UiT The Arctic University of Norway

Faculty of Law

A critical appraisal of the EU Corporate Sustainability Reporting Directive: Unpacking the double materiality principle

Ifiok Uwah

Master's thesis in Joint Nordic Programme on Environmental Law (JUR-3920) (May, 2024)

Table of Contents

Abbreviations iii

ABSTRACT v

1. INTRODUCTION 1

1.1. Background 1

1.2. Purpose and research questions 3

1.3. Scope 4

1.4. Methodology 5

1.5. Literature Review 5

1.6. Research Gap 8

1.7. Structure of the Thesis 9

2. UNDERTAKINGS AS A DRIVING FORCE OF SUSTAINABLE DEVELOPMENT 11

2.1. Sustainable Development as a new paradigm shift 12

2.2. The Ideas of Corporate Social Responsibility (CSR) and Environmental, Social And Governance (ESG) 18

2.2.1. Corporate Social Responsibility (CSR) 18

2.2.2. Environmental, Social, and Governance (ESG) 20

2.2.3. Relationship between CSR and ESG 23

3. DOUBLE MATERIALITY IN EU SUSTAINABILITY REPORTING 26

3.1 The Corporate Sustainability Reporting Directive (CSRD) 26

3.1.1. Expansion of the Scope of Coverage 29

3.1.2. The Integration of a Sustainability Report in the Management Report 30

3.1.3. Due Diligence Disclosures 32

3.1.4. Introduction of External Assurance Requirement 32

3.1.5. Digital Tagging of the Reported Information 33

3.1.6. The Introduction of the Double Materiality Principle 33

3.2 Materiality in Corporate Sustainability Reporting 34

3.3 The concept of Double Materiality 37

3.4. Application of the Double Materiality concept under the CSRD 42

4. TOWARDS AN EFFECTIVE IMPLEMENTATION OF THE DOUBLE MATERIALITY PRINCIPLE IN SUSTAINABILITY REPORTING 47

4.1. The place of compliance and enforcement of the Double Materiality principle 47

4.2. Challenges in implementing the Double Materiality principle under the CSRD 48

4.2.1. Identifying and Scoping of Material Matter 50

4.2.2. Scoring of Topics 51

4.2.3. Complexity of the Concept 51

4.2.4. Lack of certainty in the understanding of certain concepts 52

4.2.5. Cost of compliance 55

4.2.7. Issue of stakeholder engagement 56

4.3. Recommendations 58

5. CONCLUSIONS 64

Figures and Tables 71

Works Cited 72

Abbreviations

ABBREVIATION	MEANING
AR	Application Requirements
CSR	Corporate Social Responsibility
CSRD	Corporate Sustainability Reporting Directive
DM	Double Materiality
DR	Disclosure Requirements
EC	European Commission

ESG	Environmental, Social and Governance
ESRS	European Sustainability Regulation Standards
EU	European Union
FASB	Financial Accounting Standards Board
GHG	Greenhouse Gases
GRI	Global Reporting Initiative
IASB	International Accounting Standards Board
IIRC	International Integrated Reporting Council
IM	Impact Materiality
IR	Integrated Reporting
IRO	Impacts, Risks, and Opportunities
MDG	Millennium Development Goals
MS	Member State
NFRD	Non-financial Reporting Directive
PA	Paris Agreement
SASB	Sustainability Accounting Standards Board
SD	Sustainable Development
SME	Small, and Medium-scale Entrepreneurs
SR	Sustainability Reporting
SRI	Socially Responsible Investment
UN	United Nations

ABSTRACT

The EU Corporate Sustainability Reporting Directive (CSRD) is an ESG reporting legislation which sets out a procedure for corporate organizations to make mandatory disclosures concerning their activities. The method to be applied as prescribed by the ESRS Delegated Regulation is by way of a double materiality assessment.

The aim of this work is to make a critical analysis of the double materiality principle to determine its justification for use, how it fits into the sustainability narrative of the EU and a fortiori, its role in the attainment of the EU's Green Deal objective of 2050 net zero GHG emissions, as well as its Green transitioning policy. Also, an analysis will be made concerning potential challenges these undertakings may face in its implements, and recommendations made on possible ways out.

In the end, several submissions will be made. The first is that the requirement for assessment under the double materiality principle is a key step in the right direction, showing intent. Secondly, it will be submitted that in spite of this, many issues stand in the way of the principle fulfilling its function and finally, that irrespective of any early setbacks, there still lies room for improvements and strict implementation will play a vital role in achieving sustainability within the EU.

Keywords: Sustainability. Sustainability Reporting, Materiality, Double Materiality, Sustainable Development, ESG

1. INTRODUCTION

1.1.Background

The world as we know it today is faced with several existential issues. These include the climate change crisis (and its attendant collateral socio-environmental challenges), the recent COVID-19 pandemic, GHG emissions, water, air and land pollution, forest fires, droughts, desertification etc. Many socio-environmental challenges are due to human activities. Historically, humanity has neglected taking action to mitigate these issues, leading to hunger, diseases, death, and poverty. Many fail to grasp the problem's magnitude or the need to balance profit with resource sustainability. Some, through ignorance or lack of empathy, fail to partner with society and the environment, worsening these problems. To Levin (2012) "… even when we collectively recognize the need to act now to avoid future catastrophic impacts, the immediate implications of required behavioral changes overwhelm our collective interest in policy change and the ability of the political and policy systems at multiple levels to respond."[1]

While the public sector also bears responsibility, the private sector is largely to blame for the current unsustainable state due to prioritizing profit over sustainability for a long time. Due to the fact that overtime, the causes of these socio-environmental problems had persisted unrestrained, we are now faced with a situation where the negative effects keep multiplying as time progresses, thus making the ability to successfully combat the challenge. It is for this reason that sustainable development is considered a "wicked problem" that has defied all attempts at solving it.[2] The idea of sustainability arises from recognizing every citizen's equal right to basic needs and the earth's limited capacity to meet them. Uneven wealth distribution and development, along with population growth and civilization advances, have led to unequal resource allocation and increased environmental degradation. Alluding to the nature of sustainable development as a wicked problem faced from a climate change perspective, Zhenmin and Espinosa (2019)[3] posited thus;

---

[1] Levin, K., Cashore, B., Bernstein, S., & Auld, G. (2012). Overcoming the tragedy of super wicked problems: constraining our future selves to ameliorate global climate change. *Policy Sciences*, *45*(2), 123–152. https://doi.org/10.1007/s11077-012-9151-0, p.148

[2] According to Lewin, et al., despite many efforts, progress on key issues like climate change, pollution, and inequality remains elusive due to complex challenges. See, Levin, S., Reeves, M. & Levina, A. (2020). The Social Responsibility of Business Is to Increase Its Profits. In: Brill, H., Kell, G., & Rasche, A. (eds.) *Sustainable Investing: A Path to a New Horizon*. Routledge Publishers, p.28

[3] Zhenmin, L. and Espinosa, P. (2019), "Tackling climate change to accelerate sustainable development", *Nature Climate Change*, 9, 493–496. www.nature.com/natureclimatec,ange, p.495

It is a threat multiplier, with the potential to worsen some of humanity's greatest challenges, including health, poverty, hunger, and inequality and ecosystem preservation, among others. Conversely, addressing climate change also offers humanity's greatest chance to positively impact these goals.

On its part, the EU, as a signatory to the Paris Agreement, and having adopted the UN Agenda 2030, the EU has put in place plans and policies which it intends will ultimately lead it to attaining zero GHG emissions by 2050.[4] These, it hopes to achieve by focusing majorly on three topical issues: sustainable corporate governance and duty of care, the "Taxonomy" regulation, and the revision of the directive on non-financial information.[5] Plans and policies are contained in the 2030 sustainable financial action Plan, and the EU Green deal. To achieve these, laws have been put in place to ensure that every activity carried out within the confines of the EU is tailored towards the achievement of this ambition. One of such laws is the Corporate Sustainability Reporting Directive.[6] The essence of this piece of legislation is to provide the requirement and also make rules for entrepreneurs to report on the sustainability of their activities as it relates to the EU environment.

The CSRD aims to ensure activities align with the EU Green transition policy and encourage corporations to address environmental, social and governance (ESG) issues impacting their performance. Alongside the ESRS Delegated Regulation, the CSRD prescribes the double materiality (DM) principle for sustainability assessments by EU and certain non-EU undertakings. This principle involves evaluating the impact of an entity's actions on ESG factors (impact materiality) and the risks and opportunities affecting its performance (financial materiality). If sustainable development is to be guaranteed, then a means of ensuring that all parties, both in the public and private sectors, are brought on board the same ship and captained

---

[4] According to Camara (2022), while "On the one hand, climate change concerns have escalated at global level."… "Transition to a net zero economy appears as inevitable but the progress on meeting the 2015 Paris Agreement targets has been unsatisfactory so far." See Câmara, P., & Morais, F. (2022). *The Palgrave Handbook of ESG and Corporate Governance* (1st ed.). Springer International Publishing AG. https://doi.org/10.1007/978-3-030-99468-6, p.7.

[5] See Chomová, K. (2022), "The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure". Available at (2) (PDF) The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure (researchgate.net), p.14

[6] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (hereinafter referred to as the CSRD)

to a sole terminus- 2050 GHG emissions neutral EU[7]. This can be achieved through education, incentivization, or outright compulsion.

