The role of existing regulation and discretion in harmonising non-financial disclosure

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Abstract

The 2014/95/EU Directive is the first regulatory attempt to harmonise large entities' non-financial reporting. It sets minimum requirements whilst leaving discretion to Member States in transposing relevant aspects of disclosure. The transposition is the first moment in which the Directive directly impacts on companies and determines whether they will be complying with more similar rules. This study uses the fit/misfit theory to assess the achievement of formal harmonisation between the UK, France and Italy. An analysis of domestic regulations shows that discretion favoured convergence of rules but also the presence of old and new differences. All countries had to engage in some degree of change to be compliant. The UK and France had a high degree of legal fit and used discretion to limit adaptation costs by minimising the legal intervention and over-implementing the Directive respectively. Italy instead welcomed the legal misfit and greatly departed from its previous regulation.

Keywords: Corporate Social Responsibility reporting, Harmonisation, Non-financial Directive, Transparency, Regulation.

1. Introduction

For a long time, academics, practitioners, and policy makers discussed the importance and need of non-financial information (NFI) (Haller, Link, & Groß, 2017) for decision-making (Deegan, 2017). Due to a variety of reasons, disclosure of non-financial matters greatly evolved from the first attempts recorded in the 1970s (e.g. Hahn & Kühnen, 2013). Although voluntary in many national contexts, sustainability, social and integrated reports became widespread; they began to follow dedicated standards and guidelines and have external assurance to increase their credibility (Salvioni & Bosetti, 2014).

Nonetheless, the extent of the improvement has been questioned by many, including academics (e.g. Cho, Michelon, Patten, & Roberts, 2015), non-governmental organisations and users (Kinderman, 2019). On this matter, the European Commission (EC) highlighted the lack of transparency and comparability of NFI between European companies (EC, 2011). Reporting on sustainability issues is common practice among large companies worldwide (KPMG, 2017), but not as much within European borders (EC, 2013). Moreover, different disclosure regimes co-existed across Member States. For example, France is considered to be one of the pioneers in terms of Corporate Social Responsibility (CSR) reporting and has been mandating detailed requirements for over a decade; the UK is quite renowned for its sustainability reporting practices while Italy made historically little effort in this area.

In the last decade, various crises created the perfect circumstances for a European regulatory intervention to mandate non-financial reporting. A proposal was published in 2013 and its amended version later became the 2014/95/EU Directive (from now onwards the 'NFD'), which obliges certain large public undertakings and groups to publish a non-financial statement commencing on or after 1 January 2017. The Preamble of the NFD explicitly states the intention of achieving similarly high level of transparency across the EU through a

minimum disclosure requirement. The NFD aims at increasing companies' accountability by requiring a minimum amount of NFI of a certain quality and making such information more comparable and consistent between Member States (La Torre, Sabelfeld, Blomkvist, Tarquinio, & Dumay, 2018).

However, regulation is not always an effective way to change behaviours and practices (Bebbington, Kirk, & Larrinaga, 2012; Luque-Vilchez & Larrinaga, 2016). At the time of writing, companies' data are not yet available, therefore the authors cannot infer whether disclosure will be better than the past; the aim of the study is instead that of understanding if and how non-financial reporting rules have been harmonized as a result of the NFD.

Accounting harmonization is a process that sets bounds to variations between companies, thus it increases comparability (Nobes & Parker, 1981). It differs from standardization as the former moves away from total diversity and the latter moves toward uniformity (Tay & Parker, 1990). Harmonisation can be conceived at a rule-level (formal or de-jure harmonisation) and practice-level (material or de-facto harmonisation). Formal harmonisation aims to make laws more similar and not identical.

In achieving the aim of harmonisation, the EU chose to use a directive as a legal instrument, which leaves Member States enjoy some freedom of choice, i.e. discretion, in the transposition. A regulation would have been binding in its entirety, while directives are binding with regard to the result to be achieved but leave the national actors with choice about form and methods. The use of a directive has allowed to avoid a one-size-fits-all approach (EC, 2013) and promoted a light-touch intervention in absence of a strong regulatory history on the matter. However, discretion could lead to less comparability of companies' disclosure. Therefore, our research questions are as follows:

1. Did the enactment of the 2015/95/EU Directive create similar regulations across Member States?

2. What change in disclosure requirements did the transposition into national laws induce in each country?
3. What is the role of discretion in relation to the comparability of NFI?

In the EU's words, 'high flexibility of action [is left to Member States] in order to take account of the multidimensional nature of CSR and the diversity of the CSR policies implemented by businesses' (Preamble, NFD). The EU allows discretion to Member States because it acknowledges that regulation cannot disregard the features of the country it applies to. Therefore, it is interesting to understand how discretion has been used by Member States to increase (or decrease) provisions of quantity and quality of information to disclose.

This research contributes to the literature on formal harmonization and non-financial reporting. It is useful to professionals and also policy makers because formal harmonization is a crucial driver of material harmonization (harmonization of practices), which refers to the compliance by regulated subjects (Rahman, Perera, & Ganeshanandam, 1996; Tay & Parker, 1990). Also, as D'Arcy (2001) pointed out, 'it is only possible in the first place to harmonise standards, not environmental or cultural factors nor accounting practices for all listed companies in one country'.

The remainder of this work considers the evolution of non-financial disclosure, especially in Europe (§ 2), and the issuance of the NFD to overcome disclosure shortcomings (§ 3). It addresses discretion at the transposition stage, which is problematized in relation to the objectives of the European legislator and subsequently in relation to how much the new regulation fits the previous national regulatory environment. Section four explains the research method. Results (§ 5) and discussions (§ 6) are presented, followed by the conclusions (§ 7).

2. From voluntary to mandatory non-financial disclosure

Non-financial disclosure greatly evolved over time. At first, the communication of NFI was usually a brief report on social aspects and later also included environmental matters (Hahn & Kühnen, 2013). From the 1990s, companies began to disclose more NFI about a wider variety of themes using different channels (e.g. annual reports, dedicated sustainability reports, websites) (Cho et al., 2009). Meanwhile, reporting frameworks and guidelines were developed nationally and internationally (e.g. OECD Guidelines for Multinational Enterprises, ISO 26000, UN Global Compact, GRI guidelines and EU Eco-Management and Audit Scheme) and external assurance on NFI increased.

Nonetheless, critiques on non-financial reporting have emerged. The EC defined the shortcomings in terms of quantity, quality and comparability of the NFI provided. EC's consultations depicted corporate disclosure as mainly focused on positive aspects rather than performance-related information and material negative impacts (EC, 2011). Information about risk management, human rights and corruption matters was missing and Key Performance Indicators (KPIs) poorly used. Many studies also highlight how non-financial reports can be a symbolic management practice (Michelon, Pilonato, & Ricceri, 2015), of poor quality and not leading to better accountability (Boiral, 2013, Merkl-Davies & Brennan, 2007).

