indicate (sometimes different) directions for reporting. Along with different numbers, comes different content. The content of each of the frameworks only partially overlaps with the scope of the Directive and the focus of the frameworks on each of the five Directive's reporting items (business model, policies and due diligence, outcomes, risks and KPIs) is uneven. The EFFAS KPIs for ESG and the UK Guidance on Strategic Report concentrate on the business model and risk reporting, e.g.:

> "Anti-corruption and anti-bribery: How does the entity's business model ensure adequate regard is given to anti-corruption and anti-bribery requirements? How does the entity's culture ensure that this is effective throughout the organisation? What are the areas of risk to the entity? How does this vary in the different geographical locations in which the entity operates and the different sectors in which it operates?" (Financial Reporting Council, 2018, p. 48)

On the other hand, the TI's reporting framework concentrates on policies and commitments rather than risks and business model. The risk-related indicators deal with the risk assessment processes rather than risks as such, e.g. D3 "Carrying out risk assessment of potential areas of corruption" or D4 "Detailed policies for high-risk areas of corruption". The Global Reporting

Initiative and German Sustainability Code attempt to combine different indicators, but with a focus on policies.

Both the Directive and the Communication refer to the reporting frameworks but they do not explain how the frameworks should be applied in light of the Directive's provisions. In particular, the Communication refers to over twenty frameworks, some of which do not relate to corruption at all and others only partially cover the scope of the Directive. The Communication does not provide guidelines to cover the gaps, the overlaps, and the differences between the frameworks. As discussed earlier, the Communication provides a partial and inconsistent set of corruption-related indicators, which neither summarize the indicators from the other frameworks nor fully cover the Directive's scope.

6.4.3. Access

6.4.3.1. What are the goals?

Section 2 "Purpose" of the Communication does not refer to the availability of the information. The only reference to the accessibility of the information appears in subsection 3.2. "Fair, balanced and understandable", where the language of disclosure is mentioned. The Communication suggests that disclosure in "customary business language" will make information "more accessible for relevant investors and other stakeholders" (European Commission, 2017, p. 7). Other principles, mentioned by the Communication, may address both the information component and the access component as well as the other two components partially. Yet, the description of the principles is vague and inconsistent. Thus, their scope is not explicit.

6.4.3.2. How are the goals to be achieved (requirements)?

The Communication does not establish the recommended vehicle or timing of disclosure.

The structure of disclosure is not addressed directly by the Communication. In subsection 4.1 the Commission describes the business model, in subsection 4.2 – policies and due diligence, in subsection 4.3 – outcomes, subsection 4.4 is dedicated to principal risks and their management, and subsection 4.5 – to KPIs. Subsection 4.6 of the Communication is called "Thematic aspects" and refers to five "aspects", which the Directive established: "Environmental matters", "Social and employee matters", "Respect for human rights", "Anti-corruption and bribery matters", as well as "Others" referring to the supply chains and conflict minerals. The Communication characterizes the "business model" as the "context" item, which does not relate to the particular themes. Meanwhile, the "example" provides that the companies "may" consider disclosing the link between the business model and the corruption. The Communication, thus, does not relate principles to the reporting items and reporting items to the themes. By articulating the items (business model, policies, risks, outcomes, and KPIs) separately from the themes, the Communication undermines the structure indicated by the Directive.

Some of the "principles" seem to establish basic access requirements. For example, the Communication advises avoiding repetitions. Subsections 3.2. "Fair, balanced and

understandable", 3.3. "Comprehensive but concise" and 3.6. "Consistent and coherent" establish and repeat a few more requirements, which may pertain to the access. These recommendations refer to the language of disclosure. In particular, the Communication advises in favor of using plain language, consistent terminology and definitions of technical terms. It encourages companies to consider disclosing in "customary business language". The Communication also advises against the immaterial information, boilerplates, repetitions, details, and generic information.

To conclude, the Communication does not refer to the desired vehicle or timing of reporting. A separate presentation of the reporting items and reporting themes creates a mismatch between the Directive's and the Communication's requirements for the structure and content. The Communication advises using plain language, consistent terminology and definitions of technical terms. It encourages companies to consider disclosing in "customary business language". The Communication also advises against the immaterial information, boilerplates, repetitions, details, and generic information.

6.4.4. Users

6.4.4.1. What are the goals?

The Communication does not use consistent terminology to describe users and beneficiaries of the newly institutionalized transparency. The Communication uses the terms "users", "stakeholders", "investors and other stakeholders", and "stakeholders, including investors and consumers".

The "Introduction" section of the Communication suggests that "greater transparency" will lead to better performance of the companies and "more robust growth and employment and increased trust among stakeholders, including investors and consumers". The sentence mentions "consumers" separately, but their interests are not differentiated from the other stakeholders' interests. Unlike the Directive (and similar to the Impact Assessment), the Communication mentions the "trust" of consumers rather than their direct access to the information. The "investors" are mentioned separately. The Communication highlights the particular role of the non-financial disclosure in the "sustainable finance" agenda. The EU sustainable finance regulation, however, does not cover anti-corruption. The Introduction of the Communication concentrates on the investors' benefits from the ideal transparency but it does not establish their specific information needs and capacities.

The "Purpose" of the Communication does not mention users or stakeholders at all.

The "Key Principles" section of the Communication mentions "stakeholders" and "users" quite extensively. In particular, the "Key Principles" section of the Communication requires the information to be "stakeholder-oriented" i.e.:

> "Companies are expected to consider the information needs of all relevant stakeholders. They should focus on information needs of stakeholders as a collective group, rather than

on the needs or preferences of individual or atypical stakeholders, or those with unreasonable information demands

As appropriate, this may include, among others: investors, workers, consumers, suppliers, customers, local communities, public authorities, vulnerable groups, social partners and civil society" (European Commission, 2017, p. 9)

It refers to a very broad notion of "all relevant stakeholders". The Communication does neither explain the "relevance" of stakeholders", nor establishes the principle for the "grouping" of the stakeholders. The categories of the stakeholders differ from previously mentioned in the Impact Assessment, Proposal and Directive. For example, NGOs are not mentioned (however, the term "civil society" is used). "Vulnerable groups" and "social partners" are added without explanations of how these groups differ from other groups.

Reference to the "stakeholders" and "users" also appear in other "Key Principles". For example, concerning the "Disclose material information" principle the Communication suggests that "preparers, auditors and users of financial information" are familiar with the notion of materiality". It does not establish the effects of the notion on other users/ stakeholders.

The subsection on materiality further suggests that the companies may take into account in the assessment of the materiality the "interests and expectations of relevant stakeholders" and "topics already identified by competitors, customers or suppliers". The Communication, however, does not explicitly define whose understanding the Directive refers to when it defines the inclusion criterion "to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity".

To conclude, the Communication refers extensively to the "users" and "stakeholders". The Communication also includes the notion of "stakeholder oriented" information. In the respective subsection, the Communication provides a list of "stakeholders". This list partially overlaps with the provisions of the Impact Assessment, the Proposal, and the Directive. The Communication introduces some new "stakeholders" and omits some of the previously mentioned groups. Furthermore, the Communication does not differentiate between the direct "users" and other stakeholders.

6.4.4.2. How are the goals to be achieved (requirements)?

The Communication does not establish the interests and capacities of different users and promotes broad-based solutions. This approach does not take into account the differences in the interests and capacities, recognized by the European Commission itself, by the reporting frameworks, to which the Directive and Communication referred, and by the scholarship.

In particular, the public consultations on the Communication addressed the following question:

"Who should be considered in your opinion the main audience of the non-financial statement(European Commission, 2016, p. 8)

The Commission observed “a plurality of views, showing that there is a broad diversity of perspectives as regards who should be taken into account when considering the main audience of non-financial information disclosed by companies” (European Commission, 2016, p. 8). Almost half of the respondents, primarily NGOs and consumers, advocated for “considering all users when disclosing non-financial information”. At the same time, a “large group of respondents argue that investors in general are a more appropriate main audience”. The Commission considered “all users” by listing them but not by considering their relative needs and capacities.

Furthermore, the frameworks, listed by the Communication, demonstrated significant variation in the definition of users. Similar to the Directive and the guidelines, the UN Global Compact Communication on Progress referred to “stakeholders” and the German Sustainability Code mentioned “business partners and stakeholders”, “clients and lenders”, and “stakeholder groups (e.g. customers, suppliers, employees)”. Other reporting frameworks acknowledged differences in the users’ motivations and interests and/ or targeted specific users. The Global Reporting Initiative framework (GRI) created a binary system by both appealing to a broad audience and highlighting a specific interest and role of financial professionals. GRI established different metrics for different categories of users. In contrast, the EFFAS ESG indicators were developed to help investors to identify specific risks and opportunities. Similarly, the UK Guidance on the Strategic Report targeted “shareholders”. It, therefore, provided that:

> “The strategic report and the annual report more broadly should contain information that is material to shareholders, including information that enables shareholders to assess the directors’ stewardship” (Financial Reporting Council, 2018).

In a similar vein, the Commission itself recently highlighted the differences in the “stakeholders’” interests. In its Communication on climate-related disclosure, the Commission stated that investors are more interested in the information about financial implications of non-financial factors, while “citizens, consumers, employees, business partners, communities and civil society organizations” are more interested in non-financial implications.

The scholarship also demonstrated that stakeholders vary in their interests and attitudes:

> “However, one of the challenges the EU will face should it decide to do so is in clarifying the question of audience. The current Directive is a kind of “all things for all people,” failing to distinguish between material issues for integrated reporting vs. the socially significant ones for sustainability reporting. As noted above, the Directive is ambiguous regarding the underlying concept of materiality on which it is based” (Eccles & Spiesshofer, 2015, p. 19).

Despite clear differences in the interests and capacities of the stakeholders, the Communication does not define the targeted audience of users. It also does not acknowledge potential differences in the needs and capacities of the mentioned users, which are obvious from the scholarship and the Commission’s own work. The reporting frameworks, mentioned by the

Communication, target different audiences, producing ultimately different understandings of materiality and different indicators.

6.5. Conclusion

Article 2 of the Directive mandated the European Commission to prepare the non-binding guidelines in consultation with the stakeholders. The Directive prescribed the Commission to include in the guidelines general and sectoral KPIs to facilitate relevant, useful and comparable disclosure.

The public consultations over the guidelines demonstrated a lack of consensus among the stakeholders. In particular, NGOs and civil society organizations continuously argued for detailed prescriptions, a comprehensive list of KPIs and inclusion of sectoral issues. In contrast, the companies have argued actively for the principle-based and flexible approach. The Commission opted to act based on the opinion of the "majority" of the respondents. A majority of the respondents suggested that the guidelines should set principles and ideas rather than being "neutral" or "detailed/ prescriptive". The respondents also advised the Commission to "identify key principles, provide flexibility for companies to exercise judgment, and/or make reference to other frameworks" when approaching KPIs.

The analysis of the guidelines within the transparency components demonstrates that the Communication concentrated on the information component. Other components have been addressed less.

Guided by the public consultations, concerning the disclosers, the Communication aimed at creating the best practice for all companies instead of providing sectoral indicators. The Communication noted that the materiality assessment, the KPIs and other factors can vary across the sectors. Despite the provisions of Article 2 of the Directive, the Communication did not create sectoral performance indicators for reporting on corruption.

Concerning the information component, the Communication used over 40 different notions to describe the outcomes. The Communication did not explain such goals as "comparable" or "relevant". Some explanations were provided regarding the material; fair, balanced and understandable; comprehensive, concise; strategic and forward-looking; stakeholder orientated; consistent and coherent information. The Communication included four sets of information-related requirements: (1) the inclusion criteria/ principles; (2) the reporting items; (3) the reporting themes; and (4) the reporting frameworks. The Communication used multiple inclusion criteria but rarely explained them. The "necessary" criterion, in particular, lacked clarity due to its unspecified nature. The Communication also did not define all the reporting items. The Communication provided separate guidelines on the reporting themes and the reporting items. As a result, only one of the reporting themes related to corruption (business model). On the other hand, the guidelines related to the anti-corruption reporting did not cover all of the Directive's reporting items, including the reporting on business model and risks, and provided a very limited understanding of reporting on outcomes. The nature of KPIs related to anti-corruption was

unclear. Despite the Communication section on KPIs characterized KPIs as being quantitative, the anti-corruption KPIs were primarily qualitative or their nature was not clear. The Communication referred to over twenty reporting frameworks, some of which did not relate to corruption at all. The Communication did not provide guidelines to cover the gaps, the overlaps and the differences between the frameworks.

The access goals were unclear from the Communication. The "accessibility" was mentioned only in relation to the language. However, purposes and principles seemed to be at least partially relevant for the access. The Communication provided no guidelines on the vehicle of disclosure. Unlike the Directive, it did not relate the themes to the reporting items. The Communication advised using plain language, consistent terminology and definitions of technical terms. It encouraged companies to consider disclosing in "customary business language". The Communication also advised against the immaterial information, boilerplates, repetitions, details, and generic information.

The Communication referred extensively to the "users" and "stakeholders". The Communication also included the notion of "stakeholder oriented" information. In the respective subsection, the Communication provided a list of "stakeholders". The Communication introduces some new "stakeholders" and omits some of the previously mentioned groups. The Communication did not differentiate between the direct "users" and the other stakeholders. It also did not acknowledge potential differences in the needs and capacities of the users, which were obvious from the scholarship and the Commission's own work. The reporting frameworks, mentioned by the Communication, targeted different audiences, producing ultimately different understandings of materiality and different indicators.

The table below summarizes the analysis within two dimensions: goals and requirements. The Communication was non-binding and required no approvals. It, thus, provided the Commission with the possibility to clarify the goals and include any relevant voluntary instruments. The Communication used the principle-based approach, which used goals as requirements instead of clarifying the requirements in relation to the goals. Furthermore, the Communication established a broad objective of the "stakeholder-oriented" information in the "users" component. Apart from the principles and goals, the Communication contained rather limited requirements: it included no sectoral KPIs. It relied on multiple unexplained "filters" such as "necessary", "appropriate", and "proportionate". The Communication did not reconcile the reporting frameworks it referred to. It disregarded the relation between the reporting items and themes, established by the Directive. It did not acknowledge different interests and capacities of the users. The Communication provided some recommendations on the language of disclosure.

	Goals	Requirements
Disclosers	No “one-size-fits-all”, flexibility Methodology relevant to companies across all economic sectors	Principle-based approach Relevant to companies subject to the Directive and serves as the best practice for all companies No sectoral specifics for anti-corruption
Information	40 different notions to describe the outcomes Purpose: high quality, relevant, useful, consistent, more comparable, concise, material, consistent, coherent disclosure and avoiding boilerplates and box-ticking. Principles: material; fair, balanced and understandable; comprehensive, concise; strategic and forward-looking; stakeholder orientated; consistent and coherent information	Multiple inclusion criteria and principle-based approach Reporting items are separated from the reporting themes No relation or consistency between the anti-corruption KPIs, the anti-corruption theme and the reporting items. Flexibility to use multiple reporting frameworks
Access	Accessibility Potentially purposes and principles: Purpose: high quality, relevant, useful, consistent, more comparable, concise, material, consistent, coherent disclosure and avoiding boilerplates and box-ticking Principles: material; fair, balanced and understandable; comprehensive, concise; strategic and forward-looking; stakeholder orientated; consistent and coherent information.	Fragmentation of format through separation of items and themes Language: plain language, consistent terminology and definitions of technical terms, “customary business language”, against immaterial information, boilerplates, repetitions, details, and generic information.
Users	Multiple references to the interests of stakeholders and users	Targeted users are not defined “Business case” for transparency

Table 1. Goals and requirements in the Communication

7. Chapter VII. From the Directive to the implementation in the member states: Transposition of the Directive 2014/95/EU in Germany

7.1. Introduction

This is the first chapter to address the design of the corporate anti-corruption transparency at the level of the member states. Unlike the EU Regulations, the EU Directives do not have a direct effect on private parties unless they meet the criteria set in *Van Gend en Loos v Nederlandse Administratie der Belastingen* case*.* The Directive 2014/95/eu promoted "flexibility". The NFRD was "unlikely to acquire direct effect" (Bijlmakers, 2017, p. 293). Thus, the application of the Directive was dependent on the national efforts to transpose its provisions.

The member states have to achieve the effects set out by the Directives by transposing the respective provisions into the national legislation (Article 288 TFEU). The NFRD required the member states to transpose its provisions no later than December 6, 2016. All member states generally transposed the Directive by the end of 2017 and the Commission did not indicate infringements in this regard, even though some minor delays occurred (e.g. both German and French transposition acts were signed in 2017).

The Impact Assessment highlighted substantial variation in the pre-Directive approaches toward the non-financial transparency across the member states. The Impact Assessment, thus, aspired to "level a playing field'. Recital 21 of the Directive indicated the intention to increase "the relevance, consistency and comparability of information disclosed" across the member states. At the same time, the Impact Assessment and the Directive intended to keep flexibility and "minimum harmonization", ensuring a significant level of discretion for both undertakings and member states. The "minimum harmonization" standard meant that the Directive "sets a common floor of regulation, which all Member States must respect, but it does not set a ceiling" (Weatherill, 2012). Following the "minimum harmonization" standard, Recital 1 of the Directive confirmed the right of the member states "to require, as appropriate, further improvements to the transparency of undertakings' non-financial information, which is by its nature a continuous endeavor". Thus, the Directive provided the member states with the possibility to make choices within the components of transparency. Within each component, the member states had a possibility of incorporating outcomes and requirements exceeding the Directive's provisions. Furthermore, the Directive explicitly delegated the decision-making to member states in several cases.

Concerning the disclosers, the member states were allowed to calibrate the scope of application (by adjusting the PIE definition, establishing broader scope, and tailoring the requirements to the sectors). Article 4 of the Directive mandated the member states to "bring into force the laws, regulations and administrative provisions necessary to comply with this Directive". Recital 10 highlighted the obligation of the member states to "guarantee disclosure of non-financial information by undertakings in compliance with this Directive".

Concerning the information component, the member states were able to clarify the goals and the requirements and go beyond the Directive's provisions. The member states could clarify the "to the extent necessary" standard. Furthermore, the Commission defined the reporting items and themes loosely and provided a few KPIs. There was room for maneuver on the side of the member states to specify the themes and the items and the relation between them. The member states also had an opportunity to qualify the application of the "comply or explain" principle and to impose higher quality assurance standards. The Directive, furthermore, explicitly enabled member states to use the national scope in transposing the requirements on the "prejudicial information". The member states were authorized to allow or prohibit the omission of the non-financial information in exceptional cases when the company's management considered the information to be "seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity" (Article 19a(1) of the Directive). Article 19 also suggested that member states "shall provide that undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon".

Regarding the access component, the Directive provided the member states with significant discretion. The member states were free to specify the goals and tailor the requirements. The Directive provided for disclosure in a management report. However, it allowed member states to exempt the companies from including a non-financial statement in the management report if the undertaking already prepared a separate report for the same year and this separate report was published together with a management report or no later than six months after the end of the financial year (Recital 6 and Article 19a(4)). Furthermore, according to the minimum harmonization standard, the member states were free to establish their own formats, checklists and databases as well as the language of disclosure to ensure accessibility of the information.

Concerning the users, the Directive provided the member states with ample opportunities of tailoring the disclosure to the particular users to satisfy all users and stakeholders mentioned at the EU level.

Before proceeding with the analysis of the transposition at the level of the member states, it should be acknowledged that Germany and France have traditionally transposed the EU Directives in different manners. The German approach is based on standard constitutional principles and procedures. Germany, therefore, uses a full legislative procedure for the transposition of the EU Directives. Irrespective of the scope of the Directive, the German Parliament is customarily involved as "the principle of the primacy of the parliamentary legislature requires that the basic elements of any statutory system be regulated through Acts of Parliament" (Voermans, 2018, p. 7). Accordingly, the German transposition is usually documented within the relevant law. In contrast, France resorts to the use of "constitutional emergency procedures and related legislative emergency-instruments to sweep up transposition backlogs" (Voermans, 2018, p. 5). In France, the parliament traditionally receives a brief summary note from the respective ministry, based on which the parliament decides whether to proceed

with a full parliamentary review. The parliament technically delegates the transposition of most of the Directives to the executive branch (Drahn, 2020; Voermans, 2018).

The variation in the transposition traditions implies that the parties involved in the transposition and the documents produced vary from member state to member state. The sections on the context in member states will provide an overview of the relevant documents in Germany and France respectively.

7.2. The context in Germany

Prior to the Directive, Germany lacked mandatory non-financial transparency regime. However, in 2011 Germany developed a vast voluntary non-financial transparency regime, encapsulated in the German Sustainability Code. In May 2014, the German Government announced the intention to support the promotion of the Code as "one way of strengthening the European dimension" (German Council for Sustainable Development, 2014).

The Code included corruption reduction in its goals since its early versions. In later versions of the Code, the anti-corruption reporting included five indicators, adapted from the Global Reporting Initiative and EFFAS frameworks (the companies were allowed to choose between the frameworks). In its indicators, the Code demonstrated a broad understanding of corruption, including political contributions and lobbying.

With regard to corporate corruption in general, Germany has been one of a few European countries with ongoing enforcement against both companies and individuals (OECD, 2018).

While Germany had a developed voluntary regime, supported by the government (Council for Sustainable Development, 2014), it did not want to install a mandatory regime. In the course of negotiation of the NFRD, German MEPs opposed the Directive (Committee on Legal Affairs of the European Parliament, 2013, p. 3). The German delegation insisted that an increase in the "relevance, consistency and comparability of information disclosed by very large companies across the Union, can be sufficiently achieved by the Member States" (Committee on Legal Affairs of the European Parliament, 2013, p. 42). According to Kinderman, "Germany not only tried to kill the proposal, it tried to persuade other member states not to support the Directive as well" (Kinderman, 2020, p. 8). Kinderman suggested that German attempts to sabotage the Directive could be "explained at least in part by its unusually large Mittelstand or medium-sized enterprise sector" (Kinderman, 2020, p. 3).

Even though Germany had not been able to "kill the proposal", the final version of the Directive incorporated several changes driven by German MEPs. The scope of application was limited (PIEs rather than large companies), the quality assurance standard was decreased (presence, not consistency) and the possibility of exemptions by the member states was introduced.

On October 17th, 2016 German government published a Draft Law to Strengthen Non-Financial Reporting by Companies in Their Management and Group Management Reports (hereinafter – the Draft Law). The Draft Law bound amended non-financial transparency regime together with

corporate governance regime in one package. The Draft announced a one-to-one transposition within the scope of the accounting provisions. Thus, the German government rejected the possibility of introducing stricter requirements than those introduced by the Directive. The Draft Law made it clear that there was no alternative to the transposition of the Directive. It also highlighted limited options of the member states in adjusting the Directive to allow companies to omit information, to allow reporting outside of the management report, and to request an audit. The Draft Law did not mention the possibility for the member states to strengthen the requirements of the Directive under the minimum harmonization standard.

On October 19th, 2016, a few days after the Draft Law was published, the German Green and Left parties published a petition (hereinafter – the Greens Petition), suggesting that the German government failed to use the opportunity to improve the non-financial transparency and ran short even of one-to-one transposition. The left-wing parties demanded a significant amount of changes to all components of transparency.

On November 16th, 2016 the Federal Council challenged the Federal government over the notion of materiality with little success.

The parliamentary debate occurred on March 9th, 2017. Despite the late night, a heated debate broke out between the Green and Left parties, on the one side, and the center-right Union parties (CDU/CSU) and center-left SDP, on the other side. Green and Left parties called for stricter rules while center/ right parties advocated for a limited scope and minimization of burdens on the economy. The debate reflected conceptual differences in understanding of the goals of transparency regulation as well as the requirements. When the Green and the Left parties voted against the law, a round of comments from the parliamentary Committees was organized. This round broad a few changes in the Draft Law, which, however, remained far from satisfying the left parties' demands, expressed in the Greens Petition and the hearings.

The German government slightly delayed transposition. The Law was eventually signed on April 18th, 2017. The German Sustainability Code remained active as a parallel voluntary regime.

7.3. The role and the structure of the German Law

The *Law to Strengthen the Non-Financial Reporting by Companies in Their Management and Group Management Reports* (Deutscher Bundestag, 2017a) contains twelve articles. Article 1 amends and introduces over twenty articles of the Commercial Code. Article 2 focuses solely on the audit requirements. Articles 3 and 4 regulate the coming into effect of the new provisions. Article 5 deals with the definition of the small corporation or micro cooperative in the Business Register Law. Articles 6 and 7 and 9 amend the securities law, stock company law, and the transparency law with provisions on the coming into force of the NFRD but do not introduce any new content requirements. Similar to Articles 3 and 4, Articles 6, 7, and 9 are transitional. Articles 8 and 10 amend the Companies Act and the Cooperative Act to ensure the review of the non-financial statement by the management of the companies. Article 11 amends special laws, such as the German Banking Act and Financial Conglomerates Solvency Law to extend the provisions

of the Commercial Code to the PIEs. In general, this study focuses on the amendments, introduced by Article 1. Articles 2, 8, 10 and 11 of the German Law are discussed in relation to the quality and disclosers as appropriate.

Key provisions of Article 1 introduce and amend Sections §§289a-289e and §§315a-315d of the German Commercial Code. Sections §289a and §289f deal with corporate governance and diversity information. This chapter focuses mainly on Sections §289b-§289e. Section §289b of the Commercial Code "Obligation to provide the non-financial statement" sets the obligation to provide the report and the scope of application and provides two "exemptions": the exemption for the daughter companies within a group of companies and the exemption for the companies, providing a separate report. Section §289c "Content of the non-financial declaration" establishes the content of the report. Section §289d refers to the international frameworks. Section §289e allows "omission of the disadvantageous information". Sections §§315a-315d largely reiterate the provisions of §§289a-289e but in application to the company groups. Section §§ 320 and 325 include the non-financial transparency in the general provisions, related to the audit and pre-disclosure checks. Sections §§ 331, 334, 335, and 335a provide penalties for the omission of the non-financial report. Sections 336, 340a, 340i, 340n, 341a, 341j, 341n, and 342 contain provisions specific to PIEs, such as credit institutions, cooperatives and insurance companies

To avoid confusion, when talking about the final provisions of the law (i.e. those which were agreed upon in the Parliament and adopted), the chapter uses the numbers and names of the articles in the Commercial Code. Apart from the articles, introduced and changed by the German Law, some preexisting articles are inferred if it facilitates the interpretation of the new provisions. For example, the general provision on the language of reporting is inferred for this purpose.

When necessary for the analysis, the chapter refers to the Draft Law (the Law negotiated in the Parliament). The Draft Law contains an introduction and commentary which are useful for the analysis of the goals of the new transparency regime.

It is necessary to acknowledge that neither the Draft Law nor the final German Law uses the term "transparency" (die Transparenz; das Transparent) to describe their goals. At the same time, this term is extensively used by the Greens Petition and several times during the parliamentary hearings. Moreover, the German Law uses the same set of components as the Directive (disclosers, information, access, users), which suggests that it aspires to transparency in line with the Directive's provisions. Yet, the lack of reference to transparency as a goal is prominent.

The upcoming analysis focuses on the provisions of the final version of the *Law to Strengthen the Non-Financial Reporting by Companies in Their Management and Group Management Reports* (Deutscher Bundestag, 2017a) (hereinafter – the German Law). Other official documents, produced by the German government and political parties, are used to highlight the policy goals and the available choices. In particular, this chapter explores the provisions of (1) the Draft Law (Deutscher Bundestag, 2016b); (2) the Greens Petition (Deutscher Bundestag, 2016a); (3) the Statement by the Federal Council and Counter-Statement by the Federal Government (Deutscher Bundestag, 2016c); and (4) the Minutes of the Parliamentary Hearings (Deutscher Bundestag,

2017b). These documents are particularly useful for the understanding of the policy goals, as the German Law itself naturally concentrates on the legal requirements. Furthermore, these documents are useful to highlight the choices of requirements. The comparison allows understanding the alternative views on the transparency components.

7.4. Four components of transparency in the German Law

7.4.1. Disclosers

7.4.1.1. What are the goals?

The Draft Law noted that there were "no alternatives" to the transposition of the Directive. The Draft Law aimed at "one to one" implementation (Deutscher Bundestag, 2016b, p. 30). It stated that "there is no indication that the project is intended to go beyond the implementation of the CSR directive" (Deutscher Bundestag, 2016b, p. 68). Concerning disclosers the goals, indicated by the Draft Law, followed the announced "one-to-one" implementation in order to avoid "burdens for German SMEs" (Deutscher Bundestag, 2016b, p. 44). Accordingly, the Draft Law aspired to cover 548 companies (Deutscher Bundestag, 2016b, p. 69).

The Draft Law dedicated ten pages to the discussion of "burdens" and "costs" created by the new regime. The limitation of the scope of application was aimed at reducing the "burden".

The scope goals, established by the Draft Law, were criticized in the Greens Petition. The Green and Left parties noted that only around 300 companies would be obliged to disclose non-financial information (the assessment by the government was 548 companies). Furthermore, focus on capital market-oriented companies meant the exclusion of large private companies common for German economy. These companies, according to the Greens Petition, were of public interest simply because of their size. Thus, their exclusion led to unequal treatment.

A debate over the scope of application further escalated in the parliamentary meeting. The Greens and Left parties maintained a critical position. The Left party argued that the Draft Law covered only 3% of the large companies and omitted companies such as Aldi and Lidl "which are currently criticized for the massive violation of workers' rights on the plantations" (Deutscher Bundestag, 2017b, p. 22258)

The Green party shared the sentiment:

> "Who is outside? Insignificant companies such as Deutsche Bank. Otherwise, Deutsche Bank is everywhere, only it should not report on sustainability, etc. Aldi is not there, despite its international presence in many areas, including in developing countries, with long production and supply chains" (Deutscher Bundestag, 2017b, p. 22259)

The center and right parties did not comment much on the scope of application. One-to-one scope of application manifested an intention to avoid the burden on the business. The German Law in its final version does not provide an account of the goals but it keeps the provisions of the

Draft Law regarding the disclosers intact. Thus, the right-wing parties prevailed in the debate over the coverage.

The German Draft Law somewhat revived the discussion over clarity and legal certainty concerning the easiness of the parent identification within a group. It suggested that identifying a group management report might be difficult in multistage groups and required the subsidiaries to refer to the reports of their parents to improve users' understanding of the scope of disclosers (Deutscher Bundestag, 2016b, p. 44).

The Draft Law aspired to cover between 300 (as assessed by the Greens) and 548 (as assessed by the government) companies. The Draft Law recognized that the users should be able to identify the reporting entity without difficulties. The Draft Law did not suggest any sectoral tailoring as a goal.

The German legislator followed the "one-to-one" implementation. The Draft Law aspired to "flexibility" and avoidance of a "burden". More than ten pages of the Draft Law were dedicated to the discussion of compliance burdens and costs created by the new regime. In this discussion, the Draft Law referred extensively to the Directive as a source of the "costs" and to the intention of the German government to minimize the costs. The Draft Law did not mention the notion of "harmonization" while referring to the NFRD. At the same time, it mentioned "flexibility" eight times and "burden(s)" seven times, in particular concerning the scope of application.

7.4.1.2. How are the goals to be achieved (requirements)?

The scope of application and related enforcement requirements are established by Sections § 289b, 331, and 334 of the German Commercial Code.

Section §§ 289b of the Commercial Code establishes that stock corporations, limited liability companies, partnerships, and European Companies (SE) fall within the scope of the new provisions if they are: (a) are classified as large companies (Große Kapitalgesellschaften) within the meaning of Section 267 Paragraph 3 Sentence 1 of the Commercial Code i.e. they exceed at least two of the following characteristics: balance sheet sum of €20 million/ annual sales of €40 million/ an annual average of 250 employees; (b) are oriented towards the capital market within the meaning of Sect. 264d of the Code; and (c) have more than 500 employees on average in the course of a year. Large financial institutions and insurance companies are mandated to report irrespective of their capital-market orientation.

The German Law, thus, covers the companies, designated as PIEs at the EU level, in particular, listed companies, and financial and insurance institutions.

Similar to the Directive, German Law requires the accumulation of the information at the level of the parent (consolidating entity). The subsidiaries are exempted from the reporting obligations if they are included in the consolidated report. If a subsidiary is exempt from providing a report, "it must state this in its management report with an explanation of which parent company makes

the group management report or the separate non-financial group report publicly available and where the report is in German or English is disclosed or published".

German Law requires the members of the representative body or the supervisory body of the corporation (or a group) to review a separate non-financial report. If the non-financial report is integrated into the management report, standard rules apply to the review of the management report. According to the amended Section §331, the members of the representative body or the supervisory body of the corporation (or a group) can be subject to a fine or imprisonment for incorrect reflection or concealment of the circumstances of the corporation in the reporting documents, including the non-financial report.

Sections §§331 and 334 establish significant sanctions for both the members of the representative body or the supervisory body of the corporation (or a group) and the corporations. Sanctions include fines up to two million euros or twice the benefit from the offence for the members of the representative body or the supervisory body of the listed company or group. Furthermore, the members of the representative body or the supervisory body of the corporation (or a group) are subject to imprisonment of up to 3 years. For the listed companies fines up to 10 million euro and turnover fines are established by Section §334.

The German Law does not establish any sectoral requirements and KPIs.

Regarding the scope of application and the enforcement, the Greens Petition criticized the scope requirements and proposed including non-listed companies with more than 500 employees. The Petition also proposed to consider a future extension of the scope to companies with more than 250 employees. Furthermore, the Petition advocated for the effective design of sanctions in the event of violations. Finally, the Green and left parties proposed a provision encouraging and supporting companies with fewer than 500 employees who voluntarily prepared sustainability reports. The Greens Petition also recognized the problem with the identification of the reporting entities and information and suggested a need for a database of the reports (Deutscher Bundestag, 2016a, p. 1)

During the parliamentary hearings, left-wing parties highlighted the need for a broader scope of application together with the clarity of requirements for the application of sanctions. This contrasted with the views of the center/ rights parties, who claimed that many large companies had already reported information "without green tutoring" i.e. voluntary (from the speech of Dr. Hans-Joachim Schabedoth, SPD) (Deutscher Bundestag, 2017b, p. 22260).

To conclude, the German Law introduces the minimal scope of application following the Directive and the definition of PIE at the EU level. The Law relies on the following criteria: (1) number of employees; (2) financial results; (3) parent/ consolidating entity (in case of the group); and (4) listed companies, financial institutions, and insurance institutions. To ensure more clarity, the Law prescribes the consolidated subsidiaries to disclose the reporting parent, but it does not provide for the list of reporting entities and does not require parents to disclose consolidated entities for the purpose of the non-financial reporting. The Law introduces relatively high

sanctions for the failure to comply with the new reporting provisions, but such sanctions are subject to proof of the violation of the respective (often vague) requirements. The Law does not differentiate between the sectors. The comments by the Green and Left parties suggested that the scope of application, the clarity, and the enforcement provisions were subject to interpretation. In particular, despite seemingly significant sanctions, the left-wing coalition found them not effective. Furthermore, the Greens Petition suggested that the clarity was insufficient in the absence of the "database".

7.4.2. Information

7.4.2.1. What are the goals?

The final version of the German Law does not define the information outcomes and concentrates on the requirements. The desired information-related outcomes of German Law have been articulated mainly in three documents. The Draft Law contained the outlook on the information outcomes by the federal government. The Greens Petition referred to the outcomes from the perspective of the left-wing parties. The Minutes of the Parliamentary Hearings also mentioned some information-related outcomes.

The "Problem and goal" section, preceding the Draft Law provided that "investors, companies and consumers all require more and better information" (Deutscher Bundestag, 2016b, p. 1). The Draft Law, thus, alluded to the quantity (more) and quality (better) information, which informed the Impact Assessment. Neither "more", nor "better" were further described.

Further references to the information outcomes occurred in the commentary to the Draft Law (Deutscher Bundestag, 2016b, pp. 26–72). The Draft Law mentioned comparability ("vergleichbar", "Vergleichbarkeit"), relevance ("relevant", "Relevanz"), essential nature (which could have been interpreted also as "materiality" or "principal" nature as discussed below) ("wesentliche"), usefulness ("nützliche"), understandability ("verständliche"), completeness ("vollständig abdecken), structure ("einer übersichtlich strukturierten"), materiality ("materiellen Informationen") , proportionality (verhältnismäßig), coherence ("zusammenhänge") as well as "flexibility" ("Flexibilität", "Handlungsflexibilität"). These notions were used together as well as separately from each other and in various contexts.

Comparability ("vergleichbar", "Vergleichbarkeit"), "flexibility" ("Flexibilität", "Handlungsflexibilität") and "essential" nature ("wesentliche", which also could have been interpreted as "materiality" or "principal" nature as discussed below) have been especially prominent in the Draft Law.

The Draft Law described the goals of the Directive by referring to "comparability" ("vergleichbar", "Vergleichbarkeit") and "flexibility" (Flexibilität", "Handlungsflexibilität"). According to the Draft Law, the Directive intended "to ensure a sufficient degree of comparability" while keeping "a high degree of flexibility to act to address the multifaceted aspects of corporate responsibility" (Deutscher Bundestag, 2016b, p. 26). This particular description did not mention other goals, indicated by the EU documents, such as relevance, consistency, or materiality.

In multiple cases, comparability was juxtaposed with "flexibility" and "freedom of choice":

> "It was also considered to establish a specific reporting framework to improve comparability. On the one hand, however, this is opposed by the wording of Directive 2014/95/EU, which gives the Member States the freedom to give companies freedom of choice" (Deutscher Bundestag, 2016b, p. 52).

The German legislator generally emphasized the "flexibility of action" as one of the key goals of the Directive. In particular, the Draft Law referred to the "necessary flexibility" and "high degree of flexibility" which contrasted with only "sufficient" comparability.

The Draft Law referred to "essential" ("wesentliche") over forty times. The term "essential" ("wesentliche") appeared in the Draft Law as a German analog for the term "principal" used in the Directive in relation to the risks. However, the German Law also used it to describe the information in general, risks and materiality principle.

In some cases, "essential" ("wesentliche") might have been interpreted as an analog to the "materiality" notion and "necessary for an understanding" standard of the Directive. In particular, the Draft Law referred to "Wesentlichkeitsvorbehalt" which can be roughly translated as a "materiality provision". In line with the understanding of "essential" as a materiality criterion, of the Draft Law used "essential" ("wesentliche") to describe both the risks and the general approach to the inclusion of the information:

> "The reporting is not only subject to the proviso that it is an essential risk, but also subject to the essentiality requirement of Section 289c (3) HGB-E (in the sentence before number 1). According to this, only the information that is necessary for an understanding of the course of business, the business result and the situation of the corporation and the effects of its activities are to be reported. The point of reference for essentiality differs: Section 289c paragraph 3 numbers 3 and 4 HGB-E refers to the German Bundestag - essentiality of the risk, i.e. on the very probable occurrence of serious negative effects, while § 289c paragraph 3 HGB-E in the sentence before number 1 requires the essential information about the risk. In this context, an essential risk is usually also an essential piece of information with regard to the effects of the business activity on non-financial aspects. However, § 289c paragraph 3 HGB-E requires in the sentence before number 1 that the information is always important for understanding the business development, the business result and the situation of the company". (Deutscher Bundestag, 2016b, p. 50)

However, on another occasion, the Draft Law referred to the "materiellen Informationen" rather than "Wesentlichkeitsvorbehalt" in describing the materiality. Furthermore, the term "essential" ("wesentliche") was similar to the one used in the German translation of the Directive 2014/95/eu with regard to the "principal risks" ("wesentlichen Risiken") rather than the "necessary" criteria ("erforderlich").

The Greens Petition described the goals in similar terms as the Draft Law. In particular, it mentioned comparability ("vergleichbar", "Vergleichbarkeit"), usefulness ("nützliche"),

relevance (“relevant”, “Relevanz”). It also reffered to the use of reliable and documentable indicators (“überprüfbare” und “dokumentierbare”) and “meaningful” (“aussagekräftig”) reporting (Deutscher Bundestag, 2016a)

The Minutes of the Parliamentary Hearings contained a few references to the quality goals. The most important reference to such aspects as “meaningful” and “comparable” (“aussagekräftig” and “vergleichbar”) appeared in the position of the Green party:

> “As a result, your implementation of the Directive, ladies and gentlemen, will lead to reports which, in the end, are not meaningful or comparable” (Deutscher Bundestag, 2017b, p. 22260)

Several trends can be observed in the German implementation of the Directive’s provisions.

Firstly, the expected outcomes, articulated by the Draft Law, partially overlapped with the Directive. However, Draft law emphasized contradiction between “flexibility” and “comparability” and between increase in the quality and quantity of the information and compliance costs. Also, “proportionality” and “relevance” alluded to the Directive’s requirements. At the same time, the Draft Law referred to some outcomes which the Directive had not mentioned. Partially, these outcomes appeared in the Impact Assessment (e.g. “material”) and the Communication (e.g. “understandable”, partially they were absolutely new (e.g. “structured”, “complete”). On the other hand, the Draft Law omitted the notion of “consistency”, directly mentioned in the Directive and explained by the Commission’s Communication. The descriptions of the information-related outcomes were spread across the Draft Law, so it was difficult to form a comprehensive view.

Secondly, the Draft Law linked some of the goals to the requirements. For example, the Draft Law meaningfully connected comparability to the use of the frameworks and the review of the reports. Furthermore, the “essentiality”/ “materiality” notion was related to both the notion of “principal risks” and “necessary for an understanding” criteria. However, such links were rather sporadic and many goals did not relate to the requirements. For example, the “usefulness” was not linked to a particular requirement. Where the goals were connected to the requirements, the Draft Law only partially discussed the implications of the use of certain requirements for the outcomes. For example, the reference to the link between the use of the frameworks and comparability did not provide a full account of the implications of such use.

Thirdly, the Draft Law and the Greens Petition relied on similar goals. In fact, the Draft Law articulated more goals in general. However, the Minutes of the Parliamentary Hearings indicated that the parties perceived the goals differently. As indicated in the Draft Law, the German government believed that the new law would improve comparability. And the right and center parties supported the government in the Parliament. On the other hand, the Left and Green parties suggested that the law would not be able to create a meaningful and comparable disclosure. This example highlights that notions such as “comparability”, “consistency” and “relevance” often used to describe the state of transparency were subject to interpretation. The following section will demonstrate that while the Greens Petition referred to the same goals as

the Draft Law, it proposed a substantially different set of requirements. Thus, different parties assigned different meanings and requirements to the same goals.

