

ESG REPORTING FRAMEWORK IN POLAND – THE CURRENT STATE OF AFFAIRS AND PERSPECTIVES

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Purpose: The purpose of the article is to systematise and present – against a background of the essence of ESG accounting – the applicable and proposed legal framework for non-financial reporting in Poland.

Design/methodology/approach: The article uses qualitative research methods: the method of studying literature and legal acts, the method of analysis and synthesis, as well as the descriptive method and deductive inference.

Findings: The results of the literature studies make it possible to conclude that the topic of ESG reporting is not new, but it is gaining importance, and this process will most probably continue. The growing demand and pressure for companies to be more environmentally and socially responsible are accompanied by the efforts that they make to present the best possible information in this area. To some extent, these activities are voluntary, but they are increasingly enforced by legal regulations. Non-financial information is gaining importance for various stakeholder groups, who are increasingly aware and sensitive to environmental, social and corporate governance issues. It, therefore, seems obvious that the disclosure of ESG information – in part voluntary and influencing marketing – is becoming increasingly regulated and necessary. This is evidenced by further EU regulations and their transposition into domestic legislation. Analysis of the regulations already in force and the draft CSRD Directive cited in the article clearly indicates that the European Commission has been increasing the obligations related to ESG reporting in recent years, and they will be further increased in the future.

Originality/value: The value of the article is the analysis, synthesis and systematics of issues related to the essence and framework of non-financial reporting (sustainable development) in Poland, including issues related to the currently applicable and proposed European Union legislation.

Keywords: ESG reporting, non-financial reporting.

Category of the paper: General review.

1. Introduction

The purpose of enterprises is their continuous development, expressed, among other things, through profit maximisation. At the same time, there is a widespread view in the literature, as well as in the practice of economic life, that enterprises cannot focus only on business goals. It does not require much effort to identify a range of enterprises, initiatives, individuals and organisations which are involved in social issues and have a responsible approach to the issues of ecology and environmental protection. However, it also seems that there is some ground for the belief that capitalism, as it exists today, causes more harm than good in the world (Edelman, 2020). ESG issues such as climate change and poverty – amplified by the effects of the Covid-19 crisis (Wood, 2020) – are at the root of the above-mentioned harm. There is, therefore, a growing need for and pressure on companies to be more environmentally and socially responsible. These expectations come from various stakeholder groups, including shareholders, creditors, customers, "regulators" (both domestic and EU), employees, suppliers, social and environmental activist groups, and the media (Sajjad et al., 2020; Camilleri, 2015; Hoang, 2018).

To meet the growing demands of their stakeholders and the challenges posed by the environment, uncertain external conditions and uncertain business, enterprises are increasingly often making efforts to improve both their business models and reporting systems (Arif et al., 2021). Such actions are partly enforced by law and partly voluntary. In the latter case, it is an approach that especially characterises entities belonging to environmentally sensitive industries, such as the coal, oil or gas industry. Analysis of the subject literature shows that entities operating in these types of industries try to present better ESG information more often than other entities, mainly in order to legitimise their activities and neutralise the stigma of poisoners (Dhaliwal et al., 2011).

2. ESG and ESG Accounting – Fundamental Assumptions

ESG is an increasingly popular concept integrating three elements: the environment, social responsibility and corporate governance (Domańska-Szaruga, 2011; Boffo and Patalano, 2020). This abbreviation is an agglomeration of concepts related to sustainable development, also in the corporate environment. Sustainable development is such development that meets the needs of the current generation without compromising the ability of future generations to satisfy their needs. When analysing individual ESG components, it should be noted that (E) environmental responsibility focuses on maintaining the state of the environment. It refers to the responsible utilisation of natural resources in a way that minimises environmental damage while ensuring

