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TAXONOMY FOR TRANSPARENCY IN NON-FINANCIAL STATEMENTS – CLEAR DUTY WITH UNCLEAR SANCTION

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Abstract

The updated Directive 2013/34/EU brought a legal duty for large undertakings in the EU to include in their management report a non-financial statement. Considering the UN Agenda 2030, the European Green Deal and Action Plan on Financing Sustainable Growth, there was enacted Regulation (EU) 2020/852 aka Taxonomy Regulation which adds to this reporting duty the information about the environmental sustainability of the economic activities. What does it mean? Who, when and what must disclose and what are the sanctions for that? EU businesses and their stakeholders need answers to these four questions in order to satisfy their legal duty as well as to boost their effectiveness, efficiency and legitimacy. A holistic deep content, comparative and contextual analysis with a teleological interpretation is performed and rather surprising answers along with more general observations about EU law and EU policies are proposed. A duty to defined subjects is imposed, but the sanction mechanism is missing.

Keywords

Non-financial Statement, Environmentally Sustainable, Taxonomy Regulation

I. Introduction

The common, later on single internal, market with four fundamental freedoms of movement has always been at the centre of the modern European integration, launched after World War II. The Treaty of Amsterdam has added to the Maastricht Treaty on the EU the sustainable development as one of the objectives and the famous strategy Europe 2020 for the smart, sustainable and inclusive growth followed. In addition to these internal inputs, a strong international influence has developed and the EU became a part of and also a supporter of the UN endeavours, such as the UN 2030 Agenda for Sustainable development from 2015 ("Agenda 2030") as well as the Paris Agreement on Climate Change, adopted by the UN General Assembly in the same year, 2015 ("Paris Agreement").

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However, all these pro-sustainability instruments represented a commitment of the EU, EU institutions and perhaps EU member states. Over time, it became obvious that, without the multi-stakeholder model with a cross-sector partnership (Van Tulder et al., 2016, Van Tulder and Keen, 2018) and engagement of all stakeholders, the drive for sustainability would be futile.

The EU realized that and decided to motivate, if not induce, EU member states and their businesses to report about their pro-sustainability behaviour and so make them engaged in the Corporate Social Responsibility ("CSR"). The first step in this arena was the legislative novelization of the Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34") which brought forth a legal duty for large undertakings in the EU to include in their management report a non-financial statement. It needs to be emphasized that it was done via a Directive, regarding a rather small circle of subjects, in a somewhat vague manner and basically without setting sanctions for the violation of such a duty. Manifestly, more radical steps appeared as necessary to be done and the European Commission of Jean-Claude Juncker has attempted to do so, see e.g. Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector ("SFDR"). However, an even stronger drive for a "more green Europe" is noticeable since the appointment of Ursula von der Leyen and her commission. A perfect example of this trend is Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("Taxonomy Regulation") which is designed to support the transformation of the EU economy to meet its European Green Deal objectives. This should serve as both a classification tool to bring clarity as well as a screening tool to support investment flows into economic activities which are environmentally sustainable. The obvious concern is whether this rather complex and long Regulation can and will successfully fight and eliminate parasitic practices in the sustainability and CSR arena, such as greenwashing, and ultimately help the EU to establish and maintain an internal market that works for the sustainable development of the EU. The assessment about that could and should be done in few years, but already right now a pioneering study can be performed in order to achieve a deeper understanding of the pertinent legal duty. So far, such a study has not been performed and considering the taking effect of the Taxonomy Regulation, it is highly relevant and topical to analyse this legal duty, in particular the dimension of the taxonomy for transparency in non-financial statements.

In order to satisfy this aim about the deep understanding of the given duty, four questions need to be answered. Firstly, who has this duty? Secondly, since when has this duty applied? Thirdly, what does this duty entail, i.e. what must be disclosed? Fourthly, what are the sanctions if businesses having this duty fail to report and disclose this information? Therefore, after this Introduction (I.), the Literature and Legislative Review (II.) along with the employed Data and Methods (III.) needs to presented. Then, each of these four questions is to be discussed consecutively and separately (IV), while ultimately answers and observations regarding all four questions are juxtaposed to offer pioneering answers as well as general suggestions and semi-suggestions not just limited to sustainability reporting in the EU (IV.)