7.4.2.2. How are the goals to be achieved (requirements)?

7.4.2.2.1. Five sets of information requirements in German Law

German Law features a significant number of requirements regarding the information. For the analysis, the requirements are allocated into five sets. The German Law develops on the (1) the inclusion criteria; (2) the reporting items and KPIs (items and KPIs are mentioned together and, thus, explored together); (3) the reporting themes including the reporting on corruption; (4) the use of the reporting frameworks; (5) the quality assurance and quality management requirements. The respective provisions are also discussed in the Draft Law, in the Greens Petition, and in the Minutes of the Parliamentary Hearings. The subsections address the requirements according to the type. Within each subsection, the following structure is followed. Firstly, the respective provisions of the EU law are shortly summarized. Secondly, the provisions of the German Law are explained. Thirdly, the explanations from the Draft Law and the arguments provided in the Greens Petition and the Minutes of the Parliamentary Hearings are discussed. The provisions of the commentary to the Draft Law, Greens Petition and the Minutes build upon the legal provisions, proposed in the Draft Law. Therefore, it makes sense to articulate the legal provisions first. Since the final version of the German Law is virtually identical to the (core text of the) Draft Law, the final provisions are provided to avoid confusion and repetition. This approach is not chronological, but it emphasizes the importance of the final legal requirements.

7.4.2.2.2. The inclusion criteria

The Directive relied on several inclusion criteria. “To the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity” criterion was applied to all information. The Directive combined this criterion with two exclusion clauses. Firstly, the Directive established the “comply or explain” provision, allowing the companies to report only on the policies they have and omit reporting on those they do not have subject to a reasoned explanation. Secondly, the Directive allowed the member states to let companies omit prejudicial information in exceptional cases. Along with these general inclusion/ exclusion rules, which applied to all reported information, the Directive contained at least four (and more if the recitals are taken into account) criteria, applicable to specific reporting items. With regards to risks, the Directive mentioned “adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts”, “principal risks” as well as “where relevant and proportionate”. With regards to KPIs, the Directive required only “relevant to the particular business”. “Where appropriate” criterion was used in relation to “references to, and additional explanations of, amounts reported in the annual financial statements”.

General inclusion criteria: “to the extent necessary”, “comply or explain principle” and omission of disadvantageous information

The German Law incorporates general inclusion criteria and two exclusion provisions. Section 289c(3) of the German Law provides:

> "... the non-financial statement must provide the information, which is necessary for an understanding of the course of business, the business result, the situation of the corporation *as well as* the impacts of its activities on the aspects mentioned in paragraph 2".

The Section 289c(4) contains "comply or explain" provisions. Section 289e realizes the right of Member States to allow for an omission of "disadvantageous information". The information can be omitted "exceptionally" when it is likely "to cause the corporation a considerable disadvantage" and "does not prevent an appropriate and balanced understanding course of business, the business result, and the situation of the corporation and the impacts of its activities". The German Law interprets the "fair and balanced" criterion in the omission rule as "appropriate and balanced" ("entsprechendes und ausgewogenes").

Specific inclusion criteria

The German Law also uses inclusion criteria for the specific reporting items.

The German Law mentions "essentiality" (or "materiality" subject to the translation of "wesentlichen Risiken") in relation to the reporting on the "risks" item:

> "3. the essential (material) risks associated with the company's own business, which are very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2, as well as the handling of these risks by the company;
>
> 4. the essential (material) risks associated with the business relationships of the corporation, its products and services, which are very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2, insofar as the information is important and the reporting of these risks is proportionate, as well as the handling of these risks by the corporation"

The German Law does not only refer to "wesentlichen Risiken", which roughly correlates with the Directive's "principal" risks criterion but adds on top of this criterion "very likely to have a serious negative impact" criterion. The Draft Law suggests that the "very likely to have a serious negative impact" criterion manifests application of Recital 8 of the Directive. The German Law also mentions "important" and "proportionate" in relation to the risks in business relationships.

In relation to the KPIs, the German Law also contains the requirement to disclose only "the most important non-financial performance indicators, which are significant for the business activity of the corporation" ("der bedeutsamsten nichtfinanziellen Leistungsindikatoren, die für die Geschäftstätigkeit der Kapitalgesellschaft von Bedeutung sind").

The "references to amounts shown in the annual financial statements and additional explanations" should be reported insofar as it "is necessary for understanding".

Interpretation of the inclusion criteria

The Draft Law provided explanations related to some of the newly introduced provisions.

The Directive and the Communication referred to the "impacts" as a core notion for the inclusion of the information, but they did not explain the nature of the "impacts". The German Law refers to "the information, which is required for an understanding of the course of business, the business result, the situation of the corporation as well as *the impacts* of its activities on the aspects mentioned in paragraph 2". The German Law uses "sowie" ("as well as") to connect the impacts on business and non-financial impacts. The Draft Law provided rather contradictory explanations regarding the application of the nature of impacts. On one occasion, the Draft Law seemed to suggest that each piece of information needs to be assessed based on both financial and non-financial impacts. At the same time the commentary highlighted the primacy of the financial impacts by stating that "the information is always important for understanding the business development, the business result and the situation of the company" (Deutscher Bundestag, 2016b, p. 50).

The Draft Law provided some explanations regarding the information which can be omitted:

> "The information is essential (material) within the meaning of Section 289c (3) HGB-E for an understanding of the course of business, the business result, the situation of the corporation and the effects of its activity... However, the information is not so important that its omission completely precludes a balanced overall understanding. " (Deutscher Bundestag, 2016b, p. 52).

The German government made it clear that only material information about "essential (material) risks ... which are very likely to have or will have a serious negative impact" was subject to reporting. The Draft Law attributed the amendment to the one-to-one implementation approach, triggered by the compromise nature of the Directive:

The Greens Petition criticized the core inclusion standard. The Petition suggested that the requirement to report only on "non-financial risks, which at the same time have an impact on the business activity and the situation of the company, i.e. only the information that is ultimately relevant for the financial situation" is contrary to the provisions of the Directive (Deutscher Bundestag, 2016a, p. 2) The Greens Petition, thus, interpreted the new standard to include information on the issues which are likely to have both non-financial and financial impacts. Such interpretation followed from the wording of Sections 289(3) (which kept previously existing standard referring to effects on business) and 289c(3) (which suggested "as well as" wording). The Green and Left parties demanded to include information on the issues that create real or potential material non-financial impacts irrespective of the related financial impacts (Deutscher Bundestag, 2016a).

The Green and Left parties also expressed concerns over the "very likely to have or will have a serious negative impact" standard in relation to the risks. They considered that the Draft Law not only failed to improve the provisions of the Directive, but went against it by requiring only "very

likely serious negative effects" instead of "likely negative effects", (Deutscher Bundestag, 2016a, p. 2). "Very likely serious negative effects" standard was also questioned by the German Federal Council, which proposed to change the wording to "likely serious negative effects". The Federal Government rejected the change referring to the text of the preamble to the NFRD:

> "The Federal Government does not want to take up the Federal Council's proposal. The corresponding provision in Article 19a of Directive 2014/95 / EU ('likely adverse impacts') is specified in recital 8 of the Directive ('very likely ... severe impacts')" (Deutscher Bundestag, 2016c, p. 2).

In the parliamentary debate, the inclusion criteria, including the "necessary" standard, the nature of the impacts, and the scope of reporting on risks had not been extensively discussed. The CDU/CSU justified the "very likely serious negative effects" standard by referring to the proportionality principle. The inclusion criteria were, thus, limited to limit the costs to ensure that "the effort for the procurement and control of this information is proportionate and appropriate" (from the speech of Heribert Hirte (CDU/CSU)) (Deutscher Bundestag, 2017b, p. 22258)

As the Greens Petition showed, the parties interpreted the inclusion criteria differently. The Green and Left parties expressed their concerns about the precision of the resulting information (Deutscher Bundestag, 2016a, p. 2).

To conclude, the German Law uses both the main text of the Directive and the recitals to introduce multiple inclusion criteria. The Law incorporates a general inclusion criterion ("necessary") as well as both exclusion clauses (comply or explain clause and prejudicial information clause). The German Law uses the wording "necessary ("required") for an understanding of the course of business, the business result, the situation of the corporation as well as the impacts of its activities on the aspects mentioned in paragraph 2". The use of "as well as" ("sowie") allows interpreting the provision as requiring the non-financial disclosure only in the cases when the information is required for an understanding of both financial and non-financial impacts. Such interpretation is confirmed by the explanations in the Draft Law and the Greens' Petition. The German Law, thus, interprets the "necessary" criterion in a limiting way. Furthermore, the German Law uses additional inclusion criteria to limit the reporting on specific reporting items. The German Law refers to "wesentlichen Risiken", which roughly correlates with the Directive's "principal" risks criterion. It mentions "important" and "proportionate" in relation to the risks in business relationships. Concerning the KPIs, the German Law contains the requirement to disclose only "the most important non-financial performance indicators, which are significant for the business activity of the corporation". The inclusion criteria represent the strictest interpretation of the Directive's main text. The German Law, furthermore, uses the Directive's recitals to limit the reporting. In particular, the Law incorporates "very likely serious negative effects".

7.4.2.2.3. The reporting items

The Directive established six reporting items in total (1) a brief description of the business model, (2) a description of the policies and due diligence; (3) the outcome of the policies; (4) the principal

risks; (5) non-financial KPIs; (6) references to, and additional explanations of, amounts reported in the annual financial statements (mentioned separately). The Directive prescribed to report five former items "relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters". The latter item was required "where appropriate".

The Directive mentioned the business model as the first item. The Directive required to disclose the business model in relation to the reporting themes, in particular corruption. It was suggested that the business model disclosure was supposed to provide a context for the risk assessment on each of the mentioned themes (Szabó & Sørensen, 2015).

Section 289c(1) of the German Law provides:

> "The non-financial declaration within the meaning of § 289b must briefly describe the business model of the corporation"

Section 289c(3) of the German Law provides:

> "Regarding the aspects mentioned in paragraph 2, the non-financial statement must provide the information, which is necessary for an understanding of the course of business, the business result, the situation of the corporation as well as the impacts of its activities on the aspects mentioned in paragraph 2, including:
>
> (1) a description of the policies followed by the corporation, including the due diligence processes applied by the corporation;
> (2) the results of the policies according to number 1;
> (3) the essential (material) risks associated with the company's own business, which are very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2, as well as the handling of these risks by the company;
> (4) the essential (material) risks associated with the business relationships of the corporation, its products and services, which are very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2, insofar as the information is important and the reporting of these risks is proportionate, as well as the handling of these risks by the corporation;
> (5) the most important non-financial performance indicators, which are significant for the business activity of the corporation;
> (6) insofar as is necessary for understanding, references to amounts shown in the annual financial statements and additional explanations".

Thus, the German Law does not require the companies to explain the business model in relation to corruption opposite to the requirement of the Directive to disclose each item "relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters".

Concerning the policies, the German Law requires the companies to provide a description of policies and due diligence and include the information on outcomes. The explanations in the

Draft Law suggested including information on the concrete measures within the policies. These points, however, stayed within the commentary to the Draft Law and did not appear in the final text of the German Law. The final version of the German Law does not use the explanations to make the norms of the law more concrete.

The German Law repeats the Directive's provisions regarding the "outcomes of the policies". The explanations to the Draft Law suggested that companies should report "feststellbare" i.e. ascertainable results. If the policy did not lead to any results, this should have been reported as well. Concerning the depth of reporting the commentary to the Draft Law suggested that "more detailed explanation of these results is not mandatory, but may often be of interest to the users of the information and therefore useful" (Deutscher Bundestag, 2016b, p. 50). The same clarifications do not appear in the final text of the German Law itself.

The German Law limits the reporting on the risks to the essential very likely serious risks. The limitation of the scope of the risk reporting is discussed in section 7.4.2.2.2. of this thesis in relation to the inclusion criteria.

The German Law prescribes to disclose the most important non-financial performance indicators, significant for the business activity of the corporation ("der bedeutsamsten nichtfinanziellen Leistungsindikatoren, die für die Geschäftstätigkeit der Kapitalgesellschaft von Bedeutung sind"). By including the wording "most important" and "significant for the business activity" the German Law limits the scope of reporting established by the Directive. The wording of the transposition law follows directly from the German text of the Directive 2014/95/eu, which referred to the main non-financial indicators (der wichtigsten nichtfinanziellen Leistungsindikatoren) of importance (or significant) for the business activity (die für die betreffende Geschäftstätigkeit von Bedeutung sind). The English text of the Directive, meanwhile, referred to "key" rather than "most important" indicators and contained the criterion "relevant" rather than "significant". Furthermore, the Directive referred to the KPIs relevant to a particular business, rather than only those significant for the business activity.

German Law requires companies to provide references to amounts shown in the annual financial statements and additional explanations, insofar as is necessary for understanding ("soweit es für das Verständnis erforderlich ist, Hinweisen auf im Jahresabschluss ausgewiesene Beträge und zusätzliche Erläuterungen dazu"). This wording of the German Law is similar to the wording of the Directive, which requires providing the references "where appropriate", but not the same. It is unclear if the standard, introduced by the German Law, is effectively different from the one, proposed by the Directive.

To summarize, the German Law limits the requirements, introduced by the Directive. Firstly, it does not require the companies to disclose the business model in relation to the non-financial aspects, in particular, in relation to corruption and bribery. Secondly, the German Law limits the reporting on risks and KPIs by using the inclusion criteria as discussed earlier in section 7.4.2.2.2. of this thesis.

7.4.2.2.4. The reporting themes: corruption

The Directive required companies to report “as a minimum” on five thematic aspects i.e. environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (some differentiated between “anti-corruption” and “bribery and suggested six themes (Szabó & Sørensen, 2015). In relation to each “theme”, the Directive prescribed a list of items, discussed above (business model, policies, outcomes, risks and KPIs). Recital 7 to the Directive and the Commission’s Communication used the term “instruments” to describe the anti-corruption reporting. The Directive did not define any of the used terms, including “corruption”, “bribery”, “policies”, “due diligence”, “risks”, “outcomes”, or “instruments”. Thus, it was not possible to establish the difference or similarity between the “instruments” and other items or differentiate reporting on “corruption” from reporting on “bribery”.

The German Law copied the main provisions of the Directive in combination with Recital 7 and referred to “fight against corruption and bribery, where the information may relate, for example, to the existing instruments to fight corruption and bribery”. In the discussion of the topics of disclosure, the commentary on the Draft Law provided some explanations for the goals of inclusion of each thematic aspect. Corruption and bribery featured the shortest explanation:

> “Concerning the fight against corruption and bribery, the examples mentioned in recital 7 (of the Directive) are to be taken over for item 5. Corruption and bribery are particularly problematic for the community and are outlawed by many laws. It is crucial, however, that this understanding is also practiced in the company. This is why, for example, reporting on existing instruments to combat corruption and bribery can be considered. This includes the measures and processes of the corporation to prevent and detect corruption and bribery” (Deutscher Bundestag, 2016b, p. 48)

The Directive included anti-corruption and bribery in the scope without explaining the scope of the problem, the difference between corruption and bribery, and the difference between reporting on “anti-corruption” versus reporting on corruption. The German Law does not provide further clarifications on these matters. Corruption has not been specifically discussed in the Greens Petition or the hearings of the German Parliament. Furthermore, it was often omitted altogether when the reporting themes were mentioned.

7.4.2.2.5. The reporting frameworks

According to Article 1 of the Directive, Section 289d of the German Law promotes the use of the frameworks:

> “The corporation can use national, European or international frameworks to prepare the non-financial declaration. The declaration must state whether the corporation used a framework to prepare the non-financial declaration and if this is the case is which framework is used otherwise, why no framework was used”.

The wording of Section 289d as well as the commentaries to the Draft Law made it clear that companies could use any framework or no framework, publish information in a specific order or without an order, in a separate section or throughout the management report.

The Draft Law explained the provision on the frameworks by the tension between comparability and flexibility. It suggested that no specific framework can be established by the law without a risk of undue burden and lack of flexibility.

The comparability principle informed part of the Greens Petition. The Greens considered reliance on frameworks crucial for comparability. Accordingly, they required the law to orient the companies to particular frameworks.

The parliamentary hearings featured a rather extensive debate over the value and use of frameworks, driven by the left-wing parties. The left parties suggested that a reference to a specific framework is necessary to ensure comparability. The CDU/ CSU insisted through the parliamentary debate that a reference to a specific framework was "questionable for constitutional reasons" (from the speech of Heribert Hirte (CDU/CSU)) (Deutscher Bundestag, 2017b, p. 22258). The agreement of the CDU/ CSU and SPD on the Law allowed for keeping the text of the Draft Law unchanged.

7.4.2.2.6. The quality assurance and quality management

The Directive obliged member states to ensure a check of the *presence* of the non-financial statement by the statutory auditor or an audit firm. Furthermore, the member state had a possibility ("may require") to require the *content* of the statement to be verified by an independent assurance services provider.

The Directive also obliged member states to provide for the collective responsibility of the members of the administrative, management and supervisory bodies of the companies for ensuring compliance with the Directive. This provision created equal rules for the separate report and management report for which the responsibility of the governing bodies has existed under general provisions of the Accounting Directive.

The amendment to Section 317 of the Commercial Code provides for an audit "to check whether the non-financial statement or the separate non-financial report, the non-financial group declaration or the separate non-financial group report is submitted". Due to the possible separation of the non-financial and management report, German Law allows for the audit to take place within four months from the date of the balance sheet reporting. It requires the same auditor to check the management report and the presence of the non-financial part, irrespective of the latter being presented together with the management report or separately.

In line with the Directive's provisions requiring member states to establish the liability of the management and supervisory bodies for the content of the non-financial information, the German Law establishes the obligation of the company's supervisory board to examine the non-financial information. This provision is consistent with the possibility of sanctions being imposed on the members of management and supervisory bodies. While the amendment to Section 171(1) requires a review by the supervisory board, it does not establish a standard for the review. The standard should potentially be derived from the inclusion criteria and the standards of liability.

The Greens Petition required the standard for the auditor's review to be increased. According to the Green Party, the Law had to ensure that "the content of the non-financial information is checked by external specialists with expertise in environmental and social audits. In the medium term, it should be ensured that the non-financial information experiences a comparable level of auditing as the financial information" (Deutscher Bundestag, 2016a, p. 3)

Furthermore, left-wing parties required adjustment of the requirements in such a way as to make governing bodies of the company accountable for the content of non-financial information irrespective of the commercial/ financial implications of such information. The arguments, expressed in the Greens Petition, were partially reiterated in the parliamentary hearings but with no effect. The final version of the German Law kept all the provisions on the audit, review and sanctions intact (apart from the period for publication of the audit report, which changed to four months due to the shortening of the period for non-financial reporting).

The audit requirements, proposed by the German government, are inspired by a one-to-one implementation approach. Section 317 limits the standard to the presence of the report. It demonstrates the narrowest interpretation of the Directive's provision.

7.4.3. Access

7.4.3.1. What are the goals?

The Draft Law mentioned access to the information ("Zugang"). In particular, it alluded to the wording of Recital 3 of the Directive which aspired "to provide consumers with easy access to information about the effects of business activities" (Deutscher Bundestag, 2016b, p. 46). The Draft Law also referred to "accessibility"/ "availability" ("zugänglich") when formulating the requirements. It stated that the companies could make "the non-financial information available to the public in three different ways". Similar to the Directive, the Draft Law did not explain the goals of accessibility and availability further.

As previously, multiple other notions, used by the Draft Law and other documents, may apply to the access component, in particular such notions as comparability, understandability, completeness, structure, coherence and flexibility. However, none of these notions is explicitly discussed in relation to accessibility.

7.4.3.2. How are the goals to be achieved (requirements)?

Concerning the vehicle of reporting, the final version of the Directive referred to the "management report" and allowed member states to let the companies publish the non-financial statement no later than six months after the end of the reporting period. Concerning the format of reporting, the Directive contained provisions to disclose five items within five themes (or six, according to Szabó & Sørensen,). However, none of the documents contained a provision to follow a specific format or structure. The Directive did not establish a language of reporting.

In relation to the vehicle of disclosure, the German Law uses the possibility of separating the non-financial information from the financial information. Section 289b of the German Law prescribes

the companies to provide the report in one of the following ways: (1) the non-financial statement forms a part of the management report; (2) the non-financial statement is prepared as a separate document and published together with the management report disclosed; (3) the non-financial statement is prepared as a separate document and published on the corporation's website no later than four months after the balance sheet date and for at least ten years, provided the management report refers to this publication by specifying the website.

The Draft Law allowed for a six-month delay, but the final version of the Law provided for a four-month delay possibility. The commentary to the Draft Law dedicated around ten pages to the discussion of the administrative burden, which it strongly associated with the choice of the disclosure vehicle. The assessment by the Federal Government suggested that the possibility of separate reporting would relieve "the new burdens on the economy". It would follow the "one in, one out rule" by minimizing the costs of the companies:

> "The BMJV estimates the level of relief at 10% (changeover effort) or 5% (annual effort) for the burden of CSR reporting" (Deutscher Bundestag, 2016b, p. 70).

Accordingly, the German government planned to achieve a financial relief of 3522000 euros at the moment of conversion and 539700 euros annually by allowing a separate disclosure. The relief possibility was explained as follows:

> "In contrast, the decoupling of the CSR reporting from the annual financial statements (option 2) is relevant for relief. Because, according to the results of the consultations, data that are necessary for non-financial reporting are often not available at the time of the annual financial statements and therefore have to be determined/estimated in a complex manner; without the decoupling, this would require higher personnel costs each year. For the same reason, companies that already voluntarily report on sustainability aspects have already decoupled this reporting. Without option 2, these companies would have to change their processes with considerable effort" (Deutscher Bundestag, 2016b, p. 70).

The government did not explain the effects of the decoupling on the decision-making of the users. Furthermore, it did not account for the costs associated with the collection and assessment of the separately placed information.

The Greens Petition criticized the separation of management and non-financial reporting. The Green and Left parties asked for an amendment ensuring the simultaneous publication of financial and non-financial reports. Furthermore, the Greens proposed creating a "database" ("Datenbasis") for reporting.

In the Parliamentary Hearings, the CDU/ CSU agreed to a limitation of the reporting gap to four months instead of six.

To conclude, the German Law allows for a separation of financial and non-financial information.

With regard to the format of reporting, a rigid structure is absent in the German Law. The German Law indicates themes and items. As discussed earlier, the German Law separates the business model from the list of items.

The Draft Law explained that a strict format requirements as follows “would fail to meet the indirect aim of Directive 2014/95/EU to use reporting to encourage companies to recognize and assume their social and ecological responsibility” (Deutscher Bundestag, 2016b, p. 47).

With regards to the language of disclosure, Section 289b indicates that disclosure in German or English language (Deutscher Bundestag, 2016b, p. 47). At the same time, general provision of Section 325(1) of the Commercial Code is applicable. Section 325(1) of the Commercial Code requires the publication of company reports (annual financial statements, the management report, the auditor's certificate or the certificate of refusal to grant such certificate, the governance declaration, etc.) in the German language. If the parent company, registered in the EEA is providing reports on behalf of the German branches, the Code requires such documents to be in English or to be translated into German. Thus, German companies are expected to report primarily in German with English being exceptional for companies with foreign parents.

To conclude, the German Law uses the possibility of decoupling financial and non-financial reporting. The format of reporting is still somewhat semi-structured but in a different way than in the Directive. The language of reporting is primarily German. The flexibility is emphasized.

7.4.4. Users

7.4.4.1. What are the goals?

The introduction to the Draft Law, the Greens Petition and the Minutes of the Parliamentary Hearings revealed some disagreements over the targeted users and their interests.

The Draft Law mentioned the Directive’s intended broad reach. The introduction to the Draft Law followed upon the Directive’s idea of satisfying all users including “investors, companies and consumers” (Deutscher Bundestag, 2016b, p. 1). In the remaining part, the Draft Law made no difference between the investors, consumers and other stakeholders. The Law, thus, did not acknowledge differences between the levels of coordination and the interests of different groups of users.

The differentiation between different categories of users, however, emerged in the Greens Petition. The Greens acknowledged that non-financial information was relevant for consumers, investors as well as customers and business partners. However, they also called for some adjustments in the law, which were particularly relevant for some categories of users. In particular, left-wing parties advocated for clear reference to specific frameworks in the law to make the information more comparable and accessible for non-professional users:

> “Orientation to the existing framework also results in the further development of these systems. It also creates better comparability and thus better usability *(usefulness)* for non-

> governmental organizations, trade unions, the media or even consumers themselves" (Deutscher Bundestag, 2016a, p. 4)

The Greens Petition also called for better consumer orientation of the law, including making the information relevant for consumer protection and including the consumers' concerns in the disclosure. It was not clear from the Petition how exactly such an approach was to be practiced.

The Minutes of the Parliamentary Hearing exhibited further the lack of agreement on the role of consumers in the new regulation. The SPD representative, Metin Hakverdi, who started the debate, acknowledged that the non-financial information was relevant for both consumers and capital markets. He did not differentiate between these two categories in terms of access or the content of information. At the end of his speech, Metin Hakverdi referred to the Greens Petition and mentioned that SPD party also wished that the debate over consumers' interests had been more prominent within the preparation of the law.

Despite the agreement between CDU/ CSU and SPD on the one-to-one implementation of the law, CDU/ CSU expressed a more radical opinion on why the law did not take into account specific interests of non-professional and less organized users:

> "As far as the content is concerned, I look at colleague Kelber. We argued about it, of course – he is still awake, I see it; I hope I did not wake him up - whether the information on privacy and consumers' protection should be included in the reporting obligation. I still believe - you agreed with our opinion; and if not agreed, we notice that the dialog worked - that it would be foreign to the system at this point to install it. I am not against consumer protection, but it does not belong in accounting law" (from the speech of Heribert Hirte (CDU/CSU)) (Deutscher Bundestag, 2017b, p. 22258)

In CDU/ CSU opinion, the consumer protection matters were separated from the Directive's content provisions i.e. they referred to the narrow category of consumers' rights rather than to the right of consumers to know about corruption and environmental matters, covered by the Directive. The consumers' protection matters were, thus, excluded from the law due to the "accounting" nature of the law. Another CDU/CSU member Dr. Volker Ullrich expressed somewhat similar idea that the consumers' concerns were important for the management of the companies, but in general annual and management reports were traditionally meant to inform shareholders.

The Green Party argued both for more attention to the consumer protection and better tailoring of the information to the consumers' interests because "transparency is the right of consumers (from the speech of Renate Künast, Alliance 90/ The Greens) (Deutscher Bundestag, 2017b, p. 22261).

The disagreement over the consumers related to both the content of information and its accessibility for non-professional and less concentrated groups of users. Yet, the debate did not develop significantly within the parliamentary hearings. The debate highlighted the lack of acknowledgment of differences in capacities and interests of different groups of users in both

the EU-wide regime and the German regime. The German Law mandated the disclosure of non-financial information, but, similar to the EU Directive, was not clear on who will use it and benefit from it. As the section below will show, it also did not create special access instruments for non-professional less organized categories of users.

To conclude, the German Law mentions different users but primarily targets professional users (investors) as demonstrated by its “accounting” rather than “consumer protection” framing.

7.4.4.2. How are the goals to be achieved (requirements)?

The German Law does not create requirements tailored to the interests and capacities of different users. Arguably, it makes the reporting less relevant for non-investors by connecting the “necessary” criterion to financial impacts. The German Law also makes the reports less accessible to non-professional users by separating the financial and non-financial reporting.

7.5. Conclusion

German Draft Law opted for a “one-to-one” implementation of the Directive. All components of transparency, proposed by the Federal Government in the Draft Law were significantly contested by the Green and Left parties. In particular, the left-wing parties contested the amount of the covered companies within the “disclosers” component, the inclusion criteria, the reporting items and the quality assurance rules in the “information” component, the vehicle and the format of reporting within the “access” component and the targeting of the consumers within the “users” component. Nevertheless, the consensus of the right-center German parties allowed for smooth completion of the transposition.

An analysis of the German Law within the transparency components demonstrates that in relation to the disclosers, the German Law did not intend to go beyond the provisions of the Directive. The German Law aspired to cover between 300 (as assessed by the Greens) and 548 (as assessed by the government) companies. The Draft Law recognized that the users should be able to identify the reporting entity without difficulties, however, this goal was limited to the identification of the reporting parent based on a subsidiary report. In defining the scope of application, the German Law relied on the following criteria: (1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); (4) listed companies, financial institutions, insurance institutions. The law introduced the minimal scope of application following the definition of PIE at the EU level. The law prescribed the consolidated subsidiaries to disclose the reporting parent, but it did not provide for the list of the reporting entities to be compiled or published. It also did not require the parent entity to disclose the entities consolidated for the purposes of the non-financial reporting. The Law introduced quite high sanctions for the failure to comply with the new reporting provisions. The Law did not differentiate between the sectors. The scope of application as well as the clarity and the enforcement provisions were subject to interpretation.

In relation to the information, the outcomes in the Draft Law expected were partially similar to the previously suggested by the Directive and the related documents, in particular comparability,

materiality, understandability, usefulness, etc. The Draft Law also used new descriptions of the goals. The Draft Law and the Greens Petition relied on similar descriptions of goals despite suggesting very different requirements. In its requirements, the German Law used both the main text of the Directive and the recitals to introduce multiple inclusion criteria. The German Law used the wording "required for an understanding of the course of business, the business result, the situation of the corporation as well as the impacts of its activities on the aspects mentioned in paragraph 2". The German Law, thus, interpreted the "necessary" criterion in the most limiting way. The Law incorporated both exclusion clauses (comply or explain clause and prejudicial information clause). The German Law used the Directive's main text as well as the recitals to introduce the inclusion related to the reporting themes. The Law did not require the companies to disclose the business model in relation to the non-financial aspects, in particular, in relation to corruption and bribery. The German Law did not improve the provisions of the Directive related to corruption. The companies were allowed to use any reporting framework or no framework, publish information in a specific order or without order, in a separate section or throughout the management report. Section 317 Of the German Law limited the quality assurance standard to the presence of the report. It demonstrates the narrowest interpretation of the Directive's provision.

In relation to the access, the German transposition documents contained several references to the "availability" and "access". In relation to the vehicle of disclosure, the German Law used the possibility of decoupling the financial and non-financial reporting. The law explicitly suggested a flexible format of reporting. The language of reporting was primarily German.

Within the "users" component, the German Law mentioned different users, but the law was associated with "accounting". The German Law did not create requirements tailored to different users' interests and capacities. Arguably, it made reporting less relevant for non-professional users by prioritizing the financial impacts.

The analysis of the German Law within goals and requirements dimensions demonstrates that the German Law indicated multiple outcomes, which had been previously mentioned in the documents at the EU level. Furthermore, the goals were quite similar in the rhetoric of the German government and the opposing left-wing parties. The German Law used the national scope to limit its requirements. In particular, the German Law applied the minimal requirements in the following cases: the PIE definition, the prejudicial information exception, the quality assurance, the vehicle and the timing of disclosure. Furthermore, the German Law used the Directive's lack of clarity to limit the requirements in the following cases: inclusion criteria; separation of the business model from the reporting items list.

	Goals	Requirements
Disclosers	300/ 548 companies Easy identification of a reporting parent in the "multistage groups"	Four criteria: (1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); (4) listed, financial institutions, and insurance companies Subsidiaries must refer to the reporting parent in their reports Establishes sanctions
Information	Comparability, relevance, essential nature (or "materiality" or "principal" nature), usefulness, understandability, completeness, structure, materiality, proportionality, coherence, and flexibility	Inclusion criteria: information "which is necessary for an understanding of the course of business, the business result, the situation of the corporation as well as the impacts of its activities on the aspects mentioned in paragraph 2", reasoned comply or explain, omission of disadvantageous information Inclusion criteria relevant for particular items: risks associated with the company's own business, which are very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2; "the most important non-financial performance indicators, which are significant for the business activity of the corporation"; "references to amounts shown in the annual financial statements and additional explanations" insofar as it is necessary for understanding Reporting items: business model separated, five items related to the themes: (policies/ due diligence, results, risks/risks related to the business relationship, KPIs, explanation of financial information); KPI: instruments to fight corruption Reporting themes: fight against corruption and bribery Reporting frameworks: may be used any frameworks, should report on the use Quality assurance: the presence of the report
Access	"Access" to investors, "easy access" to consumers, "available". Comparability, understandability, completeness, structure, coherence and flexibility	Vehicle and timing: non-financial statement may be incorporated in financial reporting or should be submitted separately not later than four months The structure of reporting is flexible Language is primarily German
Users	Different users need the information, including the public and the consumers	The target audience is not established but framed within the accounting provisions

Table 1. Goals and requirements in German Law

8. Chapter VIII. From the Directive to the implementation in the member states: Transposition of the Directive 2014/95/EU in France

8.1. Introduction

This chapter describes the transposition of the NFRD in France. This is, thus, the second chapter to address the design of corporate anti-corruption transparency at the level of the EU member states. Similar to other chapters, this chapter starts with a discussion of the context and the role of the French Law and moves towards the analysis of goals and requirements established within four components of transparency by the French regulators.

8.2. The context

The Impact Assessment to the NFRD mentioned France as an exemplary regulatory regime (European Commission, 2013a). French Law required non-financial reporting since early 2000. The non-financial reporting obligation was supported by metrics. Despite these earlier developments, anti-corruption was included in the scope of regulated non-financial transparency only in 2012 (MEDEF, 2012).

In 2012, France adopted Grenelle II Act to amend the Commercial Code. The provisions of Grenelle II applied to the fiscal year starting after December 31, 2013. Grenelle II extended the scope of application of the mandatory non-disclosure regime to include the largest non-listed companies in addition to listed companies. The non-financial information was to be included in the report presented by the board of directors or the management board to the general meeting of shareholders annually (MEDEF, 2012).

Grenelle II affected significantly the content of disclosure by extending the content of reporting. Importantly, the item "Fairness of practice" prescribed companies to report actions to prevent corruption (MEDEF, 2012). Grenelle II did not define corruption and did not provide further details. Grenelle II included the "comply or explain" principle. Furthermore, Grenelle II established extensive quality assurance requirements. It required a certified auditor to cover three matters. Firstly, the auditor was required to verify the presence of the information required by the law in the management report. Secondly, the auditor was required to give a reasoned opinion on the "sincérité" of the published information. Thirdly, the auditor was required to explain its approach to verification of the non-financial information (Office of the Ambassador at large for Corporate Social Responsibility, 2012, p. 5).

Neither pre-Grenelle nor Grenelle-based regime was supported by any sanctions. The publication by the French Office of the Ambassador General for CSR provided the following explanations regarding the quality assurance and sanctions:

> "No provision concerning sanctions was included in the NRE Act. It might seem surprising, but this element reflected a long tradition of what in France is called "orientation laws".

> Laws of this sort are regularly adopted in France to set important objectives for the nation reinforced by the significance that parliamentary decisions carry.
>
> […]
>
> In other words, even though there is still no legal sanction for noncompliance, the verification mechanisms put in place by the Act ensure that companies who do not disclose the required information do so at their own risk, knowing that they will surely have more to lose if they don't comply than if they do (Office of the Ambassador at large for Corporate Social Responsibility, 2012, p. 6).

The Grenelle II regime resulted from a process of consultations with stakeholders lasting for over eleven years and resulting consensus (Office of the Ambassador at large for Corporate Social Responsibility, 2012, p. 7).

Several guidelines appeared intending to advise companies on the implementation of non-financial transparency. In 2012, MEDEF (a French Business Association) issued a Methodological Guide on the implementation of Grenelle laws. MEDEF's guidance on anti-corruption reporting was minimal. The companies were expected to use existing reporting frameworks to disclose systems and processes for preventing and avoiding illegal behavior, in particular, corruption, and the tools used to check such systems. The companies were also advised to describe how corruption was identified, avoided and punished. The Guide did not define corruption or provide a set of specific indicators.

On the surface, the German and French pre-Directive regimes were different. The German regime was based on a voluntary Code without a defined scope of application. The French regime was based on the law. However, this difference appeared to be less pronounced if the enforcement was considered. Even though France had a law on disclosure, the law was not supported by any sanctions or incentives. Quality assurance introduced by Grenelle II law was supportive of the requirements of the law but did not substitute for enforcement. In this sense, neither German nor French pre-Directive regime was supported by sanctions and incentives. Concerning corruption, the German regime was arguably more developed, as the German Sustainability Code featured more detailed provisions on corruption reporting.

As concerns corporate corruption in general, France joined the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 and established corporate criminal liability for corruption. Yet, France showed little enforcement activity against corporate corruption (OECD, 2018). Germany, which had been long criticized for having only administrative liability for companies, actually enforced rather aggressively against corporate corruption. As of 2017, Germany sanctioned 316 individuals and 11 companies for bribery of foreign public officials in business transactions (OECD, 2018). France, in contrast, provided for corporate criminal liability in its legal system but applied it only to 2 companies and 15 individuals as of 2017 (OECD, 2018). France did not impose as significant charges as Germany (OECD, 2018).

Similar to German and UK stakeholders, French stakeholders actively participated in the public consultations on Directive 2014/95/eu and the Commission Communication. According to Kinderman (2020), France was the "strongest supporter and the only country that tried to strengthen the Commission's initial proposal" (Kinderman, 2019, p. 8). France "pushed not only for a larger scope, but also for external assurance/verification and country-by-country reporting" (Kinderman, 2019, p. 9).

The report of the Legal Affairs Committee on the amendments to the Directive 2014/95/eu, suggested that French Members of the European Parliament insisted on the introduction of a country-by-country tax reporting (Committee on Legal Affairs of the European Parliament, 2013). Yet, French MEPs did not propose any other major amendments during the negotiation in the EU Parliament. At the same time, in February 2014 the French Parliament issued a resolution that welcomed the Proposal for the NFRD and at the same time criticized its weakening (Assemblée Nationale, 2014). In the Resolution, French Parliament suggested several critical points, including the scope of application, the exemption for the "disadvantageous information", lack of precise metrics, and low quality assurance standard. The Resolution of the French Parliament was rather ambitious in comparison to the amendments, proposed by the French MEPs in the EU parliamentary procedures (Assemblée Nationale, 2014; Committee on Legal Affairs of the European Parliament, 2013).

Both France and Germany were among four countries, which issued special statements related to the Directive. Germany explicitly opposed the idea of mandatory disclosure. France, in contrast, supported the Directive and even insisted on its extension. However, in the negotiations in the EU Parliament, France proposed moderate amendments.

The transposition of the Directive in France was multistage. In 2016 the French Parliament had a set of discussions over the Equality and Citizenship Law (Loi relatif à l'égalité et à la citoyenneté). The non-financial transparency regime was discussed within the Equality and Citizenship Law framework. Thus, the new transparency regime was framed within the law, aimed at youth support and equality. The Law became a point of topical debate due to its extensive outreach. In particular, the Equality and Citizenship Law included provisions on youth support, housing, equality and discrimination. The National Assembly eventually adopted it despite rejection by the Senate. Article 216 of the Equality and Citizenship Law provided that within six months of the promulgation of this law, the government is authorized to transpose the Directive. Despite the controversy around the Equality and Citizenship Law in general, Article 216 of the Law, delegating the creation of the transparency regime to the government, was not subject to any debate in Parliament. Article 216 was placed within Section 11 "Miscellaneous and final provisions" as a technical tool to allow the adoption of a relevant ordinance by the government.

The Equality and Citizenship Law was adopted on January 27, 2017. Meanwhile, the French Treasury Agency of the Ministry of Economy and Finance (Direction générale du Trésor, hereinafter also - Tresor) started consultations on the new Ordinance. In the course of the consultations, the French CSR organization CSR Platform (Platforme RSE) published a Note on

non-financial transparency. The document was prepared in coordination with the Research Organization on Sustainability (RIODD) and the Movement of the Enterprises of France (MEDEF). The Note was fundamental for the understanding of the transposition in France as all groups of the stakeholders participated in the discussions, organized by the CSR Platform. The Note referred to the following "poles" of participating stakeholders: business and economic pole; pole of employee organizations; pole of civil society organizations; CSR researchers and developers; and pole of public institutions. It should be, however, noted that NGOs and research organizations, involved in the debate, focused primarily on environmental matters. None of the involved stakeholders had extensive expertise in anti-corruption.

The Note demonstrated a consensus reached between the stakeholders over multiple principles and provisions of the transposition law. The stakeholders did not challenge substantially the scope of application or the approach to the content, proposed by the government. However, some divergence in the views of stakeholders on the transparency existed. The points of divergence and convergence will be discussed further.

Similar to Germany, France slightly delayed the transposition of the Directive. On July 19, 2017, the government (Ministry of Economy and Finance) issued Ordinance No. 2017-1180 on the publication of non-financial information by certain large companies and certain groups of companies. On July 21 the Ordinance was submitted to the President along with a Report to the President (hereinafter – the Report to the President). In October 2017 the Ordinance was submitted to the National Assembly for ratification through the Draft Law. The Ordinance was ratified without any comments on October 18, 2017. The Extract from the Minutes of the Council of Ministers of October 18, 2017, provided a summary of the goals and provisions of the new regulation.

Among other things, the Ordinance delegated the Ministry of Economy and Finance with the possibility to establish the thresholds from which certain companies are required to report the non-financial information. The Decree of the Ministry of Economy and Finance No. 2017-1265 was published on August 11, 2017. Both Ordinance and Decree introduced changes in the French Commercial Code.

8.3. The role and the structure of the French Law

Ordinance No. 2017-1180 on the publication of non-financial information by certain large companies and certain groups of companies contains sixteen articles. Articles 1 and 2 amend the French Commercial Code, in particular, Articles L. 225-102-1 (establishes a general obligation to provide a report and the scope of the report) and L.221-7 (clarifies the legal form of a foreign parent company). Articles 3 and 4 of the Ordinance relate to diversity. Articles 5 to 13 amend the provision of the special laws. Article 5 amends the provisions of Article L.511-35 of the Monetary and Financial Code to extend the provisions of Article 225-102-1 of the Commercial Code to credit institutions. Articles 6 and 7 amend the provisions of Article L. 310-1-1 and 322-26-2-4 of the Insurance Code to extend the provisions of Article 225-102-1 of the Commercial Code to the insurance and reinsurance companies. Articles 8 and 9 amend the provisions of Articles L. 931-7-

3 and 931-7-5 of the Social Security Code to extend the provisions of Article 225-102-1 of the Commercial Code to provident institutions and their unions. Article 10 amends the provisions of Article L.114-17 of the Mutual Insurance Code to extend the provisions of Article 225-102-1 of the Commercial Code to the mutual insurance companies. Article 11 amends the provisions of the Labor Code to ensure that certain non-financial information is provided to the employees. Articles 12 and 13 amend provisions of the Rural and Maritime Fishing Code (Article L.524-2-1) and the Law on the Status of Cooperatives (article 8) to ensure that large cooperatives are covered by the provisions of the Article 225-102-1 of the Commercial Code. Articles 14 to 16 are final transitional provisions.