The EU CSRD promotes corporate transparency and accountability in implementing sustainability practices. It mandates the DM principle, requiring that undertakings report both the impact of their activities on ESG considerations and the related risks and opportunities affecting their performance, the reason being that "[u]ltimately, successful investment depends on a vibrant economy, which depends on a healthy civil society, which is ultimately dependent on a sustainable planet."[8] This role of the private sector is further amplified by Eccles and Serafeim (2013), while stating that;

> This vast concentration of economic power gives companies the ability and the responsibility to assume roles that were previously the province of nations. By building sustainable strategies, the world's most influential and innovative firms—perhaps more effectively than nations themselves—can pave the way to a sustainable society, one that meets the needs of the current generation without sacrificing those of generations to come.[9]

1.2. Purpose and research questions

The aim of this work is to expand and elucidate on how the sustainability reporting requirement of the CSRD, through the instrumentality of the double materiality concept, can aid the accelerated, yet environmentally sustainable achievement of the 2050 net zero target of the European Union. The main question this research work will seek to answer will be "How does the double materiality principle impact the effectiveness of EU CSRD SR obligations as a means of achieving the EU 2050 net zero target?" In answering this question, the thesis will address the following sub-questions:

[7] According to Alessi, et al, "[i]n the European context, as will be explored in the next section, the role of the financial system has been clearly recognised as only private resources can fill the gap to promote the ecological transition that the available public resources are not able to afford." See, Alessi, L., Guagliano, C., Linciano, N., Soccorso, P. (2022). Sustainable Growth in the European Framework and the Role of Finance. In: Linciano, N., Soccorso, P., Guagliano, C. (eds) Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_2, p.14

[8] World Bank Group (*Who cares wins: connecting financial markets to a changing world (English).* Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world, p.3

[9] Eccles, R. G., & Serafeim, G. (2013). The performance frontier: innovating for a sustainable strategy. In *Harvard business review* (Vol. 91, Issue 5, pp. 50–150). Harvard Business Review, p.60

- What does double materiality mean? How is it interpreted in literature, in legislation/courts? What is the origin of this concept?
- How is the concept of double materiality incorporated in the EU CSRD? How is it operationalized in CSRD provisions?
- Are there challenges and pitfalls with the implementation of double materiality in sustainability reporting? What are the possible solutions to these problems?

In addressing the first sub-topic, the work will seek to interrogate the idea of the double materiality principle by addressing issues such as its etymology, its definition and context as proffered by the courts, legislation and authorities from different disciplines. Secondly, it will attempt to rationalize the reason for its choice as the basis for corporate disclosures by the EU. After that, an attempt will be made to explain the workings of the double materiality principle within the context of the CSRD, so as to present a clear picture of the processes required in the implementation process, the source of the law and the import of the provisions of the law.

Furthermore this work in attempting to unbundle the DM principle, will seek to show how its importance, primarily within the EU corporate reporting context, but ultimately as a viable tool for the actualization of the EU's 2050 net zero GHG emissions target. Finally, the work will take a look at the potential challenges and pitfalls that may hamper a smooth implementation of the DM principle under the CSRD, analyze how these may happen and then suggest ways to overcome them. This work seeks to analyze the CSRD, its objectives and role in achieving the EU's net zero GHG emissions target. It will most importantly discuss the double materiality principle which both the CSRD and the ESRS[10] have introduced as the basis for the assessment of the materiality of topics by undertakings while preparing their sustainability statements.

1.3. Scope

"Sustainable development" and "sustainability" are complex, multidisciplinary concepts involving biology, environment, accounting, law, social sciences, and more. This work will

[10] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (hereinafter referred to as the ESRS DR)

focus on assessing the law, its objectives, and its role in addressing human crises. However, it will also reference other disciplines for clarification and comparison. As a result, the scope of this work will be limited to analyzing the importance of sustainability reporting, the role the CSRD will play in integrating it into the overall EU Green agenda and the place of the DM principle in achieving this.

1.4. Methodology

The methodology to be applied in the execution of this thesis will be the doctrinal research methodology with reliance placed first and foremost on law- EU law, case law, as well as international and regional soft laws. Then recourse will be made to texts and legal journals to support the arguments presented. However, as has been said. Due to the interdisciplinary nature of the subheads of the subject-matter in discourse, recourse will also be made to academic sources from both the humanities, accounting and economics.

For instance when an issue such as "materiality" is being discussed, information mostly from the accounting field (from which it originated) will be employed in analyzing it, but only to that extent, as its functionality and application as a corporate sustainability tool will only be addressed from the perspective of the law in a bid to clearly expound on the import of the CSRD. The reason for this is that while accountants look at materiality from a quantitative view, the law views it more from a qualitative perspective. This doctrinal approach will test the CSRD, analyze its justification, identify potential loopholes, and propose solutions. The CSRD aims to regulate ESG reporting within the EU, targeting an audience largely unfamiliar with sustainability in the workplace. Comparing information from extra-legal sources will help understand the justification of the double materiality principle under the CSRD and its perception by experts and stakeholders.

1.5. Literature Review

Discussions about the corporate responsibility reporting under the CSRD as it relates to the subject matter of this work revolves around issues such as sustainability, corporate sustainability reporting, materiality, double materiality etc. Considering the fact that it is the subject-matter of this work, it the opinions of scholars concerning the concept will be analyzed as well. Sustainability Reporting is a very critical to the attainment of the EU Green Deal

ambitions and for purposes of this work, constitute a vital pivot on which other matters stand- the DM is proposed in a Directive founded on it. SR has been defined as "the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development."[11] It can therefore be said that the CSRD affords corporations the opportunity and guidance to achieve this objective, and prescribes the DM as the tool for its preparation.

Materiality, being a dynamic concept, has been defined from a various perspectives; based on what it entails (GRI and Accountability.org), its purpose (SASB and IASB) and a means of providing guidance on the criteria and thresholds for prioritizing those issues (IIRC). As it relates to the opinion of experts on the subject matter, there is diverse opinion regarding the role of the DM principle and its subsequent incorporation into the CSRD as a critical part of the corporate reporting process. While some scholars are in support of its prescription, criticisms range from its being incapable of fulfilling the intended objectives, to it not effecting any change in the present state of affairs, and others even opining that a different approach entirely be applied. Supporters of its inclusion argue that incorporating non-financial considerations into reporting requirements not only increases transparency, accountability and inclusiveness in the reporting process, and according to Cho et al, it provides stakeholders the ability to make informed decisions[12]. According to Mezzanotte (2024), "the choice of a double materiality approach for corporate sustainability reporting under the CSRD and ESRS rules has been justified by a policy trajectory that promotes the alignment of corporate behavior with sustainable development objectives."[13] To Eccles (2013), it is critical to apply the double materiality principle because "[r]eports based largely on financial information do not provide sufficient insight to enable stakeholders to form a comprehensive picture of the organization's performance and of its ability to create and sustain value, especially in the context of growing environmental, social and economic challenges."[14]

---

[11] See GRI Sustainability Reporting Guidelines 3.1, p.3. Available at https://www.mas-business.com/docs/G3.1-Guidelines-Incl-Technical-Protocol.pdf

[12] Ibid. p.81.

[13] Mezzanotte, F. E. (2024), "Examining the Reasons for Impact Materiality in EU Corporate Sustainability Reporting", *European Business Law Review* (Forthcoming), Available at SSRN: https://ssrn.com/abstract=4637172, p.24

[14] See Eccles, R. G., & Serafeim, G. (2013). The performance frontier: innovating for a sustainable strategy. In *Harvard business review* (Vol. 91, Issue 5, pp. 50–150). Harvard Business Review, p.136

Furthermore, it is argued that its inclusion facilitates a more holistic risk management system. To Engler, (2022), "[t]he idea of double materiality comes from a recognition that a company's impact on the world beyond finance can be material, and therefore worth disclosing, for reasons other than the effect on a firm's bottom line."[15]

Critics however argue that many challenges stand in the way of the definition and quantification of non-financial materiality which invariably leads the society back to the problem of greenwashing which it sought to escape from originally. This, to them, thus raises concerns about the practicability, feasibility and enforceability of the principle. Spence (2007), for instance, argues that as a result of the pervasive nature of the business environment, ''the transformative potential of [social and environmental reporting] would appear to be severely limited."[16] Another point raised is the financial and regulatory burden they say the process of implementation will place on the shoulders of undertakings, most especially SMEs. To Mezzanotte (2023)[17], the DM concept is flawed because it lacks clarity, while De Cristofaro and Gulluscio (2023)[18] argue that even in cases where stakeholder engagement is carried out, their opinions and views are still vulnerable to manipulation to ultimately favour the interests of investors. Still, another school argue that the introduction of the DM concept does not introduce any change to the state of affairs. To Baumüller and Sopp (2022)[19], this is the case because no clear distinction can be made between financial materiality and sustainability materiality which overtime, tend to overlap and merge with each other. Further still, there are those who argue that the DM concept is incapable of solving the SR issue. Rather, the suggest a dialogic approach that recognizes the pluralistic nature of sustainability concerns and

---

[15] See Engler, H. (2022) '"Double materiality": New legal concept likely to play in debate over SEC's climate plan?' Available at https://www.thomsonreuters.com/en-us/posts/investigation-fraud-andrisk/sec-double-materiality-climate/

[16] Spence, C. (2007). Social and environmental reporting and hegemonic discourse. *Accounting, Auditing, & Accountability*, *20*(6), 855–882. https://doi.org/10.1108/09513570710830272, p.875

[17] Mezzanotte, F. E. (2023) "Corporate sustainability reporting: double materiality, impacts, and legal risk", *Journal of Corporate Law Studies*, 23(2), 633-663, DOI: 10.1080/14735970.2024.2319058

[18] See De Cristofaro T. and Gulluscio C. (2023). In Search of Double Materiality in Non-Financial Reports: First Empirical Evidence. *Sustainability*. 15(2):924. https://doi.org/10.3390/su15020924

[19] See Baumüller, J. and Sopp, K. (2022), "Double Materiality and the Shift from Non-Financial to European Sustainability Reporting: Review, Outlook and Implications" *Journal of Applied Accounting Research,* 23(1) 8–28.

regulates it to effect a democratic implementation of same in the SR process. Those in this school of thought include Puroila and Mäkelä (2019)[20] and La Torre, et al.[21]

1.6. Research Gap

Sustainable development is a "wicked problem" encompassing hunger, climate change, pollution, biodiversity loss, droughts, global warming, and human rights violations. Its definition, like "sustainability," is highly contested. However, the existence of these socio-environmental crises is undeniable and requires urgent action for mitigation or reversal. This will highlight the EU's efforts to regulate corporate economic practices to streamline governance decisions towards the green transition and achieving 2050 net zero GHG emissions.