II. Literature and Legislative Review

Sustainability has millennial and rather continental roots going back to the Bible with its parables and to Ancient civilizations with their flood and building management. The transition from the divine and abstract concept of sustainability to the man-made and concrete concept of the sustainability has been done under a strong German influence, see the Hanseatic League endeavours and the proclamation of *Nachhaltigkeit* in the 18th century the influential book *Sylvicultura Oeconomica* by the German Colberist – Hans Carl von Carlowitz and in the 19th century influential book *Einfachste den höchsten Ertrag und die Nachhaltigkeit ganz sicher stellende Forstwirthschafts-Methode* by Emil André (MacGregor Pelikánová et al., 2021a). Since the 20th century, the principal proponent of sustainability is the United Nations ("UN") with their 1948 Universal Declaration of Human Rights ("UDHR"), 1987 Brundtland Report of the World Commission on Environment and Development Report: Our Common Future and Agenda 2013 with its 17 Sustainable Development Goals ("SDGs").

The CSR has centennial and rather common law roots going back to the US realizing that uncontrolled competition leads to the concentration, cartelization and monopolization by big, often multi-national or international players. In 1953, Howard R. Bowen published a fundamental book in this respect under the title *Social Responsibilities of the Businessman*, which argued that the largest US businesses are centres of power and decision-making and touch the lives of all (Carroll, 2016). This trend has challenged the conventional perception reducing the business responsibility to mere profit maximization for shareholders as advanced by Theodore Levitt and Milton Friedman (Balcerzak and MacGregor Pelikánová, 2020). Namely, Bowen with his book and Carroll with his four layers pyramid brought the suggestion about the expansion of the responsibility of the business, i.e. enlarging its scope (not only economic, but as well environmental and social issues) as well as the pool of beneficiaries (all stakeholders and even the entire society). A further advancement and development of this suggestion is represented by the concept of shared values (Porter and Kramer, 2011; Kramer and Pfitzer, 2016), which ultimately combines sustainability and CSR concerns and presents a common foundation. The CSR of businesses should match with all three sustainability pillars, i.e. should not make any false trade-offs between economic, environmental and social aspects and should genuinely contribute to a value creation, an improvement of the business' reputation and an increase of the trust and respect of customers (Streimikiene and Ahmed, 2021), i.e. to a continuous competition success (Gallardo et al., 2019). In sum, sustainability and CSR need to take advantage of the multi-stakeholder model and synergetic interaction in compliance with ethics (Sroka and Szántó, 2018), especially ethics as endorsed by Codes of Ethics (MacGregor Pelikánová et al., 2021b) and related management (Petera et al., 2021). This could arguably lead to "a more sophisticated form of capitalism" (Porter and Kramer 2011).

However, this general enthusiasm for sustainability and CSR is shared more by international organizations and states than by businesses. Empiric observations confirm the business first instinct that sustainability and CSR are prima facia expense making the business outcome more expensive and less competitively detrimental (MacGregor Pelikánová

and MacGregor, 2020a) and that poorly set, applied or communicated CSR could be a contra-productive burden (MacGregor Pelikánová and Hála, 2021). Therefore, businesses should be induced to make a good and transparent choice regarding sustainability and CSR, otherwise their endeavours can be futile, wasteful and perhaps even detrimental (MacGregor Pelikánová and MacGregor, 2020b). Arguably, it is the role of the state with its law and policies, to motivate and to steer businesses in this direction. The EU has accepted this role and for several decades key EU institutions, especially the European Commission, have been working on a framework to establish an internal single market that works for the sustainable development of Europe (Nevima et al., 2018). Crises magnify differences, worsen the social and economic inequalities (Ashford et al., 2020) and accelerate trends, so now, in the aftermath of the COVID-19 epidemic and the middle of the Ukraine war, it should be a perfect time to even more radically advance the framework so stakeholders, including investors and consumers, obtain information and can act accordingly, including vetoing certain investments and paying a CSR bonus aka a sustainability circular premium (D'Adamo and Lupi, 2021). However, a deeper understanding of the current situation and framework, as a pre-requirement for selection of future action, requires a systemic chronologic evolution of the policy and law setting on the EU level – from 1997 to now.

1997 saw the signing of the Treaty of Amsterdam ("Treaty of Amsterdam") amending the Maastricht Treaty on European Union from 1992 ("TEU"). The Treaty of Amsterdam entered into force in 1999 and not only simplified the EU legislative process (co-decision procedure), but as well brought new EU objectives by stating *"to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development."* The Rubicon was crossed and the sustainability became the objective of the EU to be projected both by the EU policies and the EU law. Any potential doubts about the mere ephemeral nature of the commitment to the sustainability was eliminated within just a few months. Indeed in 2010, the EU set its priorities for the next decade via a fundamental strategic document Europe 2020: A strategy for smart, sustainable and inclusive growth ("Europe 2020"), which was accompanied by even more sustainability and CSR explicit documents such as the Green Paper: Promoting a European Framework for CSR (MacGregor Pelikánová et al., 2021a; Turečková and Nevima, 2018).