The Ordinance delegates to the Ministry of Economy and Finance the possibility to establish the thresholds from which certain companies are required to report the non-financial information. The *Decree of the Ministry of Economy and Finance No. 2017-1265 implementing Ordinance no. 2017-1180 of 19 July 2017 relating to the publication of non-financial information by certain large companies and certain groups of companies* was published in August 2017. The Decree contains five articles, amending the Commercial Code and the Labor Code. Articles 1 of the Decree amends article R.225-104 of the Commercial Code, establishing the thresholds. Article 2 amends article R. 225-105 of the Commercial Code with some performance indicators. Article 3 amends article R. 225-105-1 of the Commercial Code regarding the use of the reporting frameworks. Article 4 amends R. 225-105-2 of the Commercial Code regarding third-party quality assurance. Article 5 amends the Labor Code. Articles 6 to 8 are transitional.

In general, this chapter focuses on the amendments, introduced to Articles L. 225-102-1, R.225-104, R. 225-105, R. 225-105-1, and R. 225-105-2 of the Commercial Code. To avoid confusion, this chapter refers to the articles of the Commercial Code. Apart from the articles, introduced and changed by the French law, some other articles may be inferred if it facilitates the interpretation of the new provisions. For example, the general provisions on the language of reporting are inferred for this purpose. The amendments to the special laws are discussed in relation to disclosers and in relation to the provision of non-financial information to the employees.

The article related to the transposition of the Directive 2014/95/eu in the Equality and Citizenship Law was too general and was not extensively debated in Parliament. The Ordinance and the Decree establish requirements but do not say much about the expected outcomes of the new regime. The Report to the President and the CSR Platform Note also focus on the requirement rather than the expected outcomes. The legislative dossier, related to the Ordinance featured one document, which explained the expected outcomes of the new regime i.e. the Minutes of the Meeting of the Council of Ministers. The Minutes of the Meeting of the Council of Ministers provided an overview of expected outcomes and requirements in two pages. Furthermore, some expected outcomes were mentioned in the Communication by the French Treasury Agency of the Ministry of Economy and Finance (also referred to as the Tresor Communication). It is somewhat difficult to explicate the expected outcomes of the French regime due to the multiplicity of the documents and brief articulation of outcomes.

The upcoming analysis of the transposition in France focuses on the *Ordinance No. 2017-1180 on the publication of non-financial information by certain large companies and certain groups of companies* (Ministère de l'Économie et des Finances, 2017b) (hereinafter – the Ordinance) and the *Decree of the Ministry of Economy and Finance No. 2017-1265 implementing Ordinance no. 2017-1180 of 19 July 2017 relating to the publication of non-financial information by certain large companies and certain groups of companies* (Ministère de l'Économie et des Finances, 2017a) (hereinafter – the Decree). Equality and Citizenship Law (L'Assemblée nationale et le Sénat, 2017) and the Minutes of the Meeting of the Council of Ministers (Conseil des ministres, 2017) are referred to in the discussion of the outcomes of the new regime and interpretation of the requirements. The supporting documents, such as the Report to the President (Ministère de l'Économie et des Finances, 2017c) and the Communication by the French Treasury Agency of the Ministry of Economy and Finance (Direction générale du Trésor, 2017) are cited whenever they are relevant. The Note of the CSR Platform (Platforme RSE, 2017) is used in discussion over the goals and requirements. In the absence of the parliamentary debate, the text of the Note is used to highlight the main challenges the NFRD met in France and the key options the regulators had in the introduction stage as proposed by the stakeholders.

8.4. Four components of transparency in the French Law

8.4.1. Disclosers

8.4.1.1. What are the goals?

The transposition documents did not articulate the expected goals of the intervention extensively. Equality and Citizenship Law only mentioned the need to transpose the Directive.

The Note of the CSR Platform announced the "consensus" of the stakeholders over "the need to make room for concepts such as due diligence, respect for human rights and the fight against corruption" (Platforme RSE, 2017, p. 8). The stakeholders also seemed to agree on the "abandoning the distinction between listed and unlisted companies with regard to the application of the information categories of the decree" (Platforme RSE, 2017, p. 8). However, the stakeholders "did not decide on a possible substitution criterion to adapt the requirement for medium-sized businesses" and did not agree on the inclusion of the simplified joint-stock companies in the scope (Platforme RSE, 2017, p. 8). Furthermore, the Note of the CSR Platform suggested that the opinions of the stakeholders split on the matter of consolidation of reporting at the level of the parent companies. While some stakeholders supported the "global approach", which was aligned with the Directive, others expressed concerns and proposed to mandate disclosure by companies exceeding the thresholds even if they were subsidiaries. While the Note referred to the discussion over the scope of disclosers, it did not explicate the agreements reached by the stakeholders on this matter.

The Minutes of the Meeting of the Council of Ministers provided:

> "The scope of the companies required to produce such a declaration is evolving to orient the system towards large companies. Thus, small and medium-sized listed companies are

> no more subject to this system, which constitutes an important simplification measure. In addition, the new system exempts subsidiaries from producing such a declaration, as soon as the information concerning them is presented by the head of the group on a consolidated basis, which gives a complete picture of the extra-financial impacts of the group's activities while limiting the reporting burden on subsidiaries" (Conseil des ministres, 2017, p. 1).

The Tresor Communication provided a slightly extended version of this explanation. In particular, it established the need "to orient the system towards large companies whose impact of activities is considered to be significant with regard to environmental, social and societal criteria" (Direction générale du Trésor, 2017, p. 1)

The expected outcomes, articulated by the Minutes of the Meeting of the Council of Ministers and the Tresor Communication neither specified the scope of large companies to be covered nor their number. Both documents seemed to cover all large companies and in the case of groups – all parents of the large groups. This correlated with the Note of the CSR platform, suggesting the "abandonment" of the distinction between the listed and non-listed companies.

The Note of CSR platform mentioned a suggestion of some stakeholders to clarify the consolidation scope:

> "Some members requested that a list of all the entities included in the consolidation scope is provided, with an indication of their address, the country of registration and the country in which their headquarters are located, the capital links, and the nature of the activities. Others refer to the obligations already existing in the Commercial Code regarding the information on subsidiaries and holdings" (Platforme RSE, 2017, p. 12)

The Note, thus, approached the issue of clarity regarding the disclosing entity and the scope of entities being consolidated. Other documents did not feature any considerations in this regard.

The French transposition documents did not mention sectoral specific.

8.4.1.2. How are the goals to be achieved (requirements)?

Part I of the Article L. 225-102-1 of the Commercial Code establishes that both listed and not listed companies should include a declaration of extra-financial performance into their management reports if their balance sheet total or the turnover and the number of employees exceeds thresholds fixed by the Decree of the Council of State. Part I of the Article L. 225-102-1 is in line with the ambition to cover all large companies "abandoning the distinction between listed and unlisted companies". This provision relies on three criteria: (1) number of employees; (2) financial results; (3) parent/ consolidating entity (in case of the group).

The provision of Part I of the Article L. 225-102-1 of the Commercial Code is, however, further qualified by Part III of the same Article. Part III provides that environmental and social reporting is mandatory for both listed and not listed companies while reporting on human rights and the fight against corruption is required only for listed companies. The reporting on the fight against

corruption is, thus, reserved for a much smaller group of entities than environmental and social reporting. The obligation to report on corruption has been reserved only for listed companies already under the Grenelle II regime and the transposition of the Directive does not change it.

Article R. 225-104 of the Commercial Code establishes two types of thresholds. Following the Directive, the threshold for listed companies is established at 20 million euros for the balance sheet total, 40 million euros for the net amount of turnover, and 500 for the average number of permanent employees during the year. The threshold for non-listed companies is higher, but those are not required to report on corruption in the first place.

Articles, introduced by the Ordinance, into special codes, in particular the Insurance Code, Monetary and Financial Code, Mutual Insurance Code, and Social Security Code extend the provisions of the Article L. 225-102-1 to the entities, engaged in particular activities, including:

1. Credit institutions, finance companies, investment companies, parents, and holdings of such companies (Article L511-35 of the Monetary and Financial Code);
2. Insurance, re-insurance companies, and mutual insurance companies (Articles L310-1-1-1 and Article L322-26-2-4 of the Insurance Code);
3. Provident institutions or their unions, provident companies, their groups, parents, and unions (Articles Article L931-7-3 and Article L931-7-5 of the Social Security Code);
4. Mutual (or mutual insurance) companies, their unions, parents, and groups (Article L114-17 of the Mutuality Code);
5. Some other specific companies.

Article L.511-35 of the Monetary and Financial Code and analogous articles in other special codes do not explicitly specify whether companies, engaged in special activities, are supposed to disclose only environmental and social information, or also information on human rights and corruption. The application of Part III of Article L225-102-1 suggests that corruption disclosure is mandatory only for listed companies.

In line with the Directive, the French Law requires the consolidation of the information at the level of the parent company. Part IV of Article L225-102-1 of the Commercial Code drops the reporting obligation for companies under the control of parent companies, established within the EU, which are included in a consolidated statement. Part IV of Article L225-102-1 of the Commercial Code does not oblige the parent companies to provide the list of subsidiaries, which it covers in the non-financial report. It also does not specifically require the subsidiaries to disclose the reporting parent company.

Finally, Part VI of the Article L225-102-1 presents the enforcement strategy:

> "When the report provided for in the second paragraph of article L. 225-100 does not include the declaration provided for in I or II of this article, any interested person may ask the president of the court ruling in summary proceedings to order, if necessary under penalty, to the board of directors or the management board, as the case may be, to communicate the information mentioned in III or article L. 22-10-36. When the request is

> granted, the penalty payment and the procedural costs are payable, individually or jointly as the case may be, by the directors or members of the management board"

Thus, despite the requirement of the Directive, the French Law abstains from specifying the liability for the omission of the non-financial information. It suggests that the new regime can be privately enforced.

Before the Directive, French legislation relied on the "orientation law" practice, refraining from establishing sanctions for the failure to report the non-financial information (Office of the Ambassador at large for Corporate Social Responsibility, 2012). This practice is kept by the Ordinance, which does not establish the sanctions for omission or misrepresentation of the non-financial information.

To summarize, for corruption reporting, French Law establishes a minimal scope of application, covering large listed companies. The French definition of PIE goes slightly (but not far) beyond the EU rules, covering as a result listed entities, credit institutions, insurance companies, mutuals, provident institutions, holding companies of credit institutions, insurance companies, and listed entities. It is not completely clear from the text of the special norms whether special PIEs (insurance, mutual insurance, credit institutions, etc.) are required to report on corruption if they are not listed. In line with the Directive, the reporting is required at the level of a parent company. This solution implies a high level of abstraction. According to the CSR Platform Note, some stakeholders suggested that companies above the thresholds should be required to report irrespective of the consolidation by the parent. However, the Ordinance does not introduce this requirement. The idea to require reporting of the list of consolidated subsidiaries is not implemented in French Law. The French Law relies on private enforcement. The Law does not contain any sector-specific provisions.

8.4.2. Information

8.4.2.1. What are the goals?

The Note of the CSR Platform considered information-related matters, but it focused on the requirements, proposed by the draft Ordinance and Decree, rather than on the expected outcomes. The Note did include many information-related outcomes. The Note suggested a "structuring" goal ("dispositions présentent en effet un caractère structurant pour les déclarations non financières") of the new provisions for the non-financial declaration (Platforme RSE, 2017, p. 10). The Note referred to the "materiality principle" ("le principe de matérialité") multiple times in application to the specific requirements of the Directive:

> "The I. of the new article R. 225-105 introduced by article 3 of the draft decree retains the principle of materiality: the declaration on non-financial performance identifies, for each category of information, the significant risks caused by the activity of the company, including, where relevant and proportionate, the risks created by its business relationships, its products or its services" (Platforme RSE, 2017, p. 19).

In contrast to the Commission's Communication and the German Law, the Note of the CSR Platform did not explicitly connect "materiality" and "necessary for an understanding" inclusion criteria. Rather, similar to the Impact Assessment, it mentioned "materiality" as a goal.

The Minutes of the Meeting of the Council of Ministers suggested that "the extra-financial performance declaration, which replaces the corporate social responsibility (CSR) report, becomes a strategic management tool for the company, both concise and accessible, focused on significant information of interest to its stakeholders" (Conseil des ministres, 2017, p. 1).

Thus, the Minutes focused on the "concise and accessible" ("concis et accessible") nature of the declaration and on its ability to communicate the "significant information of interest" to the stakeholders ("concentré sur les informations significatives intéressant ses parties prenantes"). However, this did not seem to be the full account of the expected outcomes. The Minutes also mentioned the "complete picture" which should be provided by the non-financial statement and the "essential" character of the information (Conseil des ministres, 2017, p. 2).

Tresor's Communication was very similar to the Minutes of the Council of Ministers, but it added "coherence" to the set of outcomes. The Tresor's Communication provided that the stakeholders will receive information "which gives a complete and coherent picture of the extra-financial impacts of the group's activities while limiting the reporting burden on the subsidiaries" (Direction générale du Trésor, 2017, p. 1)

Finally, both the Minutes of the Council of Ministers and the Tresor's Communication referred to the "flexibility" ("flexibilité") of the new regime in their last lines. None of the documents explained mentioned outcomes, for example, "significant" ("les informations significatives intéressant") and "essential" ("un document d'information incontournable").

The Ordinance and the Decree mention two more outcomes of their requirements. Firstly, the "sincérité" (which can be translated as "fairness" or "integrity") is discussed as an outcome to establish the scope for the audit review. Furthermore, the Ordinance mentions the need to ensure the possibility of comparison of the information i.e. the "comparability" ("de façon à permettre une comparaison entre ces données" in relation to the publication of the information comparable across the years).

To conclude, the characterization of the goals of the French Law contained references to the "strategic character" ("un outil de pilotage stratégique de l'entreprise") of the non-financial statement. The French Law was expected to ensure the "conciseness and accessibility of the information" ("à la fois concis et accessible"), its "completeness" ("une image complete"), "significant" ("concentré sur les informations significatives intéressant ses parties prenantes") and "essential" ("un document d'information incontournable") nature. At the same time, the Minutes of the Council of Ministers and the Tresor Communication referred to "flexibility". The French Law itself refers to the fairness ("la sincérité des informations" in relation to the quality assurance standard) and comparability ("de façon à permettre une comparaison entre ces données") in its requirements.

8.4.2.1. How are the goals to be achieved (requirements)?

8.4.2.1.1. Five sets of information requirements in French Law

Similar to the previous chapter, for the analysis the requirements of the French Law are allocated into five sets: (1) the inclusion criteria, (2) the reporting items and KPIs, (3) the reporting themes including the reporting on corruption; (4) the use of the reporting frameworks; (5) the quality assurance and quality management requirements. Each of the upcoming sections starts with the final provisions of the French Civil Code as amended by the Ordinance and the Decree. Then, the provisions of the related documents are discussed to the extent such documents relate to the respective set of requirements.

8.4.2.1.2. The inclusion criteria

General inclusion criteria: "to the extent necessary", "comply or explain principle" and omission of disadvantageous information

Part III of the Article L.225-102-1 of the French Commercial Code, introduced by the Ordinance, provides that:

> "To the extent necessary for the understanding of the situation of the company, the development of its business, of its economic and financial results and the impacts of its activity, the declaration referred to in I and II presents information on how the company takes into account the social and environmental consequences of its activity, as well as, for the companies mentioned in 1o of I, the effects of this activity with regard to respect for human rights and the fight against corruption".

The wording suggests that "economic and financial" ("économiques et financiers") relates to the "results" ("de ses résultats économiques et financiers") but not to the impacts ("des incidences de son activité"). This paragraph of the French Law refers to the non-financial consequences, but it does not clarify whether financial or non-financial impacts (or both) should be taken into account in the assessment of the "to the extent necessary" criterion.

Concerning the environmental and social information, Part III of the Article L.225-102-1 establishes that the non-financial impacts should be reported. However, there is no clarity regarding the non-financial impacts related to anti-corruption and human rights matters. The clarifications provided by the French Law do not relate to corruption. Thus, similar, to the original provisions of the Directive, the provisions of the French Law do not identify the nature of the "impacts" for application of the "necessary" criterion. It is impossible to establish whether the companies are obliged to reveal the corruption-related information based on the non-financial impacts or the impacts of corruption on their financial performance or both financial and non-financial impacts. The analysis of the other French documents suggests that the stakeholders did not discuss the "necessary" criterion in detail or the nature of the "impacts" of the company's activity.

Article R. 225-105 establishes the "comply or explain" principle:

> “When the company does not apply a policy regarding one or more of these risks, the declaration includes a clear and reasoned explanation of the reasons justifying it”.

Unlike German Law, French Law does not use the national scope to provide for the possibility to exclude the “disadvantageous” “prejudicial” information.

Specific inclusion criteria

Apart from the “to the extent necessary” the French Law uses other inclusion criteria for specific reporting items. Article R.225-105 of the Commercial Code, obliges the companies to include the description of the principal risks only (“principaux risques”). Furthermore, the aspect “Information relating to the fight against corruption: actions taken to prevent corruption” should be reported only “when it is relevant for the principal risks or policies” (“lorsqu’elles sont pertinentes au regard des principaux risques ou des politiques mentionnées au I du présent article”). The Note of the CSR Platform suggested that the stakeholders were unable to reach a consensus on the limitation of disclosure to “when it is relevant for the principal risks or policies”. The civil society organizations rejected the inclusion criteria:

> “The pole of civil society organizations wants the deletion of the mention "when they are relevant with regard to the principal risks mentioned in I or the policies mentioned in II of this article " at III. the new article R. 225-105 of the commercial code introduced by the draft decree” (Platforme RSE, 2017, p. 28).

The Note did not mention the opinions of other groups of stakeholders regarding the matter. The final versions of the Ordinance and Decree do not incorporate the comments of the civil society organizations.

Article 225-105 provides that companies should provide “a description of the principal risks, linked to the activity of the company or of all companies, including, where relevant and proportionate the risks created by its business relationships, its products or its services”. None of the French transposition documents defines the “relevance” and “proportionality”.

The French Law does not contain any inclusion criteria for KPIs. However, the KPIs are connected only to reporting on the “results of the policies”. Thus, the French Law does not envisage the use of indicators for reporting on the risks or policies.

Article R.225-105-1 of the French Law copies the Directive’s inclusion criteria, related to the provision of references to the amounts indicated in the financial reports “where appropriate”:

> “The declarations mentioned in I and II of article L. 225-102-1 present the data observed during the financial year ended and, if applicable, during the previous financial year, to allow a comparison between these data. They include, where appropriate, references to the amounts indicated in the documents mentioned in article R. 232-1 of this code”

In addition to the inclusion criteria originating from the Directive, Article R. 225-105 introduces one more inclusion criteria in relation to “due diligence”, i.e. “a description of the policies applied

by the company or all of the companies, including, where applicable, the due diligence procedures implemented to prevent, identify and mitigate the occurrence of the risks mentioned in 1°". The French Law, thus, requires the inclusion of the information about due diligence "where applicable" ("le cas échéant")

To conclude, the French Law introduces general "necessary" inclusion criteria without changes. The French Law does not define the nature of the impacts in the criterion. The French Law established the reasoned "comply or explain" clause but does not allow the omission of disadvantageous prejudicial information. The Law uses a set of item-specific filters as well: it requires to disclose "principal" risks, including those relating to business relationships "where relevant and proportionate". It provides for disclosure of due diligence "where applicable" and requires the references to the amounts mentioned in the financial reports to be reported "where appropriate".

8.4.2.1.3. The reporting items

Article R. 225-105 of the Commercial Code provides:

> "I. - The declaration of extra-financial performance mentioned in I of article L. 225-102-1 and the consolidated declaration of extra-financial performance mentioned in II of the same article present the business model of the company or, if applicable, of all the companies for which the company establishes consolidated accounts.
>
> They also present, for each category of information mentioned in III of the same article:
>
> 1° A description of the principal risks linked to the activity of the company or of all companies, including, where relevant and proportionate, the risks created by its business relationships, its products, or its services;
>
> 2° A description of the policies applied by the company or all of the companies, including, where applicable, the due diligence procedures implemented to prevent, identify and mitigate the occurrence of the risks mentioned in 1°;
>
> 3° The results of these policies, including key performance indicators.
>
> When the company does not apply a policy regarding one or more of these risks, the declaration includes a clear and reasoned explanation of the reasons justifying it.
>
> II.-The declaration contains when it is relevant for the principal risks or policies mentioned in I of this article:
>
> …
>
> B.- For the companies mentioned in 1 ° of I of Article L. 225-102-1, the following additional information:
>
> 1 ° Information relating to the fight against corruption: actions taken to prevent corruption;

…"

Furthermore, Article R. 225-105-1 establishes a separate requirement to report, where applicable, references to the amounts indicated in the financial documents.

The Directive included the business model in the general list of reporting items to be disclosed in relation to each of the themes. Unlike the Directive, Article R. 225-105 of the French Law does not require the business model to be reported in relation to corruption.

The provisions of the French Law, related to the reporting on policies and results of the application of the policies, repeat the provisions of the Directive. The requirement related to the "due diligence" is limited by the introduction of the "where applicable" inclusion criterion.

The French Law articulates the requirements, related to the risks, before the requirements related to the policies, due diligence, and results. The French Law omits the "how the undertaking manages those risks" wording of the Directive. This omission can potentially be explained by the overlap of the "risk management" reporting and reporting on policies, due diligence and results.

Article R. 225-105 of the Commercial Code requires companies to report on "the results of these policies, including key performance indicators". In limitation to the provisions of the Directive, Article R. 225-105 requires the companies to use KPIs for reporting on the results of the policies only rather than for reporting on risks, business model and other items.

In contrast to the Directive, Article R. 225-105-1 requires the references to the financial statements to be included ("des renvois aux montants"), but not the explanations:

> "The declarations mentioned in I and II of Article L. 225-102-1 present the data observed during the closed financial year and, where applicable, during the previous financial year, to allow a comparison between these data. They include, where applicable, references to the amounts indicated in the documents mentioned in article R. 232-1 of this code"

An analysis of the transposition documents demonstrates a lack of discussion on the reporting items. The Minutes of the Meeting of the Council of Ministers and the Tresor's Communication do not mention anything specific concerning the reporting items. The Note of the CSR Platform demonstrated the general consensus of stakeholders over the reporting items.

To conclude, the provisions of the French Law, related to the reporting items, largely repeat the provisions of the Directive. The French Law does not advance the description of the items. In fact, the French Law limits the provisions of the Directive in three ways. Firstly, it does not relate the reporting on the business model to the reporting on corruption (or other items). Secondly, it connects the KPIs to reporting on the results of the policies, but not on the business model, risks and policies. Thirdly, it requires providing references to the amounts reported in the financial statements, but not the explanations of the amounts, reported in the financial statements while such explanations may be particularly relevant for reporting on corruption.

8.4.2.1.4. The reporting themes: corruption

Article L. 225-102-1 of the Commercial Code, introduced by the Ordinance, obliges the companies to report information relating to the fight against corruption: actions taken to prevent corruption". Under Article R. 225-105 "actions taken to prevent corruption" belong to the "additional information". They should be reported only when "relevant for the principal risks or policies". This is in contrast to Article L. 225-102-1 which introduces reporting on the "fight against corruption" as a basic requirement for specified companies.

Article R. 225-105-1 features forty elements and establishes detailed reporting elements for all other disclosure themes. For example, for reporting on human rights Article R. 225-105-1 establishes five reporting elements. The provision on environmental reporting includes a set of categories such as pollution, biodiversity and climate change. These categories are further clarified. For example, the "climate change" category includes "the significant greenhouse gas emissions", "the measures taken to adapt to the consequences of climate change", etc.

In contrast, as demonstrated above, there are virtually no additional explanations and indicators for reporting on corruption. Article L. 225-102-1 also does not establish the definition of corruption for the purposes of reporting.

The Note of the CSR Platform contained a list of possible reporting elements for each theme of disclosure. The Note revealed that the stakeholders discussed more advanced indicators for corruption but failed to agree on them. The stakeholders discussed the following indicators within a broader category "Fairness of practices":

> "significant lobbying activities with public authorities, donations to the parties and political leaders in the counties where they are legalized"
>
> "measures taken to prevent, detect, avoid and punish behavior, which is illegal or contrary to the international principles or rules, in particular, corruption, respect for social and human rights in the different countries, the conflicts of interest, protection of personal data, abuse of corporate assets"
>
> "communication of controversies and complaints targeting the company and sanctions/ convictions applied to it"
>
> "measures taken in favor of health and consumer safety" (Platforme RSE, 2017, p. 16)

The stakeholders managed to reach an agreement only on the part of the element concerning lobbying i.e. "significant lobbying activities with public authorities". The Decree, however, does not include any of the discussed categories.

To conclude, the French Law refers to "information relative to fight against corruption" "("relatives à la lutte contre la corruption") only instead of "(anti-) corruption and bribery". It uses the wording "fight against", which might limit the scope of reporting. The single "additional information" element, introduced by the Article R. 225-105-1 is "actions taken to prevent

corruption". It is not further detailed. Thus, it is unclear, how the "actions taken to prevent corruption" can be differentiated from the anti-corruption policies, which form the core requirement of the Article.

8.4.2.1.5. The reporting frameworks

Article R. 225-105-1 provides:

> "When a company voluntarily complies with a national or international standard to fulfill its obligations under this article, it mentions this, indicating the recommendations of the standard which have been adopted and the methods of consultation with them"

The CSR Platform Note suggested that stakeholders agreed on the need for a methodological guide supporting the regulatory provisions on format and quality. Such a guide was prepared by MEDEF in consultation with other stakeholders. However, the French Law does not contain a reference to MEDEF Guide or any other particular reporting framework.

The French Law, similar to the German Law, does not orient the companies to use a specific framework. The companies are required to indicate if they used the frameworks, but the law does not provide that such frameworks should be used consistently or completely.

8.4.2.1.6. The quality assurance and quality management

Article L. 225-102-1 provides:

> "For companies, whose balance sheet total or turnover and the number of employees exceed the thresholds fixed by a decree of the Council of the State, if necessary on a consolidated basis, the information appearing in the declaration mentioned in Parts I and II is subject to verification by an independent party, according to the methods established by the Council of the State"

Article R.225-105-2 establishes an obligation for the management of the company to appoint an auditor accredited for this purpose by the French Accreditation Committee (COFRAC) or by an analogous body recognized by a multilateral agreement established by the European coordination of the accreditation bodies.

Furthermore, as prescribed by Article L. 225-102-1, Article R.225-105-2 establishes the thresholds. Under Article R. 225-105-2, if the declaration is prepared by the companies exceeding 100 million euros for the balance sheet total or 100 million euros for the net amount of turnover and 500 for the average number of permanent employees employed during the financial year, the report of the independent third party is required to include:

> "a) A reasoned opinion on the compliance of the declaration with the provisions of I and II of article R. 225-105, as well as on the fairness ("la sincérité") of the information provided in the application of 3 o I and II of article R. 225-105;
>
> b) The diligence that it has implemented to conduct its verification mission".

The French Law, thus, enhances the quality assurance standard introduced by the Directive, using the member state scope, provided by it. However, the enhanced standard, requiring to assure *the fairness ("la sincérité")* of the information applies only to the largest companies. For the companies below the established threshold, the Commercial Code requires the certification, that the *presence* of a non-financial report. The Commercial Code does not further define the "fairness" (la sincérité) criterion.

Before the Directive, French Law treated the quality assurance requirements as a partial substitution for the sanctions:

> "In other words, even though there is still no legal sanction for non-compliance, the verification mechanisms put in place by the Act ensure that companies who do not disclose the required information do so at their own risk, knowing that they will surely have more to lose if they don't comply than if they do (Office of the Ambassador at large for Corporate Social Responsibility, 2012, p. 6).

Thus, French "mandatory" disclosure was not supported by the sanctions or enforcement, but by the quality assurance. This approach was generally kept in the transposition of the NFRD. However, for many large companies, the quality assurance standard remained very low i.e. the auditor was required to verify the presence of the non-financial report.

As discussed in the section on disclosers, Article L. 225-102-1 of the Commercial Code provides that any interested person may demand the court to oblige the company's board of directors or the management board to communicate the non-financial information which the company previously failed to communicate. The French Law, thus, imposes the responsibility on the members of the supervisory bodies for the presence of the non-financial information but does not establish their responsibilities to ensure quality.

The Note of the CSR Platform demonstrated some disagreement regarding the quality assurance:

> "The pole of the companies and the economic world wishes that independent third-party organizations are not asked to certify on the analysis of the risks and the relevance of the information provided (cf. III. Of the new article R. 225-105- 2 of the Commercial Code introduced by the draft decree)" (Platforme RSE, 2017, p. 27).

The Decree eventually opts for the "fairness" (la sincérité) standard, already familiar to the pre-Directive French Law.

To conclude, the French Law includes an increased quality assurance standard: it requires the "fairness" (la sincérité) of the non-financial report to be checked by an independent auditor. This standard, however, is not further explained and applies only to the largest companies.

8.4.3. Access

8.4.3.1. What are the goals?

The Minutes of the Council of Ministers, announcing the ratification of the Ordinance, provided for several expected outcomes, which seemed to relate to the access. In particular, the Minutes referred to a "concise and accessible" declaration and to the "format":

> "At the end of this transposition, the extra-financial performance declaration, which replaces the corporate social responsibility (CSR) report, becomes a strategic management tool for the company, both concise and accessible, focused on significant information of interest to its stakeholders.
>
> …
>
> The format of the extra-financial performance declaration is clarified. The content of this declaration includes a statement relating to its business model, a presentation of the extra-financial risks it faces, a description of the policies implemented to limit these risks as well as the results of these policies. Resulting from an in-depth analysis of the extra-financial challenges facing the company, the declaration of extra-financial performance aims to become a reference document for all parties" (Conseil des ministres, 2017, p. 1).

Thus, the Minutes did not only aspire "accessibility" but also referred to the clarification of the "format". Furthermore, the Note of the CSR Platform mentioned twice "the structure" of the non-financial information. In particular, it suggested a "structuring nature" of the new provisions for the non-financial declaration ("dispositions présentent en effet un caractère structurant pour les déclarations non financières") (Platforme RSE, 2017, pp. 8, 10).

To conclude, French documents envisage several access-related outcomes, including the information being more concise and accessible and better structured.

8.4.3.2. How are the goals to be achieved (requirements)?

Concerning the vehicle of disclosure, France does not use the national scope to allow decoupling of the financial and non-financial reporting. Part I of Article L. 225-102-1 explicitly requires the extra-financial declaration to be included in the management report. Furthermore, Article L. 225-102-1 obliges the companies to make the non-financial statement "freely accessible" on the company's website along with including it in the management report.

Article R. 225-105-1 further specifies that non-financial statements should be "made freely available to the public and made easily accessible on the company's website within eight months of the end of the financial year and for five years". The publication on the website is not an alternative to the inclusion in the management report, but an additional communication vehicle. By combining two vehicles, the French Law ensures that users do not need to search for the information in both vehicles. Furthermore, the provision of the information on the website provides an alternative to the users who are less familiar with the management reports. The inclusion of the information in the management report ensures that the timing of non-financial disclosure coincided with the timing of financial disclosure.

While the French Law obliges the companies to use two vehicles of disclosure to communicate the information, it does not create a single database for the collection and comparison of the anti-corruption information between the companies. The French Law prescribes to create a database to simplify the access of the employees and work councils to social and environmental information. Yet, the database does not include corruption-related information.

Concerning the format and the structure of disclosure, the Minutes of the Council of Ministers aspired to a "clarified" format and the Note of the CSR Platform referred to the "structuring" of the reporting. Newly introduced provisions of the Commercial Code touch upon two aspects of the format.

Firstly, Articles L.225-102-1 and R.225-105 repeat the Directive's semi-structure by indicating the themes and the items of disclosure. The French Law, however, does not require the companies to disclose particular information in a particular order. Furthermore, Article R.225-105 provides that companies should report a set of indicators "when they are relevant to the principal risks or policies". For the anti-corruption information Article R. 225-105 establishes only one indicator: "Information relating to the fight against corruption: actions taken to prevent corruption". This indicator overlaps with the previous requirements on reporting on the risks, policies and results and undermines rather than enhances the structural reporting. To conclude, the new provisions of the Commercial Code do not establish a single format or structure for reporting on corruption.

Secondly, Article R. 225-105-1 provides that companies should report information in a time-consistent manner "to allow a comparison between these data"

The CSR Platform Note alluded to the structuring character of the new Directive. Yet, the discussion between the main stakeholders did not refer to the format of disclosure per se. It can be assumed that the parties were generally satisfied with the regulatory approach.

Regarding the language of disclosure, the general rule of the Commercial Code applies providing that accounting documents are drawn in French (Article L123-22).

There is no acknowledgment in the transposition documents of the possible implications of the varying languages of disclosure across Europe.

To summarize, French Law establishes advanced rules for the publication of information in the management report and website. The companies are required to include non-financial information in their management reports at the time of their publication. In this way, the timing of non-financial reporting is aligned with the timing of financial reporting. Publication of information on the website along with the management report is supposed to ensure broader outreach of the information. The Law, however, creates no clarity regarding where exactly the information can be found within the management report and website. Furthermore, the French Commercial Code establishes a few provisions to simplify the accessibility of non-financial information. For example, the database is created to simplify the access of the employees and work councils to social and environmental information. The indicators are established to provide a (loose) format of disclosure. Yet, provisions regarding databases and indicators do not affect

reporting on corruption. No indicators are established for reporting on corruption and corruption information is not included in the database for work councils. The new regime does not contain specific language-related provisions, but the general provisions required the management report to be published in French.

8.4.4. Users

8.4.4.1. What are the goals?

The Equality and Citizenship Law provided the original mandate for the transposition of the Directive 2014/95/eu. Thus, the transposition mandate was incorporated within the objectives of the Law to encourage citizen engagement and strengthen equality. This approach suggested that the French government intended all the citizens to benefit from the disclosure obligations. The Minutes of the Council of Ministers operated with the terms “stakeholders” and “interested parties” (Conseil des ministres, 2017). The Minutes aspired to satisfy “all stakeholders”.

The Note of the CSR Platform consistently used the term “stakeholders” to describe the parties, participating in the consultations and interested in the non-financial reporting. In particular, it referred to “companies, social partners, civil society organizations, stakeholder networks, researchers and public institutions” as stakeholders (Platforme RSE, 2017, p. 6).

Despite the stakeholders being able to reach a consensus on multiple matters, the important disagreement persisted. In particular, the stakeholders disagreed on the scope of application of the new law (concerning the restriction of the corruption-related reporting to public interest entities and concerning the identification of the parents and subsidiaries), the inclusion criteria (the limitation of use of the indicators to the cases “when they are relevant to the principal risks or policies”) and the scope of the corruption reporting.

8.4.4.1. How are the goals to be achieved (requirements)?

The strong position of the labor unions in France informed the legal provisions to some extent. The Ordinance 2017-1180 amended Article L2323-8 of the Labor Code. Article L2323-8 of the Labor Code provides for the access of the employees and members of the work councils to a database with information about certain aspects of the company’s activity. The amendment includes the environmental information disclosed under Article L225-102-1 in the scope of the database. In this way, the regulator significantly simplifies the access of work councils and employees to environmental information. At the same time, the provisions of Article L2323-8 of the Labor Code do not cover human rights and corruption-related information.

The regulatory provisions do not reflect the targeted audience. The positioning of the regime within Equality and Citizenship Law suggested that the new regime was supposed to benefit society. However, the interests of specific users and the alignment of interests between them were neither explored, nor reflected in the regulation. The special provisions for accessibility for the employees and work councils do not apply to corruption. The French Law does not provide users with tailored requirements for the collection and processing of the information.

8.5. Conclusion

The non-financial disclosure has been part of the French legislation before the Directive 2014/95/eu. The anti-corruption disclosure has been included in the French law in 2012 by Grenelle II Law. Presence of the legal provisions allowed to qualify the French regime as mandatory. Nonetheless, the Grenelle II provisions were not supported by sanctions and enforcement. Familiar with the non-financial disclosure and interested in leveling the playing field, France supported the NFRD in the EU negotiations. Yet, this support manifested itself in the issuance of a special statement rather than introducing the amendments.

The French Parliament adopted the Equality and Citizenship Law, which delegated the government with the task of shaping the non-financial disclosure regime. The Equality and Citizenship law integrated the delegation norm among other norms related to youth support, diversity, and equality. This approach contrasted with the EU and German "accounting" approach. Nevertheless, the later government documents (the Ordinance and the Decree) integrated the new requirements into the Commercial Code – similar to the German case.

The documents, related to the transposition, have generally demonstrated the stakeholders' consensus on the main aspects of transpositions. The French government documents, announcing the transposition, did not feature much information about the regime.

Concerning the disclosers, the Tresor's Communication reflected the risk-based approach by stating that "the scope of the companies required to produce such a declaration is evolving to orient the system towards large companies whose impact of activities is considered to be significant with regard to environmental, social and societal criteria". The document did not contain information about the number of covered companies or other goals. The anti-corruption transparency requirement covered only listed companies and some special PIEs. The French Law slightly extended the notion of PIE. Thus, four criteria defined the scope of application of the corruption-related reporting: (1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); and (4) listed entities, credit institutions, insurance companies, mutuals, provident institutions, holding companies of credit institutions, insurance companies and listed entities. The French Law did not provide for any rules helping to define the reporting companies and/or their parents/ subsidiaries. The French Law did not establish liability for the failure to comply with the non-financial disclosure requirements. It established a possibility for the interested party to require in court the presentation of the information. Thus, the transposition law kept the practice of the "orientation law". The audit requirements covered only the largest companies (defined by the financial results).

In relation to the information, the Tresor's Communication and the Minutes of the Meeting of the Council of Ministers referred to the "strategic character" ("un outil de pilotage stratégique de l'entreprise") of the non-financial statement. The French Law aspired the "conciseness and accessibility of the information" ("à la fois concis et accessible"), its "completeness" ("une image complete"), "significant" ("concentré sur les informations significatives intéressant ses parties prenantes") and "essential" ("un document d'information incontournable") nature. The French

Law referred to the fairness ("la sincérité des informations") and comparability ("de façon à permettre une comparaison entre ces données"). The French Law relied on the "to the extent necessary for an understanding" inclusion criterion and did not clarify the nature of the respective impacts. The French Law kept the reasoned "comply or explain" clause. The French Law did not use the national scope to allow omission of the prejudicial disadvantageous information. Along with the general inclusion and exclusion criteria, the French Law used special ones in relation to several reporting items. It required to disclose "principal" risks, including those relating to business relationships where "relevant and proportionate". It provided for disclosure of due diligence "where applicable" and required the references to the amounts mentioned in the financial reports to be reported "where appropriate".

The provisions of the French Law, related to the reporting items, largely repeated the provisions of the Directive. The French Law did not advance the description of the items. In fact, the French Law limited the provisions of the Directive in three ways. Firstly, it did not relate the reporting on the business model to the reporting on corruption, allowing for a generic reporting on the business model. Secondly, it connected the KPIs to the reporting on the results of the policies application, but not on the business model, risks and policies. Thirdly, it required to provide references to the amounts reported in the financial statements, but not the explanations of the amounts, reported in the financial statements while such explanations may be particularly relevant for reporting on corruption. The French Law referred to the "fight against corruption" but not to bribery. The single "additional information" element, introduced by Article R. 225-105-1 is "actions taken to prevent corruption" was not further detailed. Thus, it was unclear, how the "actions taken to prevent corruption" could have been differentiated from the anti-corruption policies, which formed one of the reporting items. It appeared that the "actions" represented only part of the scope of the reporting items. The companies were required to indicate if they used the reporting frameworks, but the law did not provide that such frameworks should be used consistently or completely. The French Law somewhat improved on the Directive's provisions by requiring quality assurance of the non-financial reports of the *largest* companies. Instead of the assurance of the presence of the report, the French Law required the auditor to check the fairness ("sincérité") of the information.

Concerning the access, the Minutes of the Meeting of Ministers and Tresor Communication aspired to create "a strategic management tool for the company, both concise and accessible, focused on significant information of interest to its stakeholders". These documents also suggested that the format ("le format") of the declaration was "clarified". The Note of the CSR Platform also repeatedly referred to the "structuring" of the non-financial reporting in the light of the new law. Nevertheless, the French Law did not contain any specific structure. It relied on the same semi-structure, that the Directive provided. Furthermore, similar to German Law, the French Law separated the business model from the reporting items. It also connected KPIs to the reporting on results only, rather than using them to support all reporting items. Unlike the German Law, the French Law did not use the national scope to allow separate reporting of the financial and non-financial information, thus, aligning the vehicle and the timing of financial and non-financial disclosure. The French Law also mandated the information to be accessible on the

website. The French Law did not establish any specific language requirements for the non-financial information. Thus, the general rules of the Commercial Code applied, meaning that the French companies were required to report in French.

Concerning the users of the information, the French Law made a step towards making the information more accessible for a specific category of the stakeholders i.e. employees, but this approach did not apply to the anti-corruption information.

The analysis of the French provisions within goals and requirements dimensions demonstrates ambitious goals within all components, especially concerning disclosers, access and users components. Within the “disclosers” component the French documents articulated the risk-based approach and coverage of all large companies. For the “access” component, the “structuring” role of the requirements was assumed together with “concise and accessible” reporting as a result. The framing of the French provisions within the “Equality and Citizenship” Law suggested social benefits and inclusion of the citizens in the initiative. Yet, the requirements of the French Law for all components were rather limited. In particular, the scope of application of the law was limited and the sanctions were not established. The indicator for corruption reporting was very limited. The French Law relied heavily on the inclusion criteria. It did not establish a format of disclosure and did not tailor the anti-corruption reporting to the needs of different users. The French Law, however, improved on the Directives provisions to some extent by introducing the stricter quality assurance standard (only for the largest companies) and not using the national scope for decoupling of financial and non-financial reporting.

	Goals	Requirements
Disclosers	Orient the system towards large companies whose impact of activities is considered to be significant with regard to environmental, social and societal criteria	Four criteria: (1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); (4) listed entities, credit institutions, insurance companies, mutuals, provident institutions, holding companies of credit institutions, insurance companies and listed entities. The idea to establish a list of consolidated subsidiaries is not implemented in French Law. Relies on private enforcement and covers only cases of failure to provide the information
Information	Supporting documents: "Strategic character" of the information, conciseness and accessibility of the information", "completeness" "significant", and "essential" nature, "flexibility" Law: "fairness" in relation to the quality assurance standard and comparability in relation to the publication of the information comparable across the years	Inclusion criteria: "the extent necessary for understanding of the situation of the company, the development of its business, of its economic and financial results and of the impacts of its activity, the declaration referred to in I and II presents information on how the company takes into account the social and environmental consequences of its activity, as well as, for the companies mentioned in 1o of I, the effects of this activity with regard to respect for human rights and the fight against corruption", reasoned comply or explain. Other inclusion criteria: "principal" risks, including "where relevant and proportionate" and "where applicable" those relating to business relationships due diligence; the references to the amounts mentioned in the financial reports to be reported "where appropriate" Reporting items: business model separated, three items related to the themes: (policies/ due diligence, results, risks/ risks related to the business relationship, KPIs only related to results) + separate references to the financial amounts (not the explanations Reporting themes: fight against corruption. Information relating to the fight against corruption: actions taken to prevent corruption..." Reporting frameworks: may be used any frameworks, should report on the use Quality assurance: fairness (la sincérité) of the non-financial report - applies only to the largest companies
Access	More concise and accessible and better structured.	Vehicle and timing are aligned with financial reporting + reporting on the website is mandated The structure of reporting is flexible Language is primarily French
Users	Different users need the information	The target audience is not established but framed within the equality and citizenship law

Table 1. Goals and requirements in French Law

9. Chapter IX. Application: the anti-corruption reporting by the six largest EU companies

9.1. Introduction

The goal of this chapter is to establish the outputs of the Directive 2014/95/eu. This chapter addresses the following research question:

— How is the design of the NFRD reflected into the transparency practices of the EU largest companies after transposition of the NFRD?