Over time, the EU launched a large number of initiatives around reporting social, environmental and governance (ESG) aspects, with many of them specifically addressing environmental issues (such as the European Pollutant Release and Transfer Register). However, they all promoted voluntary reporting. Also, the EU Eco-Management and Audit Scheme (EMAS) proposed by the EU Council and revised in 2009 remained voluntary. The first EU regulatory attempt to mandate ESG reporting is the Accounts Modernisation Directive (2003/51/EC), which imposed only a 'broad and unfocused' requirement (Costa & Agostini, 2016) of 'including information relating to environmental and employees matters... to the

extent necessary for an understanding of a company's development, performance or position...where appropriate' (EC, 2013).

Social and cultural differences led to diverse interventions across EU Member States; some countries used a hard approach and others a soft one (Albareda, Lozano, & Ysa, 2007) leading to the co-existence of a variety of requirements across the EU. Certain Member States, such as France and Denmark, are considered to be pioneers of non-financial reporting regulation, while others intervened only after the 2003/51/EC Directive was issued.

The shortcomings of voluntary disclosure alongside a shy regulatory EU intervention and a diverse regulatory environment reduced comparability of disclosure between companies located in different States and, in turn, did not facilitate cross-border share trading (Szabó & Sørensen, 2015).

The financial crisis, environmental scandals and activism contributed to creating the conditions for the EC to engage in a regulatory effort to harmonize non-financial disclosure that culminated in the NFD. In obliging certain companies to provide a minimum level of disclosure, the NFD is a response to the need of higher similar transparency level that may also increase market efficiency whilst reducing the cost of capital (e.g. Dhaliwal, Li, Tsang, & Yang, 2011; Goss & Robert, 2011).

However, the EU legislator relied on mandating NFI disclosure to achieve also wider EU objectives on CSR. For instance, in the EU CSR Strategy for 2011-2014, the EC sees the provision of NFI as instrumental in the construction of a comprehensive and robust CSR policy. This transparency objective had already been stated in 'The Single Market Act' (EC, 2011). In 2013, the EC stated that non-financial disclosure is a leverage for encouraging sustainable economic growth as well as improving 'citizen and consumer trust and confidence in the Single Market' (EC, 2013). Similarly, the NFD Preamble (point no.3) emphasizes the 'importance of businesses divulging information on sustainability [...] with a view to [...] increasing investor

and consumer trust [...] and how disclosure of non- financial information is vital for managing change towards a sustainable global economy'. Therefore, transparency is an objective as well as a mean to the wider purposes of increasing trust and creating a more sustainable economy. This is consistent with a large body of academic contributions for which disclosure of information facilitates trust (Danker, 2013; Millar, Eldiomy, Hilton, & Chong, 2005; Schipper, 2007; Wehmeier & Raaz, 2010) and firm's transparency drives more ethically sound and socially responsible decision-making (Awaysheh & Klassen, 2010; Halter & de Arrunda, 2009).

Of course, the NFD may not achieve its intended outcomes. The assumptions and the arguments used by the EU legislator have been already questioned (La Torre et al., 2018; Szabó & Sørensen, 2015). Kinderman (2019) argues that the NFD is the result of a soft-touch proposal that was weakened by the position taken by countries and organisations in the negotiation process. Also, previous research shows that formal harmonisation doesn't necessarily lead to material harmonisation. According to Luque-Vilchez and Larrinaga (2016) the NFD will have a marginal impact on the quantity and quality of information in Spain. Bebbington et al. (2012) argue that the reason of the poor outcome of the previous Spanish regulatory attempt is to be found in the lack of normativity. In France, CSR disclosure requirements were moving toward normativity, but not leading to an improvement in information quality (Chauvey, Giordano-Spring, Cho, & Patten, 2015). Therefore, formal implementation does not always lead to practical implementation. Research shows how practices may converge when rules are different and even rules may be followed by uneven practices (Ball, Robin & Wu, 2003; Mahoney, 2009; Mastenbroek, 2005; Versluis, 2007). Nonetheless, formal harmonisation is the first moment in which companies are directly impacted by the European intervention and its analysis will allow to ascertain how companies will respond to these new rules.

3. The use of discretion in the transposition of the Non-Financial Directive

The NFD requires large European undertakings (public-interest entities having more than 500 employees) to prepare a ‘non-financial statement’. It sets minimum information requirements (i.e. a short list of obligations) but it also gives the Member States options to choose from and the ability of adding further requirements.

The ‘minimum harmonisation’ approach was preferred to full harmonization (for example achieved by means of mandatory EU standards or more detailed rules) to avoid high compliance costs or that reporting could become a tick-box exercise (EC, 2013, p 29). However, a minimum approach does not imply a minimal impact on national contexts. For instance, Jeppesen and Loft (2011) show how the implementation of the EU Eighth Directive in Denmark disturbed the balance within the audit profession and triggered a conflict between state-authorised and registered auditors over the statutory audit jurisdiction. Hence, the transposition of the NFD into country members’ legislation represents a challenging step that academics have just started to investigate (Jeffery, 2017; Szabó & Sørensen, 2017).

The choice of using a directive as the legal instrument is likely to raise differences in formal implementation. The text of directives is not directly applicable to Member States in its entirety. Member States are free to choose the most appropriate form and mean amongst the permitted ones to fulfil the requirements and achieve the objectives set by the European legislator. Since the text of directives is not binding, states can use a variety of transposition techniques such as copying-out parts of the text of a directive in a new national regulation, transposing the text with minor or major terminology changes or other adjustments, opting for elaboration and/or formulation. For example, the UK Government recommends to always use copy-out for transposition where it is available (HM Government, 2018). Member States have room for manoeuvre in implementing directives (Green-Cowles, Caporaso, & Risse, 2001) and this discretion can be used to set requirements that exceeds the EU law (gold-plating) or not.

As Bugdahn (2005) underlines, ‘in most cases, the institutions involved have room for interpretation that can be used for conserving national patterns, cutting costs or changing domestic patterns beyond EU requirements (conservative or progressive interpretation)’.

Moreover, the NFD gives explicit options to Members States with reference to: i) where NFI is reported (whether in the management report or in a separate report), ii) verification of the information provided by an independent assurance services provider, iii) type of reporting standards or guidelines companies may use, iv) possibility of omitting certain information during the course of negotiation.

Discretion does not hinder compliance. All of the EU Member States have almost timely transposed the NFD, thus being compliant. Discretion allows for differences in the patterns of transposition that may lead to different outcomes. This process of local adaptation within the scope of discretion granted by EU rules is known in the public policy literature as ‘customization’ (Thomann, 2015; Thomann & Zhelyazkova, 2017) or ‘domestication’ (Thomann & Sager, 2017) of EU legislation.