Regarding the strictly legal setting, one of the most noticeable and explicit contributions to this trend was Directive 2013/34 and in particular its novelization by Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Indeed, this novelization brought a critically important new provision into Directive 2013/34, i.e. Art. 19a Non-financial statement *"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,. . . "* Consequently, certain large businesses in the EU are subject to a legal duty to inform about their CSR in their management reports (Balcerzak and MacGregor Pelikánová, 2020).

The European Commissions under the presidency of José Manuel Barroso (2004–2014) and Jean-Claude Juncker (2014–2019) have demonstrated the commitment to the smart, sustainable and inclusive growth as well as to SDGs, e.g. by arranging for the approval of the Paris Agreement by the EU in 2016 and for the confirmation of the commitment of the 2030 Agenda and its 17 SDGs in 2017. Regarding transparent reporting, even more important is the Action plan on financing sustainable growth ("Action Plan") with 10 Actions which was released by the European Commission in March 2018. Namely, Action 9 deals with the strengthening of sustainability disclosures (European Commission, 2022). Two months later, in May 2018, the European Commission presented, as a part of the sustainable finance package and in relation to Action 9, the proposal for SFDR, including a developed memorandum, see 2018/0179(COD). In November 2019, the SFDR was adopted and, by its novelization through the Taxonomy Regulation, includes Art. 2a about the principle of doing no significant harm.

This rather radical legislative evolution is paralleled, if not directly caused, by the arrival of the new president of the European Commission, Ursula von der Leyen, who appears to be even much more committed to sustainability, and in particular to protection of the environment, than her predecessors. Indeed, her repeatedly reaffirmed six priorities, are (i) A European Green Deal; (ii) A Europe fit for the digital age; (iii) An economy that works for people; (iv) A stronger Europe in the world; (v) Promoting the European way of life and (vi) A new push for European democracy (Bassott, 2021). SFDR was enacted basically at the same time when this new European Commission took office, i.e. SFDR was signed by the President of the European Parliament and by the President of the European Council on the 27th of November, 2019 and the Commission of Ursula von der Leyen was scheduled to take office on the 1st of November, 2019, but because the original French, Hungarian and Romanian commissioner-candidates lost their confirmation votes by the European Parliament, the modified Commission was approved on the 27th of November, 2019 (yes, on the same day as SFDR!) and took effect on the 1st of December, 2019. Only ten days later, on the 11th of December, 2019, the EU European Commission published its communication on "The European Green Deal" aspiring to make the EU the first climate neutral continent by 2050 (European Commission, 2021).

Although the legislative process towards SFDR took 1.5 years, i.e. from May, 2018 to November, 2019, a novelization was needed, and this came about a half year later, i.e. in June, 2020 the Taxonomy Regulation was enacted. The legislative process towards the Taxonomy Regulation started at the same time with the process towards SFDR, i.e. in May 2018, but was more challenging and required a 2nd reading in the European Parliament. Obviously, the Taxonomy Regulation is more than a technical legislative instrument. Indeed, the Taxonomy Regulation is an ambitious attempt to be both a classification and assessment instrument which brings a set of common EU-wide criteria to define whether an economic activity is or is not environmentally sustainable and adds the principle of do no significant harm as Art. 2a to SFDR (Art. 25 of Taxonomy Regulation). The most important criteria to establish that the considered economic activity is environmentally sustainable is that it contributes substantially to at least one of the six environmental objectives set by the Taxonomy Regulation (Art. 9 Taxonomy Regulation) and at the same

time does not significantly harm ANY of them (Art. 3 Taxonomy Regulation). These six advanced environmental objectives are: a) climate change mitigation; b) climate change adaptation; c) the sustainable use and protection of water and marine resources; d) the transition to a circular economy; e) pollution prevention and control; f) the protection and restoration of biodiversity (Art. 9 Taxonomy Regulation).

Does it mean that the Taxonomy Regulation eliminates parasitic practices in the sustainability and CSR arena, such as greenwashing? The consideration of this BIG issue requires a proper understanding and appreciation of the underlying four questions. Who has the duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the Taxonomy Regulation demands? Since when does this duty apply? What exactly does this duty entail, i.e. what must be disclosed? What are the sanctions if businesses having this duty fail to report and disclose this information? These questions are to be addressed based on data predominantly available from EurLex and methodologically processed as customary for the EU law and policy data.

III. Data and Methods

The study and assessment of the taxonomy for transparency in non-financial statements in the EU as a tool for the elimination of parasitic practices in the sustainability and CSR arena requires a deep understanding of the underlying legal duty. Therefore, in re the literature and legislative evolution, it is necessary to locate relevant data from the sphere of the EU law and assess them in an appropriate manner, while focusing on the quartet of the who, what, when and if questions.