that these resources will remain available for future generations (Mgbame et al., 2021). (S) The social element of the ESG framework is referred to as the concept of corporate social responsibility. Social responsibility perceives an organization as a corporate citizen who should give back to society, even if it benefits from society. This responsibility is the obligation of entrepreneurs to implement such a policy, make such decisions and set such directions for their business that will be consistent with the objectives and values of the society (Żychlewicz, 2015; Stecko, 2012; Abad-Segura et al., 2019). On the other hand, (G) corporate governance includes the structure and activities related to managing and controlling organisational matters, to reconcile the interests of various parties. It is a mechanism that drives all the other ESG framework factors so that the company can earn stakeholders' trust. It includes such actions as governing the organisation, objectives and strategies, monitoring strategy implementation, directing and controlling the overall business, and reporting to shareholders on operations and management. It is therefore an attempt to find the so-called golden mean – a solution that would reconcile the financial aspirations of economic entities with the expectations of the stakeholders directly involved in its operation while maintaining the good of the entire society (Mgbame et al., 2021; Wierzbicka, 2018; Tylżanowski and Leoński, 2018).

The origins of ESG date back to the 1970s, when corporations such as General Motors, Ford and Cummins Engine began to share information about their philanthropic activity and involvement in the community (Wilburn, and Wilburn, 2013). Reporting needs have increased due to the occurrence of environmental disasters. Events of this kind are among the factors that contributed to the creation of special requirements concerning reporting in the ESG area. However, the prepared reports did not include a comprehensive overview of the companies' operations, they only contained a relatively random set of indicators. The situation has been changing in recent years. Corporations are disclosing a broader range of ESG data, mainly due to the emergence of global initiatives such as the UN Global Compact (UNGC), or the Global Reporting Initiative (Mgbame et al., 2021). At the same time, ESG accounting also began to be included in company accounting, as a result of the fact that stakeholders were concerned about the impact of companies on the environment and society, as well as how company management helps to solve this problem (Ackers and Eccles, 2015). Investors and other stakeholders have lost confidence in traditional financial reporting, especially after the 2008 crisis. It was then that the need arose for companies to adopt ESG accounting, containing ESG information in the form of additional reports, which are intended to increase the efficiency of information use (Maroun, 2018; Abhayawansa et al., 2019). What, then, is ESG accounting? First, it is considered a new direction in the field of accounting, complementing financial accounting data (Ismail and El-Shaib, 2012; Thomson, 2015). It is an accounting practice that takes into consideration the relationship between the company and the environment (Esch et al., 2019). ESG accounting is also interpreted as providing information on how a company's activity affects the environment, society and the management structure established in order to achieve the company's strategic objectives. These definitions indicate that ESG accounting is

strategic communication of the company's goals and business activity, as well as its impact on the environment and the society (Eccles et al., 2015; Casonato et al., 2019). Therefore, ESG reporting is a way for companies to inform stakeholders about the actions they are undertaking towards sustainability, as well as their business-related actions – other than the traditional assessment of financial results (Lament, 2017; Erkens et al., 2015).

3. Directive 2014/95/EU as the Beginning of Mandatory Non-Financial Reporting

At the European Union level, the first attempts to introduce mandatory non-financial disclosures date back to the late 1990s. In terms of regulations related to accounting, these samples were reflected in the Accounts Modernisation Directive (2003), according to which the information presented in the activity report should not be limited to financial aspects. Under the provisions of the foregoing Directive, the scope of disclosures should be increased with regard to social and environmental aspects, which was to allow for a better understanding of the development of the company and its financial situation. As pointed out by D. Kinderman (describing in detail the process of the creation of and struggle for the Directive 2014/95/EU on mandatory non-financial disclosures) (Kinderman, 2015), EU actions aimed at expanding the scope of mandatory ESG disclosures were blocked by large and influential enterprises (German ones in particular), which postulated voluntariness in this area. The change of approach to these issues was forced, as already mentioned, by the 2008 crisis, as well as environmental and construction disasters (e.g. the explosion on the BP Deepwater Horizon oil platform in 2010 and the collapse of the building at the Rana Plaza complex in Bangladesh in 2013) (Fijałkowska et al., 2019). The institutional response to such events was the initiative of the European Parliament that culminated on 25 November 2014 with the issue of Directive 2014/95/EU (Directive 2014/95/EU) regarding disclosure of non-financial information. Member States were given time to implement it until 6 December 2016, and its provisions entered into force on 1 January 2017 (Fijałkowska, 2016). However, it should be emphasised that already in 2011, the European Commission issued a Communication in which it indicated that enterprises should have a mechanism for integrating social, environmental, ethical and human rights issues, as well as consumer problems, with their activity and basic strategy (Commission Communication, 2011). Directive 2014/95/EU confirmed that position. It introduced the requirement for large public-interest entities to disclose, in an activity report or in the form of a separate report, a minimum amount of relevant information on environmental, employee-related and social issues, the protection of human rights and the fight against corruption and bribery (so-called corporate social responsibility reporting). In addition, the provisions of the Directive introduced the obligation of new disclosures in the field of