Studies on EU customization suggest that discretion is a tool used by Member States to improve EU policies by adapting them to heterogeneous contexts and integrating local policy positions (Hooghe & Marks 2003: 235; Whitford 2007). Thus, Member States’ discretion is conceived as a bottom–up notion that may better explain Europeanization research.

Instead, traditional law studies on delegation conceive discretion as a control tool to avoid deviations from centrally decided provisions (Huber, Shipan, & Pfahler, 2001; Oosterwaal, Payne, & Torenvlied, 2012). According to delegation studies, discretion is constrained or granted by the principal (the central government) to guide the behaviour of transposition agents and implementing actors (Dörrenbächer & Mastenbroek, 2017). Thus, the level of discretion is studied as a deliberate choice of the European legislator generated by compromises achieved at the EU level (Franchino, 2007; Hartmann, 2016). In this sense,

Kinderman (2019) shows how the NFD is the unsatisfactory compromise resulting from the position taken by countries and business associations in a negotiation process dominated by France, Germany and the UK.

In the context of the NFD, minimum disclosure requirements surely create a basis for comparability between NFI across Member States, but discretion, although useful to preserve countries' CSR peculiarities, may put the aim of increased transparency and comparability at risk. This is the case of Member States using their discretion to introduce more rules. Over-implementation (Dimitrakopoulos, 2001) may eventually maintain the pre-existing differences between higher and lower Member States performers. It is also possible that some States may not fully adopt the EU provisions to maintain their own poor national reporting practices (under-implementation). Finally, regulation could favour cross-country comparability while reducing comparability between companies within a certain country, as demonstrated by the adoption of IFRS (Mussoi Ribeiro, Silva do Carmo, Lopes Fávero, & Nelson Carvalho, 2016).

A dominant approach in explaining differences in transposition is based on the theory of fit/misfit between the European legislation and the domestic situation. It builds on the assumption that Member States prefer maintaining the status quo and try to minimize the cost of institutional adaptation caused by the transposition (Borzel, 2003; Heritier, 1995).

The fit/misfit theory has received great attention by scholars of the EU directives' implementation (Dörrenbächer & Mastenbroek, 2017). The argument in these Europeanization studies is that of goodness of fit: if there is high fit between a directive (and the change it is proposing) and status quo in a Member State, then the implementer will transpose the directive in a more timely manner and the content transposed will be more coherent than in case of misfit (Börzel & Risse 2000; Falkner, Treib, Hartlapp, & Leiber, 2005; Green Cowles et al., 2001; Heritier et al., 2001; Knill & Lenschow, 1998). As argued by Steunenberg and Toshkov (2009), both discretion and legal fit are factors that can explain differences in transposition. In this

sense, we could expect countries with detailed pre-existing domestic regulations to favour similar regulation emanated from the EU. However, countries may use the transposition process to exercise opposition through the backdoor (Falkner et al., 2005).

Since previous literature review found robust evidence supporting the goodness of fit argument on compliance with EU directives (Angelova et al., 2012), also this work adopts this theoretical lens to analyse the national implementations of the NFD. At the same time, also critics to this argument (see Duina, 1997; Knill & Lenschow, 1998) will be used. Past studies have found that national legislators may favour change instead of preferring the status quo (Mastenbroek & Kaeding, 2006; Dörrenbächer and Mastenbroek, 2017). Falkner, Hartlapp, & Treib (2007) demonstrated that domestic governments may welcome a high degree of misfit as an opportunity to introduce a positive change, while in some cases, politicians and public officials supported a directive even if it meant departing from existing domestic legislation (Steunenberg & Toshkov, 2009).

Some research looks at the formal side of the rule transfer, i.e. the degree of fit or misfit with the existing normative framework in the country, while others developed a different concept of misfit. For example, Dimitrova and Rhinard (2005) looked at the misfit between directives and the local norms intended as the prevailing value orientations in society. Another possibility is also to look at the misfit with preferences of domestic actors.

4. Research method

In order to answer the research questions, the study carries out a country-comparison of the enactment laws and the previous national legal requirements as reported in the relevant national laws (Table 1). No regulation issued by a subject different from the national government (e.g. Stock Exchange) was considered.

INSERT TABLE 1 HERE

Such comparison will give insights on the similarity among national laws and what is the role of discretion and legal fit in pursuing higher comparability and transparency of companies' disclosure. This research excludes the requirements about diversity introduced by the NFD.

The UK, France and Italy were selected as cases because they were at very different stages in terms of non-financial reporting regulation before the NFD and present differences in social, cultural and political aspects that could prevent harmonization (Albareda et al., 2007; Baker, 2014).

France is considered one of the forerunners of social reporting, which was a legal requirement already in 1977. The intervention of the State in regulating CSR is strong and rules are quite detailed. In the UK, social reporting is left to the voluntary initiative of companies, although the Companies Act 2006 already mandated NFI to be provided in the strategic report. In the English law tradition, only principles are laid down while the rest is left to managerial discretion (Arnold & Matthews, 2002). Italy did not have a detailed regulation before the NFD and preferred creating discussion groups and committees to generate consensus on CSR (Contrafatto & Rusconi, 2005). These differences make it possible to assess how different starting positions are actually reflected in the stage of implementation.

The presence of domestic regulation is also a determinant of the different level of country support and opposition to the NFD's negotiation process. Kinderman (2019) shows that France was the strongest supporter (and wished for stringent requirements) due to the presence of a long CSR reporting tradition, while the UK played an important role in watering down the proposal in the attempt of replicating the Companies Act model on a European scale.

Italy kept an ambiguous position in the negotiations; it initially opposed the NFD fearing high adaptation costs. As the regulatory proposal weakened up over time, the opposition changed into support.

The first step of the research was the analysis of the NFD provisions to identify mandatory requirements and options left to Member States. For example, mandatory obligations are easily identifiable by the use of expressions such as ‘shall’, ‘must’ or ‘have to’ (see Appendix 1). Each of the provisions was then interpreted as to whether and how it was intended to improve transparency. Textual analysis followed textual meaning where possible and used a purposive approach to identify the meaning of the statutes where the wording was unclear. This method is commonly used in case law of the European Court of Justice and interprets laws according to the intent of the EU provisions. Interpretation is therefore guided by teleological argumentation and structuralism (Barak, 2005; Baratta & Carli, 2014). The same approach was used in the analysis of domestic regulations.