Consequently, the principal source of data is the database EurLex, along with the e-platforms of the European Commission and European Parliament, which offer not only Regulations and Directives in their original as well as consolidated versions, but as well related legislative, semi-legislative and policy instruments. Considering the study and assessment aim and the four questions, especially the consolidated version of Directive 2013/34 and the recent Regulations, SFDR and Taxonomy Regulation are relevant The legal nature of them needs to be fully appreciated and the distinction between Directives, Regulations and mere policy instruments needs to be emphasized. When, later in this paper, Directive 2013/34, SFDR or Taxonomy Regulation are mentioned, then it refers to their current consolidated versions.

The employed methods are determined by the nature of the sources and data (Yin, 2008), i.e. it needs to be fully appreciated that SFDR and Taxonomy Regulation are directly applicable in a unified manner in the entire European Economic Area, i.e. even beyond the EU. There are mandatory and directly applicable instruments of the secondary EU law. Such a law nature requires methods of legal modelling and methods of systemic interpretation. It is well established that a literate approach should be auxiliary while the interpretation of Regulations as well as other EU law instruments have to be dominated by the teleological approach focusing on the "spirit of the law". Obviously contextual and evolutionary approach is to be employed in order to process the mentioned data in a multi-disciplinary and dynamic manner and thus to ultimately achieve an advanced thematic analysis and content analysis (Silverman, 2013; Popescu and Duháček Šebestová,

2022). The involved analysis includes both induction and deduction (Krippendorff, 2013; Vourvachis and Woodward, 2015) and entails more qualitative than quantitative aspects (Kuckartz, 2014).

Considering the four questions, the search, the selection of the relevant provisions and their interpretations are to be done manually by the author and have inherently subjective features. However, legal science as well as a legal search and interpretation are rather argumentative than axiomatic and thus it is fully acceptable to manually proceed and present provisions and interpret them while offering an abundant explanation refreshed by forensic juxtaposition, the critical comparison, glossing and Socratic questioning (Areeda, 1996). The methodologic backbone is the persuasive argumentation comparable to Meta-Analysis (Glass, 1976; Schmidt and Hunter, 2014) showing that we ultimately know (or should realize that we know) more than we initially believed. The pillars for this dynamic mutually intra-related argumentation and analysis are Directive 2013/34, SFDR and the Taxonomy Regulation. Considering the absence of the case law to verify arguments and conclusions, the presented answers to the given four questions are not conclusive, instead they are rather an opportunity to bring points for further discussions about the feasibility and potential of the taxonomy for transparency, in non-financial statements in the EU, to become a tool for the elimination of parasitical practices in the sustainability and CSR. To verify the implied, or at least suggested, conclusions and their reliability, it would be feasible to perform a more detailed formalized content analysis of public outputs of large companies in the EU, so that it is possible to use an appropriate quantitative method to verify. However, the necessary formalization of content analysis could lead to skewed outputs.

IV. Results and Discussion

The EU law explicitly and expressly includes provisions about the taxonomy for transparency in non-financial statements of certain EU businesses. Nevertheless, it is not obvious whether the Taxonomy Regulation or any other EU primary or secondary law instrument eliminates, or at least can eliminate, parasitic practices in the sustainability and CSR arena, such as greenwashing. Therefore, a rather tedious task of addressing a quartet of questions about the imposed duty needs to be performed as a pre-requirement for the consideration of this BIG issue: what, who, when and if. The pillars for this dynamic mutually intra-related analysis are Directive 2013/34, SFDR and the Taxonomy Regulation.

Firstly, there needs to be addressed the 1st question, i.e. there needs to be identified the subject of the legal duty, i.e. who has the duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the Taxonomy demands? A cursory overview of the pertinent Regulations and Directives reveals that the mentioned trio, i.e. Directive 2013/34, SFDR and Taxonomy Regulation, needs to be explored. The starting point for the identification of subjects, to whom the legal duty is imposed, is Art. 1 of the Taxonomy Regulation, followed by the consideration of Art. 2 and Art. 8 of the Taxonomy Regulation. These provisions point to Directive 2013/34, especially Art. 1, Art. 19a and Art. 29a, and to SFDR, especially Art. 1 and Art. 2, see Table 1.