The analysis is largely located within the purview of annual reports. In line with the general approach of the thesis, this chapter reflects briefly on the context and the role of the annual reports. It proceeds to the analysis of four components of transparency in the annual reports. Among these, the chapter pays significant attention to the information component.

9.2. The context

The companies, especially the large companies, have experienced pressure to report on anti-corruption before the transposition of the Directive. Such pressure has emerged from the increasing corporate anti-corruption enforcement (OECD, 2018), stakeholder-driven initiatives such as the UN Global Compact Communication on Progress and the GRI (Barkemeyer et al., 2015) and mandatory regimes e.g. in France. However, the Impact Assessment to Directive 2014/95/eu emphasized poor reporting practices. The Directive incorporated “anti-corruption and bribery matters” as one of the themes. This chapter analyzes the reporting after the Directive took effect.

The chapter aims to reveal how the companies employed the concepts used in the requirements of the Directive. Thus, it takes qualitative approach. The annual reports are analyzed manually. Due to the size of the reports (varying between 150 and 600 pages and averaging 300 pages) and spread of corruption-related information throughout the reports, a small sample of companies is selected. Respective methodological choices have been established and explained in detail in Chapter II of this thesis.

9.3. The role and the structure of the reports

This chapter focuses on the reports of six EU companies – three French companies: AXA, BNP Paribas, and Total; and three German companies: Allianz, Volkswagen, and Daimler. The reports are analyzed over three years in line with the methodology described in Chapter II. Only reports published under the Directive 2014/95/eu are analyzed. According to the transitional provisions of the Directive and the national laws, the companies had to start applying the Directive by disclosing the information pertaining to year 2017 in their 2018 annual reports. Thus, this study analyzes reports which cover year 2017. These reports were published in 2018, but they refer to the previous year (e.g. Daimler Annual Report 2017 or AXA Registration Document 2017). To

avoid confusion this chapter always refers to the year covered in the report. Thus, this chapter covers only the reports published only after the Directive became effective across the EU.

In France, the companies were required to publish non-financial information under the Directive 2014/95/eu in an annual report. Thus, companies reported information in their yearly Registration Documents. In Germany, companies were required to publish non-financial information under the Directive 2014/95/eu in an annual report or in a separate report published no more than four months later. Three German companies used different vehicles to report on corruption. Accordingly, this chapter analyzes the following documents:

	AXA	BNP	Total	Allianz	Daimler	Volkswagen
2017	Registration Document 2017 (AXA, 2017)	Registration Document and Annual Financial Report 2017 (BNP Paribas, 2017)	Registration Document 2017 including the Annual Financial Report (Total, 2017)	(1) Allianz SE Annual Report 2017 (Allianz SE, 2017) (2) Allianz Group and Allianz SE Combined Separate Non-Financial Report 2017 (Allianz Group, 2017)	Daimler Annual Report 2017 including Combined Management Report (Daimler AG, 2017)	(1) Annual report 2017 (Volkswagen AG, 2017b) (2) Sustainability Report 2017 (Volkswagen AG, 2017a)
2018	Registration Document 2018 - Annual Financial Report (AXA, 2018)	Registration Document and Annual Financial Report 2018 (BNP Paribas, 2018)	Registration Document 2018 including the Annual Financial Report (Total, 2018)	(1) Annual Report 2018 (Allianz SE, 2018) (2) Annual Report 2018 including Allianz Group and Allianz SE Combined Separate Non-Financial Report (Allianz Group, 2018)	Daimler Annual Report 2018 including Combined Management Report (Daimler AG, 2018)	(1) Annual report 2018 (Volkswagen AG, 2018a) (2) Sustainability Report 2018 (Volkswagen AG, 2018b)
2019	Universal Registration Document 2019 - Annual Financial Report (AXA, 2019)	Universal Registration Document and Annual Financial Report 2019 (BNP Paribas, 2019)	Universal Registration Document 2019 including the Annual Financial Report (Total, 2019)	(1) Annual Report 2019 (Allianz SE, 2019) (2) Annual Report 2018 including Allianz Group and Allianz SE Combined Separate Non-Financial Report (Allianz Group, 2019)	Daimler Annual Report 2019 including Combined Management Report (Daimler AG, 2019)	(1) Annual report 2019 (Volkswagen AG, 2019a) (2) Sustainability Report 2019 (Volkswagen AG, 2019b)

Table 1. List of analyzed annual reports

In total, 24 (if Daimler's reporting model is counted as a single report) documents have been analyzed for this chapter. This chapter uses the generic term "annual report(s)" for all documents used for reporting under the Directive 2014/95/eu unless a specification of the reporting vehicle is needed.

Whenever company-specific information is presented, the analysis starts with French companies and proceeds to German companies in the following order: AXA, BNP Paribas, Total, Allianz, Daimler, and Volkswagen.

9.4. Four components of transparency in the annual reports

9.4.1. Disclosers

9.4.1.1. How are the requirements applied?

Three years after the Directive 2014/95/eu took effect, neither France nor Germany developed an official list of companies subject to reporting under the Directive. Research by Accountancy Europe suggested that there were 1150 Public Interest Entities (PIEs) in Germany and 1796 PIEs in France. Beyond France and Germany, member states varied tremendously in the definition of PIEs (Accountancy Europe, 2017). The application of the Directive in both member states depended on four criteria (PIE status, financial results, number of employees and parent status). Thus, not all the PIEs were required to report under the Directive.

In five out of six cases, the non-financial reporting has been done by the same parent undertaking over three years.

In one case (Allianz), it was unclear whether the reporting company was the parent company. Allianz, the largest German insurance company, was managed by two parent companies, Allianz SE and Allianz Group. According to the information presented on the website of Allianz Group, Allianz SE is the ultimate parent company of the Group:

> "Allianz SE is the holding company of the Allianz Group. In addition, Allianz SE operates in the field of reinsurance, providing reinsurance protection for Allianz Group companies, in particular" (Allianz, 2020).

Allianz SE was indicated as a parent and as a reporting entity in the (unofficial) lists of entities reporting under the Directive 2014/95/eu in Germany (Global Compact Network Germany & econsense, 2018; Kluge & Sick, 2016). Allianz SE and Allianz Group published separate annual reports. In 2017, they published a consolidated Non-financial report. In 2018 and 2019, the Non-financial report was integrated into the annual report of Allianz Group, but not in the report of Allianz SE, despite the latter being described as a parent.

The companies disclosed the lists of entities included in the consolidated financial statement, but not the lists of entities for which non-financial/ anti-corruption reporting was done.

9.4.1.2. What are the outcomes?

In the EU over 40000 large companies are registered (European Commission, 2013a). Germany hosts at least 4512 companies with 250 or more employees, France hosts at least 1446 companies with 250 or more employees (OECD, 2022).

It is unclear how many companies are covered across the EU. The number of companies reporting under the Directive was assessed to be 6000 across the EU (Climate Disclosure Standards Board, 2021; European Commission, 2018). Lately, however, the European Commission reported that NFRD covered "approximately 11 700 large companies and groups across the EU" (European Commission, 2021b). In Germany, econsense report identified 467 companies reporting under the Directive 2014/95/eu (Global Compact Network Germany & econsense, 2018). MBF report identified 536 reporting companies (Kluge & Sick, 2016) German government identified 548 reporting companies. Thus, the Directive covered less than 15% of German large companies. In France, the number of companies subject to anti-corruption and bribery reporting was not reported. The differences in the assessments and the use of "approximately" suggests lack of clarity regarding the scope and number of reporting entities.

9.4.2. Information

9.4.2.1. How are the requirements applied?

9.4.2.1.1. Five sets of requirements in annual reports

The Directive and the transposition laws relied roughly on five sets of requirements: (1) the inclusion criteria; (2) the reporting items; (3) the reporting themes, in particular the antic-corruption and bribery; (4) the reporting frameworks; (5) the quality assurance and quality management requirements. Five sets of requirements are used for analysis. The analysis begins with the inclusion criteria. The analysis of the reporting theme precedes the analysis of the reporting items. The findings on the reporting frameworks and KPIs are presented together. Finally, quality assurance/ management is analyzed.

For practical purposes, the sub-sections below report the findings first. An overview of each company's reporting is presented afterward unless the company did not report anything.

9.4.2.1.2. The inclusion criteria

General findings

This subsection analyzes how the companies explained the inclusion of anti-corruption and bribery information in their reports. Four main findings emerge from the analysis of the justifications for the inclusion of the anti-corruption information in the reports. Firstly, the companies used different concepts to report on the rationales for inclusion and exclusion of the information in the reports ("material adverse impact", "main challenges", "importance for external stakeholders", "importance for BNP Paribas employees", "main risks", "of material significance", "key risks", "relevant risks", the "crucial importance", "key role", "top inherent compliance risk areas", "principal risks", "extremely important"). Secondly, only a few companies reported on the methods behind their assessment of the inclusion criteria. For example, BNP

referred to the “importance for external stakeholders” and “importance for BNP Paribas employees” as the assessment criteria for materiality. Thirdly, the concepts and the methods used by the same company varied across the years. Fourthly, companies applied the inclusion criteria at different levels. Some companies reported the assessment for particular corruption cases (Total), others reported the assessment for corruption in general (Volkswagen), and still others reported assessment for the broader compliance, ethical, regulatory and financial risks (Total, Allianz, BNP Paribas).

Findings per company

AXA did not use the notion of materiality in relation to corruption in 2017. However, it suggested the possibility of “material adverse impact” of the new legislation and litigation developments in general (AXA, 2017, p. 176).

In 2018, AXA named “fighting bribery, corruption and tax evasion” among the “most material risk”. In 2019, however, it abandoned the notion of “materiality” in relation to corruption. The 2019 report listed “risks related to fight against corruption and tax evasion” among the “main risks”. AXA used the notion of impact concerning the risks in general. Yet, AXA did not report the financial or non-financial impacts of corruption in particular.

BNP Paribas did not use the notion of materiality in 2017. In 2018 and 2019, it used the notion of materiality. The company related materiality to the “importance for external stakeholders” and “importance for BNP Paribas employees”. The materiality matrix did not consider the “necessity” of the information for the understanding of the company’s “development, performance, position and impact of its activity”. In 2018, the company selected and rated 21 issues “following the materiality analysis”. The presentation of the issues did not include corruption as a separate category. It referred to such notions as “Fair competitive practices” and “Ethics & Compliance”. The company did not make it clear whether corruption fell within one of the categories or both of them and how it scored within the categories. In 2019, BNP selected 14 “most major and crucial issues” based on the materiality assessment. The report merged the risk of corruption with the risk of tax evasion in the category “Financial risks”.

In 2017 and 2018, Total referred to “material” information in relation to the “ethical misconduct and non-compliance risks”, which included corruption. It stated that legal cases against its entities may lead to potential “material adverse impact”. Total defined impact of unethical behavior and corruption in financial terms in reference to “criminal and civil penalties and could be damaging to TOTAL’s reputation and shareholder value” (Total, 2017, p. 81). In 2019 the company did not refer to “material adverse impact” in the sections referring to ethical misconduct. In 2017, 2018 and 2019 Total reported that none of its existing corruption-related legal cases was “material”. Total also used other criteria to describe the information on corruption. In 2018, Total listed corruption among the “main challenges”. In 2019, corruption was listed among “prominent risks” and “most significant SDGs”.

Allianz did not refer to "materiality" or "impacts", used in the Impact Assessment and the Directive, but used the notions of "principal risks" and "severe adverse effects" in line with the text of the German Law:

> "In the context of the requirements introduced through the CSR Directive Implementation Act in 2017, we have not identified any principal risks resulting from our business activities, business relations, products, and services that could have severe adverse effects on material non-financial matters (Environmental, Social, Human Rights, Employee, Compliance/Anti Corruption and Bribery)" (Allianz Group, 2017, p. 2).

In 2018 and 2019 reports, Allianz kept the same wording but eradicated the list of matters to which it applied. At the same time, the company identified a list of "top inherent compliance risk areas". In 2017, the company included "corruption" in its list of "top inherent compliance risks" (Allianz Group, 2017, p. 7). In 2018, however, corruption disappeared from the list. In 2019, "regulatory compliance" appeared on the list. The relation of this notion to corruption was not explained. Allianz also did not provide any criteria for the attribution of risks to the "top inherent" areas except referring to the internal assessment of the "compliance risk scenarios".

Daimler did not apply the notions of "materiality" or "impact" to corruption. Daimler referred to the "crucial importance" and "key role":

> "A key role in the public's current perception is played by the company's approach to environmental, employee and social matters, fighting corruption and bribery, and respecting human rights" (Daimler AG, 2017, p. 168).

While the company mentioned "public interest" as an indicator of the "crucial importance", it was only relevant as long as the public perception affected the reputation of the company. Daimler's reports also described the corruption risk (along with other non-financial risks, defined by the Directive) as "extremely important".

In 2017, Volkswagen Sustainability Report referred to the "The Report on Risks and Opportunities" for the "overview of the risks judged by the Volkswagen Group to be of material significance" (Volkswagen AG, 2017a). The mentioned Report on Risks and Opportunities included in Volkswagen's annual report, provided that "corruption, inadequate government structures and a lack of legal certainty" in emerging markets "pose risks" for the company (Volkswagen AG, 2017b, p. 168). Thus, corruption seemed to be a material risk in emerging markets. The report did not contain further considerations of the impact or frequency. In 2018 and 2019 Volkswagen did not refer to the notion of materiality in relation to corruption. Certain non-financial risks, including corruption, were qualified as "key risks" and "relevant risks". Volkswagen's Sustainability Reports discussed materiality, but without direct connection to corruption.

9.4.2.1.3. The reporting themes: corruption

Four features were observed in relation to the notion of corruption. Firstly, companies referred to corruption and bribery on multiple occasions, but none of the companies explicitly defined either corruption or bribery. Secondly, companies mentioned different practices in relation to corruption in their reports. Thirdly, all companies tended to include corruption within broader notions and these notions differed across companies and years. The role of corruption within the broader notions was unclear. As a result, it was impossible to define the boundaries of reporting on corruption, in particular, to define which information in the reports was relevant for corruption and to define which practices were considered corrupt.

All six companies mentioned corruption as well as bribery. None of the companies explicitly defined corruption or bribery throughout the years. In 2019, Volkswagen attempted to define corruption practices. It included "risks of active corruption", "risks of passive corruption", and "misappropriation and embezzlement risks" in "corruption and bribery" (Volkswagen AG, 2019b, p. 21). The companies referred to "corruption" and "bribery" and occasionally to other practices such as "graft" and "lobbying". In particular, AXA and BNP Paribas referred to "lobbying" both as a part of corruption risk and separately.

In reporting, companies merged corruption with other risks. AXA reported on corruption within the notion of "regulatory-related risks". BNP referred to corruption within "reputational risk", "operational risk", 'compliance risk" and finally, within the "ethics & compliance" categories. It defined the notions of "reputational risk", "operational risk", 'compliance risk", but it did not define the place of corruption within these categories. BNP risk assessment framework placed "Ethics & compliance" risks very high but the place of corruption within "ethics & compliance" was not clear. Total used the notion of "ethical misconduct" and "compliance" in 2017, 2018 and 2019. Allianz replaced the corruption section in its report with the section "Regulatory compliance" in 2019. It was unclear whether "Regulatory compliance" included corruption. Anti-trust and economic sanctions were mentioned separately, but corruption was not. Daimler reported primarily on "compliance" rather than "corruption|. Volkswagen reported primarily on "compliance" and "ethics". The place of corruption in "compliance" and "ethics" was not defined.

9.4.2.1.4. The reporting items

9.4.2.1.4.1. Reporting on the business model and risks

In relation to each reporting theme, including corruption, the Directive required to report "a brief description of the undertaking's business model", "the principal risks", and "how the undertaking manages those risks". The Directive connected the business model and risks by referring to the elements of the business model i.e. to the "undertaking's operations" and "business relationships" in the description of the risks. Two items are also connected in the company's reports and, thus, they are analyzed in one subsection. Three analytical components for analysis are taken from the Directive:

(a) Business model and corruption risk: antecedents of corruption risk ("a brief description of the undertaking's business model")

(b) Business model and corruption risk: principal risks ("the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas")
(c) Business model and corruption risk: risk assessment and risk management tools and processes ("and how the undertaking manages those risks").

The analysis suggests that most of the companies did not disclose their business model in relation to corruption and did not report on their principal risks/ high-risk operations in relation to corruption. If provided, the information was generic. All companies reported on risk assessment and risk management, but the scope of reported information varied.

(a) Business model and corruption risk: antecedents of corruption risk

Among six companies, Total and Volkswagen presented the information concerning the business model within the sampled sections. Total reported the number of suppliers and the amounts spent on services and goods. Yet, the company did not connect these numbers explicitly to the risk of corruption. Volkswagen mentioned its spending on procurement in relation to corruption in 2017, but not in 2018 and 2019.

These companies also mentioned their geographical presence, main activities, and the number of employees. In some cases, a connection to corruption was made, e.g.:

> "TOTAL is present in more than 130 countries, some of which have a high perceived level of corruption according to the index drawn up by Transparency International" (Total, 2018, p. 208).

Neither Volkswagen nor Total explained particular aspects of their work in locations with a high level of corruption. The companies did not provide company-specific information. They reported information that was equally applicable to almost all large multinationals.

AXA, BNP Paribas, Allianz and Daimler did not report on their business model in relation to corruption (i.e. not in the sampled parts of the reports).

(b) Business model and corruption risk: principal risks

Total and Daimler reported on principal risks. In both cases, risks were not company-specific, but common for the industry, for example:

> "Our risk-minimization measures focus in particular on sales companies in high-risk countries and business relationships with wholesalers and general agencies worldwide" (Daimler AG, 2017, p. 232)

The list of high-risk operations was generic, sometimes inconsistent (e.g. Total mentioned different high-risk areas every year without explanations), and often omitted altogether (e.g. AXA, BNP Paribas, Allianz, Volkswagen). Companies mentioned distributorship, philanthropy,

sponsorships, sales to governments, and other practices and features of their business models in their reports and on their websites. However, the information on these practices did not appear in the sampled parts of the reports, related to corruption. These practices were not assessed for the corruption risks.

(c) Business model and corruption risk: risk assessment and risk management tools and processes
General findings

The majority of the risk-related information in the reports was dedicated to the risk assessment processes and resources. The information about the risk assessment and the risk management was intertwined so it was not always possible to separate the two. Largely, the information was not specific to corruption but formed a part of the information about risk management in general or management of the non-financial/ compliance/ regulatory/ legal/ operational/ reputational risks. None of the companies reported systematically the information relevant to corruption risk in particular (e.g. management of high-risk regions and transactions, information about the scope of operations assessed for corruption risk). Among six companies, only BNP Paribas reported particular activities mapped for corruption risk assessment and the reporting was partial (i.e. it referred to activities added to risk mapping rather than all activities covered). Total referred to corruption risk management but did not describe it. Daimler's wording "special care in contacts with authorities and public officials" and "risk-minimization measures focus in particular on sales companies in high-risk countries and business relationships with wholesalers and general agencies worldwide" was not connected directly to the scope of risk assessment and management. Eventually, in none of six cases, it was possible to establish what operations were mapped and scoped for corruption-specific risk assessment and management, how often the assessment happened, and what particular corruption-specific and company-specific processes it entailed.

Companies did not use specific indicators or structures to report on risk management. The companies presented different information and structured it differently, turning it incomparable. While the information was incomparable in certain aspects, it was generic in other aspects making it impossible to differentiate between the companies. For example, the companies described in general terms the involvement of compliance and legal functions, "lines of defense", "compliance risk" and "reputational risk". This information was not specific to particular companies but reflected general industry approaches. Companies primarily used qualitative terms to describe the risk assessment and risk management, such as "regularly updated", "comprehensive", "significant risk areas", and "significant issues that require escalation". Companies described risk management and risk assessment in positive terms e.g. "robust, regularly updated", "strengthening the risk-based focus of control reviews and testing", and "internal alert system and the corruption risk mapping were considerably improved". None of the companies described weaknesses in their risk management and risk assessment frameworks. A few companies referred to externally developed and commonly accepted risk assessment and

risk management frameworks (COSO, IDW AsS 980), but the scope of their application to corruption was not revealed. An overview of reporting on risk assessment and risk management is provided below for each of the six companies.

Findings per company

In 2017, AXA reported that "Compliance Risk Assessment" was performed annually by entities to identify the most significant compliance risk and it served as a basis for the "Annual Compliance Plan". "Compliance section of the Group Standards" contained standards and policies on "significant risk areas affecting compliance activities", controls, and monitoring principles. In 2018 and 2019, AXA referred to "risk management" and "compliance risk assessment". However, it did not provide information directly related to the risk of corruption.

BNP Paribas disclosed that it performed corruption risk mapping and control of identified risk as a part of compliance and reputation risk management. Furthermore, whistleblowing was used as a source of risk learning. The company also performed risk-based validation of "new and non-standard" transactions, processes, and businesses. The company stated that the management "of compliance and reputation risks is based on a system of permanent controls built on four components: general and specific procedures; coordination of action taken within the Group to guarantee the consistency and effectiveness of monitoring systems and tools; deployment of tools for detecting and preventing money laundering, terrorist financing and corruption, detecting market abuses, etc.; training, both at Group level and in the divisions and business lines" (BNP Paribas, 2017, p. 398).

BNP Paribas also reported positive developments in its corruption prevention and management system. For example, in 2017 BNP reported that the risk management system "overhauled following the publication of the so-called "Sapin 2" law" and included an "anti-corruption code of conduct incorporated into BNP Paribas SA's internal regulations, governance, corruption risk mapping, policies, procedures and tools used to control identified risks, internal alert systems, and finally, controls and reports" (BNP Paribas, 2017, p. 100). In 2018 and 2019, BNP reported the same information with a few additions. In particular, it added the fact that the Board of Directors was responsible for ensuring effective risk management. In 2018, it disclosed that the "internal alert system and the corruption risk mapping were considerably improved" (BNP Paribas, 2018, p. 522). In 2019, BNP reported that the "methodology of corruption risk mapping has been reviewed and improved to cover the additional processes (supplier awareness, lobbying and governance)" (BNP Paribas, 2019, p. 104). However, the company has never reported the original scope of risks to which the "improvements" have been made. In 2018 and 2019 BNP reported that it mapped "sustainability" risks according to the article R.225-105-1 of the French Commercial Code and Ordinance No. 2017-1180. Despite referring to the Directive transposition, this disclosure did not contain any corruption-related information. To conclude, information on risk assessment and risk management was largely not specific to corruption or partial. It was impossible to establish all particular operations assessed for corruption risk and the processes used. Positive developments were reported, but not the negative.

In 2017, Total described the risk assessment and management for corruption by stating that it had "processes to identify and evaluate corruption risks" (Total, 2017, p. 201). Possibly, there was more information on the risk management and assessment in the report, but not in the sampled parts. In 2018 and 2019, the section "systems in place" of Total's report suggested that "special systems are deployed to prevent risks related to ethics and non-compliance". The company disclosed that the Board of Directors received information on risks. The company also described the anti-corruption risk assessment:

> "Beyond the Group risk mapping, a risk mapping dedicated to the risks of corruption have been carried out at Group level and every Compliance Officer is responsible for establishing a mapping dedicated to the risks of corruption within their entities, with the aim of drawing up a suitable action plan. Employees are provided with tools that help them identify the risk of corruption, e.g., the Typological guide of corruption risks" (Total, 2018, p. 208)

Total mentioned risk analysis as a part of supplier selection and training allocation framework. Yet, Total did not state particular operations and locations which were scoped for the corruption risk assessment. The terms such as "suitable action plan" and "specific rules" did not describe the nature of the respective processes. Thus, the scope of corruption risk management was not clear.

According to the Allianz non-financial report, "compliance" risk was covered by Allianz's Integrated Risk and Control System (IRCS) (Allianz Group, 2017, p. 7). Allianz's Compliance Management System was incorporated in the general "Risk Management Framework" to ensure compliance "with internationally recognized laws, rules, and regulations". According to the report, the risks were "regularly assessed, monitored, and reported". Apart from the "Compliance Management System" the company had a "Compliance Quality Assurance Program", but the difference between the two was not explicitly described. Allianz also provided information about positive developments in its general risk assessment system. Such information was, however, not corruption-specific but related to the "compliance risk". Allianz dedicated a paragraph specifically to anti-corruption and anti-fraud risk assessment:

> "Anti-corruption and anti-fraud risk assessments are now integrated into the IRCS and mitigation activities are monitored through a global tracking tool. Further assessments and on-site reviews, including key control testing and follow-ups, are conducted as necessary, following a risk-based approach" (Allianz Group, 2017, p. 7)

Only a small part of Allianz's disclosure was specific to corruption. The company used terminology that it did not explain. It was impossible to establish from the reporting what particular operations and in which locations were assessed and managed and how often. In 2018 and 2019, Allianz presented similar information to the 2017 report.

Daimler described its "Compliance Management System" as follows:

> "Eliminating corruption, preventing cartel arrangements and ensuring compliance with technical regulations — we introduced our Compliance Management System in order to address exactly these issues, which are extremely important to us" (Daimler AG, 2017, p. 231)

Daimler also disclosed having "integrated risk assessment, risk-based measures for avoiding corruption in all business activities" which concentrates on high-risk countries and contacts with public officials. Daimler named whistleblowing as a source of learning about the risks.

Daimler presented the same information in 2018 and 2019. The company added that its risk assessment and management accorded to the "national and international" standards. Thus, Daimler presented some corruption-related information, but it was impossible to establish particular operations, locations, periods, and scope of corruption risk assessment and management.

In 2017, Volkswagen disclosed that it assessed and managed the risks using the internal risk assessment system, which "is based on the internationally recognized COSO Enterprise Risk Management framework" and "combines aspects of the internal control system with aspects of the compliance management system" (Volkswagen AG, 2017a, p. 46). The risk assessment and management were based on three lines of defense (business, risk management department, audit). The Board was involved in the risk management by getting regular updates. The company, furthermore, assured that "group risk management processes also take account of the risks associated with six nonfinancial aspects" including corruption. However, Volkswagen did not report to which extent the risk assessment integrated corruption. In 2018 and 2019, Volkswagen added information about the "compliance risks", but not corruption per se. In 2019, Volkswagen disclosed its aspiration for a group-wide analysis of risks and the development of IT tools for this purpose. Volkswagen's reports contained other occasional references to risk management. In particular concerning whistleblowing, which was considered to be a risk-learning tool (2018 and 2019), and risk-based selection of suppliers (2019). To conclude, Volkswagen focused on "compliance" and did not include detailed information on the assessment and management of the risk of corruption per se.

9.4.2.1.4.2. Reporting on the policies and due diligence

The Directive prescribed to disclose "a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented". The companies presented a significant amount of diverse information about policies and due diligence. It was possible to differentiate among nine categories. The categories are listed below according to their prominence in the companies' reports:

(a) Information about compliance and anti-corruption commitments;
(b) Information about (internal and external) human resources allocated to the anti-corruption compliance and responsibilities;
(c) Information about awareness raising, including training and communication;

(d) Information about general anti-corruption policy and prohibition of corruption;
(e) Information about risk-specific policies and procedures (e.g. policies regarding business partners, policies on sponsorships and policies on gifts, etc.);
(f) Information about monitoring and control, including used technical tools;
(g) Information about whistleblowing, advice, and feedback mechanisms;
(h) Information about investigation-related policies and processes;
(i) Information about the incentives, sanctions, and contract clauses supporting the anti-corruption rules.

On average, the companies provided the most information in relation to three categories: (a) commitments, (b) resources, (c) and awareness-raising.

(a) Information about compliance and anti-corruption commitments

Reporting on commitments did not fall within the information, explicitly required by the Directive i.e. the "description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented". Yet, the information about commitments was consistently prominent across the reports of five companies (BNP, Total, Allianz, Daimler, and Volkswagen). AXA disclosed less on commitments. The information was largely similar for all companies with some minor differences. The companies concentrated on three main aspects: (1) commitment to comply with the law, (2) commitment to ethical business including specific commitment to anti-corruption, and (3) participation in the collective action and other initiatives.

All companies confirmed their **compliance with the law**, except for AXA's 2018 and 2019 reports, which either omitted or placed such information elsewhere (i.e. beyond the sampled sections mentioning corruption or bribery). The wording of the respective commitments was largely the same across the sample (e.g. "compliance with applicable legal requirements" (Total); "compliance with internationally recognized laws, rules and regulations" (Allianz); "compliance means acting in conformance with laws and regulations" (Daimler).

Furthermore, each company highlighted **its ethical commitment**. The wording varied, but the general meaning of the information seemed to be the same. Companies announced their voluntary commitments to ethical values and sustainability goals. Some companies further clarified the disclosure by providing specific **anti-corruption statements** (BNP and Total confirmed their compliance with newly introduced French Law; BNP, Total, Allianz, Daimler, Volkswagen (and AXA in 2017) mentioned fighting corruption as a value and a goal in one way or another (including "zero tolerance").

Reports demonstrated slight variance regarding the **participation in collective action and voluntary initiatives**. In particular, BNP presented itself as a "contributor to or active member of" the United Nations Global Compact (Advanced level), Businesses for Human Rights, French Institute for Sustainable Development. Total reported participation in Extractive Industries Transparency Initiative (EITI) (since 2002) and Partnering Against Corruption Initiative (PACI) (since 2016). Total also referred to OECD and United Nations frameworks in relation to human

rights but not in relation to corruption. Allianz announced compliance with the principles of the United Nations (UN Global Compact), OECD guidelines for multinational enterprises, and European and international standards (this information, however, was presented in different sections across the years – while in 2017 it related to corruption directly, in other years it did not). In 2019, the company also declared that it worked with such organizations as the German Institute for Compliance (DICO) and the Global Insurance Chief Compliance Officers' Forum (CCO Forum) "to enhance our understanding of compliance issues and share best practices". Daimler 'committed itself" to the principles of the UN Global Compact and "reached agreement on "Principles of Social Responsibility" with the World Employee Committee" in 2017, 2018, and 2019. Volkswagen announced its support for the United Nations Global Compact and "declarations of the International Labour Organization (ILO), the principles and conventions of the Organization for Economic Co-operation and Development (OECD) and the international covenants of the United Nations on basic rights and freedom" 2017 and 2018. In 2019, it added EITI and the industry DRIVE Sustainability initiative to the list

(b) Information about (internal and external) human resources allocated to the anti-corruption compliance and responsibilities;

General findings: overview

On average, there was a significant amount of information about resources dedicated to compliance. All companies presented the information about compliance resources extensively. All companies had compliance departments and were responsible for compliance. Over the years, there was an increase in the amount of information on resources, especially by French companies, which reported on the anti-corruption responsibilities of the Board and management in later years (2018 and 2019). At the same time, the amount of information and its coverage varied significantly across the companies. French companies reported noticeably more and covered more aspects. In particular, French companies reported on the number of Compliance Officers (BNP, Total), responsibilities of the Board and the Board Committees regarding corruption in particular (BNP, Total), and resources directly dedicated to anti-corruption (AXA, Total). At the same time, German companies reported on some other aspects, such as resources directly dedicated to whistleblowing mechanisms (Daimler, Volkswagen). Most of the companies reported on compliance resources in general, while only AXA and Total – on anti-corruption resources. Some companies (BNP, Total) reported numbers (e.g. number of compliance officers), while others did not. However, the companies which reported on the number of the officers did not report the benchmarks such as employees, locations, and activities. Some companies reported more on the principles of organization of compliance (BNP, Allianz, Volkswagen), while others did not. And, finally, some companies (BNP, Total, Volkswagen) presented the responsibilities in a more detailed way, while others did not (which, without required indicators was not necessarily an indicator of the absence of such responsibilities). Furthermore, the information about compliance resources, while important, did not directly fall within the core of the "description of policies and due diligence" required by the Directive 2014/95/eu. Such

information was supportive, but it did not describe policies and due diligence directly. The increase of the compliance officers of Total in 2018 and the decrease in 2019 did not mean that corruption was managed worse. The “supervisory” role of the BNP compliance organization did not mean that the results of its work were better than those of its peers. Even numbers of officers did not indicate better anti-corruption policies given the varying responsibilities and industries. The information related to resources related to three large blocks: (1) compliance resources in general; (2) anti-corruption resources; (3) involvement of the governance bodies in compliance management.

Compliance resources in general

The first large block represented the information about the compliance/ ethics and other departments engaged in the management of compliance risks in general.

AXA reported on the role of the compliance function in a separate section and described its responsibilities (including corruption risk management and policy development). It also disclosed the presence of the “Compliance Policy” reflecting the organization of the function. The information did not change over the years.

BNP Paribas also included information about its compliance organization in general. The company reported on the number of compliance officers (over 3000), principles of the organization of the function (including independence), targets and achievements throughout the years, and the character of the role. In particular, the Group ensured independence, the constant growth of compliance, direct access to the Board and CEO, and transition from the management character of compliance to supervision. BNP described compliance organization in general. BNP stated that the compliance organization was involved in the implementation of anti-corruption rules under Sapin II law, but did not disclose the scope of such involvement.

Total reported that its compliance controls were performed, in particular by the “Compliance network and the Ethics Committee, the role of which is to listen and provide assistance” (Total URD 2017, 88). In 2018 and 2019, the wording has changed to “Compliance network, the Ethics officers’ network and the Ethics Committee”. Throughout the years, Total disclosed some specific responsibilities of the compliance function, i.e. the responsibility of the Audit and Internal Control over the conflicts of interests review.

Allianz provided that compliance is organized both on a central and local level and reported on the responsibilities of compliance.

Daimler reported on several resources in different parts of the report. In particular, it referred to the Compliance organization, Integrity and Legal Affairs, and special resources for whistleblowing.

Volkswagen disclosed that it had a compliance organization and a “three lines of defense approach” to the management of all risks (first line – operational risk management and internal control systems; second-line – Group Risk Management function, third line – Internal Audit). In

2018 and 2019, VW's reports featured some more information on the organization (Group and brand officers managed by the Group Chief CO, competence centers), reporting lines of compliance (to the Director of Integrity and Legal Affairs and the Audit Committee of the Supervisory Board), and responsibilities. In 2019, VW announced a new governance policy for compliance functions, and separate resources dedicated to whistleblowing and investigation.

Anti-corruption resources

All companies reported on the involvement of compliance in corruption risk management and policy-making but only AXA and Total reported on anti-corruption resources per se.

AXA only disclosed the appointment of "Anti-Bribery Contacts" within the group. It did not disclose the numbers or responsibilities.

Total placed the information about compliance officers directly in the sections on anti-corruption. Total reported "more than 360 Compliance Officers" in 2017 (Total, 2017, p. 92), "nearly 390 Compliance Officers" in 2018 (Total, 2018, p. 208), and "nearly 370 Compliance Officers in charge of rolling out and running the program at the subsidiary level" in 2019 (Total, 2019, p. 238). The placement of the information in the section on anti-corruption indicated that these are resources dedicated to corruption per se. However, in other cases, Total reported on broader responsibilities of the compliance officers (Total, 2019, p. 97).

Total reported a "three lines of defense" approach in relation to corruption risk.

Involvement of the governance bodies in compliance management

All companies reported on the involvement of governance bodies in the management of compliance risks. However, the information varied widely in amount and coverage. AXA reported that compliance had an access to the Board and Committees. It also disclosed regular reporting on "significant compliance matters" to "the Group Audit Risk & Compliance Committee, the Audit Committee, and to the Board of Directors (as required)" (AXA, 2017, p. 159). The information on AXA's governance bodies involved in compliance management varied across the years. BNP reported extensively on the direct access and regular reporting of compliance to the Board and Committees. Total did not report on responsibilities corruption-related responsibilities of the Board in 2017, but in 2018 and 2019 included the responsibility of the Board to ensure "a system for preventing and detecting corruption and influence peddling is in place" as well as other compliance (but not corruption per se) related responsibilities. It also reported on the involvement of the Audit Committee, Ethics Committee, Governance and Ethics Committee, Strategy and CSR Committee (these names of the committees occurred across reports and years without structure). The information in the reports of German companies was scarcer. Allianz and Daimler mentioned compliance reporting to the Audit Committee of the Supervisory Board and Volkswagen – to the Board of Management.

(c) Information about awareness raising, including training, and communication;

General findings

All companies reported rather extensively on awareness, training and communication. German companies presented on average slightly more information than French companies did. The analysis of the sampled parts of the reports suggested that at least five out of six companies (AXA's status was not clear) had "compliance" and "ethics" training programs and made key policies available. However, companies used different indicators for reporting on the awareness. Five out of six companies (AXA being an exception) reported on training for employees. Some companies treated provided extensive training-related information (BNP) and referred to the GRI training-related indicators (Volkswagen), others provided less information. Four companies out of six reported about training for the third parties (supplier or business partners). AXA and BNP did not explicitly mention training for the third parties. Most of the companies concentrated on compliance/ integrity/ Code of Conduct training and mentioned anti-corruption training only in the passing, but Total and Allianz described anti-corruption training per se in more detail. The modes of training were discussed with varying levels of detail. Some companies mentioned specific events (Total, Volkswagen), others – specific themes (e.g. Daimler mentioned training on whistleblowing). Finally, the way the companies presented information about the character of training varied significantly. BNP reported nothing in 2017 but announced mandatory anti-corruption training in 2018 and launched training for all employees in 2019. Total provided that anti-corruption training per se is "mandatory" but only for "targeted" employees. Allianz, the company with the least information on corruption in general, was the only one to confirm explicitly the presence of mandatory training for all employees throughout the years. None of the companies disclosed the scope of anti-corruption training. Daimler confirmed mandatory training but not on corruption per se. Volkswagen first reported allocation of mandatory training per risk, suggesting that some high-risk employees had anti-corruption training. But this understanding was wrong as in 2019 the company announced that the mandatory anti-corruption training was launched for "specific groups" of employees and some business partners. The companies used vague terms. For example, "specific groups" and "specific risks", "constant" communication, "numerous" measures, and "regular" training. Companies announced launching and improvement of training but not their absence. Overly positive wording, such as "numerous awareness and communications measures launched to ensure that all parties are committed to combating corruption", "extensive training courses", and "completely overhauled" were not supported by clear explanations allowing users to verify the degree of improvements. Variation in the scope of reporting along with vague and overly positive language made information incomparable. An overview of reporting on training and awareness by each company is presented below.

Findings per company

AXA did not report on training and awareness in the sections sampled for the study. A reference to "business ethics" training was made in 2018 URD outside of the sampled sections. This reference related to suppliers and did not explicitly mention corruption.

A majority of the information in the BNP report was dedicated to employees' awareness-raising on compliance matters in general. BNP mentioned posting policies on the intranet. The training program included "identifying, controlling, and managing the reputation risk, the Group's Values, and its ethics standards" (BNP Paribas, 2017, p. 398). BNP listed an increase in the "number and scope of the training programmes for Group employees" as one of the compliance targets. Information on "training policy" related to both compliance and other training and focused on the modes of training provisions. The company reported a special training program about KYC but did not describe it. In 2017, BNP mentioned mandatory anti-corruption training as a goal (without mentioning its status for 2017). The information about compliance training for the third parties was absent. In 2018, the information was largely repeated with some important additions. In particular, the group announced that "online awareness training on corruption risks was launched for all employees" (BNP Paribas, 2018, p. 104). The 2018 report also highlighted the role of Corporate Communications in protecting the reputation of the Company and providing information to employees and third parties. The distribution of the new Code of Conduct (with a specific anti-corruption section) and its publication on the website were mentioned. In 2019, the company repeated information from the previous report adding information about raising awareness about whistleblowing. BNP also announced "numerous awareness and communications measures launched to ensure that all parties are committed to combating corruption" (BNP Paribas, 2019, p. 525), but did not describe any of the measures in detail.

Total reported awareness and training measures for both employees and suppliers. In relation to employees, Total mentioned communication on the Code of Conduct and other compliance-related policies in general, and communication on corruption per se. In particular, Total disclosed that the Code of Conduct and "number of guides, such as Business Integrity Guide and Human Rights Guide" were distributed to the employees and available on the intranet. This information was repeated a few times (Total, 2017, pp. 88, 89, 101). Furthermore, Total disclosed "regular" "awareness-raising and training actions" for all employees and separate training "exposed" functions and Compliance Officers. Total disclosed the requirement for employees to confirm their familiarity with the Code of Conduct. Finally, Total held dedicated events such as Annual Business Ethics Day. In relation to corruption per se, Total disclosed "activities designed to raise awareness among all employees" i.e. an e-learning course being rolled starting in 2011 in 12 languages and a more in-depth module starting in 2015. The latter was "accessible to all employees and mandatory for targeted personal (approximately 30000 employees)". Finally, Total announced "more targeted training activities" for exposed positions and Compliance Officers. Concerning suppliers, Total disclosed "support" in particular through compliance presentations. Total mentioned a few events for suppliers (some of them annually) with anti-corruption training being a part of them. In 2018, the details were added e.g. compliance training for procurement was announced, and communication was mentioned in relation to anti-corruption management commitment. In 2019, further details were added about the distribution of renewed code of ethics and communication about whistleblowing. Furthermore, the amount

of “targeted personal” increased significantly this year, but Total did not explain the change in the amount.

Allianz announced the availability of its Code of Conduct on the Internet and “interactive training programs around the world” on the compliance program. The modes of training included both e-training and in-class. In 2017, 2018 and 2019 Allianz confirmed a mandatory character of its anti-corruption training:

> “Anti-corruption training is compulsory for all employees, with online and in-class trainings delivered in more than 20 languages” (Allianz Group, 2017, p. 7).

Allianz did not further disclose the scope of the training. Allianz did not disclose information on the training for suppliers.