diversity policy, the composition of the company's administrative, management and supervisory bodies, the objectives of diversity policy, the methods of its implementation, its results, as well as risks and risk management in non-financial matters. Entities covered by the aforementioned regulations are obliged to apply the "comply or explain" principle, which means that when an entity does not conduct a policy regarding one or more issues specified in the Directive, it is obliged to disclose this fact and state the reasons behind such a situation (Directive 2014/95 EU); Fijałkowska, 2016).

The transposition of Directive 2014/95/EU into Polish law entailed the need to amend the Accounting Act. Pursuant to it, an additional article was introduced (Art. 49b), regulating the obligation to include a statement on non-financial information in the activity report. If an entity prepares a separate report on the non-financial information required for the statement together with the activity report and publishes it on its website within six months of the balance sheet date, it will no longer be obliged to prepare a separate statement on non-financial information. (Act of 15 December 2016; Tylec, 2018). In addition to the amendment to the Accounting Act, the National Accounting Standard No. 9 "Activity Report" was also updated (National Accounting Standard, 2017). Due to the introduced changes, the category of entities subject to the non-financial reporting obligation now includes public-interest entities (independently exceeding the thresholds, or being parent entities of capital groups) listed in art. 3 sec. 1 e items 1-6 of the Act, being a capital company, a limited joint-stock partnership or such a registered partnership or a limited partnership in which all partners that bear unlimited liability are capital companies, limited joint-stock partnerships or companies from other countries with a similar legal form to the foregoing companies and partnerships. Examples of these include banks, insurance companies, investment funds, issuers, pension funds and domestic payment institutions. The entities listed in the Act are obliged to prepare a statement on non-financial information if in the financial year for which they are preparing their financial statement and in the preceding year they exceeded the following values: average annual employment (in full-time equivalents) – 500 people and the total balance sheet assets at the end of the financial year – 85 million PLN or 170 million PLN – in the case of net revenues from the sale of goods and products (Chluska, 2017; Act of 15 December 2016; Act of 29 September 1994; Tylec, 2020). According to the Accounting Act, as amended in connection with the transposition of the Directive, the areas of ESG reporting include:

- a description of the entity's business model,
- performance indicators,
- a description of the policies carried out by the entity in relation to social, employee, environmental, human rights and anti-corruption issues, as well as a description of the results of the application of these policies,
- a description of due diligence procedures – if the entity applies them,

- a description of significant risks related to the activity of the entity that may have an adverse impact on social, employee, environmental, human rights and anti-corruption issues, including risks related to the entity's products or its relations with the external environment, including contractors, as well as a description of the management of these risks (Act of 15 December 2016; Lorenc and Kustras, 2017).

4. EC Communications: Guidelines on non-financial reporting (2017) and Supplement on reporting climate-related information (2019)

Despite the provisions of Directive 2014/95/EU, the lack of methodology, standards and a precise set of ESG information to be disclosed in the reports has become a serious challenge for the ESG reporting practice. Support in this area was to be provided by a supplement to this Directive, introduced by the Communication from the European Commission: Guidelines on non-financial reporting (methodology for reporting non-financial information). The Communication identifies several frameworks on which companies can base their reporting process. However, it should be emphasised that these were non-binding and non-mandatory guidelines aimed at persuading companies to disclose high-quality, relevant, useful, consistent and comparable non-financial information (environmental, social and management-related) (Santos et al., 2021; Communication from the Commission, 2017; Tylec, 2020).