Table 1: Subjects of the legal duty to report about CSR

Legislation	Wording	Comments
Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34")		
Art. 2 Definitions	. . . (1) 'public-interest entities' means undertakings within the scope of Article 1 which are: (a) governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member State . . . ; (b) credit institutions as defined in point (1) of Article 4 of Directive 2006/48/EC . . . (c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 . . . (3); or (d) designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business . . . ;	Public-interest entities = undertakings with transferable securities, credit institutions, insurance undertakings or designated undertakings.
Art. 19a Non-financial statement	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 . . .	Public-interest entities with more than 500 employees.
Art. 29a Consolidated non-financial statement	1. Public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates, on a consolidated basis . . . 500 employees during the financial year shall include in the consolidated management report a consolidated non-financial statement containing . . .	Parent undertakings with more than 500 employees
Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector ("SFDR")		
Art. 1 Subject matter	This Regulation lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks . . .	Financial market participants and financial advisers

Legislation	Wording	Comments
Art. 2 Definitions	. . . (1) 'financial market participant' means: (a) an insurance undertaking which makes available an insurance-based investment product (IBIP); (b) an investment firm which provides portfolio management; (c) an institution for occupational retirement provision (IORP); (d) a manufacturer of a pension product; . . .	Financial market participants = insurance or investment undertaking
	(11) 'financial adviser' means: (a) an insurance intermediary which provides insurance advice with regard to IBIPs; (b) an insurance undertaking which provides insurance advice with regard to IBIPs; (c) a credit institution which provides investment advice; (d) an investment firm which provides investment advice; (e) an AIFM which provides investment advice . . .	Financial adviser = insurance intermediary or insurance/credit institution providing investment advice
Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("Taxonomy Regulation")		
Art. 1 Subject matter and scope	. . . 2. This Regulation applies to: (a) . . . financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable; (b) financial market participants that make available financial products; (c) undertakings which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement pursuant to Article 19a or Article 29a of Directive 2013/34/EU.	Financial market participants and subjects of Art. 19a and Art. 29a of Directive 2013/34 subjects
Art. 2 Definitions	(2) 'financial market participant' means a financial market participant as defined in point (1) of Article 2 of Regulation (EU) 2019/2088 . . .	Financial market participants pursuant to SFDR
Art. 8 Transparency of undertakings in non-financial statements	1. Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information . . .	Art. 19a and Art. 29a of Directive 2013/34 subjects

Source: Authors' own processing based on the EurLex.(2022)

The first question can be answered by summarizing that subjects of the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the Taxonomy demands are:

* undertakings with transferable securities with more than 500 employees,
* credit institutions with more than 500 employees,
* insurance undertakings with more than 500 employees or which makes available an insurance-based investment product or which provides insurance advice with regard to IBIPs,
* investment firms which provide portfolio management or investment advice,
* designated public interest undertakings with more than 500 employees.

Hence, in general, the subject of the legal duty to prepare and publish non-financial statements (or other reports) about the CSR with the content satisfying the Taxonomy demands are financial institutions and large undertakings considered strategic by EU member states. This leads to the 2nd question, i.e. since when they have this duty. Since the Directive 2013/34, as updated in 2014, was fully transposed and SFDR was updated by the Taxonomy Regulation, the setting of the date since when this duty applies is clearly provided by merely three articles, see Table 2.

Table 2: The start of the application of the legal duty to report about CSR

Last relevant update	Effect	Comments
Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34")		
Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance	Art. 4 Transposition 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 December 2016. They shall immediately inform the Commission thereof. Member States shall provide that the provisions referred to in the first subparagraph are to apply to all undertakings within the scope of Article 1 for the financial year starting on 1 January 2017 or during the calendar year 2017. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.	National transposition deadline 6th December 2016 met (e.g. in CZ the Act Nr. 563/1991 Coll., on accounting)

Last relevant update	Effect	Comments
Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("Taxonomy Regulation") which updated SFDR and has not yet be updated		
Taxonomy Regulation updating SFDR	Art. 9 Environmental objectives For the purposes of this Regulation, the following shall be environmental objectives: (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and restoration of biodiversity and ecosystems. Art. 27 Entry into force and application 1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. 2. Articles 4, 5, 6 and 7 and Article 8(1), (2) and (3) shall apply: (a) in respect of the environmental objectives referred to in points (a) and (b) of Article 9 from 1 January 2022; and (b) in respect of the environmental objectives referred to in points (c) to (f) of Article 9 from 1 January 2023.	1st January 2022 for climate change mitigation and adaptation 1st January 2023 for sustainable use of water, circular economy, pollution prevention and protection of biodiversity and ecosystems.