Daimler’s 2017 report contained information about the availability of Daimler’s Integrity Code on the Internet. Daimler also reported on the presence of the “extensive training courses”. The training program was planned annually and covered “the topics of integrity, compliance (including corruption prevention and technical compliance), data protection and antitrust law”. The allocation and mode of training depended on the targeted audience. All employees, except industrial employees, were automatically assigned “mandatory modules relevant for their role and function”. The program also included training due to changes in the position and repeated (app. once in three years) training. In 2017 Daimler announced that a “new mandatory version of the training program was rolled out at the end of the year under review”. It included both in-class and web training using various methods. A special program was developed for managers and members of supervisory bodies. An app was developed for “iOS company owned device”, which provided “among other things” access to information on corruption prevention. Daimler disclosed special communication to employees regarding the results of work of the whistleblowing channels. Daimler aspired to “continuously improve our methods and processes and use a variety of communication measures”. In particular, the company issued a website and a film. Daimler also announced “special courses on integrity and compliance (including corruption prevention) offered to business partners “in line with their specific risks”. In 2018 and 2019 the information was generally repeated with minor changes (e.g. instead of “annual” planning of training it became “regular” planning).

Volkswagen disclosed information regarding the availability of its Code of Conduct. In particular, in 2017 the Code of Conduct was “completely overhauled” and its “readability and practical relevance were enhanced through a clear structure, simpler language and specific examples”. Volkswagen disclosed the availability of its compliance rules on the intranet. “To raise awareness of the importance of compliance” the company included references to the Code of Conduct in the employment contracts. It used “traditional” and “electronic” channels for communication. Concerning coverage of the training Volkswagen disclosed:

> "As part of the hiring process, all new employees receive a copy of the Code of Conduct, and participation in training courses on the Code of Conduct is mandatory for all employees under permanent contract to Volkswagen AG" (Volkswagen AG, 2017a, p. 45).

The generic "compliance" terminology made it impossible to establish whether anti-corruption training took any significant part of the "compliance training" and to whom it was mandatory. The company separately mentioned "sustainability requirements" training for the procurement department and suppliers. The scope of the training was not explicitly described.

The 2018 Volkswagen report largely repeated the 2017 report. In 2019, Volkswagen also disclosed means of communication and training. In this report specific anti-corruption training was mentioned for the first time as mandatory.

(d) Information about general anti-corruption policy and prohibition of corruption
(e) Information about risk-specific policies and procedures (e.g. policies regarding business partners, policies on sponsorships and policies on gifts, etc.)
(f) Information about monitoring and control, including used technical tools

General findings

Information about general anti-corruption policy and prohibition of corruption, information about risk-specific policies and procedures and information about monitoring and controls formed the core of reporting on "policies" and "due diligence". The reporting on these three categories was intertwined, often to such an extent as to make it impossible to differentiate between the categories. Most of the companies reported on the presence of the anti-corruption policy or the anti-corruption program. However, Volkswagen did not confirm the presence of such a policy in 2018. Total and Daimler described the provisions of the anti-corruption policy and program, but the information was not company-specific. Other companies provided very short descriptions or no descriptions at all. The information was inconsistent across the years and companies. In particular, different anti-corruption policies were reported by the same company in the 2017, 2018, and 2018 reports. The companies presented the information over policies, procedures, and controls within broader themes, such as "compliance program", "compliance management system", "ethics policy", "sustainability", and "Code of Conduct". These themes were named differently in different reports. It was not always clear if they included corruption and to what extent. Furthermore, in some cases risk management was presented as a part of the compliance program, in other cases, compliance programs and risk management programs were equated. It was, therefore, not always possible to differentiate between the reporting on "risk management" and reporting on "policies. Limited information on policies, procedures and controls pertained directly to corruption. An overview of reporting by each company is presented below. To avoid further fragmentation of related information, three categories (general policy against corruption, specific policies, and controls) are analyzed together per company.

Findings per company

AXA's 2017 URD lacked a special section on corruption. References to corruption occurred throughout the report. Such mentions were partial and did not provide a full description of the **anti-corruption program, policies, and controls**. According to AXA 2017 URD "Adherence to the Standards and Policies (e.g. Anti-Money Laundering, Sanctions, Anti-Bribery…) is mandatory"(AXA, 2017, p. 159).

AXA also mentioned **Group Compliance and Ethics Guide** as a source of some provisions "to ensure that AXA Group companies and employees have a common understanding of applicable ethical standards, participate in the fight against corruption and conduct business accordingly" (AXA, 2017, p. 391). AXA did not describe the nature and the scope of anti-corruption provisions within the Guide.

In terms of **specific policies,** the company reported having two policies. In the section on the integration of environmental, social, and ethical issues in risk management and product development, AXA reported having the "Policy on business relationships involving sanctioned countries and countries identified as having high levels of corruption or political risk". This "Policy" formalized "the Group policies and procedures with respect to business in or with countries that are subject to international sanctions or embargoes or otherwise identified as high corruption, high political risk and/or tax haven jurisdictions" (AXA, 2017, p. 389). AXA did not disclose the content of the policy. In the section "Business Ethics" AXA reported "a commitment to promote "responsible" lobbying practices when AXA engages with public authorities", formalized in "Public Affairs Charter"(AXA, 2017, p. 391).

In 2017 AXA disclosed general information about compliance internal controls, but no information about specific corruption-related controls.

In 2018 and 2019 reports included short sections dedicated to corruption per se. The names of the section were different in the 2018 and 2019 reports, but the content was almost the same:

> "ANTI-BRIBERY & CORRUPTION (ABC)
>
> To prevent this risk of bribery and corruption, AXA Group has introduced a Group ABC Policy that establishes minimum standards for ABC that must be implemented by AXA entities. This Policy has been regularly updated to take account of new regulations and most notably the recent French law known as "Sapin II". A Group Anti-Bribery Oficer has been designated to design and reinforce the global ABC program at Group level and to guide its implementation across AXA. AXA entities have designated local Anti-Bribery Oficers to implement their ABC programs in accordance with AXA's Policy. Processes and procedures are in place to monitor compliance with AXA ABC standards across the Group" (AXA, 2018, p. 428).

The policy was described in generic terms (e.g. "minimum standards", "regularly updated" and "take account of"). AXA did not report the content of the policy. The Company repeated the inclusion of the anti-corruption provisions in the publicly accessible Group Compliance and Ethics

Code. The new Code was "launched" in 2019: "the content and style of the Code has also been revised to make it more accessible and easier to reference" (AXA, 2019, p. 426). Despite the introduction of a new section on corruption, the amount of anti-corruption information decreased in the 2018 and 2019 reports. In these years, the company **did not report on lobbying and high-risk territories policies**. There were no explanations provided regarding this omission. The information about the risk assessment/ control/ monitoring was largely repeated in the 2018 and 2019 reports.

AXA's anti-corruption reporting was inconsistent over the years. The 2017 report lacked a section on anti-corruption. The anti-corruption section was introduced in 2018. In 2019 the section changed the name, but not the content. Specific policies, listed in 2017, were not mentioned in 2018 and 2019. The descriptions of specific policies and controls were absent or very generic. There was no clear representation of the nature and scope of anti-corruption policy and specific policies.

BNP's 2017 report contained a section "The fight against corruption and money laundering". The description of **the anti-corruption policy** provided that it was "strengthened" in 2017 by adding an Anti-corruption Code of conduct. A reference to Sapin II law was made. The report did not disclose the definition of corruption, or the scope of covered risks, operations and areas. Only one specific policy (on gifts and hospitality) was mentioned but it was neither related to corruption risk nor further described.

Information about the anti-corruption program and policy was also mentioned sporadically in various sections across the report (sections "Code of conduct", "2017 Highlights", "Compliance", "Specific components linked to operational risk", "BNP Paribas' public positions". Section "Code of conduct" reported addition of the Anti-corruption code "drafted in accordance with the law of 9 December 2016 on transparency, the fight against corruption and modernization of economy" (BNP URD 2017, 56). Section "Compliance" partially overlapped with previous sections (it referred to Sapin II law and the new anti-corruption code) and partially added to them:

> "This system is now based on an anti-corruption code of conduct incorporated into BNP Paribas SA's internal regulations, governance, corruption risk mapping, policies, procedures and tools used to control identified risks, internal alert systems, and finally, controls and reports. The measures undertaken, led by GFS, will continue in 2018 to take into account in particular, the new recommendations of the French Anti-Corruption Agency (Agence Française Anti-Corruption or AFA) and the implementation of mandatory anti-corruption training" (BNP URD 2017, 100).

Separate sections contained information about **specific policies** such as "Know your customer", but there was no clarity regarding the presence of any anti-corruption part in this policy. Reference to anti-corruption was made in relation to the "Asset Management Policy", but the provisions of the policy were not described. In the section on "Public Positions" "lobbying" and

"representation vis-a-vis the public authorities" were treated separately from corruption. BNP did not describe the respective policies.

BNP referred twice to anti-corruption **controls** ("policies, procedures and tools used to control identified risks" and "controls and reports"), but the controls were not described. The company planned to "take into account" the recommendations of the French Anti-Corruption Agency without explaining what "taking into account" actually meant. Apart from the sections mentioning anti-corruption controls, multiple sections referred to "compliance" and "risk management" controls. Anti-corruption policy formed a part of "compliance", "risk management" and "public positions" as followed by placing information about corruption in the respective sections, but the role of corruption within each policy was not clear. There were considerable overlaps between the sections and a lack of clear terminology.

In 2018 and 2019, BNP amended the special sections on corruption and money laundering to demonstrate its compliance with the new French Sapin II law. Similar to the 2017 report, the information about policies and controls was scattered throughout the 2018 and 2019 reports. In particular, in 2018, the section "Compliance" repeated part of the section on corruption regarding components of the anti-corruption program (risk mapping, internal controls, etc.). In 2019 similar information was omitted. These reports also mentioned specific processes and policies (Know your customer, Asset management) without relating them clearly to corruption.

To conclude, BNP reporting on policies and controls lacked consistency. In particular, in 2017 lobbying policies were reported separately from corruption, while in 2019 they were integrated. Description of the anti-corruption program (including risk mapping and controls) was placed in the "Compliance" section outside of the anti-corruption section in 2017. In 2018, it appeared in both the anti-corruption section and "Compliance" section. In 2019 it was omitted altogether. The "Anti-corruption compliance code", reported in 2017, turned into an "anti-corruption system, which was incorporated into the BNP Paribas Code of conduct in 2018". Different policies governing special risks of corruption were mentioned throughout the years (gifts and hospitality in 2017, third-party due diligence in 2019). In 2019, the company presented an extension of the risk framework methodology "to cover new processes" without ever mentioning what this framework was covering before. BNP did not define terms and approaches. The information was scattered and partial. The policies were mentioned without descriptions, with partial or generic descriptions. In particular, the scope of coverage of anti-corruption policy in terms of risks, areas, and operations has not been described. BNP did mention but did not describe specific policies and anti-corruption controls. It was not clear how specific policies (e.g. Know your customer or "Conduct" framework) integrated corruption. Constant "revision" and "strengthening" occurred without a description of the respective changes. The lack of processes was never reported while newly introduced measures were reported.

Throughout the reporting years, Total allocated special section(s) for reporting on corruption and reported specifically on anti-corruption standards and controls.

In 2017, Total placed information on **anti-corruption policy** in the section "Preventing corruption". Total explained the need for the oil industry to be "vigilant concerning the risk of corruption" and referred to the Code of Conduct as prohibiting corruption and to the "zero tolerance" principle. Total reported that the anti-corruption program "embodied Group's commitments" in accordance "with the undertakings made by the Group to the United States authorities as part of the monitorship (2013-2016) and with the requirements of the French law of December 9, 2016, on transparency, the fight against corruption, modernization of the economy" (Sapin II law). It listed the following elements of the program: compliance department, risk identification, and assessment, commitment including the management commitment and related communication, awareness raising and targeted training activities, regular reporting mechanisms (including the whistleblowing), application of suitable sanctions (all these elements are described in other parts of this chapter), internal standards, prohibition of "facilitation payments" and control mechanisms.

Total's anti-corruption policy represented "a framework of internal standards, including a policy updated in 2016 that sets out the details of the program and more specific rules relating to representatives dealing with public officials, purchasing/sales, gifts/invitations, donations/sponsorships, acquisitions/divestments, joint ventures, conflicts of interest and Human Resources" (Total URD 2017, 201). The company also reported a prohibition of facilitation payments. Thus, the anti-corruption policy covered specific high-risk matters.

Total described the **anti-corruption controls** as regular reviews:

> "These reviews are followed-up with regards to the recommendations made. In addition, the audits carried out by the Audit & Internal Control Division include, depending on their purpose, controls to check the implementation of the compliance processes" (Total, 2017, p. 201).

The use of terms such as "various activities", "recommendations made", and "depending on their purpose" made the disclosure on controls so generic that it could have been used for the description of any policies in any company.

Total's Universal Registration Document also contained a description of its general compliance program. It was, however, unclear, to what extent the information about "ethics" or "compliance" related to corruption. For example, Total described its specific policies regarding suppliers in multiple sections of the report. It described "Fundamental Principles of Purchasing" as a set of commitments from suppliers in various areas, including the prevention of corruption. For example, Total specifically referred to corruption in relation to "Monitoring responsible practices among suppliers". However, while Total mentioned "prevention of corruption" specifically, it was unclear whether anti-corruption played any significant role in the monitoring in general.

Furthermore, Total's report contained sections such as "Control environment", "Policies and procedures", and "Written commitments". Sections "Control environment" and "Written

commitments" generally repeated the provisions of the anti-corruption disclosure. They also contained generic provisions, which relation to corruption was unclear.

In the 2018 and 2019 reports, the anti-corruption disclosure became more extensive. In 2018, the Company announced that it "has implemented a robust, regularly updated anti-corruption compliance program that has been rolled out throughout the Group". The program was based on "seven pillars": "management commitment or "tone at the top", risk assessment, adoption of internal standards, awareness raising and training of the employees, feedback of information, including the whistleblowing system, mechanisms for assessing and monitoring the implementation of the program, and imposition of disciplinary sanctions in the event of misconduct" (Total URD 2018, 208).

In the section on internal standards, Total described the "Anti-Corruption Compliance Directive" (which dated back to 2016):

> "As an essential element of the Group referential, the Code of Conduct sets out the behavior to be adopted, in particular with regard to the question of integrity. It prohibits corruption, including influence peddling, and advocates "zero tolerance" in this area.
>
> The Code of Conduct is complemented by a regularly updated set of anti-corruption standards. The Anti-Corruption Compliance Directive, which was updated in 2016, recalls the main principles and organizes the roll-out of the anti-corruption program. It deals, among others, with commitment, training and awareness raising, accounting and book-keeping, the assessment system and whistleblowing mechanisms. This directive is complemented by rules that deal with more specific subjects in order to prevent the various identified risks. These rules relate, among others, to the due diligence process, i.e., the analysis and assessment of third parties before entering into business relations with them. This analysis is performed according to criteria that differ depending on the risk level associated with the type of third party. These provisions are incorporated in the supplier and service provider qualification process, which was harmonized in 2017-2018 in connection with the gradual roll-out of a shared database within the Group.
>
> Standards have been drawn up to deal with other high-risk areas, such as gifts and hospitalities, which have to be registered and approved by the line manager above given thresholds; conflicts of interest, which must be declared to the line manager; compliance programs implemented within joint-ventures; and human resources-related processes such as recruitment" (Total, 2018, p. 208).

Total, thus, included "influence peddling" in the definition of corruption but did not provide the full definition of corruption. The section also mentioned a few new points (e.g. due diligence of suppliers, book-keeping) and described in a few details some policies (e.g. related to gifts), but omitted any information about some policies mentioned earlier, in 2017, e.g. donations/ sponsorships, purchasing/sales. The description of internal controls also varied across the years. In 2018, the regularity of controls, mentioned in 2017, was not reported anymore. However, the

resources engaged in the controls were discussed. The general sections on suppliers repeated the provisions of 2017.

In 2019, Total largely repeated the provisions of 2018 and reported some positive developments in its anti-corruption "internal standards", in particular "in January 2020, the Group adopted a single rule to standardize the anti-corruption due diligence processes, to be performed before entering into business relations with third parties (suppliers, representatives dealing with public officials, agents with a commercial activity, beneficiaries of donations, contributions or sponsorship, counterparties in corporate transactions, etc.). In addition, an IT supplier qualification tool, which incorporates the due diligence process, was developed to gradually be rolled-out within the Group".

To conclude, Total dedicated a separate section to corruption. However, the reported information was partial (e.g. definition of corruption was absent, descriptions of specific policies were absent or partial) and inconsistent (specific policies appeared and disappeared in the reporting, sections disappeared and changed names). Only positive information was reported (Total disclosed new processes but not their prior absence, evaluative terms were used such as "robust"). The relevance of some information for corruption was not clear.

Allianz's 2017 Annual report contained general sections such as "Compliance Program" and "Risk management", which related to multiple policies (data and consumer protection, economic and financial sanctions, combating corruption and bribery, money laundering, and financing of terrorism) as well as multiple risks (environmental, social, human rights, employee, compliance/ anti-corruption and bribery). Section "Compliance Program" contained a specific reference to the "**Anti-Corruption Program":**

> "There are legal regulations against corruption and bribery in almost all countries in which Allianz has a presence. The global Anti-Corruption Program of the Allianz Group ensures the continuous monitoring and improvement of the internal anti-corruption controls. More information on the Anti-Corruption Program can be found in the Sustainability Report on our website at www.allianz.com/sustainability" (Allianz SE, 2017, p. 17)

The 2017 Non-financial report contained some additional information about the anti-corruption program. In particular, the report announced that the anti-corruption and anti-bribery policy covered both employees and third parties across all Allianz locations. Allianz disclosed that "the program and policy prohibit the offer, acceptance, payment, or authorization of any bribe or other form of corruption, be it with the private sector or with governments" (Allianz Group, 2017, p. 7)

Allianz also presented information concerning the **"Compliance Management System".** The elements of the system were not named in one place, but the disclosure included information about commitments, compliance department and compliance responsibilities, risk assessment and management, training, and whistleblowing channel. There was no clear confirmation that

the Code of Conduct prohibited corruption but the anti-corruption policy was presented as "detailing" the Code.

Allianz disclosed the presence of **several specific policies within the Anti-Corruption Program**: "the Allianz Anti-Corruption Policy; the Allianz Gifts and Entertainment Policy; the due-diligence requirements for third parties; and the requirements for maintenance of books and records" (Allianz Group and Allianz SE Combined Separate Non-Financial Report 2017, page 7). The policies were not further described.

The information over **internal controls** was presented in relation to the whole compliance management system (which related to such different aspects as corruption, fraud, economic sanctions, etc.). The description did not indicate the nature of controls and did not differentiate between internal controls, risk management and investigations. Allianz used vague undefined terms such as "regularly", "mitigating activities", and "maturity model". The positive aspects were presented while there was no information on the possible gaps.

In 2018 and 2019, the amount of anti-corruption information in both annual reports and non-financial reports was reduced. The Annual Reports contained only information about the presence of the guidelines for "antibribery and anti-corruption". Non-financial reports of 2018 and 2019 did not contain anymore the information about particular policies for high corruption risk operations. The company did not explain whether policies ceased to exist, changed, or were not considered material anymore.

The information on compliance systems and controls remained largely the same as in 2017 (with variations described elsewhere in this chapter), but the structure of information presentation has changed undermining year-to-year comparison.

To conclude, Allianz presented the information on anti-corruption policies and controls inconsistently. A significant share of the information was generic.

In 2017, 2018 and 2019, Daimler's reported the presence of an **anti-corruption program:**

> "Our anti-corruption compliance program is based on our comprehensive Compliance Management System. The program is globally valid and particularly consists of an integrated risk assessment process that takes into account internal information such as a unit's business model and external information such as the Corruption Perceptions Index from Transparency International. The results of our risk assessment analyses form the basis of risk-based measures for avoiding corruption in all business activities (e.g. reviews of business partners and transactions) and measures to ensure that special care is taken in contacts with authorities and public officials. Our risk minimization measures focus in particular on sales companies in high-risk countries and business relationships with wholesalers and general agencies worldwide" (Daimler AG, 2019, p. 215).

The section described the anti-corruption policy and program shortly. The description mentioned **a few specific areas** where "risk-based measures" were taken.

It was possible to establish that Daimler's Integrity Code covered corruption – the company specifically mentioned the prohibition of corruption in the Code.

Furthermore, the company mentioned "eliminating corruption" as a goal of its **compliance management system**, which also targeted cartels and technical regulations compliance. The compliance management system was group-wide and contained such elements as compliance values, compliance goals, compliance organization, compliance risks, compliance program, communication and training, monitoring and improvement. Some of these elements were further described in the report. However, not all such descriptions referred to corruption per se. The descriptions, thus, were mostly generic and did not reflect anti-corruption arrangements per se. As such, it was not possible to establish which parts of Daimler's compliance management related to corruption. In particular, sections on relationships with business partners did not contain any references to corruption

To conclude, Daimler's reports contained a specific section on anti-corruption. The concrete measures and rules against corruption were partially described. The descriptions pertaining to the "compliance program" lacked corruption-related specifics.

Volkswagen's 2017 Annual report mentioned an **anti-corruption policy:**

> "In addition to the Code of Conduct, the Volkswagen Group's compliance framework incorporates the anti-corruption guidelines among others, including checklists and the express prohibition of facilitation payments, as well as guidelines on competition, antitrust law and anti-money laundering. Organizational instructions on dealing with gifts and invitations as well as on making donations also apply across the Group" (Volkswagen AG, 2017b, p. 64).

The 2018 reports did not mention an anti-corruption policy at all. In 2019, the anti-corruption policy again appeared both the Annual Report and the Sustainability Report. Volkswagen described its Code of Conduct, which "overhauled" in 2017. The Code applied to the whole group, underlined personal responsibility and established key aspects of behavior. Throughout the years different aspects of the Code were described but Volkswagen never reflected on the anti-corruption provisions of the Code. Given that the anti-corruption part of the Code was not disclosed, it was impossible to make conclusions regarding the applicability of the Code to corruption.

Corruption was further mentioned in relation to "compliance framework", "sustainability model", "sustainability in supplier relationship", "Code of Conduct for Business Partners", "risk management", "internal control", "compliance organization", and "compliance management system". These concepts sometimes related to corruption, but reporting on them overlapped considerably, they were all described in vague, overly positive terms (they were often "reinforced", "enhanced" and "revised" but without any details) and it was often impossible to derive corruption-related specifics from general clauses.

In 2017 Volkswagen described the anti-corruption policy shortly, in 2019 the description was absent. The information was not consistent: in 2017 Volkswagen mentioned that its compliance framework included anti-corruption guidelines. But the 2019 report suggested that the first company-wide policies were only developed in 2019. The company mentioned but did not describe some **specific policies** (such as gifts, and conflicts of interests).

“Compliance management system”, “compliance organization” “compliance framework” and “sustainability model” were reported to include risk management and internal control, Code of Conduct, contractual provisions regarding the Code for employees, performance review being related to compliance, training and awareness, Compliance department, whistleblowing, voluntary commitments, relationship with business partners. Volkswagen described these elements in generic terms, in relation to all non-financial risks, including such diverse risks as environmental risks, anti-trust, anti-corruption, anti-fraud and human rights.

Volkswagen described in some detail its relationship with suppliers, where corruption-related compliance was one of the principles. In particular, the company reported on the presence of the Code of Conduct for Business Partners, contractual provisions regarding compliance, checks, self-declarations, audits and training. The disclosure did not describe the anti-corruption specifics.

In 2017 corruption was mentioned in the **section on risk management and internal controls,** where the company referred to COSO requirements and “reinforcement” of internal controls, but never described internal controls and due diligence (in the sense provided by the Directive and the Commission’s guidelines). This section applied to all risks in general and it was unclear how exactly corruption was managed. In 2018 and 2019, the information on internal controls was reduced further, as they were just mentioned as present within the “compliance management system”.

To conclude, Volkswagen shortly described the anti-corruption and bribery policy in 2017 and mentioned it without description in 2019. Volkswagen mentioned various specific policies in 2017 (gifts and donations) and 2019 (gifts and conflict of interests) without relating them to corruption. Volkswagen’s Annual Reports and Sustainability Report contained multiple sections, mentioning corruption, but these sections were not dedicated to corruption per se. Eventually, it was difficult to establish to what extent they related to corruption. In different years, Volkswagen referred users to different general parts of its reports for information on corruption, but these parts sometimes did not include any references to corruption at all, but related to “compliance” and “ethics”. The role of corruption management in bigger compliance and sustainability systems was not clear. Volkswagen did not describe controls in relation to corruption. The information about internal controls pertaining to “compliance management system” in general was very generic and scarce.

(g) Information about whistleblowing, advice, and feedback mechanisms

All companies mentioned whistleblowing policies and/or channels. However, in some cases (AXA, Allianz and Volkswagen) the information about whistleblowing was mentioned only in one or two

annual reports and omitted in other reports. It might be that companies omitted the information altogether or placed it outside of the sampled parts of the reports. The information on whistleblowing was very diverse. In general, the reporting by German companies was more detailed than reporting by French companies, but the scope was incomparable. The reporting was inconsistent (with various indicators used across companies and years), overly positive ("fairly, swiftly and sensitively") and lacked details and descriptions (only presence was stated in many cases). Companies did not use similar indicators and did not report on the absence of processes or gaps.

AXA mentioned the presence of whistleblowing policies at the level of local entities in 2017 and 2018 but not in 2019. BNP announced a revision of the "Whistleblowing" procedure in 2018 but did not mention it elsewhere. Daimler consistently described a "Globally valid policy" for whistleblowing throughout the years. Volkswagen referred to whistleblowing guidelines within the sampled sections only in 2019. Total and Allianz referred to the whistleblowing channels rather than policies.

Two companies mentioned the obligation to report. AXA (2017) stated that whistleblowing is encouraged, but not mandatory. Volkswagen (2019) announced an obligation of the members of the management to report on violations

Regarding retaliation, confidentiality, and anonymity, reports varied. While the "no retaliation" policy was widely mentioned, not all companies mention confidentiality and anonymity. Some companies reported the possibility of anonymous reporting, but not the confidentiality arrangements (Daimler). Other companies reported on confidentiality, but not on anonymity (Total).

While Daimler and Volkswagen described in detail the whistleblowing channels, including 24-hour hotlines and special ombudsmen, BNP, Total, and Allianz referred to the presence of a channel without further description and AXA did not mention particular channels at all.

(h) Information about investigation-related policies and processes;

The information about investigations varied from the absence of information (BNP) to commitments to investigate (AXA) to description of involved resources and principles (Daimler). German companies Volkswagen and Daimler reported more information on investigations than other companies.

AXA mentioned investigations in 2017 in relation to the whistleblowing:

> "The AXA Group examines all escalated or identified violation and misconduct cases with the objective of ensuring an adequate response to any alleged, suspected or confirmed situations (which could constitute a breach of AXA's values or policies)" (AXA, 2017, p. 395)

BNP did not mention investigation procedures or principles at all.

Total only mentioned the right to conduct investigations on the part of the Board of Directors in 2018 and 2019.

Allianz claimed to conduct investigations without disclosing the details.

Daimler provided the most detailed information about investigations in general including the presence of a special investigation department, its availability and its approach to investigation:

> "A globally valid corporate policy aims to ensure a fair and transparent approach that takes into account the principle of proportionality for the affected parties, while also giving protection to whistleblowers. In an effort to increase trust in our whistleblower system and make it even better known within the Group, we have established a continuous communication process that includes the periodic provision of information to employees about the type and number of reported violations, as well as the staging of informational and dialogue events at our locations". (Daimler AG, 2017, p. 229)

Volkswagen did not mention investigation in sampled sections in 2017 and 2018, but in 2019 the company provided a thorough overview of the investigation of whistleblowing complaints. The company announced protection for affected parties, a presumption of innocence, preliminary examination of every case and other principles. In particular, it reported:

> "Strict confidentiality and secrecy apply throughout the investigation process. Reports are investigated fairly, swiftly and sensitively" (Volkswagen AG, 2019b, p. 66)

Furthermore, Volkswagen reported the presence of a special investigation office.

(i) Information about the incentives, sanctions, and contract clauses supporting the anti-corruption rules

Finally, the reporting on the inclusion of corruption in the employment relationships also varied significantly between the companies.

One out of six companies (Volkswagen) included detailed information on the inclusion of the obligation to comply with the code of ethics in the employment contracts. The company also reported on the Code of Conduct compliance being a part of performance review but did not disclose the details. Total reported that human rights compliance was included in the performance review but mentioned nothing about corruption. Other companies (AXA, BNP Paribas, Allianz, and Daimler) did not include corruption-related information about employment contracts and performance review in the reports. Three companies confirmed the presence of sanctions for corruption violations (BNP, Total, and Daimler). None of the companies disclosed the policy on corruption and incentives.

9.4.2.1.4.3. Reporting on the outcomes

For reporting on outcomes, several categories are used, which are based on the Directive, the Commission's Communication, the reporting frameworks, and the initial data analysis:

(a) Information on public legal cases;
(b) Information on the outputs of the awareness raising and training;
(c) Information on the incidents of corruption;
(d) Information on the changes in operations to minimize the risk of corruption;
(e) Information on the sanctions and incentives application;
(f) Information on the outputs of controls, checks, audits, external assurance.

(a) Information on public legal cases

Only one company (Total) clearly described public legal cases, related to corruption, and their development throughout the years. The company also stated that no cases had a potential of a material impact on the Group's financial situation or profitability" (Total, 2018, p. 85).

Volkswagen discussed "claims under the US Sherman Antitrust Act, the Racketeer Influenced and Corrupt Organizations Act" which did not directly relate to corruption.

While not reporting on the presence of corruption-related cases, the companies also did not report on their absence, thus, there is no clarity regarding the absence of such cases. Reporting on legal cases in general probably was done in sections, which were not sampled because they do not refer to corruption.

(b) Information on the outputs of the awareness raising and training

Even though all companies reported something on training, the information was inconsistent and incomparable among them and only positive information was presented.

BNP Paribas was the only company to confirm in 2018 the completion of anti-corruption training and training on the Code of Ethics by all employees. At the same time, BNP reported no information about the outputs of training for suppliers. In contrast, Total reported information on both employees and suppliers, but the information on corruption training was mixed with information on other compliance/ sustainability matters and no benchmarks were provided. It was, therefore, impossible to establish the proportion of employees and suppliers who participated in the anti-corruption training. The information was also not precise, as the company used "approximately" and "around". Information, presented by Daimler and Volkswagen was similarly undermined by a lack of specific information about corruption (information was reported for "compliance" training in general), lack of benchmarks (i.e. lack of total amount of employees and suppliers), and use of imprecise calculations.

Allianz and AXA reported only on training for managers and Board members or "leaders" in Allianz's case. In general, several companies presented specific data on training for managers (BNP and AXA in 2019, Allianz in 2018, Daimler in 2018 and 2019), but without clear benchmarks. Volkswagen claimed that the data percentage of those who completed "compliance" training was "not collectable" and the information of their roles "not collectable" and impossible to disclose under the local laws.

(c) Information on the incidents of corruption

Among all companies, only Daimler reported on the number of corruption incidents discovered through whistleblowing. This information was not further detailed. Volkswagen presented information on the number of all whistleblowing reports. It deemed further specifications to be confidential. Other companies did not report the respective information at all.

(d) Information on the changes in operations to minimize the risk of corruption was not reported.

(e) Information on the sanctions and incentives application

Total reported on the application of incentives. In particular, it indicated the designation of CEO Mr. Patrick Pouyanne as a co-Chairman of PACI as an achievement of one of the CSR performance goals leading to maximum (15%) variable compensation. Total did not disclose respective policies regarding incentives related to corruption.

Daimler reported on the application of sanctions in broad terms without reporting specific cases related to corruption. Other companies did not disclose either sanctions or incentives applied.

(f) Information on the outputs of controls, checks, audits, external assurance

Reporting on the outcomes of due diligence, checks and assessments varied significantly. BNP, Total and Volkswagen reported on suppliers' checks. However, BNP reported on "ESG assessment" and only in 2019. Total reported on results of anti-corruption assessment every year. Volkswagen reported on "sustainability assessment". The numbers, specified by companies varied significantly (hundreds in case of Total and thousands in case of Volkswagen and BNP). Furthermore, Volkswagen presented data inconsistently (in 2017 and 2018 – the number of supplier locations checked and in 2019 amount of self-disclosures and audits). Accordingly, the information was not comparable. The information about customer checks was presented only by BNP and information about self-assessments by the operational entities – only by Total. In a similar vein, information about external assessments was presented by BNP, Total, and Daimler. Each company referred to a different type of assessment.

9.4.2.1.5. The reporting frameworks

The Directive provided that member states should establish that "undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon". The Directive included "non-financial key performance indicators relevant to the particular business" as a content item along with the risks, policies and due diligence and outcomes, but did not establish the KPIs. The reporting frameworks provided the KPIs. Thus, the frameworks and KPIs are analyzed together. The analysis demonstrated that some of the companies referred to the reporting frameworks, in particular, the Global Reporting Initiative. However, the frameworks were used selectively and inconsistently. The key performance indicators were scarce and lacked benchmarks. All

companies tended to report on the anti-corruption program together with other “compliance” topics, where the scope of corruption-related information was not clear.

Some of the companies referred to the reporting frameworks, in particular, the Global Reporting Initiative. BNP Paribas, Total, Daimler, and Volkswagen referred to the Global Reporting Initiative. For example, Daimler referred to GRI as follows:

> “The information provided in this report is presented in conformity with the GRI Standards of the Global Reporting Initiative, insofar as this complies with applicable law” (Daimler AG, 2017, p. 215)

AXA did not refer to the reporting frameworks to report on corruption. Allianz used GRI only in its “Sustainability Report”, which was separate from its non-financial reporting under the Directive and did not qualify as the non-financial reports under the Directive.

Furthermore, some companies referred to other reporting frameworks. For example, BNP Paribas claimed its commitment to the United Nations Sustainable Development Goals; the 10 Principles of the United Nations Global Compact; the United Nations Guiding Principles on Business and Human Rights; the internationally-accepted OECD Guidelines for multinational enterprises; the internationally-accepted standards of human rights, as defined in the International Bill of Human Rights; the core labor standards set out by the International Labor Organisation. Total claimed its compliance with United Nations Universal Declaration of Human Rights, the fundamental conventions of the International Labor Organization, the United Nations, the Global Compact and the OECD Guidelines for multinational enterprises.

Despite mentioning the frameworks, in particular GRI, none of the companies coherently applied any of the frameworks, mentioned by the Directive or the Communication, for the preparation of their non-financial disclosure under the Directive.

AXA did not refer directly to GRI and also used mostly narrative information.

BNP Paribas’ 2017 report contained a “Table of concordance with the list of environmental, social and governance information required under article 225 of the Grenelle II Act”, further versions of the URD (2018 and 2019) contained “Extra-financial performance statement and vigilance plan” among the content index. They also contained a “Table of concordance with GRI, ISO 26000, UNEP FI, Global Compact, Sustainable Development Goals, Principles for Responsible Banking and TCFD”. “Extra-financial performance statement and vigilance plan” table in 2018-2019 reports specified where “Information on the effects of company’s activity with respect to respect for Human rights and fight against corruption and tax evasion (L225-102-1 and R.225-105 of the French Commercial Code” can be found. The URD 2018, for example, referred the users to pages 522, 567-562. The “Table of concordance with GRI, ISO 26000, UNEP FI, Global Compact, Sustainable Development Goals, Principles for Responsible Banking and TCFD” referred the users to pages 521 and 513 for information on the “Fight against corruption and tax evasion”. Thus, the users were referred to different pages for reporting under the NFRD and reporting under the reporting frameworks. Despite so many references, BNP actually used only one indicator for

reporting on corruption and tax evasion – the “Proportion of employees who have received training on ethics and conduct”. Other indicators were used partially if at all (i.e. it was impossible to identify any of the indicators which directly and completely corresponded to one of the frameworks).

Despite referring to GRI in general, Total did not refer to specific indicators while presenting its anti-corruption information. The most important quantitative information, presented by Total, referred to the anti-corruption training. Total reported information on both employees and suppliers, but the information on corruption training was mixed with information on other compliance/ sustainability matters and no benchmarks were provided

Allianz's annual and non-financial report did not include direct references to GRI indicators and presented narrative information on corruption.

Daimler did not refer to particular GRI indicators. Information, presented by Daimler lacked specific information about corruption (but rather “compliance” training) and benchmarks (i.e. lack of total amount of employees and suppliers).

Volkswagen was the most consistent in the application of the GRI framework. For reporting on corruption Volkswagen used six indicators “103-1 Explanation of the material topic and its Boundary”, 103-2 “The management approach and its components”, “103-3 Evaluation of the management approach”, “205-1 Operations assessed for risks related to corruption”, “205-2 Communication and training about anti-corruption policies and procedures”, 205-3 “Confirmed incidents of corruption and actions taken”. The reporting on the first three indicators was done within the general notions of “compliance” and “integrity”. The use of these notions allowed to omit the differentiation between the approaches to corruption, competition and other matters. Volkswagen’s reporting on the indicator “GRI 205: Anti-Corruption 2016 205-1 Operations assessed for risks related to corruption” included “no breakdown by location (distribution is immaterial) and risks identified (confidential information)”. Reporting on indicators “205-2 Communication and training about anti-corruption policies and procedures” and 205-3 “Confirmed incidents of corruption and actions taken” did not contain the information about corruption per se because the information “was not collectable” and “confidential”. For example, instead of confirmed corruption incidents, Volkswagen reported in 2018:

> “A total of 2,920 reports were registered throughout the Group in 2018. All substantiated reports have been, or will be, investigated, and any misconduct penalized” (Volkswagen AG, 2018b, p. 20).

In 2019, the indicator 205-3 was not used, even though the Annual report mentioned that “3,174 pieces of whistleblower information were registered across the Group (excluding China) at the four investigation offices (2018: 1,560)” (Volkswagen AG, 2019a, p. 66)

9.4.2.1.6. The quality assurance

The Directive established that auditors “should only check that the non-financial statement or the separate report has been provided” (Recital 16). The Directive, however, allowed the

Member States to fine-tune the quality assurance obligations. Germany did not use this leeway, but France attempted to enhance the Directive's provisions by requiring the auditors to check the "sincerity" of the reported information for the largest companies.

The Big Four auditors have audited the non-financial statements of six French and German companies. Ernst & Young audited Total, PWC audited BNP, AXA, Volkswagen and Allianz, and KPMG – Daimler. There was no questioning of the inconsistency of the used indicators across the years and companies by the respective auditors. Different quality assurance standards did not provide for different results.

Across the years and reports, the auditors stated their responsibility for limited assurance. In the case of France, the auditors specifically mentioned that they were not responsible for commenting on compliance with the law, including the law on anti-corruption. In all six cases, the auditors stated that the reports were in line with the regulatory provisions. In the case of France, the auditors also confirmed the "fairness" (la sincérité).

9.4.2.2. What are the outcomes?

9.4.2.2.1. The outcomes

The Impact Assessment and other documents used various concepts to describe the desired and expected outcomes of the Directive. This section compares the outcomes of the Directive with the status quo indicated in the Impact Assessment, in particular, it discusses implications for "sufficiently material, balanced, accurate... and comparable" reporting.

9.4.2.2.2. Material information

Materiality formed one of the key notions of the Impact Assessment, but the Directive did not mention it. At the same time, the Directive mentioned "to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity" as a primary criterion for the information inclusion. The Commission's Communication connected the materiality to the "necessary for an understanding" criterion and the notion of "impacts". This section combines "materiality" and "relevance" in one group of outcomes due to their conceptual proximity. The "to the extent necessary for an understanding" standard implies relevance for the understanding. The "comprehensive but concise" in the Commission's Communication is related to the focus on material information and the absence of immaterial, generic information. The "essential", "proportionate", "significant", and "useful" notions also show proximity to materiality. The analysis suggests the following implications for materiality.

Firstly, the companies used the notion of materiality episodically. Some companies did not use the notion of materiality at all in relation to the corruption (Daimler, Allianz). Some companies used it inconsistently over time (Total, AXA, Volkswagen). The companies used the notion of materiality to identify matters at different levels. For example, BNP used "materiality" criteria to define broad risks such as "ethics & compliance". Total used "materiality" to define the materiality of particular legal cases. BNP was the only one to describe in detail the assessment of

materiality. Other companies did not provide such information. Other notions, used by the companies to explain the inclusion of the information, were inconsistent and were not based on any disclosed assessment methodology ("key", "top inherent", "principal").

Secondly, the scope of the information provided by the companies varied significantly. Differences in the presented information suggested radically different understanding of materiality among the companies and even across the reporting years.

Thirdly, the companies largely failed to disclose their company-specific risk profiles. The descriptions of "corruption" or "bribery" risks were not company-specific but common for whole industries and even whole economies.

Fourthly, only a few companies disclosed the outcomes of the application of the policies. Most of the companies inconsistently described the outputs such as the amount of trained personnel. Total was the only company that disclosed corruption-related legal cases. At the same time, Total considered corruption-related legal cases not to be material. Only Daimler disclosed the number of incidents of corruption but did not describe them. To conclude, performance-related information was not reported.

Fifthly, the companies mentioned anti-corruption policies and described them in generic terms. It was impossible to establish to which operations and geographical locations the policies were applied and what due diligence processes they established. Furthermore, in the absence of a description of the company-specific business model, risks, and outcomes, the description of policies did not allow to establish their potential effects and effectiveness. Thus, the companies did not actually explain "what a company does, how and why it does it".

Sixthly, the descriptions concentrated on resources and commitments that did not fall directly within the scope of the Directive, which required disclosure of the "policies" and "due diligence".

Finally, the "generic" wording and boilerplates were abundant.

To conclude, the companies concentrated on the reporting items beyond those the Directive considered relevant, such as the commitments and the resources. The policies were mentioned but rarely described. The reporting on risks and outcomes was generic. Without reporting on risks and outcomes it was impossible to assess the policies. The companies did not consistently describe the company-specific materiality and impacts of particular issues and policies. Provided information varied so much across the companies and years as to raise questions about materiality assessment.

9.4.2.2.3. Balanced and fair information

The Impact Assessment recognized that companies did not provide balanced information. In particular, the companies focused on positive aspects and presented information on policies rather than performance and risks. The same issues persisted after the adoption of the Directive. The companies concentrated on their positive performance. None of the companies disclosed the absence or weakness of certain policies and controls. At the same time, the development of

policies and controls has been reported in overly positive terms, for example, “robust”, “strengthening” “considerably improved”, “reinforced”, “enhanced”, “fairly, swiftly and sensitively”, “numerous awareness and communications measures”, and “extensive training courses”. The use of these terms also substituted facts with views and interpretations.