In addition to other sustainability legislations, the CSRD is particularly engineered to ensure[22] that these undertakings always make a full disclosure of as they interact with ESG considerations. The advantages of these measure abound. First, it facilitates the streamlining of corporate strategy to align with EU policy. Also, it helps those undertakings in the area of comparability and competitiveness through reputational bolstering, which in the long run, is profitable in itself. Furthermore, by enhancing stakeholder engagement, it provides an avenue for transparency and accountability. The CSRD also serves as the EU’s common standard for sustainability disclosures, thereby taking away the challenge of inconsistencies in standards hitherto faced by corporate organizations. Eccles and Serafeim[23] also see it as a means of promoting innovation amongst the managers of undertakings. Another important function of the CSRD is that it fosters long-termism, which is a major part of the EU Action Plan.[24]

---

[20] See Puroila, J., & Mäkelä, H. (2019). Matter of opinion: Exploring the socio-political nature of materiality disclosures in sustainability reporting. *Accounting, Auditing and Accountability Journal*, *32*(4), 1043-1072. https://doi.org/10.1108/AAAJ-11-2016-2788

[21] See La Torre, M., Sabelfeld, S., Blomkvist, M. & Dumay, J. (2020). Rebuilding trust: sustainability and non-financial reporting and the European Union regulation. Meditari Accountancy Research, 28(5). https://doi.org/10.1108/MEDAR-06-2020-0914

[22] The significance of the mandatory nature of the obligation to disclose cannot be overemphasized, as it is a primary tool for combating greenwashing. To O’Dwyer (2002), “[w]hile some managers alluded to concerns for accountability to the wider society, there was little in the perspectives that suggested any motives outside those of a symbolic self-interested nature.” See O’Dwyer, B. (2002). Managerial perceptions of corporate social disclosure: an Irish story. *Accounting, Auditing & Accountability Journal*, 15(3), pp. 406-36, p.427

[23] Supra at p.57

[24] It has been argued that “In order to enable investors to properly assess the long-term value creation of companies, increased transparency on firm’s management of sustainability risks— which are often longer-term—is essential.” See Alessi, L., Alemanni, B., Frati, G. (2022). Financial Regulation for Sustainable Finance in the European Landscape. In: Linciano, N., Soccorso, P., Guagliano, C. (eds) Information as a Driver of

All these are made possible largely because the wisdom was seen, and a decision taken to further enhance the place of impact materiality in the sustainability disclosure process. As against the earlier practice of reporting only on financial matters, the need to factor in the interests of the society and environment in the governance process led to a whole new materiality part- that of the impact materiality. This resultant combination of materiality assessment from both perspectives resulted in the development of the DM principle.[25]

This principle therefore serves as the medium through which the EU's tool of regulating organizational sustainability conduct to ensure that undertakings within its jurisdictions operate in a manner that aligns with its green transition objectives are met. This process engenders the trust issue raised by Cho that "[d]iscrepancies between corporate talk and action are problematic, since without trustworthy reporting neither is accountability fulfilled nor is society able to evaluate corporate activities and impacts appropriately."[26] This work on its part, is an attempt to unravel how this audacious plan will be achieved, point out loopholes (if any) and also make suggestions for improvements.

1.7. Structure of the Thesis

The thesis will be divided into five chapters, starting with the introduction and scope of the work. The second chapter will address the issue of undertakings as a driving force of sustainable development, emphasizing the private sector's role in facilitating efficient and coordinated action given the global crisis of (un)sustainability. This chapter will discuss the concepts of sustainable development, corporate social responsibility (CSR), Sustainable Development Goals (SDGs), and Environmental, Social, and Governance (ESG) considerations, exploring their roles and relationships. It will also justify the collaboration between the private and public sectors to promote a sustainable future within the Union. The third chapter will focus on the subject matter of this work and its interplay with SR within the EU. It will analyze the CSRD, examining its provision of the DM principle (in league with the ESRS DR) and its application. The chapter will also cover the history of sustainability reporting

---

Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_8, p.213

[25] According to Eccles & Serafeim (supra at p.53), "By strategically focusing on the environmental, social, and governance (ESG) issues that are the most relevant—or "material"—to shareholder value, firms can simultaneously boost both financial and ESG performance."

[26] Supra, at p.81

within the EU, the double materiality principle, and the EU sustainability regime under the CSRD. The fourth chapter will address the potential challenges and pitfalls that may hinder the smooth implementation of the double materiality principle by undertakings, particularly in its early stages. It will suggest actions corporations can take to facilitate the implementation process and recommend legislative and administrative actions to promote the Directive's objectives.

Finally, the work will conclude with recommendations and suggestions on how to apply the principle effectively, enabling undertakings to comply with the CSRD. It will also emphasize the importance of the sustainability reporting process in achieving the EU's goal of net zero GHG emissions by 2050, followed by the conclusions.

2. UNDERTAKINGS AS A DRIVING FORCE OF SUSTAINABLE DEVELOPMENT

Sustainable development (SD) is a concept at the very core of the EU and as a result, its policies are designed in such a manner as to lead it towards ultimately achieving the goal, or at least, not detracting from same. As is embedded in its foundational rules, the EU "shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress [. . .] it shall combat social exclusion and discrimination, and shall promote social justice and protection.''[27] However, despite having achieved its target of reducing emissions by 20 percent in the year 2020, the EU still remains a major contributor to global GHG emissions[28] responsible for catastrophic effects of climate change. In fact, it is stated that the EU lost over 145 million euros between 2012 and 2022 as a consequence of heatwaves, floods and storms.[29] These poses a huge threat requiring a doubling of urgency to remedy in effecting adaptation, mitigation and development of resilience measures. The need to succeed in this battle against climate change and for a sustainable future in general has led to the development, and implementation of policies to regulate the conduct of both public and private persons, in a bid to ultimately achieve and atmosphere of sustainable existence in our world.

The introduction of the DM assessment criteria in the EU Corporate Sustainability Reporting Directive (CSRD) marks a turning point in regulating corporate activities for sustainability. Before exploring this new approach, it's crucial to highlight why undertakings should actively promote sustainable development. The first is that many global issues—climate change, wars, hunger, rights abuse, and money laundering—can be directly traced to business activities. Therefore, businesses must play a significant role in addressing them. Secondly, the cost involved is enormous (for instance "the EU overall welfare loss under the high warming scenario is estimated to be around 1.9% of GDP (€240 bn) per year at the end of the century, under a high emissions scenario (RCP 8.5)"[30]. It has also been estimated that to achieve its 2030

---

[27] See Art 3, para. 3 TEU

[28] According to Statista.com, the sum total of the countries that make up the EU have combinedly contributed to global CO2 emissions pollution with over 17 percent since the start of the industrial revolution. See "GHG emissions in the EU- Statistics and facts". Available at https://www.statista.com/topics/4958/emissions-in-the-european-union/

[29] See, Eurostat, "Losses from climate change: €145 billion in a decade". Available at https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20221024-1

[30] See Ciscar, J. C., Feyen, L., Ibarreta, D., & Soria, A. (Eds.). (2018). Climate impacts in Europe: Final report of the JRC PESETA III project. Publications Office of the European Union, p.6

climate and environmental policy goals, the EU must make an investment of about €470bn per year from the year 2020.[31] This is thus robbing the EU of funds that are needed in other critical sectors of the economy.

Also, resulting from the expenses made as a result of the COVID-19 pandemic, the EU was shoved into a huge debt crisis and a debilitating recession[32] due to job losses, halt in manufacturing, investment in combatting the infection and vaccines etc., therefore limiting its spending power. Most undertakings exist solely for profit-making and generate huge annual turnovers. With these excess funds, social responsibility imposes a moral obligation to contribute to societal development. Given the global nature of these problems, their consequences affect everyone. Therefore, it is reasonable that every entity should play an active role in addressing these crises to ensure a safer world for all. This chapter seeks to illustrate how this battle can be fought and won through the implementation of the corporate SR objectives.

2.1. Sustainable Development as a new paradigm shift

The concept of sustainability can be traced back to the 18th century, drawing its ideology from the practice of "*Nachhaltigkeit"*, a term coined in 1713 by German foresters, which is literally translated as "sustained yield" in English.[33] Sustainability rests on the pillars of economy, society, and the environment. It ensures that while meeting survival needs (economic) within society, individuals act in ways that do not infringe on others' rights to exist and thrive. Cho et. al,[34] in stressing the tendency to promote profit over other ESG considerations, posit that shareholders are not the only stakeholders of corporations and growing public awareness of biodiversity protection, climate change, and other social and environmental issues have made broader sustainability concerns an inherent challenge for

---

[31] See Commission staff working document 'Identifying Europe's recovery needs' accompanying the document 'Communication: Europe's moment: Repair and Prepare for the Next Generation', European Commission, COM/2020/456 final, 27 May 2020

[32] See Canton, E., Colasanti, F., Durán, J., Garrone, M., Hobza, A., Simons, W. and Vandeplas, A. (2021). The Sectoral Impact of the COVID-19 Crisis An Unprecedented and Atypical Crisis. Available at https://commission.europa.eu/system/files/2021-12/eb069_en.pdf

[33] See Grober, U. (2007), "Deep roots – A conceptual history of 'sustainable development (Nachhaltigkeit)". Available at https://www.ssoar.info/ssoar/bitstream/handle/document/11077/ssoar-2007-grober-deep_roots_-_a_conceptual.pdf?sequence=. Accessed on Friday, March 8, 2024.