The intent of the European legislator was identified by an analysis of a variety of sources (the NFD itself, the Preamble to the Directive, the Guidelines, etc.). The Preamble of the NFD (point no.1) states that the objective is that of ‘achieving similarly high levels of transparency across Member States’, but nowhere is transparency clearly defined. However, in the Impact Assessment, the EC problematized the lack of transparency both in terms of quantity (lack of information) and quality (information not sufficiently material, accurate, timely, clear, comparable, and reliable) (EC, 2013). Transparency seems to be conceptualised as transmission of a certain quantity of information of a certain type (Bushman, Piotroski, & Smith, 2004; Eijffinger & Geraats, 2006) rather than a social process (Albu, 2014). This is aligned with the verifiability approach followed also by part of the accounting literature (Albu & Flyverbom, 2016).

As the EC clearly refers to are reliability, accuracy, materiality and clarity as qualities of information, these concepts have been further declined and complemented using the literature on financial and sustainability reporting and the IASB Conceptual Framework for Financial Reporting. In fact, most of the conditions identified by the literature as constructing the concept of transparency (see for example, Barth & Schipper, 2008; Bushman et al., 2004; Hunton, Libby, & Mazza, 2006; McEwen, 2009; Mulford & Comiskey, 2002; Roohani, Furusho, & Koizumi, 2009) are the same as those considered by IASB in relation to the usefulness of financial information. The combination of EU sources and previous research resulted into the identification of eight conditions for transparency as summarized in Table 2 (Aureli, Magnaghi, & Salvatori, 2018).

INSERT TABLE 2 HERE

A condition emerging from the analysis of domestic regulations was included in the grid even when omitted in the NFD text (e.g. consistency) to check for similarities with other countries.

The interpretation of the text of the NFD based on the eight conditions above resulted into a grid of analysis (Table 3) that was used to code the national norms existing before and after the formal implementation of the NFD (see Appendix 2).

INSERT TABLE 3 HERE

To reduce subjectivity, each of the authors conducted the textual analysis of the NFD and related national laws. The results stemming from the textual analysis were discussed among the authors to guarantee investigators' triangulation.

5. Results

The analysis of regulations enabled to collect individual and comparative data before and after the transposition and to appreciate the domestic change in light of the previous regulation and the combination of mandatory requirements and discretionary ones.

5.1. Country-comparison of post-transposition rules

Given the objective of the European legislator, higher harmonisation of rules is expected. Table 4 shows similarities and differences among the relevant national laws in the UK, France and Italy when compared with the NFD provisions and reciprocally.

INSERT TABLE 4 HERE

One condition for transparency is to provide complete information. Each country complied with the minimum requirement set by the NFD and copied out the list of topics and items from the Directive itself. However, the use of discretion led to differences. Table 5 shows that the UK did not add further requirements to the mandatory ones, if not specifying that company should disclose also their environmental impact. On the contrary, France used a strong regulatory approach by detailing 42 aspects. Italy seems to sit in between; some of the new provisions are in common with the French regulation, therefore creating a convergence between French and Italian norms. This is true in relation to environmental, employee and human rights matters. Not much convergence is found in terms of detailed norms on social disclosure because only France lists further requirements. Anti-bribery and corruption matters seem to be under looked in all of the three countries.

INSERT TABLE 5 HERE

The countries under investigation used limited discretion to give further depth or breadth in the disclosure of items. Moreover, each gave importance to different aspects resulting into a lack of common specifications among countries. France over-implemented the NFD in relation to risk disclosure, while Italy focused on the use of non-financial KPIs, requiring them to be in line with the reporting standards and allowing the possibility for companies to adjust the KPIs used and increase their number.

In relation to how the norms ensure the relevance of NFI, the NFD states that companies should disclose relevant risks and KPIs and can omit potentially harmful information as long as this doesn't prevent 'a fair and balanced understanding of an entity's situation'. In other terms, information useful for decision-making shall be disclosed. All countries used their discretion to leave the option for companies to omit information by copying out the NFD's wording.

In relation to clarity of the information, the NFD requires to include in the non-financial statement, 'where appropriate', additional explanations or references to the financial statements. This provision was not transposed into the French legislation, creating the only case of non-compliance. The NFD also obliges companies to explain why policies are not pursued; all countries copied the wording, but none clarified how to provide explanations and how to interpret the concept of relevance laying behind the words 'where appropriate'.

Another condition for transparency, which is also an objective of the NFD itself, is to provide comparable information. Comparability is possible when all companies apply the same rules and disclosure is consistent over time. Yet, the NFD refers to public interest entities, but the definition of such entities changes across countries. Furthermore, Italy and France changed the scope of regulation by setting further thresholds in addition to the 500-employees average.

For example, the French regulation also applies to non-listed companies with at least 500 employees on average and total assets of at least 100m Euros or net turnover of 100m Euros.

Comparability could be improved if all companies were to use the same framework or standard. However, the NFD leaves Member States free to choose which reporting standards or frameworks are acceptable. None of the three Member States used discretion to impose a particular framework over others; therefore, companies are free to use a national, Union-based or international framework. In addition, only the Italian and French regulations require companies to provide information about topics and items that are comparable with that of the previous year, favouring comparability over time.

From a consistency standpoint, Italy over-implemented the requirements as companies are obliged also to disclose changes in reporting standards/policies.

Another key condition for transparency is how accessible information is and whether it is accessible in a timely manner for decision-making. Therefore, where the non-financial statement is located and when is made available become important factors. UK companies are obliged to include the non-financial statement within the strategic report. Italian and French companies are required to include the non-financial statement within the management report. Hence, in all cases, the NFI is made accessible at the same time as the annual report. However, the Italian legislator also decided to keep the option permitted by the NFD of using a separate report. If companies decide to follow this route then the management report must signpost where to find the non-financial statement, which should be either attached to the management report or published online within 6 months from the balance sheet date.

Lastly, transparency is enhanced by the accuracy and reliability of NFI. The only provision in this sense relates to the external audit. The Italian and UK regulations only allow statutory auditors and audit firms to conduct the audit on the non-financial statement, while France permits a wider range of assurance providers. The UK Companies Act 2006 was not

amended in reference to this aspect and therefore it kept the same requirement previously existing in relation to the strategic report. Both the Italian and French regulator used discretion to provide more stringent rules as assurance on the content of the statement is required. In France, auditors of companies exceeding certain thresholds must also comply with further disclosure obligations; the report from the independent third-party organization must include: (a) a reasoned opinion on the conformity of the declaration with the provisions laid down and on the accuracy of the information provided, and b) the steps undertaken to carry the verification out.

5.2. Country-comparison over time

Table 6 shows how the NFD changed domestic regulations. The column named ‘post’ indicates the requirement found in the enactment laws (results as reported in Table 4). The column named ‘pre’ refers to the national regulation pre-NFD. Therefore, a requirement in the post-NFD regulation may have existed before (equal sign) or may have been introduced (upward arrow). The not equal sign indicates that a pre-existing requirement has been amended or kept as additional requirement.