Source: Authors' own processing based on the EurLex (2022)

Well, the general CSR reporting duty, as included in Art. 19a and Art. 29a of Directive 2013/34, has been nationally transposed and applies since 2016. However, and much more importantly, the specific CSR reporting duty brought by SFDR and technically further specified by Taxonomy Regulation is a typical Regulation based duty and so directly applicable per se across the entire EU. Since when does this duty apply? Well, for the first two objectives dealing with climate change, it is already applicable, i.e. the start of application occurred on the 1st January, 2022. For the remaining four objectives dealing with water, circular economy, pollution and biodiversity, the start of the application was set for the 1st January, 2023. This leads to the 3rd question, which is perhaps the most challenging and might lead to a case law – what exactly does this duty entail, i.e. what must be disclosed? In order to address this question, a pretty detailed review and a rather extensive overview regarding all three secondary EU law instruments, Directive 2013/34, SFDR and the Taxonomy Regulation, needs to be prepared and presented, see Table 3.

Table 3: Content of the legal duty to report about CSR

Legislation	Wording	Comments
Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34")		
Art. 19 Contents of the management report	1. The management report shall include a fair review of the development and performance of the undertaking's business and of its position, together with a description of the principal risks and uncertainties that it faces…, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters. In providing the analysis, the management report shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.	Management report with non-financial key performance indicators
Art. 19a Non-financial statement	1. Large undertakings which are public-interest entities exceeding… 500 employees… 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…	Non-financial statement in the management report with information about 5 CSR categories plus business models and policies and non-financial key performance indicators

Legislation	Wording	Comments
Art. 29a Consolidated non-financial statement	Public-interest entities which are parent… the financial year shall include in the consolidated management report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group'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: …	Aka Art. 19a
Art. 30 General publication requirement	Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor or audit firm… Member States may, however, exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.	Management Report within 12 months
Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector ("SFDR")		
Art. 1 Subject matter	This Regulation lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.	Transparency of sustainability risks
Art. 3 Transparency of sustainability risk policies	1. Financial market participants shall publish on their websites information about their policies on the integration of sustainability risks in their investment decision-making process. 2.Financial advisers shall publish on their websites information about their policies on the integration of…	Websites about sustainability risks

Legislation	Wording	Comments
Art. 4 Transparency of adverse sustainability impacts at entity level	1. Financial market participants shall publish and maintain on their websites:(a) where they consider principal adverse impacts of investment decisions on sustainability factors, a statement on due diligence policies with respect to those impacts, taking due account of their size, the nature and scale of their activities and the types of financial products they make available	
Art. 5 Transparency of remuneration policies in relation to the integration of sustainability risks	1. Financial market participants and financial advisers shall include in their remuneration policies information on how those policies are consistent with the integration of sustainability risks, and shall publish that information on their websites.	Websites with information about remuneration policies
Art. 6 Transparency of the integration of sustainability risks	1. Financial market participants shall include descriptions of the following in pre-contractual disclosures: (a) the manner in which sustainability risks are integrated into their investment decisions; and (b) the results of the assessment of the likely impacts of sustainability risks on the returns of the financial products they make available. 2. Financial advisers shall include descriptions of the following in pre-contractual disclosures:	Pre-contractual disclosures about sustainability risks
Art. 7 Transparency of adverse sustainability impacts at financial product level	1. By 30 December 2022, for each financial product where a financial market participant… (a) a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors; (b) a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to Article 11(2).	Information for each financial product about sustainability factors
Art. 8 Environmental or social characteristics in pre-contractual disclosures	1. Where a financial product promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics, provided that the companies in which the investments are made follow good governance practices, the information to be disclosed pursuant to Article 6(1) and (3) shall include the following: (a) information on how those characteristics are met;	Pre-contractual disclosures about environmental and social characteristics of a financial product

Legislation	Wording	Comments
Art. 9 Sustainable investments	1. Where a financial product has sustainable investment as its objective and an index has been designated as a reference benchmark, the information to be disclosed pursuant to Article 6(1) and (3)…	…index
Art. 10 Environmental or social characteristics and of sustainable investments on websites	1. Financial market participants shall publish and maintain on their websites the following information for each financial product referred to in Article 8(1) and Article 9(1), (2) and (3): (a) a description of the environmental or social characteristics or the sustainable investment objective; (b) information on the methodologies used to assess, measure and monitor the environmental or social characteristics or the impact of the sustainable investments selected for the financial product, including its data sources, screening criteria for the underlying assets and the relevant sustainability indicators used to measure the environmental or social characteristics or the overall sustainable impact of the financial product; …	Websites with information about environmental and social characteristics or sustainable investment objective for each financial product
Art. 11 Transparency of the promotion of environmental or social characteristics and of sustainable investments in periodic reports	1. Where financial market participants make available a financial product as referred to in Article 8(1) or in Article 9(1), (2) or (3), they shall include a description of the following in periodic reports: (a) for a financial…, the extent to which environmental or social characteristics are met; (b) for a financial product as referred to in Article 9(1), (2) or (3): (i) the overall sustainability-related impact of the financial product by means of relevant sustainability indicators… (ii) where an index has been designated as a reference benchmark,…	Periodic reports about environmental and social characteristics and the sustainability related impact of a financial product
Art. 13 Marketing communications	1. …financial market participants and financial advisers shall ensure that their marketing communications do not contradict the information disclosed pursuant to this Regulation. 2. The ESAs may develop, through the Joint Committee, draft implementing technical standards to determine the standard presentation of information on the promotion of environmental or social characteristics and sustainable investments.	Marketing communications
Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (“Taxonomy”)		