[34] See Cho, C. H., Laine, M., Roberts, R. W., & Rodrigue, M. (2015). Organized hypocrisy, organizational façades, and sustainability reporting. *Accounting, Organizations and Society*, *40*, 78–94. https://doi.org/10.1016/j.aos.2014.12.003

corporate management.[35] It can rightly be argued that the concept of sustainability derives its nourishment from the philosophy behind the “no harm principle”. It also bolsters the need for the avoidance of a situation of a “tragedy of the commons”. Probably, it is for this reason that the UN has stressed that “We are committed to achieving sustainable development in its three dimensions – economic, social and environmental- in a balanced and integrated manner.”[36]

The reason for this paradigm shift is that before adopting sustainability, organizations focused heavily on economic development at the expense of societal and environmental considerations. Additionally, the earth's resources are finite, and every global citizen—present and future—has an equal right to enjoy these resources. Therefore, humankind must ensure eco-friendly exploitation to protect and preserve the environment and judicious consumption to guarantee future generations can benefit. Sustainability involves continuous, forward-looking actions that ensure that developing and consuming natural resources are done in a manner that enables the earth to function optimally, replenish itself, and consistently produce these resources.

Generally speaking, the idea of sustainability offers humankind with a set of normatively coherent narratives which empowers them to make guided choices towards achieving set developmental destinations. These narratives, “broadly speaking, tend to follow two rather distinct conceptual perspectives, described often as ‘weak’ and ‘strong’ versions of sustainability.”[37] The "weak" sustainability narrative focuses on short-term economic gains, while the "strong" narrative prioritizes long-term decision-making. Empirical ESG data has proven that long-termism ultimately leads to greater profitability and efficiency for organizations. Buttressing this, the EU posits that “[s]ustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects.”[38] Sustainable development (SD), on its part, can be traced back to the Stockholm

[35] Ibid. p.85
[36] See “Transforming our World: The 2030 Agenda for Sustainable Development”, supra.
[37] Boeger, N., Sustainable Corporate Governance: Trimming or Sowing? In Pieraccini, M., & Novitz, T. (2020), *Legal Perspectives on Sustainability* (2020)(1st ed., p. 39). Bristol University Press. https://doi.org/10.2307/j.ctvz0h891.6. p.47
[38] The European Green Deal- Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM

Declaration of 1972[39] which highlights man's fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, coupled with a responsibility to protect and improve the environment for present and future generations,[40] and the fact that humanity has a duty to protect the ecosystem biodiversity of the earth for present and future generations.[41] This idea of protecting the earth for the benefit of not only present generations, but also future ones inspired the definition of SD as we know it today.

The 1987 Brundlandt Commission Report[42] SD as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[43]The report further posits that sustainable development is hinged on two concepts, to wit, "needs" and "limitations". If SD is to be achieved, the "needs" of the world's teeming underprivileged should be prioritized. Additionally, the environmental "limitations" imposed by technology and social organization should be considered during development planning. These basic needs include food, clean air, water, energy, and shelter while technological limitations involve unintended environmental degradation like pollution, biodiversity loss, and climate change.

A major reason for a call of action for SD can be deduced from this definition as follows; we deserve to meet our needs as tenants of the earth today. Secondly, we owe the next generation (who in turn owe the generation after) an ethical duty to live the earth in a condition wherein, they will be able to meet their own needs.[44] To Barral (2012), "[d]evelopment will be sustainable only when both intergenerational (environmental protection) and intragenerational (fair economic and social development) equity are guaranteed, and this is to be achieved

(2019) 640. Available at https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF, p.17. Accessed on Thursday, March 7, 2024.

[39] Declaration of the United Nations Conference on the Human Environment, [From *Report of the United Nations Conference on the Human Environment*, Stockholm, June 1972.]

[40] Ibid, Principle 1

[41] Ibid, Principle 2

[42] See the 1987 "Report of the World Commission on Environment and Development: Our Common Future", p.43. Available at https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf. Accessed on Monday, March 4th, 2024. However, authors like Grober (2021) and Blewitt (2014) have argued that concept can be traced back to as far as the 1700s, with the modern appellation dating back to the late 1970s.

[43] Ibid. See also Principle 3 of the Rio Declaration.

[44] See Principle 1 of the Rio Declaration

through their integration."[45] This aligns with the UNESCO position that "Sustainable development means valuing biodiversity and conservation along with human diversity, inclusivity, and participation."[46]

SD as a concept as we know it today was brought to light at the 1992 United Nations "Earth Summit"[47] in Rio de Janeiro, Brazil. The aim of the summit, which was comprised of world leaders, media representatives, scientists and leaders of NGOs, was to deliberate on the "impact of human socio-economic activities on the environment."[48] Drawing from the earlier Brundlant Commission Report on sustainable development, the conferees after several deliberations, came to a conclusion that "the concept of sustainable development was an attainable goal for all the people of the world, regardless of whether they were at the local, national, regional or international level."[49] To achieve this, states were implored to reduce and eliminate unsustainable production and consumption patterns, while promoting appropriate demographic policies, to enable them achieve sustainable development and a higher standard of living.[50]

Though often used interchangeably, SD and sustainability achieve a shared goal through different means. Understanding their distinct yet complementary nature helps us make decisions for lasting global results. Deriving from its definition, "Sustainability is often thought of as a long-term goal (i.e. a more sustainable world), while SD refers to the many processes and pathways to achieving it."[51] This is in line with the ISO 26000 description of the objective of sustainable development as the intention to "achieve sustainability for society as a whole and the planet.[52] Thus, sustainability means living within resource limits for all life to thrive while SD combines development with environmental protection. Also, while SD aims to create

---

[45] Barral, V., (2012), "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm". *EJIL*, 23 (2), 377-400, at p.380
[46] See, UNESCO, (2012), "Education for Sustainable Development in Action". Available at https://unesdoc.unesco.org/ark:/48223/pf0000216383. Accessed on Thursday, March 7, 2024.
[47] See The United Nations Conference on Environment and Development (UNCED). See "United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992." Available at https://www.un.org/en/conferences/environment/rio1992. Accessed on Tuesday, 5th March, 2024.
[48] Ibid.
[49] Ibid
[50] See Principle 8 of the Rio Declaration.
[51] See, UNESCO, (2012), "Education for Sustainable Development in Action", supra.
[52] See, ISO 26000:2010, 3.3.5. Compare also with Section 3.1, Principles for Defining Report Content, pp. 10-11, G4 Implementation Manual.

growth and progress through adding physical, economic, environmental, and social components that improve quality of life without depleting future resources, sustainability acts as the intersection of balancing economic, social, and environmental concerns. The consciousness of sustainability drives the implementation of SD.[53] Ultimately, both concepts promote ESG considerations in human activities to protect the earth for future generations, ensuring ecological integrity as the overarching boundary for social and economic actions."[54]

In September of 2000, the UN Member States spelled out 8 goals they committed to achieve by the year 2015. These goals included the pledge to combat poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. These goals were collectively referred to as the United Nations Millennium Development Goals (MDGs)[55] and were developed to serve as a guide for the implementation of the Millennium Declaration.[56] The UN Millennium Declaration commits world leaders to combat poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. Each MDG had targets set for 2015 and indicators to monitor progress from 1990 levels. The Member States of the United Nations in 2015, with the desire of giving life to efforts for global SD adopted the 2030 Agenda for Sustainable Development.[57] This Agenda was developed to serve as a blueprint for a peaceful and prosperous existence of all peoples in all nations of the world. To put this ambition to practice, a set of goals, with their individual sub-objectives, were formulated.

These goals, seventeen in number, are what is today referred to as the UN Sustainability Development Goals (SDGs). These SDGs and their major objectives include the eradication of poverty (SDG1), hunger SDG2), enhancement of good health and wellbeing (SDG3), provision of quality education (SDG4), promotion of gender equality (SDG5), provision of clean water

[53] Case study findings have supported the proposition that organizations who view sustainability from the perspective of their impact on sustainable development and set strategy to create value for itself, society and the environment tend to align more with the UN SDGs. See, Adams, C. A. and Abhayawansa, S. (2021) Conceptualizing how companies engage with the Sustainable Development Goals, working paper.
[54] See, Tonia Novitz, & Margherita Pieraccini. (2020), supra at p.50
[55] See, https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs)
[56] See, UN (2000), General Assembly resolution 55/2, "United Nations Millenium Declaration". Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-millennium-declaration. Accessed on Saturday, April 27, 2024
[57] See "Transforming our World: The 2030 Agenda for Sustainable Development" (A/RES/70/1). Available at https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf. Accessed on Wednesday, March 6, 2024.

and sanitation (SDG6), affordable and clean energy (SDG7), decent work and economic growth (SDG8), industry, innovation and infrastructure (SDG9), reduced inequalities (SDG10), sustainable cities and communities (SDG11), responsible consumption and production (SDG13), climate action (SDG13), protection and conservation of life below water (SDG14), (and) life on land (SDG15), peace, justice and strong institutions (SDG16) and forming partnerships for achieving the goals (SDG17).