9.4.2.2.4. Accurate information

The Impact Assessment established insufficient accuracy of the information. The analysis suggests that reporting on corruption was not accurate after the Directive. Firstly, the companies did not establish the conceptual and geographic boundaries of their reporting. None of the companies defined “corruption” or “bribery”. The notion of corruption was merged with broader notions of “compliance” and “ethics”. The notions of “policies”, “risks” and “outcomes” were not defined. The companies did not use consistent terminology (e.g. “material”, “principal”, “significant” risks). Some companies used internal jargon and professional terminology (e.g. “ReFLEX Group framework” (Total), “GFS” (BNP), “self assessment, independent on-site reviews” (Allianz)). Secondly, the use of KPIs for corruption-related disclosure was poor. The companies almost did not use quantitative indicators. The indicators varied across the companies and reports. Apart from inconsistency, the indicators were not accurate. All companies regularly substituted specific information about corruption with information about “compliance” or “ethics”. The companies did not provide benchmarks (e.g. companies presented information on those employees, who completed training, but not on the general number of employees), the companies approximated amounts.

9.4.2.2.5. Comparable/ consistent information

“Comparability” and “consistency” were mentioned from the first chapters of the Impact Assessment to the transposition laws. The Directive itself referred to comparability and consistency. Disclosure on corruption lacked a) comparable (if any) definition of corruption; b) comparable (if any) definition of materiality; c) comparable scope within each of four aspects (business model, risks, policies, and outcomes); d) comparable frameworks and KPIs; e) comparable benchmarks and methodology. The information about corruption varied not only across the companies but across the reports of the same company (time consistency).

9.4.3. Access

9.4.3.1. How are the requirements applied?

Under the Directive, the member states could allow separating the financial and non-financial reporting. Germany and France followed different patterns in this regard. France sided with the stricter approach, while Germany allowed for separate reporting. The member states established the timing of disclosure accordingly i.e. together with the management report in France and within four months from the annual report in Germany. The member states did not establish a format or structure of reporting beyond the Directive’s provisions. This section describes the main findings regarding the efforts needed to find the appropriate reporting vehicle and the corruption-related information within the vehicle.

The analysis demonstrated that in France, the anti-corruption information of the three largest companies was placed in their "(Universal) Registration Documents" (URDs). The timing of non-financial disclosure was, thus, aligned with the publication of the yearly financial information. However, the search for the "management report" entailed considerable efforts since the "management reports" were not labeled as such. In Germany, it was not possible to search for a specific document due to the provided by the law flexibility concerning the vehicle of reporting. In all three cases (Volkswagen, Allianz and Daimler) the timing of publication of non-financial information seemed to align with the publication of financial information, but the way it was published was not always aligned with the investors' routines. The information about corruption was spread throughout long reports, published in (locked) .pdf formats, which prevented fast extracting of the information for comparison. All six companies published non-financial information in both national languages and English language. A summary of findings for each company is presented below.

A search for "AXA management report" as well as "AXA annual report" returned a page "Annual and Interim Reports" in the "Investors" section. The page features documents related to the latest financial year. From this page, an archive page with documents starting from 1997 is available. The pages feature "Integrated reports", "Half Year Financial Reports", "Annual Reports", "US statutory statements" and other documents. There is no "management report" available as such among the published documents. In 2017, 2018 and 2019, the information about corruption was included in AXA's (Universal) Registration Documents (RD/ URD). The content index of the Registration Documents did not specifically refer to the "management report". In the AXA's 2017 RD the mentions of corruption appeared in various parts of the annual report (e.g. in 2018, on pages 172, 177, 185 of Chapter 4 "Risk factors and risk management", pages 390, 391 of Chapter 6 "Shares, share capital and general information", pages 400, 402, 428, 431, 434, 439 of Chapter 7 "Corporate responsibility"). In 2019, there was a special subsection "Anti-Bribery & Corruption" in section "Business ethics" of chapter 7, which contained 5 sentences. References to "corruption" and "bribery" also occurred outside of the dedicated section. The information about corruption was not indexed in the content index. The information about corruption had no particular structure.

A search for "BNP Paribas management report" returned the page "Annual Reports and CSR" on the BNP website for investors in the subsection "Financial reports". There was no "management report" per se. The information about corruption was included in AXA's (Universal) Registration Documents (RD/ URD). The content index of the RDs did not specifically refer to the "management report". The 2019 report, for example, contained 26 references to "corrupt**" spread across 16 pages of the report (50, 59, 104, 430, 432, 433, 493, 516, 525, 533, 549, 578, 580, 586, 587, 615). There was no reference to corruption in the content index. The BNP 2017 report contained a "Table of concordance with the list of environmental, social and governance information required under article 225 of the Grenelle II Act", further versions of the URD (2018 and 2019) contained "Extra-financial performance statement and vigilance plan" among the content index. They also contained a "Table of concordance with GRI, ISO 26000, UNEP FI, Global Compact, Sustainable Development Goals, Principles for Responsible Banking and TCFD". "Extra-

financial performance statement and vigilance plan" table in 2018-2019 reports specified where "Information on the effects of company's activity with respect to respect for Human rights and fight against corruption and tax evasion (L225-102-1 and R.225-105 of the French Commercial Code" can be found. The URD 2018, for example, referred to pages 522, 567-562. At the same time, "Table of concordance with GRI, ISO 26000, UNEP FI, Global Compact, Sustainable Development Goals, Principles for Responsible Banking and TCFD" referred to pages 521 and 513 for information on the "Fight against corruption and tax evasion". References to "corruption" appeared extensively beyond mentioned pages.

The first link, returned in Google search for "Total SA management report", was the page "Reports and publications", containing a large set of various documents for shareholders, including annual reports and publications, quarterly results, investor presentations, annual shareholders' meetings documents and individual shareholders' publications. The page "Reports and publications" belonged to the "Investors" section of the website and the subsection "Annual reports including annual financial reports". None of the documents was named the "management report". Google search for "Total SA annual report" returned the link to the "Annual financial reports". This page contained "Universal Registration Documents" or "Registration Documents" including annual financial reports, Forms 20-F, and Factbooks. The information about corruption was included in Total's (Universal) Registration Documents (RD/ URD). The content index of the URDs did not specifically refer to the "management report" but there was a special section on non-financial performance. A bulk of the information about corruption was placed within this section, but there were also multiple references to corruption elsewhere. For example, Total's 2019 URD contained a subsection "Fighting corruption and tax evasion" within the section on non-financial performance. The content index specifically referred to this section. This section had a quite clear structure. At the same time, the URD in general contained 89 mentions of "corrupt**" on 24 pages spread across the report (e.g. pages 14, 15, 18, 88, 94, 97, 101, 107, 147, 152, 154, 155, 177 and others).

French companies also published multiple other reports, in particular "integrated reports" which sometimes referred to corruption. However, disclosure under the Directive was made in the (Universal) Registration Documents which were identified as financial documents.

In Germany, three companies followed three different approaches.

Allianz Group published a separate "Allianz Group and Allianz SE Combined Separate Non-Financial Report" in 2017 and then proceeded with the inclusion of the same report in the annual report. However, the report was still called a "separate report". The information about the corruption was, thus, presented in both annual reports of Allianz SE and Allianz Group as well as in the combined report, which was attached to the annual report of Allianz Group only. Furthermore, Allianz has published a "Sustainability Report", which was (unlike in the Volkswagen case) different from the "Non-Financial report": the annual report referred to both, but only "Allianz Group and Allianz SE Combined Separate Non-Financial Report" was expressly mentioned as being published under the Directive. The information about corruption was spread across the annual reports, the non-financial reports, and the sustainability reports. This chapter

analyzes only annual and non-financial reports as published under the Directive. In 2019 reports, there were 13 mentions of corruption spread across three pages. There was a separate section dedicated to corruption.

Daimler included non-financial information, including the anti-corruption information, in its annual reports starting from 2017. “Non-financial report” was integrated into the annual report as a separate chapter along with the “Combined management report” chapter. The information about corruption was included in both the “Management report” and “Non-financial report” chapters. The information about corruption was spread across the reports. For example, in 2019 the information about corruption appeared both in the “Combined management report” and the “Non-financial report” on 14 pages spread across the report (105, 143, 149, 212-216 and others). The “Non-financial report” contained a separate section on anti-corruption, but the information about corruption also appeared elsewhere.

Volkswagen published a separate “Sustainability Report”. The “Management report” section of the annual report provided a link to the “Sustainability Report”, mentioning that it contained disclosure under the Directive. Both the annual report and “Sustainability Report” mentioned corruption. In 2017 and 2018 the Sustainability Reports contained the “GRI index” with information on GRI indicators, but this information was published separately, outside of the non-financial report, in 2019. Even though Volkswagen published a separate “Sustainability Report”, its annual report still contained corruption references. For example, 2019 annual report 8 references to corruption spread across multiple pages (65-68, 142, 169, 175). The 2019 Sustainability report did not include a section on corruption. Instead, the corruption references were spread across the report, mostly within its “Compliance” and “Integrity” subsections of the “Responsibility” chapter.

9.4.3.2. What are the outcomes?

The positioning of the information about corruption varied across the years and companies. In multiple cases, there were no specific references to corruption in the context index. In some reports, there were no specific sections on corruption. Even when such sections were present, the information on corruption was spread across the reports.

The comparability, consistency and accessibility of reporting were undermined significantly by multiple documents and different strategies of reporting. Despite the higher clarity of the French regulation regarding the vehicle of disclosure, the lack of clearly prescribed structure and format turned the collection of information in both cases into a time-consuming exercise. In Germany, the situation was worse due to the presence of several documents (with varying names) applicable to each company. There was no clarity regarding the materiality of the information about corruption published beyond the legally prescribed vehicles.

9.4.4. Users

9.4.4.1. How are the requirements applied?

The practice of disclosure under the Directive in Germany and France was primarily investor-directed. Out of the six largest companies, four published the non-financial reports within the "investors" sections of their websites (either within the annual reports or separately) and two published the non-financial report in a separate section (Allianz and Volkswagen).

At the same time, there were no particular noticeable efforts to provide the anti-corruption information in a simplified manner, easily accessible to different categories of users. The anti-corruption information in both Germany and France was presented in the reports rather sporadically i.e. it is spread throughout the documents (see the section "Accessibility"), without clear indicators (see the section on quality). The terminology used was unlikely to appeal to the average non-professional users (e.g. companies refer to COSO and IDW AsS 980 standard).

9.4.4.2. What are the outcomes?

It is possible to suggest that the disclosing companies primarily target shareholders (investors) rather than consumers, citizens and other users mentioned in the Directive and related documents.

9.5. Conclusion

The analysis has identified the following trends concerning the disclosers of the information. Firstly, in both member states, the official lists of the covered entities were absent. It was, thus, impossible, to establish the number of the reporting entities. In Germany, the Directive achieved a minor if any increase in the quantity of the reporting entities. In France, it was impossible to establish the quantity of the reporting entities based on the existing documents. In both countries, the clarity regarding the expected disclosures was undermined by the lack of the lists of the reporting entities and the lack of information regarding the parents/ subsidiaries. According to the earlier statements of the European Commission, the NFRD covered around 6000 companies and groups across the EU (European Commission, 2018). The new estimates suggest that the Directive reached over 11000 companies (European Commission, 2021b).

Concerning the information, the analysis highlighted an inconsistent use of five sets of requirements. The companies disclosed the information about the materiality and the impacts partially and inconsistently. The companies did not report on the reasons for the inclusion of the particular information in the reports. The companies did not provide the definitions of corruption and did not establish the scope of the anti-corruption reporting. The reporting on corruption was often merged with the reporting on the "compliance risks" or other broader categories. The information on the risks and business model was scarce and not company-specific. The information on the commitments and resources prevailed over the description of the general and special anti-corruption policies. The companies reported on completely different outcomes and outputs. The companies relied on different KPIs even when using the same reporting frameworks. The quality assurance failed to reflect on the drawbacks and limitations irrespective of the standard used. These patterns had negative implications for the outcomes. The materiality of the information was not clear due to the limited disclosure concerning the impacts and materiality,

the inconsistency of the reported information and the lack of clear boundaries of the "corruption" reporting. The companies used overly positive language and reported mostly on the positive aspects, undermining the fairness and balance. The information was not accurate as the companies did not define the boundaries of "corruption" reporting and did not provide benchmarks. The comparability and consistency were affected by the differences in the definition of corruption, as well as in the scope, KPIs and benchmarks.

In terms of access, the companies used different vehicles for reporting. Overall, over three years twenty-four reports were analyzed for this chapter (3x3 French URDs, 3 annual reports of Daimler which disclosed information inside the annual report, 3 Volkswagen annual reports and 3 "sustainability reports", 3 Allianz annual reports and 3 Allianz consolidated non-financial reports). It was difficult to find an appropriate vehicle. The corruption-related information was spread through the reports. The companies used different formats and benchmarks across the years. The sampled companies disclosed the information in English. Overall, however, the accessibility of the information was poor due to the multiplicity of the vehicles and formats.

In terms of the users, the placement of the information within the financial documents indicated a general orientation towards the investors. Furthermore, it was obvious that extensive analysis of the companies' characteristics and search for the information in the reports was easier for the professional users with potential implications for the goal of satisfying all users.

The table below provides an overview of the application of the Directive's requirements by the companies. The table serves as a reference point and does not demonstrate the complexity and inconsistency of reporting.

	AXA	BNP Paribas	Total	Allianz	Daimler	Volkswagen
Parent company reports	Yes	Yes	Yes	Unclear	Yes	Yes
Discloses list of entities consolidated for anti-corruption reporting	No	No	No	No	No	No
Refers to "materiality" or "impacts" as an inclusion criterion in relation to corruption	Inconsistent	Inconsistent	Inconsistent	Refers to effects	No	Inconsistent
Defines corruption and/ or bribery	No	No	No	No	No	Inconsistent
Reports on broader notions which relation with corruption is not always clear	Regulatory-related risks, etc.	Reputational risk, ethics & compliance, etc.	Ethical misconduct, compliance, etc.	Regulatory compliance, etc.	Compliance, etc.	Compliance, ethics, etc.
Reports on the business model in the sampled sections	No	No	Generic, inconsistent	No	No	Generic, inconsistent
Reports on principal corruption-related risks/ high-risk operations	No	No	Generic	No	Generic	No
Reports on "compliance" risk-management and assessment tools	Yes	Yes	Yes	Yes	Yes	Yes
Reports on the practices for corruption risk mapping and management	No	Partially	Unclear	Unclear	Unclear	No
Reports on commitments	Yes	Yes	Yes	Yes	Yes	Yes
Reports on compliance resources	Yes	Yes	Yes	Yes	Yes	Yes
Reports on anti-corruption resources	Yes	No	Yes	No	No	No
Reports on involvement of governance bodies in compliance management	Yes	Yes	Yes	Yes	Yes	Yes
Reports on training for employees	No	Yes	Yes	Yes	Yes	Unclear
Report on training for the third parties	No	No	Yes	No	Yes	Unclear
Reports on general anti-corruption policy and prohibition of corruption	Inconsistent	Inconsistent	Yes	Yes	Yes	Inconsistent
Reports on specific policies related to corruption	Inconsistent	Inconsistent	Yes	Inconsistent	Yes	Inconsistent
Reports on internal (compliance) controls	Yes	Yes	Yes	Yes	Inconsistent	Inconsistent
Reports on whistleblowing policies/ channels	Inconsistent, only policy	Inconsistent	Only channels	Only channel	Yes	Inconsistent
Reports on investigation-related policies and processes	Inconsistent	No	Inconsistent	Inconsistent	Yes	Inconsistent

Reports on anti-corruption in employment contracts	No	No	No	No	No	Yes
Reports on sanction policy for anti-corruption	No	Yes	Yes	No	Yes	No
Reports on the policy on incentives in relation to corruption	No	No	No	No	No	No
Reports on public legal cases	No	No	Yes	No	No	No
Reports on outputs of the awareness raising and training	Only managers	Only employees	Yes	Only managers	Generic	Generic
Reports on changes in operations to minimize the risk of corruption	No	No	No	No	No	No
Reports on incidents of corruption	No	No	No	No	Yes	No
Reports on sanctions and incentives application	No	No	Incentives	No	Sanctions	No
Information on outputs of controls, checks, audits, external assurance	No	Inconsistent	Inconsistent	No	Inconsistent	Inconsistent
Reports using GRI	No	Yes	Yes	No	Yes	Yes
Uses GRI indicators for corruption	No	Inconsistent	No	No	No	Inconsistent
Quality assurance performed following the national standard	Yes	Yes	Yes	Yes	Yes	Yes
Reports on corruption in one document	Yes	Yes	Yes	No/ Inconsistent	Yes	No
Reports on corruption on consequent pages	No	No	No	No	No	No
Places information on corruption in investor-related section or sustainability section	Investor	Investor	Investor	Sustainability	Investor	Sustainability
	AXA	BNP Paribas	Total	Allianz	Daimler	Volkswagen

Table 2. Overview of application of the Directive’s requirements by company

10.Chapter X. Findings, discussion and conclusion

10.1. Introduction

In the nineties, growing amount of research has demonstrated profound negative effects of corruption and suggested the need to curb both demand and supply side of corruption (Abed & Gupta, 2002; Mauro, 1995; Vogl, 1998). The OECD Convention has promoted corporate liability for companies and their officials for offering bribes and other favors to government officials (Pacini et al., 2002). However, the regulatory and enforcement efforts targeting the supply side of corruption have still been lacking (Hock, 2017).

Corporate anti-corruption transparency has been promoted to complement other regulatory strategies aiming to curb supply side of corruption and promote fairer practices by multinationals in emerging markets (Gordon & Miyake, 2001; Wilkinson, 2006). In the early days of corporate corruption-related transparency, it has been advanced primarily through voluntary multi-stakeholder initiatives, such as the United Nations Global Compact and Global Reporting Initiative (Gordon & Miyake, 2001; Wilkinson, 2006).

Despite these efforts, corporate anti-corruption transparency has remained rather limited (Barkemeyer et al., 2015; Day & Chambers, 2011; Hess, 2009). At the turn of the decade, the financial crisis highlighted the importance of the environmental and social performance of the companies and the role of governments in promoting "sustainable growth" (Steurer, 2010). The literature on corporate non-financial transparency holds that, unlike other stakeholders, the governments can exercise coercive pressure to promote transparency (Clemens & Douglas, 2006). The "coercive pressure" hypothesis, rooted in the institutional theory, has also become prominent in the literature on corporate anti-corruption transparency (Issa & Alleyne, 2018; Sari et al., 2020). Continuing corruption and poor state of corporate anti-corruption transparency have prompted calls for government-led regulation on this matter (Barkemeyer et al., 2015; Carr & Outhwaite, 2011; Hess, 2009; Joseph et al., 2016). It was suggested that state-led regulation of corporate anti-corruption transparency will solve "the problem of corporations not reporting on such indicators" as well as "the problem of the development of these indicators" (Hess, 2009, p. 787).

In 2012, France was the first country to mandate corporate anti-corruption transparency under Grenelle II law. Yet, Grenelle II was not secured by the sanctions, targeted a small amount of companies and was soon amended due to the adoption of the Directive 2014/95/eu. Other EU member states, including Germany, did not mandate anti-corruption transparency. In Germany, the anti-corruption transparency was encouraged by the voluntary German Sustainability Code (German Council for Sustainable Development, 2017).

The Directive 2014/95/eu had been developed by the European Commission since 2010 and adopted by the European Parliament and Council in 2014. It has been seen as a game-changer in the world of non-financial disclosure (Eccles & Spiesshofer, 2015). The Directive has had a special

relevance for corporate anti-corruption transparency. Environmental and employee-related transparency had already existed within the EU regulatory framework under the Accounting Directives (European Commission, 2013a). In contrast, anti-corruption transparency was newly introduced by the Directive 2014/95/eu. Aiming to cover a significant amount of companies across Europe, the Directive has promised to become the first large-scale state-led corporate anti-corruption transparency regulation (European Commission, 2013a). The Directive was adopted among concerns regarding weakening anti-corruption efforts in the EU (euobserver, 2017; Příborský, 2012). While transparency is often seen as a complimentary regulatory strategy, in the light of the EU weak regulation and enforcement against corporate corruption, transparency was supposed to play a key role in curbing corruption.

In the later years, the Directive 2014/95/eu has been increasingly criticized. The effectiveness of the Directive was questioned (European Commission, 2020; Monciardini et al., 2020). Accordingly, the EU proposed a new Directive to overcome the deficiencies of the Directive 2014/95/eu. Newly introduced CSRD is supposed to fix many shortcomings of the older NFRD. Analysis of anti-corruption provisions of the NFRD can shed light on the future of CSRD and its "new old" approach to anti-corruption. Nevertheless, corporate anti-corruption transparency under the Directive 2014/95/eu has attained little if any research attention. This study aims to improve knowledge about design of NFRD when it comes to anti-corruption transparency.

This chapter summarizes findings and discusses theoretical and practical implications of the study. It provides an overview of findings based on research questions proposed in Chapter I. In particular, it discusses theoretical implications of the study in the light of regulatory change and regulatory design research, scholarship on architecture of targeted transparency systems and coercive pressure hypothesis. It also discusses practical implications in the light of adoption of CSRD and in the light of the EU better regulation agenda.

10.2. How can corporate anti-corruption transparency be explored analytically?

Nexus between regulation and corporate anti-corruption transparency can be explored at three levels: (1) at the level of correlation between regulation and transparency based on coercive pressure hypothesis; (2) at the level of transparency architecture based on the literature on regulated transparency systems; (3) at the level of regulatory design based on the literature on regulation, regulatory change and regulatory design.

Firstly, it is possible to correlate regulation and corporate anti-corruption regulation. Institutional theory and, in particular the notion of coercive pressure, suggest that regulation is likely to change organizational transparency practices. Accordingly, existing literature explored correlation between the regulation and enforcement on the one side and corporate anti-corruption transparency on another side. The researchers have come to conflicting conclusions. Some suggested that regulation and enforcement play a significant role in fostering corporate anti-corruption transparency, others disagreed (for conflicting accounts see Healy & Serafeim,

2016 and Sari et al., 2020). The search for correlation between regulation and corporate anti-corruption transparency did not take into account the design of corporate anti-corruption regulation.

Secondly, the relationship between regulation and corporate anti-corruption transparency can be explored based on the literature on targeted transparency systems. The literature on targeted transparency systems explored a variety of transparency regulations (Fung et al., 2007). This literature focused particularly on "architecture" of transparency system (Fung et al., 2007). It highlighted the most important elements of transparency architecture such as the match between the identified risk and the scope of transparency architecture, suitable standardized factual information, and enforcement. It suggested that regulatory design is extremely important within all components of transparency process: the disclosers, the users, the information and the access (Weil et al., 2013). The literature on regulated transparency systems did not explore corporate anti-corruption transparency.

Thirdly, the relationship between regulation and corporate anti-corruption transparency can be explored from the perspective of regulatory change and regulatory design. Regulation is often promoted in order to overcome situations where "uncontrolled marketplace will, for some reason, fail to produce behavior or results in accordance with the public interest" (Baldwin et al., 2012, p. 15). It is, thus, assumed that regulation is guided by the assessment of the scope of the market failure (Baldwin et al., 2012). However, more refined view on regulation suggests that the scope of the regulatory change is not always aligned with the scope of the market failure (Baldwin et al., 2012). Regulators are subject to multiple pressures (Hood et al., 2001). Regulators engage in different strategies to reconcile pressures and keep their legitimacy (Baldwin et al., 2012). As a result, regulatory change is not entirely based on objective assessment of the scope of market failure (Baldwin et al., 2012). Thus, the instruments proposed by the regulators may be removed from the goals of regulation (Howlett et al., 2015). Accordingly, regulatory design of transparency system may fail to fit the risk it targets and architecture of transparency system may be compromised (Fung et al., 2007).

Literature on regulation suggests that there are four patterns of regulatory change. Replacement is the targeted adjustment of regulatory goals and instruments (Howlett & Rayner, 2013). In contrast, random movement of goals and instruments may be represented by layering, drift and conversion (Howlett & Rayner, 2013). Layering is "a process whereby new elements are simply added to an existing regime without abandoning previous ones, typically leading to both incoherence amongst the goals and inconsistency with respect to the instruments and settings used" (Kern & Howlett, 2009, p. 395). Drift "occurs when new goals replace old ones without changing the instruments used to implement them" (Kern & Howlett, 2009, p. 395). Conversion involves keeping goals intact while instruments are changing (Kern & Howlett, 2009, p. 395).

Layering, drift and conversion may undermine the coherence and consistency between the goals and the instruments (Howlett et al., 2015). The incoherent goals and instruments result in the absence of a solid program theory i.e. the description of how and why the regulation is going to achieve its goals (Pawson, 2006). Regulatory failure may occur due to incoherence of the regulatory goals and instruments "just as a bridge can fail from inaccurately assessing the load-bearing strength of the material used in construction" (Howlett, 2009, p. 75). Thus, reference to the regulatory design help explaining why regulators may fail to draw suitable transparency architecture. In the light of development of state-led initiatives to improve corporate anti-corruption transparency, such as NFRD and CSRD, it is relevant to analyze the nexus between regulation and corporate anti-corruption transparency from perspective of the regulatory design.

10.3. How does corporate anti-corruption transparency emerge as a part of the EU regulatory framework?

The idea of the non-financial transparency has emerged from the EU sustainability agenda at the end of the 2000s (European Commission, 2010, 2012). The need for economic growth to overcome the crisis coexisted with the need for long-term orientation and sustainability (European Commission, 2010). "Transparency" was seen as a "smart" option to meet the objectives set by the sustainability agenda without referring to harder command and control and taxation strategies (European Commission, 2011a, 2012, 2013a).

The origins of corporate anti-corruption transparency seem indistinct from the analysis of the regulatory documents preceding the Directive. A review of the Impact Assessment, accompanying the Directive 2014/95/eu, suggests that the idea of corporate anti-corruption transparency can somewhat be traced to two sources: international frameworks, to which the Impact Assessments referred and which promoted corporate anti-corruption transparency; and French anti-corruption transparency regime. France was known to promote and influence the Directive (Kinderman, 2020). Yet, corporate anti-corruption transparency have not been pushed by the developments in the EU member states in general. Most of the member states did not have corporate anti-corruption transparency provisions and concentrated their efforts on environmental and diversity transparency (European Commission, 2013a). The emergence of corporate anti-corruption transparency can potentially be also attributed to the criticism around the EU anti-corruption efforts, but the Directive-related documents do not mention this (European Commission, 2011a, 2012, 2013a).

The Impact Assessment did not support the idea of including anti-corruption in the scope of non-financial transparency by any research specifically dedicated to anti-corruption or anti-corruption transparency. The first reference to anti-corruption occurred in the public consultations, in which the European Commission formulated one question in relation to anti-corruption (European Commission, 2011b). In total, sixty percent of stakeholders supported anti-corruption transparency. Later, the Impact Assessment suggested that "vast majority of stakeholders" have agreed to inclusion of the anti-corruption information (European Commission, 2013a). Judged by

the amount of references and questions, anti-corruption transparency has attained least attention in public consultations in comparison to the environmental, employee-related and human rights matters.

The Impact Assessment did not explicitly relate anti-corruption transparency to corruption reduction and did not explain its mechanisms. It aimed to "encourage" companies "to better identify potential risks relating to human rights, board diversity or anti-corruption", which may lead to "overall positive impact on companies' performance" (European Commission, 2013a, p. 40). These goals have been less precise than the goals "to support better employment relations and contribute to reducing risks and costs associated with labour conflicts" and "to increase the level of environmental awareness and, as a consequence, contribute to better environmental performance" indicated for other areas of transparency (European Commission, 2013a, pp. 37, 41).

The analysis of the Directive demonstrated an absence of definition of corruption in the regulatory documents. In the process of regulation, the notion of "corruption" changed to the notion of "anti-corruption and bribery". The transposition documents in the member states focused on the "fight against corruption" instead of corruption. The Directive-related documents provided no explanations regarding such change.

Based on the analysis of the Directive-related documents, the emergence of corporate anti-corruption transparency can be attributed to drift rather than to the targeted analysis of the market failure and eventual replacement of the policy goals and instruments. According to Kern and Howlett (2009), "drift occurs when new goals replace old ones without changing the instruments used to implement them". In case of the NFRD, the non-financial transparency is being extended to corruption risk without documented analysis of this risk. Instead, corporate anti-corruption disclosure is being added on top of the existing aspects of non-financial transparency and based on the research on this aspects. Neither the Impact Assessment, nor other documents address problematics of the anti-corruption transparency, in particular its inherent negative nature and sensitivity which make corporate anti-corruption transparency different from environmental or social transparency (Barkemeyer et al., 2015; Everett et al., 2007). The transparency system under the Directive 2014/95/eu does not cover specific risks as the notions of corruption and bribery remain undefined throughout the development of the Directive. The literature on anti-corruption initiatives suggests that "anticorruption policies should be supported by clearer corruption concepts" and the anti-corruption strategy should be tailored "to specific types of corruption" (Jancsics, 2019). The literature on regulated transparency systems suggests a need to adjust transparency regulations to specific risks they target (Fung et al., 2007).

It might be suggested that corporate corruption and transparency have been connected in the EU documents other than the Impact Assessment. The Impact Assessment rooted non-financial transparency regime in two documents – the Single Market Act II and the Green Paper on Corporate Governance (European Commission, 2011a, 2012, 2013a). However, none of these

documents mentioned corruption or assessed the corruption-related risks. Accordingly, this study suggested that the link between corporate corruption and transparency was not established beyond assuming that transparency can bring positive effects for the "overall performance" of the companies. There was no assessment of corruption risk or nesting of the new regulation in literature on corruption. Transparency was not tailored to the specific corrupt practices or the scope of corruption risk.

10.4. How do the EU institutions and the EU member states design corporate anti-corruption transparency through regulatory goals and requirements?

10.4.1. Regulatory goals: layering, displacement and incoherence

The Impact Assessment by nature described the goals in most detail. However, the Proposal and the Directive have also quite extensively mentioned goals in the recitals. Goals have further been discussed at the level of the member states.

The development of the Directive's goals have not been characterized by targeted adjustment (replacement). Instead, the goals have been "layered".

At the first stage contradicting goals of increasing transparency, on the one hand, and reducing cost and keeping flexibility, on the other hand, were introduced. The Impact Assessment made an attempt to balance increased transparency with the need for flexibility and reduction of regulatory burden. This resulted in the introduction of "minimum harmonization" standard. The Impact Assessment was able to clearly articulate the cost of each regulatory option but it did not benchmark regulatory options against a specific set of transparency goals. Each regulatory option was assessed against a different set of transparency goals. These goals included different degree of transparency (e.g. "enhanced transparency"; "increased transparency", "sufficient level of transparency"), different descriptions of information (e.g. "material", "comparable", "comprehensive", "sufficient clarity", etc.), different scope of users, and different dimensions of availability. As time progressed, the understanding of transparency-related goals was changing further as the articulation of goals pertaining to each component of transparency suggested.

In relation to the disclosers, the Impact Assessment recognized the risks associated with the activities of the large companies and the need to "level playing-field across the Internal Market". It, however, covered only 42% of such companies based on the need to limit the administrative burden. Limited scope of coverage was explained by the need to reduce the administrative burden rather than by the assessment of the risks or a clearly defined transparency goal. The Impact Assessment has introduced the notion of "certain large undertaking". The later documents never explicitly abandoned the goal to cover "certain large undertakings" despite covering less and less large companies.

In relation to the information, the amount of articulated goals has surpassed forty. The documents referred to multiple notions such as "materiality", "accuracy", "relevance", and

"comparability". Different chapters of the Impact Assessment used different notions and different degrees of their achievement ("increased", "improved", "more" as well as "adequate" and "sufficient"). The Explanatory Memorandum repeated only part of the goals, used by the Impact Assessment. The Memorandum also introduced new goals. The information goals in the Proposal differed from the information goals in the Impact Assessment and the Explanatory Memorandum. For example, the Proposal did not refer to "materiality" and "quality" despite Impact Assessment emphasizing these goals. The Proposal and the Directive relied on the same goals with the exception of "useful" information, introduced by Article 2 of the Directive. The Communication explained only part of the terms, used in the Directive, introduced new ones, and defined some goals by referring to the others. In the member states, different parties mentioned different information-related goals. Germany introduced information-related goals which never appeared in the Directive, such as "proportionate" and "essential". France also referred to "essential" information as well as "significant relevance". There was no attempt to reconcile the goals articulated at different levels or abandon some goals.

In relation to the access and the users, the documents aimed to satisfy multiple users despite clear differences in the interests of the users, identified in the public consultations. In particular, while non-governmental organizations and public authorities demonstrated contrasting opinions about corporate anti-corruption transparency, the documents aimed to satisfy both types of users with the same set of requirements. Similarly, the goals of improving "investors' access" and "consumers' access" have been articulated simultaneously. The documents did not discuss information-gathering and decision-making routines of different users. More specific goals, such as reduction of compliance costs, have increasingly become more prominent and subordinated users-related and access-related goals. For example, the choice of vehicle and timing of disclosure was assessed in terms of compliance costs rather than in terms of increased transparency.

Layering of the goals has had three manifestations: (1) ambiguity of the transparency-related goals; (2) (temporary) abandonment or introduction of transparency-related goals; and (3) change in the goal importance.

The EU and national documents introduced ambiguous transparency goals. Within the disclosers component goal ambiguity was introduced by reference to "certain large undertakings". This notion was formally preserved, but interpreted differently in the Impact Assessment, Proposal and Directive. In relation to the information component, goal ambiguity manifested itself in the use of multiple adjectives and degrees. The description of the "access" and "availability" varied in degrees and recipients ("available to the public", "easier and more widespread investors' access to key, useful information", "investors' access", "provide consumers with easy access to information", "made available to the public and authorities by undertakings across the Union"). It was unclear whether notions, associated with the "information", especially "consistency" and "comparability", "timeliness", "accuracy" and others applied also to the access. In relation to the users of the information, the Impact Assess referred to various notions. Different groups

(“investors”, “consumers”, “society at large”, “public”, “local communities”, etc.) changed their roles across the documents.

Goal ambiguity was associated with (temporal) abandonment or introduction of transparency-related goal at different stages of the Directive’s development. Within the information component, the Impact Assessment indicated provision of material information as the key goal of the new regime. However, the notion of materiality did not appear in either the Proposal or the Directive. The Commission’s Communication and the member states formulated and explained materiality in different terms. Within the access component, the need to ensure public availability of the information, consumer’s access and investor’s access appeared unevenly in the documents.

Transparency-related goals, including goals articulated with regards to disclosers, information, access and users, have been characterized by growing ambiguity. In contrast, flexibility and cost reduction goals did not change at the EU level. “Harmonization” was announced as *raison d’etre* of the Directive in the first chapters of the Impact Assessment, but has become secondary in the Proposal which prioritized flexibility over harmonization. In contrast to transparency-related goals and harmonization, flexibility and cost reduction goals have become clearer at the level of the member states. In Germany, in particular, the government dedicated one third of the Draft Law to cost calculation while not mentioning “transparency” any single time. France indicated “flexibility” among scarcely communicated goals of the new regulation. In none of these cases a clear effect of the cost-reduction goal on initially articulated transparency goal was revealed. Initial goals of increasing transparency and raising transparency to a high level have been kept intact due to the layering dynamics.

Goal ambiguity, goal (re-)introduction and change in the importance of the goals were in line with the goal displacement theory. Goal displacement theory suggests that major goals of the organization are often substituted with the goals which aim to increase the legitimacy of the organization (Huizinga & de Bree, 2021). Originally used to explain performance of organizations in general, the goal displacement theory has been lately advocated as a tool to analyze policies and programs (Jung, 2014). Goal displacement “is the phenomenon by which the original and often radical or idealistic goals of an organization are displaced by the inferior goals required to maintain the organization and keep its leadership in power” (Huizinga & de Bree, 2021, p. 868). Goal displacement theory, in particular, refers to the ambiguity of the goals as a linchpin of the goal displacement. In the organizational science, the goal ambiguity is characterized by “the amount of interpretive leeway” associated with the goal (Rainey & Jung, 2015). The risk of goal displacement is particularly high in the presence of a high goal ambiguity (Rainey & Jung, 2015). As demonstrated by the analysis of the Directive, goal displacement dynamic can be observed at a micro-level of changing goals within one regulation. The research on the effects of the goal ambiguity in the organizational literature suggests that goal ambiguity and goal displacement are associated with worse performance of the organizations (Huizinga & de Bree, 2021). Goal displacement theory suggests that organizations do not openly abandon the goals, however,

their actions become increasingly tailored to more specific goals which displace more ambiguous goals (Huizinga & de Bree, 2021). The analysis of the NFRD goals demonstrates a similar dynamics: increasingly ambiguous goal of improving transparency is being displaced by more tangible goals pertaining to flexibility and cost reduction.

Layering and goal displacement have led to the incoherence of the goals. Transparency-related goals have not necessarily contradicted each other, but the single understanding of transparency was missing due to the shifts in goals within four components of transparency. Multiple conceptualizations of transparency have emerged. At the EU level, the goal of increasing transparency has been formally kept from one document to another but it kept becoming more ambiguous with introduction of new elements. The references to flexibility and compliance costs has been more and more prominent. Eventually, in Germany, the goal of cost reduction was articulated while the notion of transparency was omitted altogether. In France, the prioritization of flexibility was less obvious, but flexibility informed part of provisions of the French Law, including lack of sanctions and limitation of certain provisions to the largest companies.

10.4.2. Regulatory requirements: conversion and reduction

The development of the Directive's requirements can be characterized by reference to the notion of conversion. According to Kern and Howlett, conversion occurs when "new instrument mixes evolve while holding old goals constant" (Kern & Howlett, 2009, p. 395). As earlier observed, the goals of the Directive have not been kept constant, but the goal to achieve "high level" of transparency persisted (even though it was understood differently across the documents). Requirements, however, were not explicitly connected to specific goals. As a result, the implemented set of requirements has been significantly removed from the originally indicated requirements. The Directive has largely returned to the regulatory requirements which have been characterized as "regulatory failure" in the Impact Assessment.

In case of the disclosers, there were three significant reductions in the scope of application at the EU level and one additional reduction at the level of the member state (France). The first reduction occurred within the Impact Assessment, which only covered large entities with more than 500 employees instead of the "large companies" discussed in the public consultations. The second reduction occurred between the Proposal and the Directive, when the PIE criteria was introduced. The third reduction was localized to the Directive and the Commission's Communication. The Directive introduced the need for the sectoral adjustment of the reporting indicators, but the Communication did not establish the sectoral indicators. In France, one more reduction occurred, as the French Law failed to establish the sanctions for the failure to comply with the disclosure provisions and, thus, compromised "mandatory" character of the regime.

In case of the information, a clear reduction occurred within three out of five categories of instruments – the inclusion criteria, the use of the reporting frameworks and the quality assurance.

The Impact Assessment associated regulatory failure with the use of “filters” such as “where appropriate” and “to the extent necessary”. The Proposal still used a few filters in relation to the specific content items. However, it relied on a general inclusive “fair and comprehensive” standard. The Directive returned back to the use of “to the extent necessary for an understanding” filter, adding to this a provisional possibility to exclude the “prejudicial” information if it does not affect “fair and balanced” understanding of the information. The Directive, furthermore, created a set of localized filters which applied to specific content items, including “relevant”, “where appropriate” and “principal”. The Commission’s Communication actively used the filters but largely failed to explain them. The filters were also used by the transposition laws. Germany, in particular, used filters to limit the scope of disclosure. For example, German Law provided for the disclosure of the “most likely” risks and interpreted “non-financial key performance indicators relevant to the particular business” as “the most important non-financial performance indicators, which are significant for the business activity of the corporation”. Importantly, the requirement to include the information “to the extent necessary for an understanding... of the impacts” did not specify the nature of the impacts, raising a controversy over the focus of the Directive on the financial materiality of the non-financial information. French Law also used multiple filters. Differences in the interpretation of the inclusion criteria were clear at the level of the member states.

The Impact Assessment acknowledged multiplicity of the reporting frameworks and their “principle-based” nature as contributing to the “regulatory failure”. However, later chapters of the Impact Assessment were less critical of the frameworks and incorporated the “international frameworks” as a part of the regulatory solution to (partially) overcome the lack of the EU standard (Option 3). The scope of reliance on the frameworks was not clear from the Impact Assessment. The Directive allowed the member states to let companies rely on any “national, Union-based or international frameworks”. The list of the frameworks was, thus, increased, while the scale of “reliance” was not defined. The Communication provided for the possibility of the partial use of the frameworks. The member states used the approach of the Directive by allowing to use any frameworks. Importantly, the Directive introduced its own “framework” – the Commission’s Communication, which, however, did not reconcile other frameworks. The member states allowed the companies to use “national, Union-based or international frameworks” without establishing an obligation to use a particular framework or to use the frameworks consistently.

The Impact Assessment suggested that the lack of quality assurance presented an “information gap” of the pre-Directive regime, which created “prejudice for the reliability of the information”. The Impact Assessment and the Proposal introduced rather unspecific “consistency” check, but the Directive abandoned it and delegated the decision on the quality assurance to the member states. France adopted a “fairness” check for its largest companies, while Germany did not introduce any quality assurance standard.

Two other categories of the information-related instruments (reporting items and corruption as a theme of reporting) were originally rather broad and scarcely defined. An analysis of the

reporting frameworks demonstrated significant differences in the understanding of “corruption” and “bribery” for the purposes of reporting. The frameworks used from one to over twenty indicators, which could have been directly or indirectly related to the Directive’s scope. The Commission’s Communication and the transposition laws did not clarify the scope. Furthermore, the reporting items were interpreted and transposed differently by the member states.

The requirements related to the access have been initially scarce as the Impact Assessment did not discuss such aspects as the language of disclosure or the simplification of the access through the use of a database and referred to the format/ structure only in the annexes. In the course of the development of the regime, the decisions on the vehicle and the timing of disclosure were also delegated to the member states. France did not use the possibility to separate the financial and non-financial reporting, but Germany did. The semi-structure, introduced by the Directive, was undermined by the Communication and transposition laws, which abandoned the connection between reporting on the business model and reporting on particular theme, such as anti-corruption and bribery.

The “users”-related instruments have never appeared in the regime as it failed to specify its target audience and consider appropriate interests and capacities.

