Improving climate and sustainability corporate disclosure policies to enable sustainable finance

Enforcement activities

Summary report

EUKI Research 2020

Research implemented by:

Frank Bold

Coordinator of:

Alliance for Corporate Transparency

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In 2020, Frank Bold analysed climate, environmental and governance reporting of 300 companies in Central, Eastern and Southern Europe. The companies were selected from industries that significantly contribute to climate change and from countries that lag behind in climate action and the transition to a low-carbon economy.

The results show that only a minority of companies provide sufficiently detailed information on climate (approx. 30%) and on other environmental issues (approx. 10%) that allows to understand their development, position, performance and impact as expected by the EU Non-Financial Reporting Directive (EU NFRD). The lack of specificity of the legal requirements pursuant to the EU NFRD and its national transpositions, makes an objective evaluation of companies' compliance with those requirements very difficult.

Therefore, we have assessed which of the analysed reports failed to provide any climate-related information on specific aspects explicitly required in the EU NFRD, taking into account ESMA's enforcement priorities calling for the disclosure of:

→ physical and transition risks related to climate change, provided for different time horizons,

→ mitigating actions put in place in the context of their business models and environmental policy,

→ targets that companies are pursuing in this area.[1]

All companies included in our assessment were selected from high climate risks and impacts industries, and thus climate can be considered by default a material sustainability matter.

Specifically, we assessed the following objective cases of complete absence of:

→ non-financial statement as a whole,

→ description of any climate-related and other environmental policies, their outcomes and risks,

→ climate-related and other environmental KPIs.

We identified approximately 70 companies, which failed to provide any information, or provided clearly insufficient information, in one or more of these mandatory categories. From this pool, we selected the worst 10% of 300 (31) non-financial statements analysed in our research. We collaborated with partner organisations in these countries and submitted formal requests to the national enforcement authorities to examine these cases and take appropriate action in accordance with their mandate. In this regard, the EU NFRD requires Member States to ensure that effective means of enforcement are put in place.

"Member States should ensure that adequate and effective means exist to guarantee disclosure of non-financial information by undertakings in compliance with this Directive. To that end, Member States should ensure that effective national procedures are in place to enforce compliance with the obligations laid down by this Directive, and that those procedures are available to all persons and legal entities having a legitimate interest, in accordance with national law, in ensuring that the provisions of this Directive are respected."

Each submission provided an explanation of what information has not been included in a company's non-financial statement and why that constitutes mis-compliance with a reference to the legislative requirements and guidance provided by the European Commission and ESMA, alongside a summary account of the information which was included by the company.

[1] ESMA's Public Statement - p. 13 of the European common enforcement priorities for 2020 annual financial reports, 28 October 2020

[2] Recital 10 of the Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014

This project is part of the European Climate Initiative (EUKI). EUKI is a project financing instrument by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The EUKI competition for project ideas is implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. It is the overarching goal of EUKI to foster climate cooperation within the European Union (EU) in order to mitigate greenhouse gas emissions.

More information on EUKI can be found here: http://www.euki.de/

The opinions put forward in this report are the sole responsibility of the author(s) and do not necessarily reflect the views of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

Key findings:

→ **Most Member States' don't provide a transparent procedure that allows examination of authorities' actions or provide any rights to stakeholders raising the complaint.** We've received responses from 4 out of 16 authorities contacted in 11 Member States in total (including Czech Republic, Bulgaria, Spain, Greece, Croatia, Hungary, Italy, Poland, Slovenia, Slovakia, Romania). **No authority indicated it would take any action beyond initial examination** that could lead to sanctions or formal notifications of the companies:

- The most extensive actions were taken by the *Romanian Financial Supervisory Authority (ASF)* and the *Spanish National Securities Market Commission (CNMV)*.

  - ***ASF* contacted three companies included in the complaint and asked them for an explanation.** However, ASF did not take any further steps and claimed that at the moment, it is up to the companies to decide which information to include in their non-financial statements. These 3 companies did not publish:
    NFS within the legal deadline,
    KPIs in relation to total GHG emissions or GHG emission intensity,
    climate-related risks and KPIs.