According to the United Nations Sustainable Development Group (UNSDG), the central theme of the SDGs is the "Leave no one behind" (LNOB) promise that every citizen of the world would have received all the benefits (at least at the basic standard) of the SDGs by 2030.[58] However, the reality is that six years to the 2030 target, this aim is more of an imagination than a reality. According to the UNSDG, "… halfway to 2030, that promise is in peril. The Sustainable Development Goals are disappearing in the rear-view mirror, as is the hope and rights of current and future generations."[59] The main reason for this can be attributable to the fact that the SDGs are by their very nature[60], not legally binding and as such its implementation cannot be enforced. This is so because the SDGs are not contained in any treaty, national laws or even case law. In spite of that however, several advocates are of the view that the purpose rather than the form should be considered when analyzing the implementation of the SDGs. To Boyle (2021), "although these instruments are not in legally binding form, their interaction with related treaties may transform them into something that is binding."[61]

Be that as it may, some scholars are of the opinion that the SDGs as proposed, are mere idealistic.[62] According to Brown (2015), "Unfortunately, "sustainable development," as

[58] See The United Nations Sustainable Development Group (2023), The Sustainable Development Goals Report (Special Edition). Available at https://sdgs.un.org/sites/default/files/2023-07/The-Sustainable-Development-Goals-Report-2023_0.pdf. Accessed on Friday, May 3, 2024
[59] Ibid at p.4
[60] According to the Merriam-Webster's Dictionary, a "goal" is "the end toward which effort is directed." See https://www.merriam-webster.com/dictionary/goal. Accessed on Friday, May 3, 2024
[61] See Boyle, A. (2021) Soft Law. In: Rajamani, L., & Peel, J. (eds.). The Oxford Handbook of International Environmental Law (Second edition). Oxford University Press. https://doi.org/10.1093/law/9780198849155.001.0001, pp.427 & 428
[62] Easterly (2015) puts it succinctly when he stated that "[t]he one thing that all 193 leaders could agree on was that the SDGs did not actually bind them to anything. The abundant escape clauses are disguised in respectful language. The signatories are committed to "respecting national policies and priorities." See Easterly, W. (2015). The Trouble with the Sustainable Development Goals. In *Current history (1941)* (Vol. 114, Issue 775, pp. 322–324). Current History, Inc. https://doi.org/10.1525/curh.2015.114.775.322 , p.323

advocated by most natural, social, and environmental scientists, is an oxymoron. Continual population growth and economic development on a finite Earth are biophysically impossible. They violate the laws of physics, especially thermodynamics, and the fundamental principles of biology."[63] Another argument is that since the SDGs are structured to be implemented primarily on a societal and national level, without clearly defined roles carved out for the corporate organizations to work from, then they have little or no reason to be compelled so to do.[64] As will be shown subsequently, this is far from the truth. It is thus important to emphasize here that the role of the legislature through enactment of legislations, adoption of budgets, ensuring accountability and in ensuring accountability in the organization of both public and private institutions is deemed critically essential in achieving the SDGs.[65] Also, the "[c]ontextualization of the SDGs in accordance with a firm's business practices can be essential for the generation of a local understanding of sustainability."[66] In other words, the easier it is for a corporation to tailor its strategies and policies to match SDG topics and sub-topics specific to it, the easier it is for it to achieve sustainable practices.

2.2. The Ideas of Corporate Social Responsibility (CSR) and Environmental, Social And Governance (ESG)

2.2.1. Corporate Social Responsibility (CSR)

As mentioned earlier, the SDGs are enormous and almost impossible to achieve alone, highlighting the need for public-private partnerships. Although the State is the ultimate guardian, corporations profit from and contribute to these problems, creating a moral burden of corporate responsibility. Corporate social responsibility (CSR) lacks a universal definition due to the diverse perspectives of stakeholders impacted by various aspects of CSR. It is dynamic and multidimensional, raising questions about what constitutes social responsibility and how to measure its achievement. However, several workable definitions have been proffered by various authorities. It is defined as "a management concept in which enterprises integrate social

---

[63] Brown, J., (2015), "The Oxymoron of Sustainable Development", *BioScience*, Volume 65, Issue 10, pp. 1027–1029, https://doi.org/10.1093/biosci/biv117. At p.1028

[64] Delgado-Ceballos, J., Ortiz-De-Mandojana, N., Antolín-López, R., & Montiel, I. (2023). Connecting the Sustainable Development Goals to firm-level sustainability and ESG factors: The need for double materiality. *BRQ Business Research Quarterly*, *26*(1), 2-10. https://doi.org/10.1177/23409444221140919. p.3

[65] See para. 45 2030 Agenda

[66] See Fagerlin, W. P., Shimamoto, M., & Li, R. (2019). Boundary Objects as a Learning Mechanism for Sustainable Development Goals-A Case Study of a Japanese Company in the Chemical Industry. Sustainability, 11(23), 6680. https://doi.org/10.3390/su11236680, p.4

and environmental issues into their business activities."[67] According to the European Commission (EC), corporate social responsibility is "the responsibility of enterprises for their impacts on society."[68] In other words, "The concept of corporate social responsibility focuses mainly on organization and is a response to the challenges of sustainable development."[69]

The most commonly cited definition, however, is the international standard ISO 26000 which provides that "Social responsibility (is the) responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that; contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behavior; and is integrated throughout the organization and practiced in its relationships."[70]

The cornerstone of CSR was corporate philanthropy,[71] which created a sense of indulgence in the collective minds of investors. To Cho et. al, "… corporations only engage with environmental and social issues on a symbolic level. Through omitting negative information and highlighting positive impacts, these organizations seek to appear socially responsible and environmentally friendly." [72] The result was that they benefited financially from various government tax incentives, creating a world where investor's reaped benefits and society held aspirational beliefs. Having examined CSR, it is important that its derivative, the ESG concept, used by corporations to achieve sustainability goals, is explored. Despite similarities, their goals and consequences for non-implementation differ significantly. As the

---

[67] United Nations Industrial Development Organization (2020). What is CSR? Available at https://www.unido.org/our-focus/advancing-economic-competitiveness/competitivetrade-capacities-and-corporate-responsibility/corporate-social-responsibility-marketintegration/what-csr. Accessed on Thursday, 29th February, 2024.
[68] See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility.
[69] See Kaźmierczak, M. (2022). "A literature review on the difference between CSR and ESG." *Scientific Papers of Silesian University of Technology. Organization and Management Series*., p.277
[70] ISO 26000(2010). Available at ISO 26000:2010 • social-responsibility.at. Accessed on Thursday, February 29, 2024.
[71] See https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/. Accessed on Sunday, 3rd March, 2024.
[72] Supra, p.85

world shifts toward sustainability, highlighting ESG's importance encourages a corporate mindset realignment.

2.2.2. Environmental, Social, and Governance (ESG)

The term "ESG" is “an acronym that represents Environmental – E, Social – S, and Governance – G factors that are considered when measuring sustainability and the impact of an organization.”[73] These factors have been defined as “a set of non-financial performance indicators intended to ensure the responsibility of the organization and may be subject to assessment by investors and other stakeholders.”[74] Although deriving its roots from the financial world,[75] “(evolving) from negative screens to a wide range of strategies for achieving both financial and non-financial results.”[76] Richarlison (2009)[77] posits that “The long-standing movement for ethically and socially responsible investment (SRI) has recently begun to advocate environmental standards for financiers.”[78] This suggests a long-standing push for ethical, socially responsible investments, now demanding financiers incorporate environmental standards in their dealings.

Today's understanding of ESG originates from a 2004 report by financial institutions, initiated by then-Secretary-General Kofi Annan, to integrate environmental, social, and corporate governance issues into asset management and securities services. There, it was recommended that “Analysts are asked to better incorporate environmental, social and governance (ESG) factors in their research where appropriate and to further develop the necessary investment know-how, models and tools in a creative and thoughtful way.”[79]

---

[73] See Kaźmierczak, M., supra, p. 279
[74] Ibidem
[75] To Galbreath (2012), focus on ESG emerged from the ESG emerged in the 1970s when a small body of investors began to pay more attention to the environmental and social practices of the companies they invested in. See Galbreath, J. (2012). “ESG in Focus: The Australian Evidence.” *Journal of Business Ethics,* 10th September, pp. 529-541, p.531
[76] Goodsell, D. (2021). “ESG Investing: Everyone’s on the bandwagon. But where’s it actually going? *2021 ESG Investor Insight Report.* Available at https://www.im.natixis.com/en-institutional/insights/esg-investing-survey-insight-report. Accessed on Saturday, March 2, 2024.
[77] See Richardson, B. J. (2009). Keeping ethical investment ethical: Regulatory issues for investing for sustainability. *Journal of Business Ethics*, 87, 555–572, at p. 555.
[78] Ibid at p. 555.
[79] World Bank Group (2004), “*Who cares wins: connecting financial markets to a changing world” (English).* Washington, D.C: World Bank Group. http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world, at p.ii

Although failing to state what constituted ESG, it became a global rallying point for discussions on the issue. Two factors propelled ESG. The first was the glaring inability of key MS signatories to substantially fulfil their commitments under the PA and the second had to do with a growing awareness by investors of the consequences of investment decisions, leading to a shift towards a greener-investment globe.[80] The whole idea here being that operating under a mutually all-inclusive business environment, though may result in financial losses in the short-term, will ultimately lead to sustainable growth and investment success in the long-term.

ESG can be viewed from two perspectives, to wit, the broad and the narrow. Broadly speaking, it can also be viewed in terms of the manner a company brings to bear ESG considerations in its decision-making and operations[81] thus, allowing it to influence the decision-making processes of the company. In a stricter sense, it refers to incorporating environmental (E), social (S), and governance (G) criteria into investment decisions, demonstrating responsible or sustainable practices. These include E-issues (climate change, energy use), S-issues (human rights, health and safety), and G-issues (corruption, investor protection). Thus, the broad view addresses how ESG factors impact an organization, while the stricter view focuses on how a company's decisions impact ESG factors. It has been argued that "ESG data is currently the best way to quantify a company's impact on society"[82] by highlighting core stakeholder interests—economic, social, and governance—and their importance in sustainable corporate operations. It is critical for corporations to factor in ESG considerations because they are both inextricably linked to the efficient operations of their activities, but also because ESG-related factors are so interconnected that their demands must be concomitantly attended to. "The relevance of these factors and the need to integrate them into the decision-making process of market players stems from their so-called financial

---

[80] In a survey of 8,550 respondents in 24 countries in 2021, while 58% of those polled accepted responsibility for addressing social issues, 78% and 82% placed them on the door of the government and companies respectively. On the environmental side, investors say they would like to take action with their money with two-thirds stating that they would be more inclined to invest in a fund that demonstrated a better carbon footprint. See Goodsell, D. (2021), "Values alignment is only the tip of the iceberg for ESG: Six insights from the 2021 Natixis Global Survey of Individual Investors". Available at https://www.im.natixis.com/sg/research/esg-insights-from-2021-individual-investors-survey. Accessed on Saturday, March 2, 2024.