INSERT TABLE 6 HERE

Overall Italy shows to be the country that has introduced the largest number of new provisions to comply with the NFD and go beyond it.

The UK already required all incorporated companies to disclose information about four of five topics specified by the Directive while previous Italian regulation was poorer than the UK and French one and a bigger effort to comply had to be made to introduce mandatory disclosure of social matters, respect for human rights and anti-corruption and bribery matters.

In terms of items, again the UK had already most of the NFD's requirements, therefore it complied with the European dictate simply by introducing two elements previously missing (disclosure of the framework adopted, if any, and of the due diligence process). The UK also kept requirements from the previous regulation (disclosure of the company's strategy and on community matters), eventually mandating a wider scope of information than the other two countries. Italy and France had far less requirements in this area. France went quite in detail in defining which aspects of each matter should be disclosed (Table 4), but many of these were kept from the previous regulation.

Both Italy and the UK had introduced a reference to the concept of materiality to reflect the new wording coming from the NFD, which specifically refers to the importance of understanding the impact of companies' activities. France didn't modify the previous provision and it still defines as material the information that is relevant given the company's activities and sector.

In terms of clarity of the information provided, again the need of compliance to the NFD resulted in a bigger change for Italy because of scant pre-existing country requirements. The UK amended the previous legislation, which asked to disclose which information was missing but not why, while the Italian government introduced the obligation to provide a clear explanation for not pursuing ESG policies.

In terms of comparability between companies, the scope of application of the NFD becomes important. The UK and Italy have previously made a mild request for the disclosure of NFI to all incorporated companies in compliance with the Modernisation Directive. Then, they both introduced the NFD's requirements making them mandatory for all public interest entities with at least 500 employees (as mandated by the Directive), with Italy also introducing further thresholds (Table 4). The French experience is quite different. The Grenelle II law introduced NFI disclosure requirement progressively over time, asking large companies (those

having total assets or turnover higher than 1b euro and more than 5,000 employees on average) first and medium ones later (total assets or turnover higher than 400m euro and more than 2,000 employees on average); eventually the smaller ones (total assets or turnover of over 100m euro and more than 500 employees) were also included. Therefore, the application of the NFD to a wider scope of French companies derived from the previous legislation, which was amended to limit the impact of the new obligations on less companies than those before obliged to provide NFI. Overall, in terms of scope, comparability seems to be affected negatively if we consider comparability across companies of a same country but positively if we consider comparability between companies in different countries.

The UK made no change to favour comparison over years; there wasn't a requirement before and still there isn't one. Conversely, Italy introduced a provision when enacting the NFD. France already mandated companies to provide a comparative information over time and kept the requirement in the enactment law.

Very little change was made in the position taken previously by each country about which reporting framework should be used. While before there was no reference to a reporting framework and no requirement of specifying it when disclosing NFI, now there is one, but all countries leave companies free to decide which framework to adopt.

Consistency of information is important for Italy, which decided to widen the previous requirement of disclosing changes in financial risk policies to now include also socio and environmental policies. On the contrary, France and the UK didn't introduce any provision in this sense.

All countries kept the location of the information the same as before; in the UK the information is still to be found in the strategy report while in France and Italy it is in the management report. However, Italy chose the option left by the NFD and allows companies to use a different report as well. When included in the management report and strategic report,

the information will be accessible at the same time as the annual report. While the users of companies using a different report may have that information available later. This creates new differences between countries, being Italy the only country to introduce the option of publishing the statement separately.

Both Italy and France require an audit not only on the presence but also on the content of the non-financial statement. However, the latter requirement was introduced in Italy and simply kept from the past in France. The UK decided not to amend the existing provisions for audit and assurance of NFI and as it stands, it seems the one country with the least desire for auditing and assurance.

Finally, it could be argued that the presence or absence of previous regulation could impact on the speed of enactment. However, Table 1 shows that this is not the case. Both the UK and Italy transposed the NFD almost on time, while France enacted it about 6 months after the deadline.

6. Discussions

Results allow to gain insights about how regulations in the UK, France and Italy were made more similar after the European intervention despite the possible use of discretion to adapt regulation to local specifications. According to the fit/misfit theory, we expect countries with low level of legal fit to have introduced the smallest change to minimise adaptation costs. Therefore, the three cases are expected to show the use of discretion to contain the burden on companies.

Results show that there is certainly more similarity on certain aspects than before.

The similarities found are of three types. One type originates from compliance to the NFD's minimum requirements around topics, items, scope of application, explanations for not pursuing ESG policies, and audit. All countries complied to its dictate and as a result

information is now more complete, comparable and accurate. Most of those aspects required adaptation from each country to converge. For example, none of the pre-existing national regulations referred to all of the topics listed in the NFD (this is particularly true in relation to bribery and anti-corruption) and all items (e.g. none of the regulation previously referred to a reporting framework), thus creating convergence of rules. Italy made the biggest regulatory change because its previous regulation very marginally fitted the content of the NFD.

Similarities also derive from the exercise of discretion when all Member States decided not to be stricter or not to detail further. For example, Italy and the UK amended their domestic regulation to refer to the concept of materiality as mentioned in the NFD and all countries adopted a copy-out approach. For instance, none of the countries, as before, explain the materiality concept or added requirements about the disclosure of processes (such as stakeholder engagement) and governance arrangements used to perform their materiality assessment.

The vagueness in defining the concept of materiality restricts the improvements emerging from the implementation of the NFD. As already highlighted by Jeffery (2017), it is not clear which information is deemed to be material and how the materiality test should be conducted with regard to the impact of principal risks. The copying-out approach adopted by the three countries alongside lack of clarification of concepts, may lead to a *de facto* non-binding obligation as it occurred with the disclosure of environmental and social aspects required by the Modernisation Directive (Dumitru, Dyduch, Guşe, & Krasodomska, 2017).

In the same vein, all countries exercised their discretion when decided to leave companies free to choose the reporting framework. As a result, none of them amended the ‘spirit’ of the previous regulation as they simply spelled out in the statutes that companies have freedom of choice. Such decision can affect material comparability, which will be difficult to

achieve if companies of the same country and of the same type report according to different frameworks.

The third type of similarities derives from the use of discretion to over-implement the NFD provisions. All Member States decided to specify further what kind of information companies must provide in relation to the relevant topics, although the French and Italian laws went far more in detail than the UK one. Most of the specifications included in Italian regulation are the same as the French ones, favouring completeness and comparability of information. Consistently with the previous legislation, France over-implemented provisions by expanding the scope of application, thus favouring comparability between a larger number of companies.

Results show also the presence of many differences deriving from compliance with the NFD provisions and over-implementation decisions.