Tables 1 and 2 demonstrate the differences between the articulation of the requirements at the EU level and in the member states. They demonstrate the reduction of the requirements at the EU level resulting in the lack of harmonization. It can be observed, that France and Germany did not approach transparency and corruption in the same way. France extended the application of the Directive to some non-listed companies, but this extension covered only environmental and social reporting and did not cover corruption-related reporting. Germany adopted a “one-to-one” approach to the implementation of the Directive, keeping the scope of application of the Directive intact. Neither Germany nor France required the information about corruption to be disclosed. In both cases, “fight against corruption” was used. Germany referred to “bribery” along with corruption. France referred only to corruption. Both member states kept the “comply or explain approach”. Germany, furthermore, allowed the companies to exclude “prejudicial” information. In contrast, France did not use the omission clause offered by the Directive. The member states also introduced some item-specific inclusion criteria. For example, German law required the risks to be reported only if they were “very likely to have or will have a serious negative impact”. The member states adopted somewhat different approaches to the implementation of the Directive. In particular, France has attempted to strengthen the Directive’s provisions regarding the information while Germany promoted “one-to-one” implementation approach. Despite this difference, neither France nor Germany further specified the reporting items pertaining to anti-corruption and bribery. Both member states shifted the Directive’s approach by disconnecting the reporting on the business model from the specific reporting themes. Furthermore, France limited the application of KPIs only to the reporting on outcomes (while the Directive did not limit KPIs to either outcomes or policies or risks). Germany applied item-specific inclusion criteria which limited the scope of the items. With regards to the risks, the

German Law incorporated the “essential” (“material”) criterion as an interpretation of the Directive’s “necessary” as well as “very likely to have or will have a serious negative impact” adapted from the Directive’s Recital 8. With respect to the KPIs, the German Law incorporated the criterion “the most important non-financial performance indicators, which are significant for the business activity of the corporation”. In Germany, the quality assurance standard was limited to the presence of non-financial information. The requirements for the vehicle and timing were different across the member states.

		Impact Assessment	Proposal	Directive
Disclosers	Scope of application	Certain large companies/ undertakings: large companies (financial performance) plus number of employees (500) plus parent of the group (if applicable), same approach for public and private	Two scopes: for all companies falling under the Directive and for certain large companies/ undertakings: large companies (financial performance) plus number of employees (500) plus parent of the group (if applicable)	Certain large companies/ undertakings: large companies (financial performance) plus number of employees (500) plus parent of the group (if applicable) plus PIE status (defined by the EU and member states)
	Sanctions	EU monitoring, incentives, sanctions not explicitly discussed	No special provisions (general provisions of the amended Directives in place)	Member states to establish national procedures to ensure compliance
Information	Inclusion criteria	Silo provisions, references to “materiality” and “comply or explain” on multiple occasions, rejects “to the extent necessary” and “where appropriate”	Fair, balanced, comprehensive, consistent with the size and complexity of the business, “comply or explain”, item-specific criteria	General criterion: “to the extent necessary for an understanding of the group's development, performance, position and impact of its activity”, “comply or explain”, item-specific criteria, omission possibility
	Reporting items	Per theme includes: “a description of (i) the companies' policies, (ii) performance and (iii) risk-management aspects, relying on	Per theme includes: policies, results and risks Separately mentioned: general statement, KPIs; explanations of amounts reported in financial statements	Per theme includes: business model, policies, due diligence, outcomes of the application of the policies, risks, KPIs Separately: explanations of

		existing international frameworks" KPIs and explanations of amount reported in financial statements mentioned separately		amounts reported in financial statements
	Reporting themes	Corruption/ anti-corruption and bribery	Anti-corruption and bribery	Anti-corruption and bribery
	Reporting frameworks	Report the information "relying on existing international frameworks"	Companies "may rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon"	Companies "may rely on national, Union-based or international frameworks, and if it does so, the parent undertaking shall specify which frameworks it has relied upon"
	KPIs	No EU standard means that no KPIs are established, but relevant KPIs and voluntary reporting are expected	"To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business"	Per theme: "non-financial key performance indicators relevant to the particular business"
	Quality assurance	"Information would be disclosed in reference to high quality, generally accepted international frameworks, and verified for consistency due to	No special provisions (general provisions of the amended Directives in place)	"The Member States shall ensure that the statutory auditor or audit firm checks whether the consolidated non-financial statement ... provided", the member states can enhance the assurance standard

		the inclusion in the Annual Report”		
Access	Vehicle	Annual report	Annual report	“Management report” or a separate report
	Format	Themes connected to the items but no explicit format/ standard	Themes connected to the items but no explicit format/ standard	Themes connected to the items but no explicit format/ standard
	Language	Not explicitly discussed	Not explicitly discussed	Not explicitly discussed
Users	Frame	Sustainability	Sustainability	Sustainability
	User-specific tools	No tailored requirements	No tailored requirements	No tailored requirements

Table 1. Overview of the requirements at the EU level

		Germany	**France**
Disclosers	Scope of application	(1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); (4) listed companies, financial institutions, and insurance institutions	(1) number of employees, (2) financial results; (3) parent/ consolidating entity (in case of the group); listed entities, credit institutions, insurance companies, mutuals, provident institutions, holding companies of credit institutions, insurance companies and listed entities.
	Sanctions	Fines for the company and management	Private action
Information	Inclusion criteria	Key criteria: information “which is required for an understanding of the course of business, the business result, the situation of the corporation as well as the impacts of its activities on the aspects mentioned in paragraph 2”, reasoned comply or explain, omission of disadvantageous information Other (item-specific) inclusion criteria: “risks associated with the company's own business, which are	Key criteria: “the extent necessary for understanding of the situation of the company, the development of its business, of its economic and financial results and of the impacts of its activity, the declaration referred to in I and II presents information on how the company takes into account the social and environmental consequences of its activity, as well as, for the companies mentioned in 1o of I, the effects of this activity with regard to respect for human rights and the fight against

		very likely to have or will have a serious negative impact on the aspects referred to in paragraph 2"; "the most important non-financial performance indicators, which are significant for the business activity of the corporation"; "references to amounts shown in the annual financial statements and additional explanations" should be reported insofar as is necessary for understanding	corruption", reasoned comply or explain. Other (item-specific) inclusion criteria: "principal" risks, including those relating to business relationships where "relevant and proportionate"; due diligence "where applicable"; the references to the amounts mentioned in the financial reports to be reported "where appropriate".
	Reporting items	Reporting items: business model separated, five items related to the themes: (policies/ due diligence, results, risks/ risks related to the business relationship, KPIs, explanation of financial information)	Reporting items: business model separated, three items related to the themes: (policies/ due diligence, results, risks/ risks related to the business relationship, KPIs only related to results) + separate references to the financial amounts (not the explanations)
	Reporting themes	Fight against corruption and bribery	Fight against corruption
	Reporting frameworks	May rely on national, European, or international frameworks, should report which one applied if any; should also explain if does not use any	May rely on national or international standard, should report which one applied if any; should mention recommendations which it used and method of consultation
	KPIs	Existing instruments to fight corruption and bribery (Instrumente zur Bekämpfung von Korruption und Bestechung)	Actions taken to prevent corruption (les actions engagées pour prévenir la corruption)
	Quality assurance	Presence of the report	Fairness of the information ("la sincérité des informations"): for the largest companies only
Access	Vehicle/ time	Management report (MR) or another report, to which the MR refers – no later than 4 months after the MR	Management report and website

	Format	Not specified	Not specified
	Language	Primarily national (German) with a possibility of English in some cases	Primarily national (French)
Users	Frame	Accounting Law	Equality and citizenship
	User-specific tools	No special requirements	No special requirements (unlike for other themes of reporting)

Table 2. Overview of requirements in Germany and France

10.4.3. Incongruence of regulatory goals and requirements and the flaws in transparency architecture

The goals of the Directive were subject to drift and layering. The requirements has undergone conversion and reduction. As the goals and the requirements were moving, it was more and more difficult to connect the requirements with the transparency-related goals but easier to connect them with flexibility and cost reduction considerations. The goal of increasing transparency has never been abandoned but virtually all instruments deemed necessary for such increase were downsized or removed. Due to layering of the goals, it is difficult to assess the requirements of the Directive against a particular set of goals. However, it is possible to see the incongruence between the problem statement and the goals introduced by the Impact Assessment and the requirements effected as a result of the Directive transposition.

In relation to the disclosers, the final version of the Directive and national laws indicated multiple criteria including: (1) the number of employees, (2) the financial results; (3) the status of a parent/ consolidating entity; and (4) the PIE status. Use of multiple criteria did not reflect the goals indicated in the respective documents and never formally abandoned such as the intention to cover the companies which present increased risk, the need to "level the playing field" for both private and public companies and the goal of increasing the clarity with regard to expected disclosures. Large public companies were covered by the Directive, while the private companies remained largely beyond the scope of the Directive due to the introduction of the PIE requirement. The clarity regarding the disclosers was significantly undermined by multiple scope criteria including non-harmonized PIE requirement. Accordingly, the assessments of the number of reporting companies varied significantly at the EU level as well as at the level of the member states. The lack of enforcement mechanisms in one member state (France) and narrow definition of compliance in another state (Germany) was contrary to the "mandatory" nature of the Directive. Yet, the influence of changing requirements on the goals of leveling the playing field, introducing a mandatory standard or covering certain large undertakings, was not explored by the Directive-related documents. The Directive covered between 10 and 20% of the EU large companies. Importantly, there was no relation between the scope of covered companies and the risk of corruption these companies presented.

The information-related requirements have largely returned to the state which was characterized as a "regulatory failure" by the Impact Assessment. In particular, the filters such as "where necessary" were re-introduced, the quality assurance requirements and the use of frameworks were not harmonized and introduced reporting items (such as "business model", "policies" and "risks") were not supported by appropriate indicators in relation to corruption. None of the requirements have been explicitly connected to one of multiple information goals, articulated in the Impact Assessment, such as materiality, comparability or accuracy of the information. In member states, similar goals have been interpreted differently and resulted in different requirements. For example, in Germany, the left and rights parties have articulated similar sets of goals but proposed vastly different requirements.

In relation to the access, none of the requirements was harmonized. The requirements to the vehicle of disclosure, timing of disclosure, language of disclosure and format of disclosure differed among the member states. These requirements were explicitly connected to flexibility the need of decreasing the compliance costs but not to the transparency-related goal of accessibility.

The users-related requirements were largely absent and no tailoring of the requirements to the goals occurred. The Impact Assessment and the subsequent documents mentioned multiple users. However, the goals of the users were articulated beyond their information needs and the capacities of the users were not acknowledged. The Directive did not include user-tailored requirements. The Directive-related documents did not explain the fitness of generic requirements for satisfaction of vastly different interests of the users. Thus, the Directive did not suggest a single conceptualization of transparency and did not reflect the transparency process in the regulatory requirements. The Directive-related documents failed to reflect the risk of corruption and the interest of public and investors in (anti-)corruption information.

The Directive ran into the problem it earlier associated with the "market failure":

> "The reason for such failure is to be found in the insufficient and uneven incentives provided by the market: on the one hand, the cost of transparency is certain, measurable and short term, particularly as regards externalities. On the other hand, the benefits related to increased non-financial transparency are often perceived as uncertain, longterm, or external to the company" (European Commission, 2013a, p. 11).

In particular, the Directive-related documents clearly identified and measured costs associated with transparency, but were not able to identify in a similarly clear manner the goals related to transparency. Transparency goals have not been connected to the goals of corruption reduction or corruption control. Disconnected from specific problem, the benefits and the scope of transparency were not clear.

The lack of congruence between the regulatory goals and the regulatory requirements was reflected in misalignment of the Directive's "transparency architecture" with the principles for effective transparency systems, articulated by Fung et al. (Fung et al., 2007). The Directive did

not create a clear set of incentives and sanctions to ensure the enforcement of the transparency system. In France, liability provisions were absent. In Germany, liability was established only for the failure to disclose any non-financial information. The Directive did not establish quality assurance and metrics in order to ensure disclosure of factual, comparable and accurate information. The diverse communication channels have not been adjusted to the routines of different users and the feedback mechanisms to ensure the communication between the disclosers and the users were absent.

10.5. How is the design of the NFRD reflected into the transparency practices of the EU largest companies after transposition of the NFRD?

The analysis of the corporate reports suggests that the companies have formally followed the requirements of the Directive and national laws. All studied reports have included information about corruption and/ or bribery. The companies have referred to the international reporting frameworks if they used such frameworks. The companies have ensured quality assurance of information if required by the provisions of the national law. Finally, the companies complied with the vehicles and timeframes established at the national level. At the same time, corporate reporting has largely reflected the gaps in the Directive's goals and requirements.

In relation to the disclosers, in both France and Germany, the application of the Directive was limited to public interest entities (PIEs). Large private MNEs such as Aldi and Schwarz Group (Lidl and Kaufland supermarkets) in Germany and Chanel in France remained beyond the scope of application of the Directive. Neither the member states, nor the European Commission were able to provide a clear indication of the number of covered companies (the assessments varied between 6000 and 12000 i.e. between 8% and 16% of the EU large companies and between 300 and 600 of the large companies in each of the reviewed member states).

Similar to the Directive (and related documents), corporate reports did not define the notion of corruption. The application of the Directive has resulted in multiple references to the notions of "corruption", "bribery", "ethics" and "compliance" in the annual and non-financial reports of the companies. The companies primarily referred to the term "corruption". However, most of the companies also used the term "bribery". None of the investigated reports had explicitly defined "corruption" or "bribery". The companies did not discuss the relationship between the two terms and, thus, it was impossible to establish the scope of reporting based on the use of the term "corruption" or "bribery". In multiple reports (BNP Paribas and Volkswagen being the best examples), the reporting on corruption was merged with reporting on broader notions such as "compliance", "ethics" or "fight against corruption and tax evasion". An in-depth investigation suggested that some companies mentioned particular practices pertaining to corruption. However, the reports varied in terms of mentioning the practices and in terms of practices mentioned. In particular, the political contributions and lobbying have been addressed within the corruption scope as well as outside of it in some cases while not addressed at all in other cases. The scope of the covered practices also differed from one year to another. Thus, the scope of

anti-corruption reporting differed not only across the companies but also across the reporting years.

The companies did not apply a single standard for inclusion of the information. The majority of the post-Directive reports did not explicitly specify or apply the notion of materiality to the anti-corruption information. If applied, the notion of materiality related to multiple non-financial risks, and the materiality of the corruption risks remained obscured by its combination with other risks.

The companies did not explicitly use the reporting items suggested by the Directive such as "policies", "risks" and "outcomes". The reports provided a different amount of information on five reporting items, prescribed by the Directive (business model, policies and due diligence, outcomes of the policies, principal risks and KPIs). The reported corruption-related information focused on the commitments and policies. Most of the annual reports had also covered due diligence. However, the scope and the level of detail varied significantly between the companies. In contrast to the policies and due diligence, the information on the business model and risks was scarce. The information about risks was not connected to the company's business model and was largely not specific to the company if disclosed. The information about the outcomes of the application of the anti-corruption policies was largely limited to the direct outputs such as the number of trained employees. Daimler was the only company that reported on corruption-related violations, but the information about violations was not further detailed, lacked benchmarks, and included both confirmed and unconfirmed cases. The anti-corruption information was not connected to the requirement of the Directive to include "where appropriate" references to, and additional explanations of, amounts reported in the annual financial statement despite clear connection between corruption and financial reporting.

As a result of the focus on the policies and commitments, the information was skewed towards anti-corruption i.e., the policies to fight corruption, instead of corruption per se. In relation to the policies and due diligence, the companies repeatedly reported positive changes such as the increase in the number of Compliance Officers or the development of the new policies. (Positive) anti-corruption information about the policies and commitments was not matched by (negative) information about corruption risks and outcomes. None of the companies disclosed the absence or weakness of certain policies and controls in the first place (status quo), but all companies referred to unspecified improvements in their policies. The companies also did not report on the changes and did not use company-specific benchmarks to support their claims that the policy was "reinforced" "enhanced" "clarified" or to demonstrate "numerous awareness and communications measures". As a result, the fact-based comparison between the status quo and the "enhanced" state was not possible. The companies also framed the information in predominantly positive aspirational terms. The compliance programs were described only in positive terms, for example, "robust", "considerably improved", "reinforced", "enhanced", "clarified" and "fairly, swiftly and sensitively", "numerous awareness and communications

measures launched to ensure that all parties are committed to combating corruption", and "extensive training courses".

The quantitative KPIs were primarily used in relation to the number of trained employees and third parties. Some companies reported on the number of corruption or compliance violations. If used, the KPIs were not accurate: specific information about corruption was largely substituted with information about "compliance" or "ethics", and the benchmarks were lacking (e.g. companies presented information on those employees, who completed training, but not on the general number of employees). The numbers were approximated suggesting deficiencies in the internal information on corruption. The indicators were not used consistently across the companies and years. Some companies referred to the international reporting frameworks, but the frameworks were used partially.

The information was verified by the auditors in both member states to the extent required in the national law. However, the auditors specifically waived the responsibility for the content of the information. Thus, materiality and consistency of the information were not verified.

In relation to the access component of the transparency and, in particular, the vehicle of reporting, the format of reporting, and the language of reporting, the analysis of the ex post disclosures demonstrated that the vehicles and timing for reporting of the anti-corruption information varied across companies and years. In France, the information was part of the Universal Registration Documents. In Germany, the information was spread across different documents with vehicles varying across the years. The format of reporting also varied across the companies and years. Only a few reports in Germany contained a clear "management report" part, which was prescribed by the Directive as a reporting section for the non-financial information. The majority of the reports did not refer to corruption in the content index. In all cases, the information about corruption was spread across multiple nonconsecutive pages (France and Germany) or multiple reports (Germany). It was not clear whether the materiality of the information depended on the reporting vehicle or the placement of the information within the vehicle.

Despite the absence of the language requirements in the Directive and the national language provisions in the member states, all six companies disclosed information in English in addition to the national language. The convergence of the language could have been explained by pressures beyond the Directive. At the same time, the companies did not use consistent terminology (e.g. "material", "principal", "significant" risks). Some companies used internal jargon and professional terms which were not explained in relevant sections of the reports (e.g. "ReFLEX Group framework" (Total), "IT supplier qualification tool" (Total), "GFS" (BNP), "self-assessment, independent on-site reviews" (Allianz)).

In relation to the fourth component of transparency, the users of the information, the companies did not use consistent terminology. The reports predominately referred to the shareholders and investors. At the same time, the users and stakeholders were also mentioned by some

companies. On the websites of the companies, the reports containing the information mandated by the Directive were primarily published in the financial information section or sections for investors/ shareholders which was in line with the general nature of the financial annual reports. The companies used professional jargon in their reporting, indicating that the reports might primarily target professional users.

The companies followed the minimum regulatory requirements but failed to go beyond the requirements. Accordingly, the Directive did not provide "limited but useful incentive to improve the quality of those reports" as aspired by the Impact Assessment. The Directive was able to achieve what it required. The analysis of the reporting practices indicated that regulation of corporate anti-corruption transparency created coercive pressure for the companies only to the extent to which it specified the requirements to the companies and created appropriate system of sanctions and incentives. The Directive was not able to exercise pressure beyond its requirements. Since the requirements of the Directive reduced over time, corporate reporting practices reflected reduced requirements, which were not aligned with the goals of the Directive.

10.6. Theoretical and methodological contribution

Based on theoretical framework and research question, this study started with analysis of the reasons for the emergence of corporate anti-corruption transparency within the EU regulatory framework. The review has demonstrated the absence of documented analysis of the market failure associated with corruption. The Impact Assessment did not recognize specificity of corruption as a subject of regulation which is suggested by the literature on anti-corruption. The Directive was not supported with a clear concept of corruption. Contrary to the literature on anti-corruption initiatives, the Directive was not tailored to specific types of corruption. Thus, it is possible to suggest that the non-financial transparency regulation was extended to corruption due to the policy drift rather than by managed adjustment of the regime to the goal of corruption control and or corruption reduction (Kern & Howlett, 2009).

The goals of the Directive were disconnected from corruption and layered. The original set of goals has never been formally abandoned, despite temporal abandonment of some goals and temporal introduction of new goals. The goals were multiple and ambiguous and changed their importance. For example, the initial goal of increasing quality of the information has been described using forty different terms. This goal has never been reviewed or abandoned. However, flexibility, minimization of compliance costs and reduction of administrative burden have been increasingly prioritized. The change of the Directive's goals can be characterized as layering i.e. introduction or restatement of goals without reconciliation them with previous goals (Kern & Howlett, 2009). The process of layering demonstrated the same patterns as suggested by the goal displacement model (Jung, 2014). Layering has made the goals of the Directive incoherent. There was also an increasing detachment of requirements from the goals. The Impact Assessment has measured regulatory options against different sets of goals. The requirements have been reduced within the development of the Directive while the Directive's initial goals

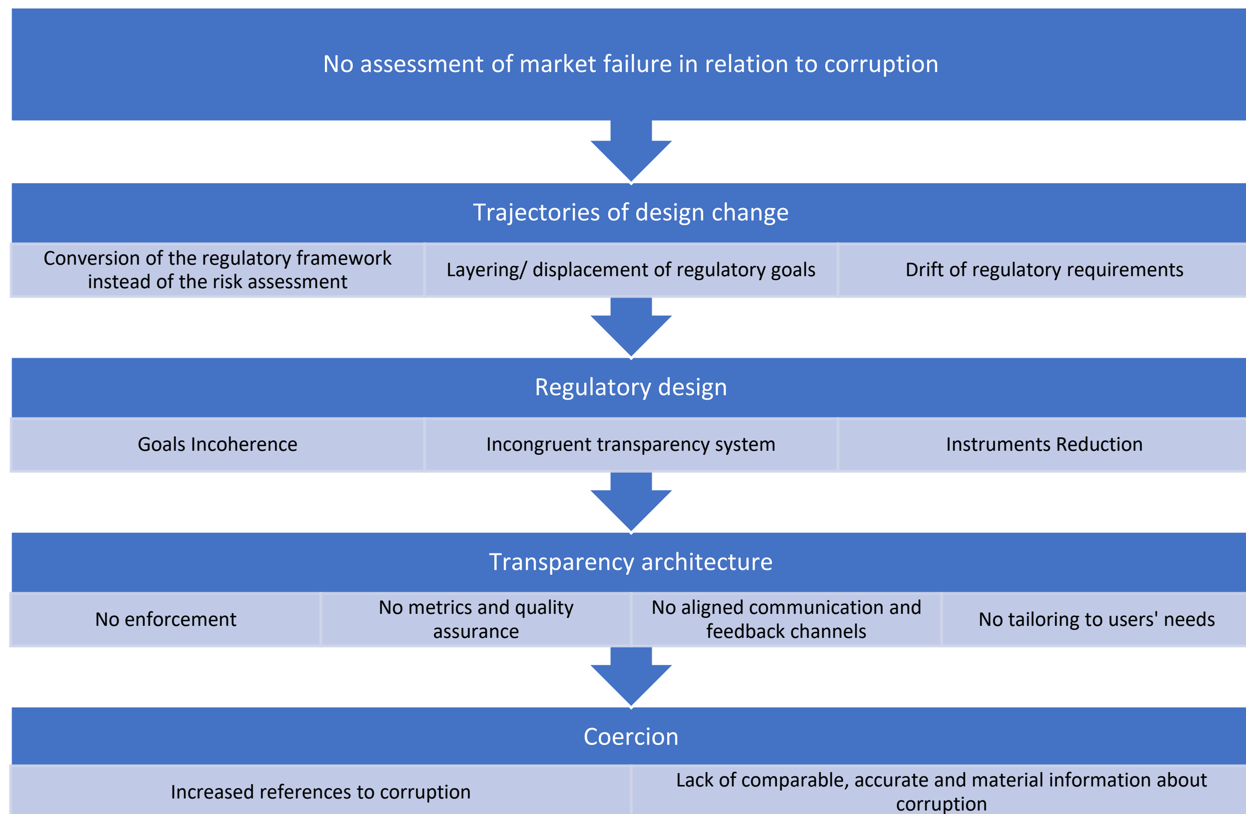
were not formally abandoned. The requirements of the Directive have not been navigated by its goals i.e. the requirements were subject to conversion (Kern & Howlett, 2009). The analysis of the Directive demonstrates growing incongruence between the original goal of increasing transparency and the requirements reducing in the light of attempts to keep flexibility and avoid compliance costs. As the goals related to transparency were ambiguous and the goals related to compliance costs and flexibility were tangible (and measurable in euros), the requirements were naturally migrating to satisfy less ambiguous goals in line with predictions of the goal displacement theory (Huizinga & de Bree, 2021)

Throughout the development of the Directive, its requirements have become increasingly disconnected from both corruption and transparency. Instead, they have been informed by the need for flexibility and reduction of compliance costs. As the link between the targeted risk, transparency and requirements kept disintegrating, the transparency architecture has been eroded within all components. The identification of the disclosers has not followed the risk-based approach, but was informed by undue burden considerations and the pressure to keep certain companies out of the reach of the regime. The mandatory nature of the regime was diminished by the lack of either sanctions or incentives supporting the regime. The quality of the information was compromised by the lack of quality assurance and reporting metrics. The access to the information was neither standardized nor linked to the information-gathering and decision-making routines of the users of the information. The channels and timing of disclosure varied among the countries and companies. The feedback mechanism between the users and the disclosers was missing (in contrast to the environmental transparency which was rooted in the Sustainable Finance framework allowing investors to take environmental information into account when making investment decisions and, thus, signal their priorities to the disclosers). The transparency system did not take into account varying interests of the users. Accordingly, transparency system under the Directive 2014/95/eu did not accord to the principles of transparency architecture which suggest a need for a risk-based architecture which is tailored to the users' needs and ensures steady communication process of factual information (Fung et al., 2007).

The flaws of transparency architecture have been reflected in the corporate transparency practices. The companies followed the requirements of the Directive but these requirements did not ensure unified understanding of corruption and transparency. As a result, companies included multiple diverse practices in the scope of corruption, or, otherwise, did not define corruption at all or mingled it with the notions of "compliance" and "ethics". The inclusion of corruption information was not guided by single principle. Accordingly, companies reported on variety of issues and it was virtually impossible to establish a single reporting item or indicator which companies understood and disclosed in the same way. Reporting on corruption has not been connected to reporting on business model and disclosure of financial statement. The Directive required these reporting items to be included "where appropriate", but the Commission's Communication and the national laws disconnected them from reporting on corruption. In line with the Directive and the national laws, the quality assurance of the reports

was limited. Furthermore, in line with the Directive and the national laws, the vehicles of reporting and the time of reporting varied. To conclude, the Directive exercised the coercive pressure to the extent defined by its requirements. While this conclusion seems self-evident, it is not fully appreciated by the literature advocating for regulation of corporate anti-corruption transparency. The literature is preoccupied with promoting the state-led regulation and measuring it instead of being concerned with design of transparency system (Barkemeyer et al., 2015; Carr & Outhwaite, 2011; Hess, 2009; Joseph et al., 2016). The findings of this study can also explain the varying results of empirical studies which include coercive pressure as a variable.

In line with earlier suggested theoretical framework, Figure 1 demonstrates the conclusions discussed above in a schematic form.



Howlett (2009) suggest that regulatory operational plans existing at the micro-level should be treated as a part of "multi-level nested phenomena". The design of regulation at micro-level reflects the processes happening at macro- and meso-levels. Traditionally, the regulatory change and regulatory coherence are discussed at macro- and meso-levels. In particular, there have been several studies of the regulatory regimes based on the notion of "policy mixes" i.e. "complex arrangements of multiple goals and means which, in many cases, have developed incrementally over many years" (Kern & Howlett, 2009; van Geet et al., 2019). This study has applied the concepts of regulatory change and regulatory design to examine a single piece of regulation – the EU Directive 2014/95/EU. Due to the nature of the European Union, multiple actors participate in designing of regulatory goals and instruments (Baldwin et al., 2012). The EU

legislative process includes negotiation and, for the EU Directives, transposition, and may last for years. At different stages of this process, regulators are subjected to pressures. This study demonstrates that the patterns of regulatory change can be detected at micro-level. Drift, layering and conversion have occurred during different stages of the Directive's development. In particular, changes in the regulatory design have been associated with the processes of negotiation of the Directive and public consultations. Drift, layering and conversion which occur at micro-level can be used to explain growing incoherence of the regulatory goals and requirements in the design of the EU Directive 2014/95/eu. The patterns of change occurring at the micro-level are in line with the patterns of change identified by earlier literature at higher level of abstraction. For example, Kern and Howlett (2009) suggest that regulation of sustainable development has been driven by the cost considerations and liberalization agenda rather than by sustainability goals. This study demonstrated that cost and flexibility considerations have been more important in the design of corporate anti-corruption transparency than the goals directly related to transparency.

The study has revealed that the goal displacement and goal ambiguity theory can be used to refine the layers of incoherence between the regulatory requirements and the regulatory goals. The goal displacement in regulation has similar patters to the goal displacement in organizations: it is triggered by the goal ambiguity, it causes migration of requirements from more ambiguous to less ambiguous goals and it produces incongruence of goals and requirements leading to the flaws in the regulatory framework (Huizinga & de Bree, 2021).

This study has further connected the concepts of regulatory change and regulatory design with the concepts of transparency architecture, developed in the literature on regulated transparency systems, and the notion of coercive pressure, which current scholarship uses to connect regulation and corporate anti-corruption transparency. The study has demonstrated that coercive pressure cannot go beyond the requirements of the state-led regulation. Thus, the architecture of corporate anti-corruption transparency is more important than its presence. This study was able to highlight potential reasons for the failure of regulation to produce coercive pressure. The findings of this study may explain earlier incoherent accounts regarding the role of regulation in fostering corporate anti-corruption transparency. This study may also help to refine calls for state-led regulation of transparency. In particular, the researchers may consider exploring in more details the users' interest in the anti-corruption information and how such interest can be translated in the regulatory requirements. It cannot be assumed that any information about (anti-)corruption is beneficial for reduction of corruption risk. It can also not be assumed that regulators are better positioned to identify beneficial information and tailor the regulatory requirements accordingly. Instead, the regulators are subject to multiple pressures. Better understanding of anti-corruption transparency may benefit regulatory risk assessment and overcome incoherence of regulatory goals and requirements.

From methodological perspective, this study has applied qualitative methodology to study the emergence and design of corporate transparency. In contrast with the existing literature, it

explored transparency practices of the companies from the perspective of quality rather than quantity of the information. Furthermore, it concentrated on transparency process including the disclosers, the information, the access and the users instead of looking extensively at the information component of transparency or transparency as a state. Qualitative exploration allowed to detect the manifestation of the Directive's design in corporate reports. Application of the qualitative approach may allow to refine further contradicting conclusions of the current scholarship.

10.7. Practical contribution

Originally informed by the practical curiosity and puzzling outcomes of NFRD implementation, this study has been able to reach conclusions on several levels. This section discusses practical implications of the study in the light of (1) the development of the new non-financial transparency regime under the CSRD, (2) the EU anti-corruption efforts, and (3) the EU better regulation agenda.

The NFRD has largely failed to reach its goals (Biondi et al., 2020; European Commission, 2020; Monciardini et al., 2020). In light of its failure, the study of its design may be considered outdated. However, a brief study of the CSRD demonstrates striking differences between the regulation of environmental transparency and regulation of corporate anti-corruption transparency. The architecture of transparency system in relation to the environmental risks is slowly but steadily improving. The Impact Assessment accompanying the CSRD Proposal mentions "environment" 309 times. The environmental transparency is recognized as a separate part of sustainability reporting, analyzed through the application of a taxonomy, linked to the goals of emissions reduction, and supported by a set of indicators (European Commission, 2021b, 2021a). The environmental transparency is being increasingly incorporated in the sustainable finance framework. In contrast, "corruption" is being mentioned by the Impact Assessment accompanying the CSRD Proposal 13 times (European Commission, 2021b, 2021a). There is no assessment of corruption risk and no analysis in the form of taxonomy or otherwise of corruption information relevant for corruption control/ corruption reduction. The new CSRD Proposal does not substantiate the inclusion of corporate anti-corruption transparency beyond its existence in the NFRD Directive. "Anti-corruption and bribery" matters are moved within larger "governance" aspect and mingled with "business ethics" and "compliance". The anti-corruption transparency is not incorporated within the sustainable finance framework. Certainly, there are some improvements including the growing scope of disclosers and the changing quality assurance standard. However, the design of CSRD in relation to the corporate anti-corruption transparency largely repeats the design of NFRD in a sense that it does not tailor requirements to the risk of corruption, but rather extend the regime to corruption without assessment of the risk. Positioning of anti-corruption transparency within broader categories further obscures the specificity of corruption risk. It is, thus, unlikely, that the goals and requirements of CSRD will be further targeted to corruption reduction.

The analysis of the Impact Assessments and public consultations related to both CSRD and NFRD suggests that anti-corruption transparency does not emerge from a separate risk analysis. Instead, the documents concentrate on environmental and, to some extent, broader social matters. A part of the resulting regulatory goals and requirements is being extended to cover anti-corruption. Furthermore, under the new CSRD anti-corruption transparency is being further obscured by references to “governance” and “business ethics”. The literature on corruption suggests that improvement of anti-corruption efforts requires better understanding of corruption risk and increased tailoring of anti-corruption efforts to specific corruption practices (Jancsics, 2019; Zhang et al., 2019). The literature on transparency systems demonstrates that unique architectures of transparency systems should be tailored to the risks they target (Fung et al., 2007). The design of CSRD contradicts the literature on anti-corruption and targeted transparency systems. In order to target the supply side of corruption, the regulators need to acknowledge its specificity and tailor interventions in line with the recommendations of the scholarship on corruption and transparency (Fung et al., 2007; Jancsics, 2019; Zhang et al., 2019). By including corruption into the scope of broader “non-financial transparency” and “sustainability reporting”, the EU legislation gives less rather than more attention to corruption. Thus, the design of CSRD is in line with the EU weakening anti-corruption agenda.

The assessment of the Directive-related documents raises questions regarding the EU regulatory approach. The Impact Assessments and the public consultations are the parts of the EU better regulation agenda (European Commission, 2022). Both goals and requirements articulated in the Impact Assessments are subject to negotiation and transposition (in case of the Directives). As a result, the Impact Assessment often presents a premature assessment of the regulatory design. The Impact Assessment may, thus, fail to predict what goals will become important within the later stages of the legislative process and mischaracterize the requirements. The inconsistency of impact assessment and modeling has been earlier highlighted by existing research (Cecot et al., 2008). This study demonstrates how Impact Assessment becomes redundant before the Directive is even adopted. This study might also indicate a broader issue – the Impact Assessment accompanying NFRD (and, as a brief analysis suggests, the one accompanying CSRD) does not focus on the ultimate problem of corruption reduction but rather on an intermediate problem of increasing transparency. This study looks at transparency goals to analyze the design of the Directive 2014/95/eu at micro-level. It actually mirrors the provisions of the Impact Assessment and the Directive which see increased transparency as a goal. However, the question may be raised whether transparency is a goal at all. The Impact Assessment aims to “increase transparency” and assumes that the same “increased transparency” can fix both the problem of corruption and human rights problem (but a different type of transparency is needed to deal with the environmental problems). There are no reasons for such assumption in the literature on transparency or corruption. On the contrary, the literature suggests that anti-corruption regulation should be tailored to corrupt practices. Public consultations are promoted for the purpose of “involving citizens, businesses and stakeholders in the decision-making process” (European Commission, 2022). There are increasing concerns about ability of the public

consultations to streamline the interests of more organized (corporate) groups and compromise political equality (Alemanno, 2020). This study suggests that public consultations create pressures on regulators which may result in increased conversion, drift and layering leading to the incongruence of the EU regulatory approaches.

10.8. Conclusion

Large companies cannot be treated as victims of corruption (Vogl, 1998). Instead, they should be treated as active participants of actions which victimize the poorest and compromise the development (Everett et al., 2007; Sikka & Lehman, 2015; Vogl, 1998). Developed countries, which host large amounts of large companies, have demonstrated uneven efforts in regulation of supply side of corruption and enforcement (Hock, 2017). Furthermore, there have been concerns regarding weakening of anti-corruption efforts and failure of the anti-corruption initiatives (Transparency International, 2019; Zhang et al., 2019). As in many other areas, transparency has been advocated to curb corporate corruption (Barkemeyer et al., 2015; Carr & Outhwaite, 2011; Hess, 2009).

The EU Directive 2014/95/eu framework has included "anti-corruption and bribery" matters. This study reviewed the design of the EU regulation of corporate anti-corruption transparency under the Directive 2014/95/eu. The study revealed that inclusion of anti-corruption aspect was not supported by analysis of corruption and corrupt practices. The non-financial transparency regulation was extended to corruption without respective research under the assumption of similarity between corruption and other non-financial risks. The goals and requirements of the Directive have demonstrated different patterns of change. The goals of the Directive have been layered by continuing introduction and restatement of the goals without formal abandonment of the previously stated goals. The requirements of the Directive have not been guided by a clear conceptualization of transparency. The requirements developed separately from the goals suggesting the pattern of conversion. The requirements reduced over time and almost returned to the pre-Directive state despite the goal of increasing transparency was kept constant. The lack of congruence between the goals and the requirements can be explained by missing, ambiguous or alternating transparency-related and corruption-related goals and the presence of clear and stable cost-related and flexibility goals. The lack of congruence manifested itself in the architecture of transparency system and in companies' reporting on corruption.

The study was able to identify the patterns of regulatory change at the micro-level of a single EU Directive. Accordingly, it was able to explain the flaws in the design of the Directive. The study is relevant for further analysis of the role of regulation in corporate anti-corruption transparency and in corruption reduction in general. The study sheds light on the limitations of the newly introduced sustainability regime under the CSRD. It suggests that fitness of transparency architecture under the CSRD for regulation of corruption is not well assessed. Judged by brief exploration of its design, the CSRD is unlikely to overcome most of the limitations of the NFRD when it comes to the anti-corruption transparency.

11.List of sources

Abed, G. T., & Gupta, S. (2002). *Governance, Corruption, and Economic Performance*. International Monetary Fund.

Accountancy Europe. (2017). *Definition of Public Interest Entities in Europe*. https://www.accountancyeurope.eu/publications/definition-public-interest-entities-europe/

Albu, O. B., & Flyverbom, M. (2019). Organizational Transparency: Conceptualizations, Conditions, and Consequences. *Business & Society*, *58*(2), 268–297. https://doi.org/10.1177/0007650316659851

Alemanno, A. (2020). Levelling the EU participatory playing field: A legal and policy analysis of the Commission's public consultations in light of the principle of political equality. *European Law Journal*, *26*(1–2), 114–135. https://doi.org/10.1111/EULJ.12371

Allianz. (2020). *Company structure and holdings*. About Us. https://www.allianz.com/en/about-us/who-we-are/company-structure-holdings.html

Allianz Group. (2017). *Competence Change Future - Allianz Group and Allianz SE Combined Separate Non-Financial Report 2017*. www.allianz.com/annualreport.

Allianz Group. (2018). *Outperform Transform Rebalance Annual Report 2018 including Allianz Group and Allianz SE Combined Separate Non-Financial Report*. https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar-2018/en-AR-Group-2018.pdf

Allianz Group. (2019). *Outperform Transform Rebalance Annual Report 2019 including Allianz Group and Allianz SE Combined Separate Non-Financial Report*. https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar-2019/en-AR-Group-Annual-Report-Allianz-2019.pdf

Allianz SE. (2017). *Competence Change Future - Allianz SE Annual Report 2017*. https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar2017/en-se-2017-annual-report-allianz-se.pdf

Allianz SE. (2018). *Outperform Transform Rebalance Annual Report 2018*. https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar-2018/en-GB-SE-2018.pdf

Allianz SE. (2019). *Outperform Transform Rebalance Annual Report 2019*. https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar-2019/en-GB-SE-Annual-Report-Allianz-2019.pdf

Alonso Carrillo, M. I., Priego De La Cruz, A. M., & Nuñez Chicharro, M. (2019). The Impact of Corporate Governance on Corruption Disclosure in European Listed Firms through the Implementation of Directive 2014/95/EU. *Sustainability*, *11*(22), 6479. https://doi.org/10.3390/su11226479

Andrés, P. de, Polizzi, S., Scannella, E., & Suárez, N. (2021). Corruption-Related Disclosure in the Banking Industry: Evidence From GIPSI Countries. In *SSRN Electronic Journal* (N° 745/2021; ECGI Working Paper Series in Finance). Elsevier BV. https://doi.org/10.2139/ssrn.3740729

Assemblée Nationale. (2014). Résolution Européenne sur la publication d'informations non financières par les entreprises. In *Session Ordinaire de 2013-2014* (no 307). https://www.assemblee-

nationale.fr/14/ta/ta0307.asp

AXA. (2017). *Registration Document 2017 - Annual Financial Report*. https://www-axa-com.cdn.axa-contento-118412.eu/www-axa-com%2Fa3fd87ca-ce10-4c5a-8eab-dccc54d315c8_axa-ddr2017-en-pdf-e-accessible_02.pdf

AXA. (2018). *Registration Document 2018 - Annual Financial Repor*. https://www-axa-com.cdn.axa-contento-118412.eu/www-axa-com%2F954ee0e3-7344-4114-bb3e-652df3371c37_axa-ddr2018-en-accessible.pdf

AXA. (2019). *Universal Registration Document 2019 - Annual Financial Report*. https://www-axa-com.cdn.axa-contento-118412.eu/www-axa-com%2F90abd6c7-80c4-48ef-84bf-1d038670d9b7_axa-urd2019-en.pdf

Baldwin, R., Cave, M., & Lodge, M. (2012). *Understanding Regulation: Theory, Strategy, and Practice* (2nd ed.). Oxford University Press.