[81] See Palmiter, A. (2021) *Capitalism, Heal Thyself.* Available at SSRN 3950395. p.5

[82] Kaźmierczak, M. (2022). Ibid at p.279

materiality, i.e. their potential material impact on the financial performance and/or risk profile of companies."[83]

The reason for this is because the organization stands to benefit through increased value creation opportunities it presents, such as access to new markets, long-term profitability, reduced costs from avoiding penalties and litigation, and increased productivity etc. Effective ESG assessment has been hindered by non-uniform reporting standards and the lack of commonly accepted criteria. Without clear standards, conflicting results arise from varying interpretations, leading to corporate "greenwashing"[84] and undermining ESG's key objectives.

Another problem is a paucity of necessary data. Without defining required data, it's unclear what to use. Also, due to poor stakeholder awareness leading to poor data contribution, many organizations fail to source data efficiently. Then there is the issue of "short-termism."[85] The motivation in such circumstances being uninhibited profit-making and this reflects on the decision-making activities of the organization. To Neto (2024), "Our economic system has evolved to maximize financial value, confusing the means (financial activity) with the ends (society's needs). It seeks infinite rewards from a finite system, and maximization of financial returns with few safeguards."[86] Short-termism hinders proactive decisions for long-term sustainability, prioritizing profiteering over other objectives, often to the investment's detriment. Another factor hindering the effective assessment of ESG has to do with a failure of the market to put to use available information. To Jonsdottir, et al (2022)[87] "… although companies have identified the strategic importance of ESG reporting and increased the volume of the ESG data they disclosed, the data are commonly over-generalized and thus irrelevant and

---

[83] Alessi, L., Guagliano, C., Linciano, N., Soccorso, P. (2022). Sustainable Growth in the European Framework and the Role of Finance. In: Linciano, N., Soccorso, P., Guagliano, C. (eds). Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_2. p.10

[84] This is defined as the act of "Making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation." See https://corporatefinanceinstitute.com/resources/esg/greenwashing/. Accessed on Sunday 3rd March, 2024.

[85] According to the Cambridge Online Dictionary, this is "the practice of considering only the immediate advantages of particular actions:".Available at https://dictionary.cambridge.org/dictionary/english/short-termism. Accessed on Sunday, 3rd March, 2024.

[86] See Neto, M A. (2024), "Why ESG is failing sustainable development". Available at https://sdgfinance.undp.org/news/why-esg-failing-sustainable-development. accessed on Sunday, March 3, 2024

[87] Jonsdottir, B.et al. (2022). "Barriers to Using ESG Data for Investment Decisions" *Sustainability* 14, no. 9: 5157. https://doi.org/10.3390/su14095157

immaterial for making investment decisions," thus constituting a hindrance to ESG implementation. Finally is the fact that the comparability and consistency of ESG ratings are limited.[88] "ESG ratings provide an opinion on a company's or a financial instrument's sustainability profile, by assessing its exposure to sustainability risks and its impact on society and the environment."[89] In a bid to tackle this challenge, the European Council and Parliament in February 2024 reached a provisional agreement for a proposal of an enactment of a regulation on environmental, social and governance (ESG) rating activities.[90] The objective of this regulation will be "to boost investor confidence in sustainable products."[91] With the coming into effect of the EU Taxonomy Regulation,[92] it is believed that this loophole has been filled as it provides all parties with a level field to operate on.[93] The Taxonomy Regulation aims to standardize ESG reporting terminology, preventing "greenwashing" by introducing uniform criteria to determine if an economic activity is environmentally sustainable.

2.2.3. Relationship between CSR and ESG

Both CSR and ESG aim to promote corporate responsiveness in business, adding value, assessing risks, increasing customer satisfaction, bolstering reputation, and complying with legal requirements. Ultimately, they aim for sustainability. However, they differ in achieving their objectives, coexisting and complementing each other while retaining distinct aspects. CSR is a general sustainability framework used by companies to promote their image, while ESG is an assessment tool for investors to measure and compare sustainability efforts. Also, CSR began

---

[88] Justifying the need for a Regulation on transparency in ESG rating activities, the EC listed amongst other things, "the lack of transparency on the characteristics of ESG ratings, their methodologies and their data sources". See European Commission, Proposal for a Regulation of the European Parliament and of the Council on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities. Available at https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2023/0314/COM_COM(2023)0314_EN.pdf

[89] See Council of the European Union Press Release, "Environmental, social and governance (ESG) ratings: Council and Parliament reach agreement". Available at https://www.consilium.europa.eu/en/press/press-releases/2024/02/05/environmental-social-and-governance-esg-ratings-council-and-parliament-reach-agreement/. Accessed on Monday, 4th March. 2024.

[90] Ibid

[91] Ibid

[92] See Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

[93] Article 1 provides that "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."

as investor-philanthropy, whereas ESG has evolved into a profit-making portfolio.[94] It has also been argued that ESG is an upgrade on the concept of CSR and was developed first as a strengthening tool, but subsequently subsumed it. According to Statista (2024), "A dynamic change of the concept of CSR into a more precise notion of ESG (Environmental, Social and Corporate Governance) has been observed, because on the basis of the factors it comprises, ratings and non-financial assessments of enterprises are created."[95] While CSR was often voluntary and self-promotional, ESG emphasizes true social responsibility, holding people accountable for their actions and preventing the exploitation of others for selfish or unselfish purposes.[96] ESG can also be seen as the lens through which multiple stakeholders can transparently look into the realm where CSR activities of an organization are carried out.

Also, though both concepts are a means of sustainability reporting, their parameters differ. While the yardstick for reporting in CSR is based on quality, ESG on the other hand relies on quantitative analysis of data.[97] Despite their differences, CSR and ESG do share critical ideological convergence and complement each other. For instance, ISO 26000 (2010) defines CSR to include factors impacting and impacted by organizational decisions, aligning it with ESG principles. Both highlight the interconnection of these factors; promoting one over others leads to injustice and failure to achieve goals. For example, a governance policy focusing solely on employee welfare but neglecting the environment will eventually suffer from low productivity due to health issues or climate change impacts. To La Torre et. al,[98] "a common understanding lying in the rationale of CSR and sustainability reporting is that companies have a responsibility that supersedes their contractual duties with shareholders and other stakeholders. Such a responsibility encloses externalities for the environment and society, overcoming the narrow market view of accountability."[99] To Kaźmierczak (2022), ultimately

[94] A Statista report states that between 2006 and 2023, the value of assets allocated to ESG funds increased immensely from 6 billion to 480 billion US dollars. See https://www.statista.com/statistics/1297487/assets-of-esg-etfs-worldwide/. Accessed on Monday, 4th March, 2024.
[95] Ibid at p.279
[96] See Friedman, M. (Ibid) at p. 176.
[97] See Gole, I. et al (2021). The Transition of Corporate Social Responsibility to Environmental, Social, and Governance. In: R. Pamfilie, V. Dinu, L. Tăchiciu, D. Pleşea, C. Vasiliu eds. 2021. 7th BASIQ International Conference on New Trends in Sustainable Business and Consumption. Foggia, Italy, 3-5 June 2021. Bucharest: ASE, pp. 52-58 DOI: 10.24818/BASIQ/2021/07/006. At p.57
[98] La Torre, M., Sabelfeld, S., Blomkvist, M. & Dumay, J. (2020). Rebuilding trust: sustainability and non-financial reporting and the European Union regulation. Meditari Accountancy Research, 28(5). https://doi.org/10.1108/MEDAR-06-2020-0914,
[99] Ibid, p.9

the goal of both concepts remains that all organizations, while building business strategies should consider social, environmental as well as interests of other diverse stakeholder groups.[100] In other words, the ultimate aim of both concepts is the operation of sustainability driven enterprises which will eventually result in the achievement of sustainable development. Biles (2021)[101], aptly sums the mutual dependence of both concepts when he states that "CSR and ESG are the two sides of the "pro-social" company coin; you need CSR to guide components of your ESG strategy, and you need ESG to measure the efficacy and extent of your CSR goals."

In this chapter, we took a look at the concepts of sustainable development and sustainability, their meanings and functions. Having seen that, we traced the history of sustainable development right from the time of the Stockholm Declaration, right up to the UN SDGs, highlighting the ultimate objective of making the earth livable for both present and future generations. Also we considered the concepts of corporate social responsibility (CSR) and ESG, the ideologies behind, the roles they play in promoting sustainability and sustainable development and their points of convergence and divergence.

---

[100] See Kaźmierczak, M., supra, p. 281

[101] Biles, B. (2021). Two Sides of the Same Coin: Why Companies Need CSR and ESG. Available at https://www.americanvetsgroup.com/two-sides-of-the-same-coin-why-companies-need-csr-and-esg. Accessed on Tuesday, 5th March, 2024.

3. DOUBLE MATERIALITY IN EU SUSTAINABILITY REPORTING

In the previous chapter an attempt was made to highlight the importance of sustainability and corporate responsibility in the perpetuation of not just humanity, but the earth as a whole. It can thus be said that an effective way of combatting contemporary ESG concerns entails both the public and private sectors working together with the single ambition of achieving set goals. However, it is a statement of fact that this has not for a long time been the case, and may still remain so unless for a long time.