Firstly, differences were found in the provisions that may lead to clearer and timely information. France doesn't mandate additional explanations and references to financial statements; this case of non-compliance (the only one) could impact on clarity and also maintains pre-existing differences. Differences exist also in relation to where the information is published (in the management report or in a separate report) and when the information could be made available to users. Had the Italian regulation mandated to publish the separate report at the same time as the annual report, timeliness of information may have been improved.

Discretion resulting in over-implementation generated the second type of differences between the selected countries. The following examples show that the use of discretion simultaneously led to a certain degree of convergence and divergence.

At first sight, France and Italy seem to converge because both over implemented the NFD by further specifying what companies should disclose. However, a closer look into national specifications (Table 2) shows a difference in depth of intervention between France

and Italy, which led to maintain pre-existing differences and make the comparison with the UK made even more difficult. The latter remained almost silent. The UK approach may have not come as a surprise as it is common to expect the issuance of detailed guidance to be delegated rather than laid down in legislation (Evans & Nobes, 1998). It is also consistent with the position taken by the UK government during the negotiations (Kinderman, 2019).

Another difference due to over implementation relates to the scope of application of the NFD. Whilst all countries refer to public interest entities with above 500 employees, France and Italy also introduced additional size-related qualifying conditions, thus reducing the possibility of comparisons among industry peers located in different countries.

Italy also diverges because it is the only country that introduced the requirement of disclosing changes in policies, therefore moving toward more consistency of the information provided but again creating more distance with the regulation of the other two countries.

Lastly, differences emerged in relation to the content and actors of the audit and assurance. Italy and France used their discretion to accept the option left by the NFD to require an audit on the content, potentially making the statement more reliable for users than in the UK, where assurance on the content of the disclosure is still not mandated. This is one of the most interesting differences and the results are in line with the position of each country during the negotiations. France supported the inclusion of stringent audit requirements in the NFD and eventually minimised adaptation costs by keeping the previous domestic provisions. However, its decision to continue allowing for a wide range of assurance providers other than auditing firms as in the past should be carefully evaluated since it may reduce the credibility of the information perceived by the investors (Pflugrath, Roebuck, & Simnett, 2011).

Generally speaking, the analysis of the national laws shows that there is almost a full compliance with EU provisions but previous differences were only partially solved. Some were maintained and new ones created.

Discretion played an important role in the outcome of the transposition process. This result raises a question about the appropriateness for the EU to leave discretion in relation to certain crucial aspects. Making some aspects mandatory (e.g. audit of information) would have not necessarily disregarded the overall EU intention to avoid a one-size-fits-all approach (EC, 2013) while it might have facilitated the achievement of EU objectives (e.g. trust).

As a result of the pre-existing requirements and confirming the position during the negotiations, the UK is the country that regulated and changed the least, almost following exclusively a copying-out approach, as recommended by the government itself. Of course, other factors such as the One in-Two out Rule and also the typical delegation of issuing more stringent and detailed requirements to the profession (Evans & Nobes, 1998) could have had an impact. France seemed to have used the most intrusive regulatory intervention, using discretion to add further requirements and thresholds. However, only a small part of the change is new. The French over-implementation is mostly the result of carrying forward the Grenelle I and II laws. Therefore, companies in the UK and France may benefit from a closer fit of local pre-existing legislations to the NFD. Conversely, the Italian legislator implemented the highest degree of change, being the previous regulation rather vague. Italy welcomed the mis-fit (Falkner et al., 2007) and faced greater adaptation costs, contradicting the classical assumption of the goodness of fit. The fact that France was slightly slower than Italy in transposing the NFD furtherly contradicts the fit/misfit theory.

7. Conclusions

The NFD aims to achieve similarly high level of transparency on NFI across Europe, which is seen as key to increase accountability. This objective is pursued by imposing minimum requirements whilst leaving Member States with high flexibility of action. The analysis of domestic regulations in force before and after the NFD shows that compliance with mandatory

requirements created convergence of rules and a different degree of domestic change. The use of discretion led to increased similarity between domestic provisions that encourage completeness, clarity, comparability, accuracy and reliability of NFI but it also maintained some of the old differences and created new ones, therefore disturbing the trajectory toward harmonisation.

The UK and France used the discretion to reduce the adaptation costs by not detailing further and over-implementing the NFD respectively, while Italy welcomed the mis-fit.

France mostly used discretion to carry previous requirements forward. Italy over-implemented the NFD moving from a poor regulation to a more stringent despite having the highest degree of legal mis-fit. Therefore, the EU minimum harmonization approach did not translate into minimum impacts and it is likely that the reporting from companies will materially change.

The minimum adjustments put in place by the UK confirm that countries may prefer maintaining the *status quo* as posited by the fit/misfit theory. However, the big change introduced by Italy, and previously experienced in the Danish and French case (Danish Business Authority, 2013), contradicts this theoretical stance as Mastenbroek and Kaeding (2006) suggest.

The results support those of Kinderman (2019), who shows how the existence of previous domestic regulation can explain the different position and role of each country in the negotiation process better than the institutional context. Nevertheless, other explanatory factors should be included in future research. For example, Brexit could have played a role in the degree of adjustment that the UK would have been willing to undertake.

The results on formal harmonization between the UK, France and Italy contributes to the literature on accounting harmonization and non-financial reporting. Also, they can be beneficial at a regulatory level to have first insights about the potential outcome of the

European intervention. It would not be a surprise if these similarities and differences will be noticed in material harmonization. Future studies will shed light on material harmonization and its relationship with formal harmonization, helping the understanding of interactions between rules and practices as well as the appreciation of whether good reporting practices need good quality regulation (Nobes, 2009).

Potential evidence of continuing differences in company reporting may lead the EU to intervene using a more invasive legal instrument than a directive or issuing a new directive with more stringent requirements. In this sense, the NFD builds a regulatory history that could feed the future EU approach. However, pushing toward standardization can be a double-edged sword as it could impact on the relevance of information.

Nonetheless, this work has some limitations that can be addressed in the future steps of this research. First, differences only refer to three countries while it could be interesting to include nations with different characteristics and traditions on ESG reporting like Nordic countries and East European countries. Second, it doesn't consider an array of factors (such as the legal systems, enforcement, business practices) that would provide a more comprehensive picture of the current requirements but also explanations of why certain domestic choices may have been made.