Barkemeyer, R., Preuss, L., & Lee, L. (2015). Corporate reporting on corruption: An international comparison. *Accounting Forum*, *39*(4), 349–365. https://doi.org/10.1016/j.accfor.2015.10.001

Barkemeyer, R., Preuss, L., & Ohana, M. (2018). Developing country firms and the challenge of corruption: Do company commitments mirror the quality of national-level institutions? *Journal of Business Research*, *90*, 26–39. https://doi.org/10.1016/j.jbusres.2018.04.025

Bauhr, M., & Grimes, M. (2017). Transparency to curb corruption? Concepts, measures and empirical merit. *Crime, Law and Social Change*, *68*(4), 431–458. https://doi.org/10.1007/s10611-017-9695-1

Baumüller, J., & Schaffhauser-Linzatti, M.-M. (2018). In search of materiality for nonfinancial information-reporting requirements of the Directive 2014/95/EU. *Sustainability Management Forum*, *26*(1–4), 101–111. https://doi.org/10.1007/s00550-018-0473-z

Béland, D. (2007). Ideas and Institutional Change in Social Security: Conversion, Layering, and Policy Drift*. *Social Science Quarterly*, *88*(1), 20–38. https://doi.org/10.1111/J.1540-6237.2007.00444.X

Berglund, S. K. (2009). *Putting politics into perspective: a study of the implementation of EU public utilities directives*. Eburon. https://dspace.library.uu.nl/handle/1874/32850

Berglund, T. (2015). Corporate Governance and Optimal Transparency. In J. Forssbæck & L. Oxelheim (Eds.), *The Oxford Handbook of Economic and Institutional Transparency* (pp. 358–370). Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199917693.013.0017

Bijlmakers, S. (2017). *The legalization of corporate social responsibility: towards a new doctrine of international legal status in a global governance context*. https://limo.libis.be/primo-explore/fulldisplay?docid=LIRIAS1854944&context=L&vid=Lirias&search_scope=Lirias&tab=default_tab&lang=en_US

Biondi, L., Dumay, J., & Monciardini, D. (2020). Using the International Integrated Reporting Framework to comply with EU Directive 2014/95/EU: can we afford another reporting façade? *Meditari Accountancy Research*, *28*(5), 889–914. https://doi.org/10.1108/MEDAR-01-2020-0695

Blanc, R., Branco, M. C., & Patten, D. M. (2016). Market reactions to transparency international reports on corporate anti-corruption. *Accounting and the Public Interest*, *16*(1), 84–99. https://doi.org/10.2308/apin-51680

Blanc, R., Branco, M. C., & Patten, D. M. (2019). Cultural Secrecy and Anti-corruption Disclosure in Large Multinational Companies. *Australian Accounting Review*, *29*(2), 438–448. https://doi.org/10.1111/auar.12231

Blanc, R., Cho, C. H., Sopt, J., & Branco, M. C. (2019). Disclosure Responses to a Corruption Scandal: The Case of Siemens AG. *Journal of Business Ethics*, *156*(2), 545–561. https://doi.org/10.1007/s10551-017-3602-7

Blanc, R., Islam, M. A., Patten, D. M., & Branco, M. C. (2017). Corporate anti-corruption disclosure: An examination of the impact of media exposure and country-level press freedom. *Accounting, Auditing and Accountability Journal*, *30*(8), 1746–1770. https://doi.org/10.1108/AAAJ-02-2015-1965

BNP Paribas. (2017). *Registration Document and Annual Financial Report 2017*. https://group.bnpparibas/uploads/file/ddr2017_bnp_paribas_gb.pdf

BNP Paribas. (2018). *Registration Document and Annual Financial Report 2018*. https://media.bnpparibas.com/fluidbook/REGISTRATION-DOCUMENT-2018/m/data/document.pdf

BNP Paribas. (2019). *Universal Registration Document and Annual Financial Report 2019*. https://group.bnpparibas/uploads/file/bnp2019_urd_en_20_03_13.pdf

Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, *9*(2), 27–40. https://doi.org/10.3316/QRJ0902027

Boyatzis, R. E. (1998). *Transforming Qualitative Information*. SAGE Publications Inc. https://us.sagepub.com/en-us/nam/transforming-qualitative-information/book7714

Branco, M. C., & Delgado, C. (2012). Business, social responsibility, and corruption. *Journal of Public Affairs*, *12*(4), 357–365. https://doi.org/10.1002/pa.1426

Branco, M. C., Delgado, C., & Turker, D. (2019). Liability of foreignness and anti-corruption reporting in an emerging market: The case of Turkish listed companies. *Journal of Cleaner Production*, *232*, 118–126. https://doi.org/10.1016/j.jclepro.2019.05.367

Branco, M. C., & Matos, D. (2016). The fight against corruption in Portugal: evidence from sustainability reports. *Journal of Financial Crime*, *23*(1), 132–142. https://doi.org/10.1108/JFC-05-2014-0027

Brennan, T. A., & Mello, M. M. (2007). Sunshine Laws and the Pharmaceutical Industry. *JAMA*, *297*(11), 1255–1257. https://doi.org/10.1001/jama.297.11.1255

Briegel, F., & Bruinshoofd, A. (2015, May 7). *Institutional quality in Europe: diverging trends in challenging economic times*. Rabobank Economic Report. https://economics.rabobank.com/publications/2015/may/institutional-quality-in-europe-diverging-trends-in-challenging-economic-times/

BusinessEurope, CEEP, Eurochambers, & UEAPME. (2013). *Joint Statement on disclosure of non-financial information*. https://www.businesseurope.eu/sites/buseur/files/media/imported/2013-01322-E.pdf

Campos, N. F., Dimova, R., & Saleh, A. (2016). Corruption and Economic Growth: An Econometric Survey of the Evidence. *Journal of Institutional and Theoretical Economics JITE*, *172*(3), 521–543. https://doi.org/10.1628/093245616X14616712130543

Campos, N. F., & Giovannoni, F. (2007). Lobbying, corruption and political influence. *Public Choice*, *131*(1–

2), 1–21. https://doi.org/10.1007/s11127-006-9102-4

Carr, I., & Outhwaite, O. (2011). Controlling Corruption through Corporate Social Responsibility and Corporate Governance: Theory and Practice. *Journal of Corporate Law Studies*, *11*(2), 299–341. https://doi.org/10.5235/147359711798110592

Cecot, C., Hahn, R., Renda, A., & Schrefler, L. (2008). An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU. *Regulation & Governance*, *2*(4), 405–424. https://doi.org/10.1111/J.1748-5991.2008.00044.X

Clemens, B., & Douglas, T. J. (2006). Does coercion drive firms to adopt 'voluntary' green initiatives? Relationships among coercion, superior firm resources, and voluntary green initiatives. *Journal of Business Research*, *59*(4), 483–491. https://doi.org/10.1016/J.JBUSRES.2005.09.016

Climate Disclosure Standards Board. (2021). *EU Non-Financial Reporting Directive*. Reporting Policy. https://www.cdsb.net/what-we-do/policy-work/eu-non-financial-reporting-directive

Coglianese, C., & Mendelson, E. (2010). Meta-Regulation and Self-Regulation. In R. Baldwin, M. Cave, & M. Lodge (Eds.), *The Oxford Handbook of Regulation*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2002755

Committee on Legal Affairs of the European Parliament. (2013). *Amendments 42-213, Disclosure of non-financial and diversity information by certain large companies and groups, Proposal for a directive (COM(2013)0207-C7-0103/2013-2013/0110(COD))*.

Conseil des ministres. (2017, October 18). *Publication d'informations non financières par certaines grandes entreprises et certains groupes d'entreprises*. Compte Rendu Du Conseil Des Ministres Du 18 Octobre 2017 |. https://www.gouvernement.fr/conseil-des-ministres/2017-10-18/publication-d-informations-non-financieres-par-certaines-gra

Considine, M. (2001). *Enterprising states : the public management of welfare-to-work*. Cambridge University Press.

Coombs, W. T., & Holladay, S. J. (2013). The pseudo-panopticon: The illusion created by CSR-related transparency and the internet. *Corporate Communications*, *18*(2), 212–227. https://doi.org/10.1108/13563281311319490

Daimler AG. (2017). *Daimler Annual Report 2017 including Combined Management Report*. https://group.mercedes-benz.com/documents/investors/reports/annual-report/daimler/daimler-ir-annual-report-2017.pdf

Daimler AG. (2018). *Daimler Annual Report 2018 including Combined Management Report*. https://group.mercedes-benz.com/documents/investors/reports/annual-report/daimler/daimler-ir-annual-report-2018.pdf

Daimler AG. (2019). *Daimler Annual Report 2019 including Combined Management Report*. https://group.mercedes-benz.com/documents/investors/reports/annual-report/daimler/daimler-ir-annual-report-2019-incl-combined-management-report-daimler-ag.pdf

Day, R., & Chambers, C. (2011). *The public face of private actions: exploring accountability in bribery and corruption disclosures by UK listed companies*.

Deegan, C. M. (2017). Twenty five years of social and environmental accounting research within Critical

Perspectives of Accounting: Hits, misses and ways forward. *Critical Perspectives on Accounting*, *43*, 65–87. https://doi.org/10.1016/j.cpa.2016.06.005

Deegan, C. M. (2019). Legitimacy theory: Despite its enduring popularity and contribution, time is right for a necessary makeover. *Accounting, Auditing & Accountability Journal*, *32*(8), 2307–2329. https://doi.org/10.1108/AAAJ-08-2018-3638

Deutscher Bundestag. (2016a). *Antrag Zukunftsfähige Unternehmensverantwortung – Nachhaltigkeitsberichte wirksam und aussagekräftig ausgestalten – Umsetzung der CSR-Richtlinie* (Issue Drucksache 18/10030, pp. 1–4).

Deutscher Bundestag. (2016b). *Gesetzentwurf der Bundesregierung Entwurf eines Gesetzes zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten (CSR-Richtlinie-Umsetzungsgesetz)* (Issue Drucksache 18/9982, pp. 1–71).

Deutscher Bundestag. (2016c). *Unterrichtung durch die Bundesregierung* (Issue Drucksache 18/10344, pp. 1–2).

Deutscher Bundestag. (2017a). Gesetz zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten (CSR-Richtlinie-Umsetzungsgezetz). In *Bundesgesetzblatt Teil* (Vol. 2017, Issue 20, pp. 802–814). https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5B@attr_id=%27bgbl117s0802.pdf%27%5D#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl117s0802.pdf%27%5D__1617736750145

Deutscher Bundestag. (2017b). *Stenografischer Bericht 221. Sitzung Berlin, Donnerstag, den 9. März 2017* (Issue Plenarprotokoll 18/221, pp. I–22366). http://dip21.bundestag.de/dip21/btd/18/025/1802581.pdf

Deville, X., & Verduyn, F. (2012). *Implementation of EU legislation on rail liberalisation in Belgium, France, Germany and The Netherlands* (No. 2012; NBB Working Papers). https://www.econstor.eu/handle/10419/144433

DiMaggio, P. J., & Powell, W. W. (1983). The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields. *American Sociological Review*, *48*(2), 147. https://doi.org/10.2307/2095101

Direction générale du Trésor. (2017). *La déclaration de performance extra-financière : un nouveau cadre de publication*. https://www.tresor.economie.gouv.fr/Articles/6d2982c8-1852-4a24-ad1d-ebd1a435b72a/files/244dbf47-729a-483f-ac80-06847a37afe5

do Nascimento Ferreira Barros, A., Rodrigues, R. N., & Panhoca, L. (2019). Information on the fight against corruption and corporate governance practices: evidence of organized hypocrisy. *International Journal of Disclosure and Governance*, *16*(2–3), 145–160. https://doi.org/10.1057/s41310-019-00060-2

Drahn, P. (2020). *Adoption of EU Business and Human Rights Policy*. Springer Nature Switzerland AG. https://doi.org/10.1007/978-3-030-46935-1_6

Duho, K. C. T., Agyenim-Boateng, C., Asare, E. T., & Onumah, J. M. (2020). Convergence and determinants of anti-corruption disclosure among extractive firms in Africa. *Journal of Financial Crime*. https://doi.org/10.1108/JFC-06-2020-0109

Eccles, R. G., & Spiesshofer, B. (2015). *Integrated Reporting for a Re-Imagined Capitalism* (No. 16–032; Harvard Business School Working Paper). https://dash.harvard.edu/handle/1/22824053

Eigen, P. (2006). Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry. *Houston Journal of International Law*, *29*(2), 327–354. https://heinonline.org/HOL/Page?handle=hein.journals/hujil29&id=333&div=&collection=

Ellias, J. R. (1999). *Accountability and multilateral global governance: exploring the discourse of transparency and the role of secrecy*. https://research-information.bris.ac.uk/en/studentTheses/accountability-and-multilateral-global-governance-exploring-the-d

Erkkilä, T. (2012). *Government Transparency: Impacts and Unintended Consequences*. Palgrave Macmillan.

Ethical Trading Initiative. (2017). *Non-financial company reporting requirements tightened up | Ethical Trading Initiative*. https://www.ethicaltrade.org/blog/non-financial-company-reporting-requirements-tightened

euobserver. (2017). *EU commission drops anti-corruption report*. https://euobserver.com/eu-political/136775

European Commission. (2010). Communication from the Commission, Europe 2020: A strategy for smart, sustainable and inclusive growth. In *COM (2010) 20220*. https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52010DC2020

European Commission. (2011a). Green Paper The EU corporate governance framework. In */* COM/2011/0164 final */* (Document 52011DC0164). https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0164

European Commission. (2011b). *Summary Report of the Responses Received to the Public Consultations on Disclosure of the Non-Financial Information by Companies*. http://ec.europa.eu/internal_market/consultations/2010/non-financial_reporting_en.htm

European Commission. (2012). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Single Market Act II Together for new growth. In */* COM/2012/0573 final */* (Document 52012DC0573). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012DC0573

European Commission. (2013a). Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity. In *SWD/2013/0127 final* (Document 52013SC0127). https://doi.org/10.1787/9789264115415-en

European Commission. (2013b). *Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups*. http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

European Commission. (2014). *EU Anti-Corruption Report*. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

European Commission. (2016). *Feedback Statement on the Public Consultation on the Non-Binding Guidelines for Reporting on Non-Financial Information by Companies Having Taken Place from 15 January to 15 April 2016*. https://ec.europa.eu/finance/consultations/2016/non-financial-reporting-guidelines/docs/summary-of-responses_en.pdf

European Commission. (2017). Communication from the Commission Guidelines on Non-Financial Reporting (Methodology for Reporting Non-Financial Information). In *Official Journal* (Issue C215, pp. 1–20). http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm#related-documents

European Commission. (2018). *Non-Financial Reporting: EU Rules Require Large Companies to Publish Regular Reports on the Social and Environmental Impacts of Their Activities.* https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

European Commission. (2019a). *Impact Assessments*. Planing and Proposing Law. https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en

European Commission. (2019b). *Speech by President Juncker at the opening ceremony of the Romanian Presidency of the Council of the European Union*. https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_325

European Commission. (2020). *Summary Report of the Public Consultation on the Review of the Non-Financial Reporting Directive*. https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive/public-consultation_en

European Commission. (2021a). *Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0150

European Commission. (2021b). *Corporate sustainability reporting*. https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

European Commission. (2021c). *Reports on development of EU sustainability reporting standards*. https://finance.ec.europa.eu/publications/reports-development-eu-sustainability-reporting-standards_en

European Commission. (2022). *Better Regulation: why and how* . https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en

European Parliament and the Council of the European Union. (2013). Directive 2013/34/EU of the European Parliament and the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Pa. *Official Journal*, *L182*. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0034

European Parliament and the Council of the European Union. (2014). Directive 2014/95/EU of the European Parliament and 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.

Official Journal, *L330*. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0095

Everett, J., Neu, D., & Rahaman, A. S. (2007). Accounting and the global fight against corruption. *Accounting, Organizations and Society*, *32*(6), 513–542. https://doi.org/10.1016/j.aos.2006.07.002

Fabbri, A., Santos, A. la, Mezinska, S., Mulinari, S., & Mintzes, B. (2018). Sunshine Policies and Murky Shadows in Europe: Disclosure of Pharmaceutical Industry Payments to Health Professionals in Nine European Countries. *International Journal of Health Policy and Management*, *7*(6), 504–509. https://doi.org/10.15171/ijhpm.2018.20

Farrales, M. J. (2005). What is Corruption?: A History of Corruption Studies and the Great Definitions Debate. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.1739962

Fenster, M. (2015). Transparency in search of a theory. *European Journal of Social Theory*, *18*(2), 150–167. https://doi.org/10.1177/1368431014555257

FiercePharma. (2019, June 14). *GSK may be reviving incentive pay for sales reps, but it's not returning to its old ways: executive* . Pharma. https://www.fiercepharma.com/pharma/gsk-may-be-tweaking-its-rep-pay-rules-but-it-s-not-going-back-to-its-old-ways-exec

Financial Reporting Council. (2018). Guidance on the Strategic Report. In *Accounting and Reporting Guidance* (pp. 1–98). FRC Publications. www.frcpublications.com

Florini, A. (1998). The end of secrecy. *Foreign Policy*, *111*, 50–63. https://ink.library.smu.edu.sg/soss_research

Forbes. (2022). *The Global 2000 2022*. https://www.forbes.com/lists/global2000/?sh=42426bb85ac0

Forssbæck, J., & Oxelheim, L. (Eds.). (2014). *The Oxford Handbook of Economic and Institutional Transparency*. Oxford University Press.

Freeman, R. E., Rusconi, G., Signori, S., & Strudler, A. (2012). Stakeholder Theory(ies): Ethical Ideas and Managerial Action. *Journal of Business Ethics*, *109*(1), 1–2. https://doi.org/10.1007/S10551-012-1374-7

Fung, A., Graham, M., & Weil, D. (2007). *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press.

Fung, A., Weil, D., Ar, M., Raham, G., Fagotto, E. L., Graham, M., Fagotto, E., Bui, L., Hamilton, J., Keating, E., Mitchell, R., & Zeckhauser, R. (2004). *The Political Economy of Transparency : What makes disclosure policies effective?* https://ash.harvard.edu/files/political_econ_transparency.pdf

Furstenberg, S. (2017). *EITI Suspension of Kyrgyzstan and Tajikistan Tests Its Global Leverage*. Eurasianet. https://eurasianet.org/eiti-suspension-of-kyrgyzstan-and-tajikistan-tests-its-global-leverage

George, A. L., & Bennett, A. (2005). *Case studies and theory development in the social sciences*. MIT Press.

German Council for Sustainable Development. (2011). *The German Sustainability Code (GSC)*. https://eclass.aueb.gr/modules/document/index.php?course=DET156&download=/536b741cXVAV/536b7974jFDg.pdf

German Council for Sustainable Development. (2014, May 6). *Merkel wishes to promote Sustainability Code*. RNE-News. https://www.deutscher-nachhaltigkeitskodex.de/en-GB/Home/News/Sustainable-Development/2014/Merkel-wishes-to-promote-Sustainability-Code

German Council for Sustainable Development. (2017). *The Sustainability Code: Benchmarking sustainable business*. https://www.nachhaltigkeitsrat.de/wp-content/uploads/2018/03/The_SustainabilityCode_2017.pdf

Global Compact Network Germany, & econsense. (2018). *New Momentum for Reporting on Sustainability? Study on Implementation of the German CSR Directive Implementation Act*. https://www.globalcompact.de/wAssets/docs/Reporting/NFE_Studie_Online_englisch_181015.pdf

Global Justice Now. (2018, October 17). *69 of the richest 100 entities on the planet are corporations, not governments, figures show*. https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/

Global Reporting Initiative. (2018). *GRI 205: Anti-Corruption* . https://www.globalreporting.org/standards/media/1006/gri-205-anti-corruption-2016.pdf

Gordon, K., & Miyake, M. (2001). Business approaches to combating bribery: A study of codes of conduct. *Journal of Business Ethics*, *34*(3–4), 161–173. https://doi.org/10.1023/A:1012517622479

Graham, M. (2002). *Democracy by Disclosure: The Rise of Technopopulism*. Brookings Institution Press.

Greenhalgh, T., & Peacock, R. (2005). Effectiveness and efficiency of search methods in systematic reviews of complex evidence: audit of primary sources. *BMJ*, *331*(7524), 1064–1065. https://doi.org/10.1136/BMJ.38636.593461.68

Harvard Kennedy School. (2016). *Transparency Policies*. Ash Center For Democratic Governance and Innovation. https://ash.harvard.edu/transparency-policies

Healy, P., & Serafeim, G. (2016). An Analysis of Firms' Self-Reported Anticorruption Efforts. *The Accounting Review*, *91*(2), 489–511. https://doi.org/10.2308/accr-51191

Hess, D. (2009). Catalyzing Corporate Commitment to Combating Corruption. *Journal of Business Ethics*, *88*, 781–790. https://doi.org/10.1007/s10551-009-0322-7

Hindess, B. (2005). Investigating International Anti-Corruption. *Third World Quarterly* , *26*(8), 1389–1398. https://www.jstor.org/stable/4017720?seq=1#metadata_info_tab_contents

Hock, B. (2017). Transnational Bribery: When is Extraterritoriality Appropriate. *Charleston Law Review*, *11*(2), 305–352. https://researchportal.port.ac.uk/portal/en/publications/transnational-bribery-when-is-extraterritoriality-appropriate(b097dbb2-31b7-4527-a9bf-dc3e6a4ae752)/export.html

Hood, C., Rothstein, H., & Baldwin, R. (2001). *The Government of Risk: Understanding Risk Regulation Regimes*. Oxford University Press. https://doi.org/10.1093/0199243638.001.0001

Howlett, M. (2009). Governance modes, policy regimes and operational plans: A multi-level nested model of policy instrument choice and policy design. *Policy Sciences*, *42*(1), 73–89. https://doi.org/10.1007/S11077-009-9079-1/FIGURES/1

Howlett, M., Mukherjee, I., & Woo, J. J. (2015). From tools to toolkits in policy design studies: The new design orientation towards policy formulation research orientation towards policy formulation research. *Policy & Politics*, *43*(2), 291–311. https://doi.org/10.1332/147084414X13992869118596

Howlett, M., & Rayner, J. (2013). Patching vs Packaging in Policy Formulation: Assessing Policy Portfolio Design. *Politics and Governance*, *1*(2), 170–182. https://ideas.repec.org/a/cog/poango/v1y2013i2p170-182.html

Huizinga, K., & de Bree, M. (2021). Exploring the Risk of Goal Displacement in Regulatory Enforcement Agencies: A Goal-Ambiguity Approach. *Public Performance and Management Review*, *44*(4), 868–898. https://doi.org/10.1080/15309576.2021.1881801

Islam, M. A., Dissanayake, T., Dellaportas, S., & Haque, S. (2018). Anti-bribery disclosures: A response to networked governance. *Accounting Forum*, *42*(1), 3–16. https://doi.org/10.1016/j.accfor.2016.03.002

Issa, A., & Alleyne, A. (2018). Corporate disclosure on anti-corruption practice: A study of social responsible companies in the Gulf Cooperation Council. *Journal of Financial Crime*, *25*(4), 1077–1093. https://doi.org/10.1108/JFC-05-2017-0045

Jaggi, B., Allini, A., Ginesti, G., & Macchioni, R. (2020). Determinants of corporate corruption disclosures: evidence based on EU listed firms. *Meditari Accountancy Research*, *29*(1), 21–38. https://doi.org/10.1108/MEDAR-11-2019-0616

Jancsics, D. (2019). Corruption as Resource Transfer: An Interdisciplinary Synthesis. *Public Administration Review*, *79*(4), 523–537. https://doi.org/10.1111/PUAR.13024

Johnston, M. (2005). *Syndromes of corruption: Wealth, Power and Democracy*. Cambridge University Press.

Joseph, C., Gunawan, J., Sawani, Y., Rahmat, M., Avelind Noyem, J., & Darus, F. (2016). A comparative study of anti-corruption practice disclosure among Malaysian and Indonesian Corporate Social Responsibility (CSR) best practice companies. *Journal of Cleaner Production*, *112*, 2896–2906. https://doi.org/10.1016/j.jclepro.2015.10.091

Jung, C. S. (2014). Extending the Theory of Goal Ambiguity to Programs: Examining the Relationship between Goal Ambiguity and Performance. *Public Administration Review*, *74*(2), 205–219. https://doi.org/10.1111/puar.12176

Kaeding, M. (2007). Administrative Convergence Actually — An Assessment of the European Commission's Best Practices for Transposition of EU Legislation in France, Germany, Italy, Sweden and Greece. *Journal of European Integration*, *29*(4), 425–445. https://doi.org/10.1080/07036330701502456

Kaufmann, D., Kraay, A., & Mastruzzi, M. (2010). *The Worldwide Governance Indicators: Methodology and Analytical Issues*. http://info.worldbank.org/governance/wgi/pdf/wgi.pdf

Kaufmann, D., & Vicente, P. C. (2011). Legal Corruption. *Economics & Politics*, *23*(2), 195–219. https://doi.org/10.1111/j.1468-0343.2010.00377.x

Kern, F., & Howlett, M. (2009). Implementing transition management as policy reforms: A case study of the Dutch energy sector. *Policy Sciences*, *42*(4), 391–408. https://doi.org/10.1007/S11077-009-9099-X/FIGURES/1

Kinderman, D. (2020). The challenges of upward regulatory harmonization: The case of sustainability reporting in the European Union. *Regulation & Governance*, *14*(4), 674–697. https://doi.org/10.1111/rego.12240

Klitgaard, R. (1998). International Cooperation Against Corruption. *Finance and Development*, *March*, 3–6. https://pdfs.semanticscholar.org/b6cf/ccb56a32cf9124be07c07b3494b79e841f58.pdf

Kluge, N., & Sick, S. (2016). *Geheimwirtschaft bei Transparenz zum Gesellschaftlichen Engagement?* (Issue

27). https://www.boeckler.de/de/faust-detail.htm?sync_id=7693

Kovács, A., Tóth, T., & Forgács, A. (2016). The Legal Effects of European Soft Law and Their Recognition at National Administrative Courts. *ELTE Law Journal*, *2*, 53–70. https://eltelawjournal.hu/wp-content/uploads/2018/05/03_Andras_Kovacs__Tihamer_Toth__Anna_Forgacs.pdf

Krippendorff, K. (2004). *Content Analysis: An Introduction to Its Methodology*. SAGE Publications. https://books.google.nl/books/about/Content_Analysis.html?id=q657o3M3C8cC&redir_esc=y

L'Assemblée nationale et le Sénat. (2017). *LOI n° 2017-86 du 27 janvier 2017 relative à l'égalité et à la citoyenneté* . Legifrance. https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033934948/

La Porta, R., Lopez-De-Silanes, F., & Shleifer, A. (2006). What Works in Securities Laws? *The Journal of Finance*, *61*(1), 1–32. https://doi.org/10.1111/J.1540-6261.2006.00828.X

Le Conseil d'Etat. (2017). Décret n° 2017-1265 du 9 août 2017 pris pour l'application de l'ordonnance n° 2017-1180 du 19 juillet 2017 relative à la publication d'informations non financières par certaines grandes entreprises et certains groupes d'entreprises. In *NOR : ECOT1711310D/ JORF n°0187 du 11 août 2017*. https://www.legifrance.gouv.fr/loda/id/JORFTEXT000035401863/

Lopatta, K., Jaeschke, R., Tchikov, M., & Lodhia, S. (2017). Corruption, Corporate Social Responsibility and Financial Constraints: International Firm-level Evidence. *European Management Review*, *14*(1), 47–65. https://doi.org/10.1111/emre.12098

Lowi, T. J. (1972). Four Systems of Policy, Politics, and Choice. *Public Administration Review*, *32*(4), 298–310.

Maden, M., Cunliffe, A., McMahon, N., Booth, A., Carey, G. M., Paisley, S., Dickson, R., & Gabbay, M. (2017). Use of programme theory to understand the differential effects of interventions across socio-economic groups in systematic reviews-a systematic methodology review. *Systematic Reviews*, *6*(1), 1–23. https://doi.org/10.1186/S13643-017-0638-9/TABLES/10

Mahoney, L. S., Thorne, L., Cecil, L., & LaGore, W. (2013). A research note on standalone corporate social responsibility reports: Signaling or greenwashing? *Critical Perspectives on Accounting*, *24*(4–5), 350–359. https://doi.org/10.1016/j.cpa.2012.09.008

Masud, M. A. K., Bae, S. M., Manzanares, J., & Kim, J. D. (2019). Board directors' expertise and corporate corruption disclosure: The moderating role of political connections. *Sustainability* , *11*(16:4491), 1–22. https://doi.org/10.3390/su11164491

Mauro, P. (1995). Corruption and Growth. *The Quarterly Journal of Economics*, *110*(3), 681–712. http://homepage.ntu.edu.tw/~kslin/macro2009/Mauro 1995.pdf

McGee, R., Gaventa, J., Barrett, G., Calland, R., Carlitz, R., Joshi, A., & Acosta, A. M. (2010). *Synthesis report: Review of impact and effectiveness of transparency and accountability initiatives*. http://www.transparency-initiative.org/wp-content/uploads/2017/03/synthesis_report_final1.pdf

MEDEF. (2012). *Guide méthodologique Reporting RSE Les nouvelles dispositions légales et réglementaires: Comprendre et appliquer les obligations issues de l'article 225 de la loi Grenel*. https://medef35.fr/wp-content/uploads/2012/07/Guide-reporting-RSE-Medef-Mai-2012.pdf

Ministère de l'Économie et des Finances. (2017a). Décret no 2017-1265 du 9 août 2017 pris pour l'application de l'ordonnance no 2017-1180 du 19 juillet 2017 relative à la publication d'informations

non financières par certaines grandes entreprises et certains groupes d'entreprises. In *Journal Officiel de la République Française*.

Ministère de l'Économie et des Finances. (2017b). Ordonnance n° 2017-1180 du 19 juillet 2017 relative à la publication d'informations non financières par certaines grandes entreprises et certains groupes d'entreprises. In *Journal Officiel de la République Française*. https://www.legifrance.gouv.fr/loda/id/JORFTEXT000035250851/

Ministère de l'Économie et des Finances. (2017c). Rapport au Président de la République relatif à l'ordonnance no 2017-1180 du 19 juillet 2017 relative à la publication d'informations non financières par certaines grandes entreprises et certains groupes d'entreprises. In *Journal Officiel de la République Française*.

Mol, A. P. J. (2010). The Future of Transparency: Power, Pitfalls and Promises. *Global Environmental Politics*, *10*(3), 132–143. https://doi.org/10.1162/GLEP_a_00018

Mol, A. P. J. (2015). Transparency and value chain sustainability. *Journal of Cleaner Production*, *107*, 154–161. https://doi.org/10.1016/j.jclepro.2013.11.012

Monciardini, D. (2016). The 'Coalition of the Unlikely' Driving the EU Regulatory Process of Non-Financial Reporting. *Social and Environmental Accountability Journal*, *36*(1), 76–89. https://doi.org/10.1080/0969160X.2016.1149302

Monciardini, D., & Conaldi, G. (2019). The European regulation of corporate social responsibility: The role of beneficiaries' intermediaries. *Regulation and Governance*, *13*(2), 240–259. https://doi.org/10.1111/rego.12248

Monciardini, D., Mähönen, J. T., & Tsagas, G. (2020). Rethinking Non-Financial Reporting: A Blueprint for Structural Regulatory Changes. *Accounting, Economics and Law: A Convivium*, *10*(2), 14–35. https://doi.org/10.1515/AEL-2020-0092/MACHINEREADABLECITATION/RIS

Mungiu-Pippidi, A. (2017). The Time Has Come for Evidence-Based Anticorruption. *Nature Human Behaviour*, *1*(1), 0011. https://doi.org/10.1038/s41562-016-0011

Mussie, N. (2016). *Corruption and its multifaceted Forms*. http://aigaforum.com/article2016/Corruption-and-its-multifaceted-forms.pdf

Nielsen, C., & Madsen, M. T. (2009). Discourses of transparency in the intellectual capital reporting debate: Moving from generic reporting models to management defined information. *Critical Perspectives on Accounting*, *20*(7), 847–854. https://doi.org/10.1016/J.CPA.2008.09.007

Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic Analysis. *International Journal of Qualitative Methods*, *16*(1), 160940691773384. https://doi.org/10.1177/1609406917733847

OECD. (2010a). *Better Regulation in Europe: France 2010*. www.sourceoecd.org/governance/9789264086555

OECD. (2010b). *Better Regulation in Europe: Germany*. www.sourceoecd.org/governance/9789264085879

OECD. (2018). *2017 Enforcement of the Anti-Bribery Convention*. www.oecd.org/corruption.

OECD. (2020). *2019 Enforcement of the OECD Anti-Bribery Convention*. www.oecd.org/corruption.

OECD. (2022). *Entrepreneurship - Enterprises by business size*. Data. https://data.oecd.org/entrepreneur/enterprises-by-business-size.htm

Office of the Ambassador at large for Corporate Social Responsibility. (2012). *The French legislation on extra-financial reporting : built on consensus*.

Pacini, C., Rogers, H., & Swingen, J. (2002). The OECD convention on combating bribery of foreign public officials in international business transactions: A new tool to promote transparency in financial reporting. *Advances in International Accounting*, *15*, 121–153. https://doi.org/10.1016/S0897-3660(02)15021-5

Parmar, B. L., Freeman, R. E., Harrison, J. S., Wicks, A. C., Purnell, L., & de Colle, S. (2010). Stakeholder theory: The state of the art. In *Academy of Management Annals* (Vol. 4, Issue 1, pp. 403–445). https://doi.org/10.1080/19416520.2010.495581

Patton, M. Q. (2015). Sampling, Qualitative (Purposeful). In *The Blackwell Encyclopedia of Sociology*. John Wiley & Sons, Ltd. https://doi.org/10.1002/9781405165518.wbeoss012.pub2

Pawson, R. (2006). *Evidence-Based Policy: A Realist Perspective*. SAGE Publications Ltd.

Phillips, R., Schrempf-Stirling, J., & Stutz, C. (2020). The Past, History, and Corporate Social Responsibility. *Journal of Business Ethics*, *166*(2), 203–213. https://doi.org/10.1007/s10551-019-04319-0

Piotrowski, S. J. (2014). Transparency: A Regime Value Linked With Ethics. *Http://Dx.Doi.Org/10.1177/0095399713519098*, *46*(2), 181–189. https://doi.org/10.1177/0095399713519098

Platforme RSE. (2017). *Avis sur le projet de transposition de la directive 2014/95/UE relative à la publication d'informations extra-financières par les entreprises* . www.strategie.gouv.fr

Příborský, M. (2012). The European Union and the UN Convention against Corruption. *The European Criminal Law Association Forum*, *1*, 34–38.

Rainey, H. G., & Jung, C. S. (2015). A Conceptual Framework for Analysis of Goal Ambiguity in Public Organizations. *Journal of Public Administration Research and Theory*, *25*(1), 71–99. https://doi.org/10.1093/JOPART/MUU040

Rasmussen, M. (2014). Revolutionizing European law: A history of the Van Gend en Loos judgment. *International Journal of Constitutional Law*, *12*(1), 136–163. https://doi.org/10.1093/ICON/MOU006

Rayner, J., & Howlett, M. (2009). Introduction: Understanding integrated policy strategies and their evolution. *Policy and Society*, *28*(2), 99–109. https://doi.org/10.1016/J.POLSOC.2009.05.001

Rothstein, B. (2011). *The quality of government: corruption, social trust, and inequality in international perspective*. University of Chicago Press.

Rothstein, B., & Varraich, A. (2014). *Corruption and the Opposite to Corruption: A Map of the Conceptual Landscape*. http://anticorrp.eu/wp-content/uploads/2014/12/D1.1_Part1_Corruption-and-the-Opposite-to-Corruption.pdf

Saenz, C., & Brown, H. (2018). The disclosure of anticorruption aspects in companies of the construction sector: Main companies worldwide and in Latin America. *Journal of Cleaner Production*, *196*, 259–272. https://doi.org/10.1016/j.jclepro.2018.06.045

Salazar, L. (2012). Monitoring International Instruments against Corruption. *The European Criminal Law Association Forum*, *1*, 20–24. www.mpicc.de/eucrim/search.php

Sampson, S. (2014). *Is Anticorruption Neoliberal Plot? Assessming the Anticorruption Project in Southeast Europe*. 1–15. https://lup.lub.lu.se/search/publication/2f37344d-a868-4ae5-849d-55ca2b24eefa

Sari, T. K., Cahaya, F. R., & Joseph, C. (2020). Coercive Pressures and Anti-corruption Reporting: The Case of ASEAN Countries. *Journal of Business Ethics*, *1*, 3. https://doi.org/10.1007/s10551-020-04452-1

Schonfelder, K., Velamuri, S. R., & Liu, W. (2016). Evolution of international and Chinese anti-bribery and corruption compliance programs. *Corporate Governance (Bingley)*, *16*(3), 437–451. https://doi.org/10.1108/CG-07-2015-0097

Schumann, D., & Widmaier, U. (2003). Political strategies of large companies and their significance for the implementation of the European single electricity market: the examples of France and Germany. *Journal of Public Affairs*, *3*(3), 260–272. https://doi.org/10.1002/PA.155

Sikka, P., & Lehman, G. (2015). The supply-side of corruption and limits to preventing corruption within government procurement and constructing ethical subjects. *Critical Perspectives on Accounting*, *28*, 62–70. https://doi.org/10.1016/j.cpa.2015.01.008

Stanford Law School Foreign Corrupt Practices Act Clearing House. (2019). *Foreign Corrupt Practices Act: Statistics & Analytics*. http://fcpa.stanford.edu/statistics-heat-maps.html

Steurer, R. (2010). The role of governments in corporate social responsibility: characterising public policies on CSR in Europe. *Policy Sciences*, *43*(1), 49–72. https://doi.org/10.1007/s11077-009-9084-4

Stiglitz, J. E. (2002). Transparency in Government. In *The Right to Tell The Role of Mass Media in Economic Development* (pp. 27–44). The World Bank. www.copyright.com.

Stolowy, H., & Paugam, L. (2018). The expansion of non-financial reporting: an exploratory study. *Accounting and Business Research*, *48*(5), 525–548. https://doi.org/10.1080/00014788.2018.1470141

Stratmann, T. (1991). What Do Campaign Contributions Buy? Deciphering Causal Effects of Money and Votes. *Southern Economic Journal*, *57*(3), 606. https://doi.org/10.2307/1059776

Sunlight Foundation. (2013). *Transparency Case Studies* . https://sunlightfoundation.com/casestudies/

Szabó, D. G., & Sørensen, K. E. (2015). New EU Directive on the Disclosure of Non-Financial Information (CSR). *European Company and Financial Law Review*, *12*(3), 307–340. https://doi.org/10.1515/ecfr-2015-0307

Tang, T. Y. H. (2020). An Investigation of Tax-Related Corporate Political Activity in China: Evidence From Consumption Bribery. *Journal of Accounting, Auditing and Finance*. https://doi.org/10.1177/0148558X20965698

Tanzi, V., & Davoodi, H. (1998). Corruption, Public Investment, and Growth. In H. Shibata & T. Ihori (Eds.), *The Welfare State, Public Investment, and Growth* (pp. 41–60). Springer Japan. https://doi.org/10.1007/978-4-431-67939-4_4

The Guardian. (2014). *The EU Law on Non-Financial Reporting - How We Got There*. Guardian Sustainable Business. https://www.theguardian.com/sustainable-business/eu-non-financial-reporting-how-richard-howitt

Thelen, K. (2004). How institutions evolve: The political economy of skills in Germany, Britain, the United States, and Japan. In *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan*. Cambridge University Press. https://doi.org/10.1017/CBO9780511790997

Toshkov, D. (2007). Transposition of EU social policy in the new member states. *Journal of European Social Policy*, *17*(4), 335–348. https://doi.org/10.1177/0958928707081065

Tosun, J., & Treib, O. (2018). Linking Policy Design and Implementation Styles. In M. Howlett & I. Mukherjee (Eds.), *Routledge Handbook of Policy Design* (pp. 316–330). Routledge. https://doi.org/10.4324/9781351252928-21

Total. (2017). *Registration Document 2017 including the Annual Financial Report*. https://sustainable-performance.totalenergies.com/sites/g/files/wompnd2346/f/atoms/files/ddr2017_va.pdf

Total. (2018). *Registration Document 2018 including the Annual Financial Report*. https://totalenergies.com/sites/g/files/nytnzq121/files/atoms/files/ddr2018-en.pdf

Total. (2019). *Universal Registration Document 2019 including the Annual Financial Report*.

Transparency International. (2009). Reporting Guidance on the 10th Principle against Corruption. In *UN Global Compact Office* (pp. 1–44). The UN Global Compact Office. www.transparency.org

Transparency International. (2019). *Western Europe and EU: Stagnating Anti-Corruption Efforts and Weakening Democratic Institutions*. Surveys. https://www.transparency.org/news/feature/cpi2018-western-europe-eu-regional-analysis

Transparency International. (2022). *2021 Corruption Perceptions Index*. https://www.transparency.org/en/cpi/2021/index/mkd

Treib, O. (2014). Implementing and complying with EU governance outputs. *Living Reviews in European Governance*, *9*. https://doi.org/10.12942/lreg-2014-1

Vale, J., & Branco, M. C. (2019). Anti-corruption reporting in emerging country multinationals. *Journal of Financial Crime*, *26*(3), 861–873. https://doi.org/10.1108/JFC-10-2018-0114

van Geet, M. T., Lenferink, S., & Leendertse, W. (2019). Policy design dynamics: fitting goals and instruments in transport infrastructure planning in the Netherlands. *Policy Design and Practice*, *2*(4), 324–358. https://doi.org/10.1080/25741292.2019.1678232

Voermans, W. (2018). *Transposition of EU legislation into domestic law: challenges faced by national parliaments*. www.europarl.europa.eu/factsheets/en

Vogl, F. (1998). The Supply Side of Global Corruption. *Finance & Development*, *35*(2), 30. https://doi.org/10.5089/9781451952780.022

Volkswagen AG. (2017a). *Empowering Transformation. Sustainability Report 2017*. https://www.volkswagenag.com/presence/nachhaltigkeit/documents/sustainability-report/2017/Nonfinancial_Report_2017_e.pdf

Volkswagen AG. (2017b). *Shaping the Transformation Together. Annual Report 2017*. https://www.volkswagenag.com/presence/investorrelation/publications/annual-reports/2018/volkswagen/en/Y_2017_e.pdf

Volkswagen AG. (2018a). *Full Speed Ahead to the Future. Annual Report 2018*.

https://www.volkswagenag.com/presence/investorrelation/publications/annual-reports/2019/volkswagen/en/Y_2018_e.pdf

Volkswagen AG. (2018b). *Sustainability Report 2018*. https://www.volkswagenag.com/presence/nachhaltigkeit/documents/sustainability-report/2018/Nonfinancial_Report_2018_e.pdf

Volkswagen AG. (2019a). *Mobility for generations to come. Annual Report 2019*.

Volkswagen AG. (2019b). *Sustainability Report 2019*. https://www.volkswagenag.com/presence/nachhaltigkeit/documents/sustainability-report/2019/Nonfinancial_Report_2019_e.pdf

Weatherill, S. (2012). Maximum versus Minimum Harmonization: Choosing between Unity and Diversity in the Search for the Soul of the Internal Market. In N. N. Shuibhne & L. W. Gormley (Eds.), *From Single Market to Economic Union: Essays in Memory of John A. Usher*. Oxford Scholarship Online. https://doi.org/10.1093/acprof:oso/9780199695706.001.0001

Wehmeier, S., & Raaz, O. (2012). Transparency matters: The concept of organizational transparency in the academic discourse. *Public Relations Inquiry*, *1*(3), 337–366. https://doi.org/10.1177/2046147X12448580

Weil, D., Graham, M., & Fung, A. (2013). Targeting Transparency. *Science*, *340*(6139), 1410–1411. https://doi.org/10.1126/SCIENCE.1233480

Wilkinson, P. (2006). Reporting on Countering Corruption. In B. Errath (Ed.), *Business against Corruption: Case stories and examples Implementation of the 10th United Nations Global Compact Principle against corruption*. UN Global Compact. https://www.unglobalcompact.org/library/161

Wiseman, J. (1982). An evaluation of environmental disclosures made in corporate annual reports. *Accounting, Organizations and Society*, *7*(1), 53–63. https://doi.org/10.1016/0361-3682(82)90025-3

Yin, R. K. (2003). *Case Study Research: Design and Methods* (3rd editio). SAGE Publications, Inc.

Zhang, Y., Jancsics, D., & Graycar, A. (2019). Introduction to PAR Symposium of Understanding and Reducing Public Corruption. *Public Administration Review*, *79*(4), 519–522. https://doi.org/10.1111/PUAR.13086