  - ***CNMV* contacted three companies and requested an explanation why the information was missing in their reports and asked them about corrective actions taken**, in particular with regards to their 2020 non-financial reports. Even CNMV did not indicate any further actions. The 3 Spanish companies did not publish respectively:
    climate related risks,
    climate-related risks and KPIs,
    climate-related policy, outcomes and risks.

- The *Slovenian Securities Market Agency* indicated that they will take the information included in the submission into account in their future work, but will not initiate any examination.

- The *Bulgarian Financial Supervision Commission* will remind the companies about their obligations concerning the disclosure of non-financial information but will not take any further steps.

→ **Another 3 authorities** (*Czech National Bank, Național Bank of Slovakia and Național Bank of Romania*) **referred to the secret procedure of the execution of their supervisory and enforcement competences** and it s not clear whether they will or won't take any actions in this matter.

→ **3 authorities claimed lack of competence in supervision of compliance with the EU NFRD** (*Bulgarian National Bank, Bank of Spain and National Bank of Hungary*), *Croatian Financial Services Supervisory Agency* ***(HANFA)*** **claimed no competence in supervision of public interest entities** and ***1 more authority claimed no competence in taking actions as corrective measures*** (*Bulgarian Ministry of Finance* that provides guidance and explanation based on the existing regulation):

- With exception of *HANFA* (that referred to the *Croatian Ministry of Finance* for submissions on public interest entities), these authorities' supervisory and other enforcement competences call for clarification since they were identified as competent in law or by other authorities which rejected their own competence. This is particularly relevant in the case of the *National Bank of Hungary (NBH)* that informed us that they oversee the corporations that are on the stock market and the content of their annual reports. However, the non-financial information is excluded from their mandate. **The current transposition of the EU NFRD into the Hungarian legislation does not delegate any public authority for the revision of the non-financial reports**. *NBH* is concerned about the problem and sees a hope if the amended reporting requirements are adopted.

→ **The Greek authority** (*Hellenic Capital Market Commission*) **claimed that the national transposition of the legislation does not apply to the consolidated entitie**s (specifically to publicly listed holding companies).

→ **3 authorities** (*Croatian Ministry of Finance, Italian Companies and Exchange Commission and Polish Financial Supervision Authority*) **have not yet responded** with the exception of acknowledgement of receipt.

Summary and recommendations

Our research and experience with the enforcement authorities point to the inconsistent transposition of the EU NFRD resulting in different requirements and conditions for companies in different countries, and a generally unbalanced approach of enforcement authorities across the EU.

Universally, we observed the following barriers to effective supervision and enforcement by national authorities, which should be addressed in the revision of the EU NFRD:

1. The flexible nature and vagueness of the reporting requirements leads the authorities to believe that they cannot examine the quality of the disclosed information, or even take action in the most obvious cases of mis-compliance, such as absence of any climate-related information. Therefore, the Corporate Sustainability Reporting Directive should provide detailed reporting requirements and corresponding standards.

2. In most Member States there is a lack of clarity on which authorities have a mandate to provide supervision and enforcement of corporate non-financial sustainability disclosures. Even the authorities which explicitly recognize their competence do not feel compelled to investigate the alleged cases of mis-compliance, and are satisfied with taking such information into account for the future. This can be rectified through the creation of an EU-wide database of enforcement authorities.

3. There is a general lack of transparency in the proceedings and absence of any procedural rights granted to stakeholders, including in particular the right to receive a response by a certain deadline and right to information on the actions taken by the authorities and their results. Furthermore, the deficiency of actions taken by the enforcement authorities point to the lack of clear rules on appropriate steps and sanctions to redress the most common problems, in particular concerning failure to publish non-financial statements and failure to provide any information in categories explicitly required pursuant to the legislation. In this regard, the new Corporate Sustainability Reporting Directive should specify the legal mandate for supervision and enforcement, including the investigative actions and sanctions for specific cases of miscompliance, as well as procedural rights of stakeholders who submit the complaints.

We summarize details, including companies' names, sectors, information missing in the companies' reports, authorities contacted and resume of their responses in this spreadsheet.