Legislation	Wording	Comments
Art. 1 Subject matter and scope	1. This Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. 2. This Regulation applies to: (a) . . . financial market participants . . . (c) undertakings which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement pursuant to Article 19a or Article 29a of Directive 2013/34/EU.	Financial marketing participants and large public interest entities
Art. 5	Transparency of environmentally sustainable investments in pre-contractual disclosures and in periodic reports	Pre-contractual disclosures and period reports
Art. 6	Transparency of financial products that promote environmental characteristics in pre-contractual disclosures and in periodic reports	
Art. 7	Transparency of other financial products in pre-contractual disclosures and in periodic reports	
Art. 8 Transparency of undertakings in non-financial statements	1. Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable . . . In particular, non-financial undertakings shall disclose the following: (a) the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable . . . ; and (b) the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9.	

Source: Authors' processing based on the EurLex (2022)

The general CSR reporting duty of large public-interest entities translates into annual publications of the management report with a non-financial statement. This includes non-financial key performance indicators and basic information about environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (Directive 2013/34) and information about how, and to what extent, the undertaking's activities are

associated with economic activities that qualify as environmentally sustainable (Taxonomy Regulation). The special CSR reporting duty entails the information and the update of information of financial market participants and financial advisers or related to financial products (SFDR) on their websites, in pre-contractual disclosures, in periodic reports. As well, compliant marketing communication about their policies on the integration of sustainability risks, remuneration policies, environmental and social characteristics, sustainable investment and sustainability impact.

Naturally, the identification of the subject, application time and content of a legal duty would be totally futile without sanctions, i.e. a legal duty without an enforcement option is basically a *nude* duty hardly deserving the legal status. Hence, it is critically important to address the 4th question about the sanction mechanisms for the violation of the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the Taxonomy demands. Each of the three analysed EU secondary law instruments has special provisions about it, see Table 4.

Table 4: Sanctions for the violation of the legal duty to report about CSR

Legislation	Wording	Comments
Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34")		
Art. 51 Penalties	Member States shall provide for penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive…	The enforcement is not harmonized, i.e. it is left to EU member states.
Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector ("SFDR")		
Art. 14 Competent authorities	1. Member States shall ensure that the competent authorities designated in accordance with sectoral legislation, in particular the sectoral legislation referred to in Article 6(3) of this Regulation, and in accordance with Directive 2013/36/EU, monitor the compliance of financial market participants and financial advisers with the requirements of this Regulation. The competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation…	The enforcement is delegated to EU member states and sectorial competent authorities

Legislation	Wording	Comments
Art. 19 Evaluation	1. By 30 December 2022, the Commission shall evaluate the application of this Regulation and shall in particular consider: (a) whether the reference to the average number of employees in Article 4(3) and (4) should be maintained, replaced or accompanied by other criteria, and shall consider the benefits and proportionality of the related administrative burden; (b) whether the functioning of this Regulation is inhibited by the lack of data or their suboptimal quality, including indicators on adverse impacts on sustainability factors by investee companies. 2. The evaluation referred to in paragraph 1 shall be accompanied, if appropriate, by a legislative proposal.	The evaluation of the applicability, including enforcement, will be by the European Commission by 30 December 2022
Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("Taxonomy")		
Art. 22 Measures and penalties	Member States shall lay down the rules on measures and penalties applicable to infringements of Articles 5, 6 and 7. The measures and penalties provided for shall be effective, proportionate and dissuasive.	The enforcement is not harmonized, i.e. it is left to EU member states

Source: Authors' processing based on the EurLex (2022)

Well, the setting of a robust and harmonized, if not unified, enforcement mechanism is not on the agenda, i.e. the EU law has evolved between 2014 and 2020 to create a clear and identifiable duty of a more or less clear group of subjects, but regarding the enforcement mechanism, we are at the very beginning. So far, it is basically left to EU member states and they are asked to provide "effective, proportionate and dissuasive penalties". Additionally, other general, ESAs, or sectorial institutions are invited to participate in the mechanism. That is that. So, is the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the Taxonomy demands real, or just an illusory chimera?