Conflicting stakeholder interests across sectors cause this state of affairs. The DM principle in EU sustainability reporting helps define issues impacting the EU's sustainability goals, enabling better alignment of corporate interests, strategies, and plans with these objectives. According to Herzig & Schaltegger (2006), the motivation for entities to report on their sustainability issues "depends on the company-specific situation and on industry and market conditions, as well as on stakeholder constellations and management preferences."[102] As a result, this chapter will be dedicated to an assessment of the CSRD, its DM requirement, basis and ultimately, the place of its mandatory reporting requirements.

3.1 The Corporate Sustainability Reporting Directive (CSRD)

As against the general trend of poor implementation of the SDGs by States, some others have taken the issue to task and pursued policies aimed at achieving set targets. This is the case of with the EU. Here, I will be looking at how the EU seeks to achieve its goal of attaining net zero GHG emissions by 2050, by regulating the way and manner corporations carry on their activities. Thus, the Corporate Sustainability Reporting Directive[103] (CSRD) was promulgated to give legal backing to this objective. The CSRD is one of three EU sustainability reporting

[102] See Herzig, C., & Schaltegger, S. (2006). Corporate Sustainability Reporting. An Overview. In *Sustainability Accounting and Reporting* (pp. 301–324). Springer Netherlands. https://doi.org/10.1007/978-1-4020-4974-3_13, p.304

[103] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

legislations[104] aimed at regulating corporate disclosures,[105] and sets out to provide a platform for strengthening the previous NFRD[106] by upgrading its rules as they relate to SR within the EU. Sustainable reporting refers to "the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development."[107] Its goal is to transparently present to stakeholders an accurate account of its activities' positive and negative impacts on the environment, society, and governance. Thus, SR reports on an undertaking's ESG-related matters.

As stated by Chopra et. al,[108] ESG reporting has moved beyond the level of being just a corporate obligation, to becoming a powerful mechanism driving sustainable development and as such, companies positioning ESG reporting at the core of their operations and strategies stand to significantly contribute to addressing the key challenges facing the planet while ensuring their long-term viability. The etymology of SR in the EU is traceable to the Accounting Directive,[109] howbeit, as concerning ESG considerations, reporting was voluntary. It was therefore no surprise when the said provision was amended by the NFRD. This was the first step in the entrenchment of sustainability in the corporate disclosure process and was achieved by its insertion into art. 19(1) providing that;

> 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,

[104] Others include Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), and Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (also known as the Taxonomy Regulation).
[105] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
[106] This is further accentuated when one considers the replacement of the phrase "non-financial reporting" in the old legislation with "sustainable reporting" in the current Directive. This points to the importance the EU places on sustainability as a driver for an efficient implementation of the Green Deal objectives. See also Recitals 7 and 8 of the CSRD.
[107] See GRI Sustainability Reporting Guidelines 3.1, p.3. Available at https://www.mas-business.com/docs/G3.1-Guidelines-Incl-Technical-Protocol.pdf. Accessed on Tuesday, May 28, 2024.
[108] Supra, p.5
[109] See Art. 19(1)

relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

It then goes on to list other requirements. From a deconstruction of the provision, it can be deduced that there is an intention to extend the annual disclosure obligations of companies to go beyond mere finances, and entering into the ESG sphere, albeit in a limited sense. Thus, it can be said that the objectives of the NFRD were mainly the creation of an enabling environment for "investors and stakeholders to make better assessments of a company's non-financial activities in relation to their overall risks and value creation"[110] and also "influence companies to establish more effective practices in social and environmental management, and therefore incorporate a more 'responsible' business mind-set."[111]

The NFRD was limited in several respects. According to the EC, in spite of its positive objectives, "There is ample evidence, however, that the information that companies report is not sufficient. Reports often omit information that investors and other stakeholders think is important. Reported information can be hard to compare from company to company, and users of the information are often unsure whether they can trust it."[112] It went on to list issues like its limited scope as regards undertakings, conflicting standards for assessment, non-inclusion of non-EU undertakings operating within the EU, non-coherence with other sustainability legislations, absence of an assurance mechanism etc.[113] It was also argued that it leaned more towards a single materiality perspective of materiality assessment,[114] and that the wordings of

---

[110] Chomová, K. (2022), "The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure". Available at [(2) (PDF) The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure (researchgate.net)](), p.8

[111] Ibidem

[112] European Commission (2021), "Questions and Answers: Corporate Sustainability Reporting Directive proposal- Revision: why was there a need to review the Non-Financial Reporting Directive (NFRD)? Available at https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_21_1806/QANDA_21_1806_EN.pdf. Accessed on Monday, May 6, 2024

[113] Ibidem.

[114] Art. 2(22) defines "sustainability risk" as "'environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment", thereby limiting it to strictly investment-dependent risks.

Art. 19(1) (a) left too much room for speculation.[115] Though both pieces of legislation sought to promote a common cause, they took divergent paths.

To Mezzanotte, the major difference between the NFRD and the CSRD is that while "the NFRD relied on a 'comply or explain' basis, whereas the CSRD operates a regime of mandatory reporting obligations subject to materiality assessment."[116] The objective of the CSRD is "to allow for better comparability of ESG (Environment, Social, and Governance) information: it aims to ensure that companies publish information that is relevant, reliable and easy-to-access."[117] The directive took effect on January 1, 2024, and will be implemented in phases until fully enforceable by January 1, 2028. It is however worth pointing out that while the CSRD handles EU sustainability reporting, the IASB still retains exclusive powers to set financial reporting standards.[118] See Table 1 for the major differences between the NFRD and the CSRD.

Thus, in order to achieve its set objectives, the CSRD introduced some innovations into the SR regime of the EU. Below are the innovations it introduces to achieve its objectives.

3.1.1. Expansion of the Scope of Coverage

In doing so, the new law now provides to the effect that large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public interest entities as defined in point (a) of point (1) of Article 2 shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position.

---

[115] Baumüller, J., & Schaffhauser-Linzatti, M.-M. (2018). In search of materiality for nonfinancial information—reporting requirements of the Directive 2014/95/EU. *Sustainability Management Forum = NachhaltigkeitsManagementForum*, *26*(1-4), 101–111. https://doi.org/10.1007/s00550-018-0473-z, p.107
[116] Ibid, p.638
[117] See Chomová, K. (2022), at p.14
[118] See Art. 3 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (IAS Regulation)

3.1.2. The Integration of a Sustainability Report in the Management Report

Before undertaking an assessment of the various stipulations made in the CSRD regarding non-financial reporting[119], it is necessary to first get an understanding of what "sustainability reporting" SR entails, and as well, what it seeks to achieve. The CSRD defines SR as "reporting information related to sustainability matters in accordance with articles 19a, 29a and 29d;"[120] To Linh, et al (2022), SR "refers to the disclosure, whether voluntary, solicited, or required, of non-financial performance information to outsiders of the organization."[121] The primary function of an SR is that it enhances an entity's reputational integrity with stakeholders through the application of programmes reflecting its social responsibility obligations and transparent management of risks. As earlier stated, SR can be either voluntary, solicited or required from the organization. On the importance of SR, it has been stated that;

> An essential goal in informing key stakeholder groups about non-financial issues is to secure the legitimation of corporate activities and the supply of important resources…. To provide confidence in the company and its corporate activities, the reporting must be reliable. One way to deal with this is the formulation of guidelines, rules or standards for sustainability reporting….[122]

Under EU law, it is mandatory for all companies that come within the jurisdiction of the CSRD to periodically report on their ESG-related matters. The CSRD significantly amends the Non-financial Reporting Directive (NFRD) by expanding the scope of who must report and the reporting subjects.[123] In effect, it does not abolish the NFRD, but seeks to strengthen it in a bid to achieve most efficiently it objectives. It serves also as a channel through which the EU implements its sustainability financing policy under the Green Deal. SR benefits from a shared taxonomy of sustainable activities, which is essential for implementing other actions and

[119] Non-financial reporting here is used interchangeably with non-financial disclosure requirements.
[120] See article (1)(2)(b)(18) CSRD
[121] Linh, N. V., Hung, D. N. & Binh, T. Q. (2022) Relationship between sustainability reporting and firm's value: Evidence from Vietnam, Cogent Business & Management, 9:1, DOI: 10.1080/23311975.2022.2082014, p.1
[122] See Herzig & Schaltegger (supra, at p.302)
[123] See Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

scaling sustainable finance.[124] A major reason for its requirement is the position of the EU when presenting its Green Deal plan that "sustainability should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects."[125]

To ensure optimal and reliable reporting in quantity (availability) and quality (comparability and credibility), legislation sets a Union-wide standard for assessing corporate sustainability. This also expands the reporting scope to include more entities, unlike non-mandatory non-financial reports (this is where the materiality metrics plays a crucial part), in addition, it can be said that "The disclosure of common and consistent information also facilitates comparability of risks and risk management between institutions, thereby enabling market participants to make informed decisions.[126] Also, it serves as a veritable deterrent to the challenge of greenwashing by undertakings. To Adams, et al (2021), "Companies tend to disclose good performance, ignore poor performance, twist the science and use sustainability reports to legitimate their actions and even mislead their stakeholders."[127]

Furthermore, SR creates a balanced platform for the authorities of information, which in turn enables stakeholders to make informed decisions. This can be seen in the context of material SD information being seen as "any information that is reasonably capable of making a difference to the conclusions drawn by: stakeholders concerning the positive and negative impacts of the organization on global achievement of the SDGs, and providers of finance concerning the ability of the organization to create long term value for the organization and society."[128]