The 2017 guidelines were extended in 2019 with a supplement on reporting climate information. These additional non-binding guidelines are aimed at providing the entities covered by the Directive with practical tips on how to better report their impact on climate as well as the impact of climate change on their activity. In the 2019 Guidelines, the EC postulates the disclosure of climate-related information concerning each of the five reporting areas specified in the Directive, i.e.: business model, policies and due diligence, the outcome of these policies, the main risk factors and risk management, and key performance indicators. At the same time, the Supplement indicates that practices in the field of climate-related reporting are undergoing dynamic changes, and the content of the related information to be disclosed may vary between enterprises depending on such factors as the sector of activity, geographical location, as well as the nature and scale of climate-related risks and opportunities. The Supplement also stresses that it is not intended to encourage companies to issue separate reports regarding climate. Instead, climate-related information should be included in reports on other financial and non-financial information and made readily available to end-users. At the same time, the EC calls for methodological flexibility and an innovative approach in this respect, going beyond the framework of the proposed guidelines (Communication from the Commission, 2019).

5. Regulation 2019/2088 (SFDR) and Regulation 2020/852 (Taxonomy) as EU Regulations on Sustainable Investments/Finance

On 10 March 2021, the Regulation 2019/2088 (SFDR) on sustainability- related disclosures in the financial services sector entered into force. It obliges financial market participants¹ and financial advisors who provide investment or insurance advisory services (concerning insurance investment products) to publish, in writing, a strategy for introducing risks to sustainable development into the business activity and to ensure transparency of such introduction into the activity. The following were indicated as the objectives of the Regulation:

- an increase in the protection of final investors and broadening of the scope of information disclosed to them,
- the achievement of greater transparency concerning how financial market participants and financial advisors introduce sustainability risks into business activity,
- a reduction of the information asymmetry in relations between the ordering party and the contractor regarding the introduction of risks to sustainable development into the activity, taking into account adverse effects on sustainable development, promoting the environmental or social aspect and sustainable investments, by requiring financial market participants and financial advisors to disclose relevant information to final investors before the conclusion of a contract, and then on an ongoing basis when they act as contractors for those final investors (ordering parties) (Regulation 2019/2088).

The scope of disclosures to which the SFDR Regulation obliges financial market participants and financial advisors includes in particular: information on the adopted strategy regarding the risk to sustainable development when making investment decisions, information on the negative impact of the investment decisions that were made on sustainable development factors and disclosures regarding the remuneration policy, in terms of including information on how to ensure its consistency with the introduction of risks for sustainable development into the activity. The indicated disclosures should be presented on the websites of entities covered by the SFDR Regulation.

The provisions of the SFDR Regulation were amended and supplemented by the Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on establishing a framework facilitating sustainable investments, on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088 – Taxonomy (Regulation 2020/852; Krappe, 2021).

The taxonomy is recognised as a new EU tool to support the achievement of sustainable development goals. The Taxonomy has established criteria (precisely defined goals) to determine whether a given business activity qualifies as environmentally sustainable, i.e.:

¹ including banks, insurance companies providing insurance-based investment products and investment companies providing portfolio management services.

- mitigation of climate change,
- adaptation to climate change,
- the sustainable use and conservation of water and marine resources,
- transition to a circular economy,
- pollution prevention and control,
- protection and restoration of biodiversity and ecosystems.

According to the provisions of the Taxonomy, business activity will be qualified as environmentally sustainable if it fulfils at least one of the above-mentioned goals and at the same time does not cause serious damage to any of the environmental goals, is conducted in accordance with minimum guarantees, and meets the technical qualification criteria characterised in Regulation 2020/852 (Regulation 2020/852; Krappe, 2021).

6. CSRD – The Future of ESG Accounting

In April 2021, the European Commission published a draft of the Corporate Sustainable Reporting Directive, which will replace the existing NFRD (Non-Financial Reporting Directive). The objective of the CSRD is to improve reporting in the area of sustainability at the lowest possible cost to better exploit the potential of the European single market so as to contribute to the transition to a fully sustainable and socially inclusive economic and financial system, in line with the European Green Deal and the UN Sustainable Development Goals. It is worth noting that the names of the requirements imposed by the CSRD were changed from "non-financial" to "sustainable" (Proposal, 2021; Baumüller and Grbenic, 2021).