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Table 1 – Domestic regulations

	Pre-NFD	National Laws enacting the NFD (transposition deadline of 6 December 2016)
UK	UK Companies Act 2006	SI2016 No. 1245 Date: 19 December 2016
France	Grenelle 1 (Law No. 2009-967) Grenelle 2 (Law No. 2010-788)	Ordonnance No. 2017-1180 Date: 19 July 2017

Italy	Civil Code	Decreto Legislativo No. 254/2016 Date: 30 December 2016
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Table 2 – Conditions for transparency

Conditions	Literature
COMPLETENESS	GRI (2011, p. 6); Kaptein (2003)
RELEVANCE (materiality)	IASB Conceptual Framework; Mulford and Comiskey (2002); Roohani et al. (2009);
CLARITY	Bushman et al. (2004)
COMPARABILITY	Aisbitt, 2008; Barth and Schipper (2008); IASB Conceptual Framework; Matuszak and Rózanska (2017); Walton (1992); Wolk et al. (2008)
CONSISTENCY	Barth and Schipper (2008)
ACCESSIBILITY	Davis et al. (2003); Matuszak and Rózanska (2017)
TIMELINESS	Bolivar (2009); Cho, Lee, & Pfeiffer (2013)
RELIABILITY and ACCURACY	Boyer-Allirol (2013); De Villiers and Van Staden (2010, 2012); Simnett et al. (2009)

Table 3 - Grid of analysis

SUB-OBJECTIVES	REGULATORY CHOICES (Discretion highlighted in bold)
COMPLETENESS	a) List of topics (minimum requirement) <ol style="list-style-type: none"> 1. Environmental matters 2. Social matters 3. Employee matters 4. Respect for human rights 5. Anti-corruption and bribery matters b) Items (including regulatory framework) <ol style="list-style-type: none"> 1. Policies, including any due-diligence process 2. Outcomes 3. Risks 4. Business model 5. Non-financial KPIs 6. Framework chosen (if any) c) Further topics d) Further items e) Further specifications f) Omit information if does not prevent a fair and balanced understanding
RELEVANCE	Reference to the concept of materiality
CLARITY	a) Additional explanations and references to financial statements b) Clear explanations for not pursuing ESG policies
COMPARABILITY	a) Comparison with peers (scope) <ol style="list-style-type: none"> 1. Public interest entities 2. 500 employees (avg) threshold 3. Further thresholds (in addition to 500 employees) 4. Wider scope of application b) Comparison with previous years c) Flexibility to choose reporting frameworks
CONSISTENCY	Disclosure of changes/differences in reporting standard/policies
ACCESSIBILITY	a) Within the management report b) In the country-specific report for ESG aspect (Strategic Report) c) In a report different than the management report d) Media channels (e.g. website)
TIMELINESS	a) Disclosure with the annual report b) Within 6 months from the end of year
ACCURACY and RELIABILITY	a) Audit on the presence of the non-financial statement b) Audit on the content of the non-financial statement

c) Further assurance requirements

d) Audit carried out by statutory auditors and audit firms

e) Assurance carried out by other independent assurance providers

Table 4 - Country similarities and differences

SUB-OBJECTIVES	REGULATORY CHOICES (Discretion highlighted in bold)	UK	FR	IT
COMPLETENESS	a) List of topics (minimum requirement)			
	1. Environmental matters	✓	✓	✓
	2. Social matters	✓	✓	✓
	3. Employee matters	✓	✓	✓
	4. Respect for human rights	✓	✓	✓
	5. Anti-corruption and bribery matters	✓	✓	✓
	b) Items (including regulatory framework)	✓	✓	✓
	1. Policies, including any due-diligence process	✓	✓	✓
	2. Outcomes	✓	✓	✓
	3. Risks	✓	✓	✓
	4. Business model	✓	✓	✓
	5. Non-financial KPIs	✓	✓	✓
	6. Framework chosen (if any)	✓	✓	✓
	c) Further topics	X	X	X
	d) Further items	X	X	X
	e) Further specifications	✓	✓	✓
	f) Omit information if does not prevent a fair and balanced understanding	✓	✓	✓
RELEVANCE	Reference to the concept of materiality	✓	✓	✓
CLARITY	a) Additional explanations and references to financial statements	✓	X	✓
	b) Clear explanations for not pursuing ESG policies	✓	✓	✓
COMPARABILITY	a) Comparison with peers (scope)			
	1. Public interest entities	✓	✓	✓
	2. 500 employees (avg) threshold	✓	✓	✓
	3. Further thresholds (in addition to 500 employees)	X	✓	✓
	4. Wider scope of application	X	✓	X
	b) Comparison with previous years	X	✓	✓
	c) Flexibility to choose reporting frameworks	✓	✓	✓
CONSISTENCY	Disclosure of changes/differences in reporting standard/policies	X	X	✓
ACCESSIBILITY	a) Within the management report	X	✓	✓
	b) In the country-specific report for ESG aspect (Strategic Report)	✓	X	X
	c) In a report different than the management report	X	X	✓
	d) Media channels (e.g. website)	X	X	✓
TIMELINESS	a) Disclosure with the annual report	✓	✓	✓
	b) Within 6 months from the end of year	X	X	✓
ACCURACY and RELIABILITY	a) Audit on the presence of the non-financial statement	✓	✓	✓
	b) Audit on the content of the non-financial statement	X	✓	✓

c) Further assurance requirements	X	✓	X
d) Audit carried out by statutory auditors and audit firms	✓	✓	✓
e) Assurance carried out by other independent assurance providers	X	✓	X

Table 5 - Further national specifications

Further national specifications (all discretionary)	UK	FR	IT
<i>Environmental matters</i>			
1. The use of energy resources	X	✓	✓
2. The use of water resources	X	✓	✓
3. Emissions of greenhouse gases	X	✓	✓
4. Polluting emissions	X	✓	✓
5. The impact on the environment	✓	✓	✓
6. Impact on health and security	X	X	✓
7. Further requirements on specific items	X	✓	X
8. Environmental policies	X	✓	X
<i>Employees matters</i>			
1. Gender equality/equality of treatment	X	✓	✓
2. Implementation of international conventions on employees' rights	X	✓	✓
3. Social dialogue/social relations	X	✓	✓
4. Employment	X	✓	X
5. Organization of work:	X	✓	X
6. Health and safety	X	✓	X
7. Training policy	X	✓	X
<i>Social matters</i>			
1. Commitment for local sustainable development and local populations	X	✓	X
2. Relations with local stakeholders	X	✓	X
3. Partnership and sponsorship actions for local development	X	✓	X
4. Inclusion in the purchasing policy of social and environmental issues	X	✓	X
5. Measures for the health and safety of consumers	X	✓	X
<i>Human rights matters</i>			
1. Policies to prevent violations of human rights	X	✓	✓
2. Fight against discrimination	X	✓	✓
3. Protection of labour force's human rights	X	✓	X
<i>Anti-corruption and bribery matters</i>			
1. Fight against both active and passive corruption	X	✓	✓
<i>Risks</i>			
1. Policies applied to risks	X	✓	X
2. Results of risk policies and KPIs related to risks	X	✓	X
<i>Non-financial KPIs</i>			
1. KPIs have to be chosen in line with the reporting standard	X	X	✓
2. Adjustments or additional KPIs are possible	X	X	✓