V. Conclusion

The EU has set a regime aiming, via taxonomy and transparency, to increase the genuine information about CSR in non-financial statements. By a set of secondary EU law instruments, a rather complex legal duty is imposed on selected businesses, namely to prepare and publish non-financial statements (or other reports) about their own CSR, with the content satisfying the taxonomy demands. Therefore, for these businesses as well as their stakeholders and even the entire society, it is critically important to fully appreciate and understand this duty and, in particular, to understand its subject, time frame, scope (subject matter) and sanctions. In order to answer these four dimensions, i.e. questions about who, when, what and if, and so to ultimately assess the effectiveness, efficiency and legitimacy of the taxonomy for transparency in non-financial statements, a holistic deep content, comparative and contextual analysis with a teleological interpretation needed to be performed. Its results, answers and semi-conclusive propositions are pioneering, with rather surprising answers, while the implied general observations about the EU law and EU policies point to an interesting trend. Namely, the subjects, time frame and content of such a duty can be, with some difficulties, established, while the enforcement mechanism remains vague. Indeed, it can be argued that the EU and EU institutions want to directly establish a legal duty, but hesitate to even indirectly set an enforcement mechanism.

Namely, the study of Directive 2013/34, SFDR and the Taxonomy Regulation provides answers to all four questions. Firstly, the subjects of the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the taxonomy demands are financial institutions and large public-interest entities considered strategic by EU member states. Secondly, this general CSR reporting duty, as included in Art. 19a and Art. 29a of Directive 2013/34, has been nationally transposed and has applied since 2016. However, and much more importantly, the specific CSR reporting duty brought by SFDR, and technically further specified by the Taxonomy Regulation, has applied since the 1st of January, 2022 regarding the climate change objective, and will apply beginning on the 1st of January, 2023 regarding objectives dealing with water, circular economy, pollution and biodiversity. Thirdly, the general CSR reporting duty of large public-interest entities translates into the annual publication of the management report with a non-financial statement including non-financial key performance indicators and basic information about environmental, social and employee matters, the respect for human rights, anti-corruption and bribery matters (Directive 2013/34) and information about how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable (Taxonomy Regulation). The special CSR reporting duty entails the information and the update of information of financial market participants and financial advisers or related to financial products (SFDR) on their websites, in pre-contractual disclosures, in periodic reports and compliant marketing communications about their policies on the integration of sustainability risks, remuneration policies, environmental and social characteristics, sustainable investments and sustainability impacts. Finally, fourthly, the enforcement mechanism is basically delegated to national laws, i.e. it is missing on the EU law level.

Consequently, it can be argued that the EU law has organically and continuously evolved for almost one decade to achieve a robust, harmonized (partially even unified) and detailed substantive setting of the legal duty to the subject of the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the taxonomy demands. There is clear progress to be observed and the materialization of the Green Deal and SDGs demands are noticeable. At the same time, it must be emphasized that this evolution is input oriented and rather spontaneous, leading to a fragmented and complex substantive law framework which might be legitimately perceived as Byzantine. However, the biggest issue is the enforcement and procedural dimension. The setting of a robust and harmonized, if not unified, enforcement mechanism and its application on the EU level is not on the agenda. The EU law has evolved between 2014 and 2020 to create a clear and identifiable duty of a more or less clear group of subjects, but regarding the enforcement mechanism, we are at the very beginning. So far, it is basically left to EU member states, and they are asked to provide "effective, proportionate and dissuasive penalties". As well, other general, ESAs, or sectorial institutions are invited to participate in the mechanism. That is that. So, is the legal duty to prepare and publish non-financial statements (or other reports) about CSR with the content satisfying the taxonomy demands real or just an illusory chimera? The near future will provide the answer, because the European Commission, under the presidency of Ursula von der Leyen, seems to have crossed the Rubicon and includes taxonomy for transparency, in non-financial statements and other reports, its priority, and at the same time it is certain that not all subjects of such a legal duty will comply. The most interesting aspect of this saga is the possibility of the involvement of all stakeholders, because at the very end of the day each and every European can participate and opt for or veto entities, businesses and financial products (not) leading to the transparent taxonomy information about sustainability. Europeans have a unique opportunity to become active players and transform the sustainability and CSR into core EU values. Let's see whether the EU will manage to reach a fair, pragmatic and not value compromising balance and so ultimately turn the current situation into a properly explored opportunity!

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