In particular, the following were identified as new elements of the Directive:

- an extension of reporting requirements to more companies, including all large and listed companies (except listed micro-enterprises),
- a requirement for attestation of information on sustainable development,
- a more detailed definition of the information that companies should provide and an obligation for companies to submit reports under mandatory EU standards for sustainability reporting,
- a provision ensuring that all information will be published in the business reports and disclosed in digital format (Proposal, 2021).

When comparing the proposed CSRD to the NFRD, it should be noted that the current NFRD covered four pillars, four basic thematic aspects in the scope of which non-financial information was expected to be disclosed. These were: environment, social responsibility and employees, human rights, as well as anti-corruption and anti-bribery measures. In the methodological aspect, the Directive was supported by non-binding guidelines.

The draft Directive indicates three main areas: environment, social policy (social responsibility) and corporate governance. The information that companies will be required to disclose in the field of environmental protection corresponds with the above-mentioned six goals of the Taxonomy. Compulsory disclosures in the field of corporate social responsibility are to cover three main issues:

- equal opportunities (including gender equality, wage equality, equal opportunities for employment and inclusion of people with disabilities),
- working conditions (wages, social dialogue, collective agreements, employee involvement, work-life balance, health, safety and work environment adaptation issues,
- respect for human rights (the fundamental rights of freedom, respect for international standards) (Proposal, 2021).

The information that companies will be required to disclose in the field of corporate governance includes: management and supervisory bodies (including their composition and role), business ethics, corporate culture, anti-corruption policy, political engagement, including lobbying, relations with business partners, including payment practices, internal control systems and risk management, including risk management for reporting processes. At the same time, works are ongoing on the future standards for the presentation of this information. These will no longer be non-binding guidelines, but probably the so-called sustainable development standards, referring to other standards, e.g. GRI, IFRS, and SASB (Proposal, 2021).

In conclusion, the CSRD will not only impose more obligations concerning reporting, but above all, it will expand the list of entities and areas covered by it. A significant change will be the extension of the reporting obligation so that it will cover all the large companies (not only listed companies) that meet certain financial and employment criteria. Importantly, plans also include the introduction of a uniform European standard for reporting on sustainable development issues – the draft Directive assumes the adoption of a first set of reporting standards by 31 October 2022. The new Directive, after having been adopted by the Member States and implemented into national legislation, will come into force in 2024, and it will first apply to data reporting for the year 2023 (Krappe, 2021). It is expected that the solutions introduced by the CSRD Directive will be a big step forward in the field of corporate transparency. This development will entail high administrative costs for enterprises (Baumüller and Grbenic, 2021).

7. Conclusions

Even though the first attempts to introduce mandatory non-financial disclosures in the European Union date back to the late 1990s, the introduction of Directive 2014/95/EU is considered to be the beginning of mandatory reporting. Despite the introduction of the Directive, a challenge for the ESG reporting practice was, and to some extent still is, the lack of a methodology, standards and a set of ESG information required to be disclosed in reports. Such a state of affairs has necessitated making further efforts to develop a methodology, indicators and a precise set of information to be presented. As a result of the search for methodological solutions for ensuring the comparability of data, the issue of non-financial reporting was increasingly regulated (e.g. by Regulation 2019/2088), which was justified by the EU's striving for the transition to a low-emission, more sustainable and resource-efficient circular economy, consistent with the sustainable development goals. Following the regulations of Directive 2014/95/EU (NFRD), further provisions were prepared, including guidelines and regulations, which addressed the issues of ESG reporting in various aspects. These regulations include in particular: Guidelines on non-financial reporting (2017), Supplement on reporting climate-related information (2019), Regulation 2019/2088 (SFDR) and Regulation 2020/852 (Taxonomy).

It can be presumed that a special role in ESG reporting will be played by the CSRD, currently being reviewed in the EU, which is to introduce a uniform European standard for reporting on sustainable development issues. It will include the obligation of non-financial reporting, defined as reporting of sustainable development, for not only large enterprises but also medium-sized and smaller ones. Thus, the disclosure of ESG information will become even more regulated, more broadly mandatory and necessary for different stakeholder groups, who are increasingly aware of and sensitive to environmental, social and corporate governance issues.

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