Table 6 - Change in transparency requirements

SUB-OBJECTIVES	REGULATORY CHOICES (discretion highlighted in bold)	UK		FR		IT	
		Post	Pre	Post	Pre	Post	Pre
COMPLETENESS	a) List of topics (minimum requirement)						
	1. Environmental matters	✓	=	✓	=	✓	=
	2. Social matters	✓	=	✓	=	✓	↑
	3. Employee matters	✓	=	✓	=	✓	=
	4. Respect for human rights	✓	=	✓	↑	✓	↑
	5. Anti-corruption and bribery matters	✓	↑	✓	↑	✓	↑
	b) Items (including regulatory framework)	✓		✓		✓	
	1. Policies, including any due-diligence process	✓	↑	✓	↑	✓	↑
	2. Outcomes	✓	=	✓	↑	✓	↑
	3. Risks	✓	≠	✓	≠	✓	≠
	4. Business model	✓	=	✓	↑	✓	↑
	5. Non-financial KPIs	✓	=	✓	=	✓	=
	6. Framework chosen (if any)	✓	↑	✓	↑	✓	↑
	c) Further topics	X	≠	X	=	X	=
	d) Further items	X	≠	X	=	X	=
	e) Further specifications	✓	=	✓	≠	✓	↑
	f) Omit information if does not prevent a fair and balanced understanding	✓	=	✓	=	✓	↑
RELEVANCE	Reference to the concept of materiality	✓	≠	✓	=	✓	≠
CLARITY	a) Additional explanations and references to financial statements	✓	=	X	=	✓	=
	b) Clear explanations for not pursuing ESG policies	✓	≠	✓	=	✓	↑
COMPARABILITY	a) Comparison with peers (scope)						
	1. Public interest entities	✓	≠	✓	≠	✓	≠
	2. 500 employees (avg) threshold	✓	↑	✓	=	✓	↑
	3. Further thresholds (in addition to 500 employees)	X	=	✓	=	✓	↑
	4. Wider scope of application	X	≠	✓	≠	X	≠
	b) Comparison with previous years	X	=	✓	=	✓	↑
	c) Flexibility to choose reporting frameworks	✓	=	✓	=	✓	=
CONSISTENCY	Disclosure of changes/differences in reporting standard/policies	X	=	X	=	✓	↑
ACCESSIBILITY	a) Within the management report	X	=	✓	=	✓	=
	b) In the country-specific report for ESG aspect (Strategic Report)	✓	=	X	=	X	=
	c) In a report different than the management report	X	=	X	=	✓	↑
	d) Media channels (e.g. website)	X	=	X	=	✓	↑
TIMELINESS	a) Disclosure with the annual report	✓	=	✓	=	✓	=
	b) Within 6 months from the end of year	X	=	X	=	✓	↑

ACCURACY RELIABILITY	and a) Audit on the presence of the information	✓ =	✓ =	✓ =
	b) Audit on the content of the information	X =	✓ =	✓ ↑
	c) Further assurance requirements	X =	✓ =	X =
	d) Audit carried out by statutory auditors and audit firms	✓ =	✓ =	✓ =
	e) Assurance carried out by other independent assurance providers	X =	✓ =	X =

Appendix 1 - Example of mandatory requirements and options in the NFD (emphasis added)

Mandatory requirement	Option
<p>Art. 1 (Modification to Article 19 bis. Point 1) – ‘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 [....]’</p>	<p>Art. 1 (Modification to Article 19 bis. Point 4) Member States may exempt ... the undertaking that prepares a separate report covering the information required for the non- financial statement ...from the obligation to prepare the non-financial statement laid down in paragraph 1, provided that such separate report: (a) is published together with the management report in accordance with Article 30; or (b) is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertaking's website, and is referred to in the management report.</p>

Appendix 2 – Examples of textual analysis identifying the use of discretion by countries

2.1. Example of implementation of an optional requirement

Condition for transparency	Relevant literature	Translation into grid of analysis (Discretion highlighted in bold)	Condition (present =1; absent = 0)		
			UK	FR	IT
ACCURACY and RELIABILITY	Assurance increases credibility of ESG information, favouring the use of information in decision-making. E.g. Boyer-Allirol (2013); De Villiers and Van Staden (2010, 2012); Simnett et al. (2009)	a) Audit on the presence of the non-financial statement	1	1	1
		b) Audit on the content of the non-financial statement	0	1	1 ^(*)
		c) Further assurance requirements	0	1	0
		d) Audit carried out by statutory auditors and audit firms	1	1	1
		e) Assurance carried out by other independent assurance providers	0	1	0

(*) Extract from the Italian legislation (Decreto Legislativo n.254/2016) in relation to point b) 'Audit on the content of the non-financial statement'

NFD (emphasis added)	Wording of the Italian enactment law	English translation
Art.1(6)- 'Member States may require that the information in the non-financial statement referred to in paragraph 1 or in the separate report referred to in paragraph 4 be verified by an independent assurance services provider.'	Art.3(10). <i>'Il soggetto incaricato di effettuare la revisione legale del bilancio [...] o altro soggetto abilitato allo svolgimento della revisione legale appositamente designato, esprime, con apposite relazione distinta da quella di cui all'articolo 14 del decreto legislativo 27 gennaio 2010, n. 39, un'attestazione circa la conformità delle informazioni fornite rispetto a quanto richiesto dal presente decreto legislativo e rispetto ai principi, alle metodologie e alle modalità previste dal comma 3.'</i>	The person in charge of carrying out the external audit [...] or any other subject authorized to carry out the external audit, prepares a report separate from the one referred to in Article 14 of the Legislative Decree 27 January 2010, n. 39 to certify the compliance of the information provided in the non-financial statement with the requirements of the present legislative decree and the audit principles, methodologies and procedures set by the Legislative Decree 27 January 2010, n. 39 paragraph 3.

2.2. Example of over-implementation

Condition for transparency	Relevant literature	Translation into grid of analysis	Condition (present =1; absent = 0)		
			UK	FR	IT
CONSISTENCY	Consistent disclosure from one period to another increases comparability of information. E.g., Barth and Schipper (2008)	Disclosure of changes/differences in reporting standard/policies	0	0	1 ^(**)

(**) Extract from the Italian legislation (Decreto Legislativo n.254/2016)

NFD	Wording of the Italian enactment law	English translation
Not mentioned	<i>Art. 3 (3). 'Nella relazione è fatta esplicita menzione dello standard di rendicontazione adottato e nel caso in cui lo standard di rendicontazione utilizzato differisca da quello a cui è stato fatto riferimento per la redazione della dichiarazione riferita al precedente esercizio, ne è illustrata la motivazione.'</i>	The non-financial statement must explicitly mention the reporting standard adopted and, if different than the one used for the preparation of the previous financial year's non-financial statement, explain the reasons for the change.