---

[124] See, Alessi, L., Alemanni, B., & Frati, G. (2022). Financial Regulation for Sustainable Finance in the European Landscape. In: Linciano, N., Soccorso, P., Guagliano, C. (eds). Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_2. p.214
[125] See the EU Green Deal 2019, at p.17
[126] See para. 49 European Banking Authority (EBA) Action Plan on Sustainable Finance (2019).
[127] See, Adams, C., Alhamood, A., He, X., Tian, J., Wang, L., & Wang, Y. (2021). The Double-Materiality Concept: Application and Issues. Global Reporting Initiative. p.7
[128] See, Adams, C.A. Druckman, P.B. and Picot, R.C. (2020), "Sustainable development goal disclosure (SDGD) recommendations, published by ACCA, chartered accountants ANZ, ICAS, IFAC, IIRC and WBA". Available at: Sustainable Development Goals Disclosure (SDGD) Recommendations | IFAC. P.9

SR enhances reputational value and the valuation of impacted issues. Since GHG emissions lack a definitive cost, aligning corporate behavior with sustainability goals is crucial. SR holds undertakings accountable, with the UN placing human rights protection responsibility on companies. The responsibility to respect human rights requires that corporatios: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.[129] In support of these, the HLEG argued for the upgrade of disclosure rules to make more transparent, the reporting of sustainability risks, with climate change having primacy.[130]

3.1.3. Due Diligence Disclosures

The CSRD also provides that in-scope undertakings, in preparing the management report, also include "the due diligence process implemented by the undertaking with regard to sustainability matters, and, where applicable, in line with Union requirements on undertakings to conduct a due diligence process."[131] This is in addition to the requirement for reporting on the due diligence process of its "principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain…."[132] These provisions require undertakings to report on sustainability matters and explain their methodology, ensuring greater transparency in the reporting process and is crucial for accountability. This is important because "[d]ue diligence in the context of social responsibility is a comprehensive, proactive process to identify the actual and potential negative social, environmental and economic impacts of an organization's decisions and activities, with the aim of avoiding and mitigating those impacts"[133]

3.1.4. Introduction of External Assurance Requirement

The CSRD provides that "Member States shall require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with the assurance standards

[129] See, Principle 13 UN Guiding Principles on Business and Human Rights
[130] See "Financing a sustainable European economy", Report by the EU High level expert group on sustainable finance, 2018. p.23
[131] See Arts. 1(4)(2)(f)(i), and 1(7)(2)(f)(i)
[132] Ibid, at 1(4)(2)(f)(ii) and 1(7)(2)(f)(ii)
[133] See ISO 26000:2010 "Guidance on social responsibility," para 7.3.1

adopted by the Commission in accordance with paragraph 3."[134] This requirement reduces uncertainty, ensuring report accuracy and completeness, and prevents misleading strategies, enhancing market effectiveness and sustainability reporting integrity. This requirement also "improves the coordination between the Accounting Directive and the Transparency Directive to explicitly include the sustainability reporting within the remit of the supervisors that are currently already responsible for the enforcement of the applicable requirements for the financial statements and the management reports of issuers."[135] As stated earlier, "the current state of uncertainty about the definition and practical operation of the assessment of the materiality of impacts and impact-related information highlights the critical value of an expeditious implementation of a sound assurance services regime under the CSRD."[136] Again, it provides that the responsibility statement in the annual financial report explicitly states that the management report is prepared according to SR standards. It also clarifies that the administrative, management, and supervisory bodies of both listed and non-listed entities must ensure compliance with these standards.

3.1.5. Digital Tagging of the Reported Information

According to the CSRD, "Undertakings subject to the requirements of Article 19a… shall prepare their management report in the electronic reporting format… and shall mark up their sustainability reporting, including the disclosures provided for in Article 8 of Regulation (EU) 2020/852, in accordance with the electronic reporting format specified in that Delegated Regulation."[137]

3.1.6. The Introduction of the Double Materiality Principle

The concept of double materiality, being the subject-matter of this work, will be discussed in detail in the subsequent sub-section.

---

[134] Art. 3(15)(1)
[135] See D'Eri, A., & Novembre, V. (2022). Future Perspectives on Sustainable Corporate Governance and Disclosures. In *Information as a Driver of Sustainable Finance* (pp. 243–265). Springer International Publishing. https://doi.org/10.1007/978-3-030-93768-3_9, p.254
[136] Mezzanotte, F. E. (2023) "Corporate sustainability reporting: double materiality, impacts, and legal risk", *Journal of Corporate Law Studies*, 23(2), 633-663, DOI: 10.1080/14735970.2024.2319058, p.636
[137] See Art. 29d

3.2 Materiality in Corporate Sustainability Reporting

The concept of materiality has a close connection to ESG and has been used to assess the impact of sustainability issues on company's financial performance and position.[138] It can be viewed as the threshold for determining relevant information which an undertaking is reasonably expected to disclose in other to provide stakeholders with information required to make informed decisions. Materiality is in fact a legal term with a long history, which has been defined as "the significance of facts to the matter at hand."[139] This means that for a fact presented to be admitted as relevant to the case before the court, its value must in the estimation of the court, be *significant.* Materiality can therefore be regarded as the sole determinant of the relevance and significance of issues to undertakings and their stakeholders.[140] "When an issue is material, it has major impacts on the financial, economic, reputational, and legal dimensions of a company, as well as on the system of internal and external stakeholders of that company."[141] But this then raises a problem of deciphering what can be considered as significant in the determination of cases. In addressing the conundrum faced courts in determining materiality, the learned jurist, Oliver Wendell Holmes posited that

> It is said that a fraudulent representation must be material to have that effect. But how are we to decide whether it is material or not? It must be by an appeal to ordinary experience to decide whether a belief that the fact was as represented would naturally have led to, or a contrary belief would naturally have prevented, the making of the contract.[142]

Drawing from this analysis, it can be argued that the law will often consider what constitutes materiality based on a case-by-case scenario. Supporting this, Bean and Thomas (1990) conclude that information "… will be material if the *average prudent investor* would

---

[138] See generally, https://www.manifestclimate.com/blog/what-is-single-and-double-materiality/. Accessed on Tuesday, May 7, 2024

[139] See Black's Law Dictionary, 7th edn.

[140] "Stakeholders" here are defined as "entities or individuals that can reasonably be expected to be significantly affected by the organization's activities, products, and services; and whose actions can reasonably be expected to affect the ability of the organization to successfully implement its strategies and achieve its objectives." See GRI G4 Guidelines and ISO 26000:2010 How to use the GRI G4 Guidelines and ISO 26000 in conjunction, p.9.

[141] Calace, D. (2019). Materiality: From Accounting to Sustainability and the SDGs. In: Leal Filho, W., Azul, A., Brandli, L., Özuyar, P., Wall, T. (eds) Responsible Consumption and Production. Encyclopedia of the UN Sustainable Development Goals. Springer, Cham. https://doi.org/10.1007/978-3-319-71062-4_43-1, p.1

[142] Holmes, O. W. (1881), "The common law." In: Gutenberg Project version: [308] Lecture IX. Contract.- III. Void and voidable.

consider the information important in evaluating his course of act".[143] Thus, in considering the nature of materiality as defined by the courts, it is important to always take into consideration whether the non-disclosure of a fact would have "influenced" an interested party's decision, or merely that they would have deemed it important that they are not deprived of such knowledge due to the "importance" they attach to it.[144] Due to the varied nature of assessment, materiality has been given different definitions by different actors based on different perceptions, borne out of the interest they have or seek to protect. According to Bernstein (1967)[145], materiality generally is simple to understand until when it is made a central concept in the application of accounting principles, where a lack of specific definition converts it into a prime problem area.[146]

Until recently, the interpretation of materiality, or what is considered *material* has tended towards a financial point of view. This was because originally, materiality centered on presenting fair and accurate reporting of a company's financial information to support financial decision-making that would serve the interests of investors being the considered primary stakeholder groups.[147] This is why the US Securities and Exchange Commission Regulation limits the definition to "…those matters as to which an average prudent investor ought reasonably to be informed before purchasing the security registered."[148] And in adding credence to this line of thought, the Supreme Court held that an item is material if there is "a substantial

[143] Bean, L. and Thomas, D. W. (1990), "The development of the judicial definition of Materiality", *The Accounting Historians Journal,* 17(2), pp. 113-123, p.121. This standard of the reasonable investor has been entrenched in US precedent as was illustrated in the position of the Supreme Court that: "All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of this decision. . . ." see Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128 (1972). at 153-54

[144] Kardon v. National Gypsum Co. [73 F.Supp. 798 (E.D.Pa. 1947 is illustrative in this regard. In this case, two officers in a corporation they shared equal ownership with two other shareholders, purchased the stock holdings of those two shareholders without informing them that negotiations for the sale of the company had begun. In deciding on the materiality of the fact of the pending, the court held that information will be considered material if it would "affect the judgment of the other party to the transaction."

[145] See, Bernstein, L. A. (1967). The Concept of Materiality. *The Accounting Review*, *42*(1), 86–95. Available at http://www.jstor.org/stable/243978

[146] Ibid, p.88.

[147] See, International Accounting Standards Board. (2010), "Conceptual Framework for Financial Reporting: The Reporting Entity". Available at https://www.ifrs.org/content/dam/ifrs/project/conceptual-framework-2010/edconceptualframeworkmar10.pdf

[148] U. S. Securities and Exchange Commission, Regulation S-X Paragraph 1.0. it must be noted that since the 1940s, up until now, the US authorities have consistently interpreted the idea of a thing being material, from this perspective.

likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision."[149]

However, despite the evolution of time and circumstances, a globally accepted definition of materiality remains elusive. This is true even with the emergence of several non-governmental corporate reporting bodies that have worked to develop the corporate sustainability regime and set standards. These organizations include the Global Reporting Initiative (GRI), Accountability.org, the Sustainability Accounting Standards Board (SASB), the International Accounting Standards Board (IASB), and the International Integrated Reporting Council (IIRC). A definition of what is deemed *material* for the purposes of corporate reporting will suffice. While GRI defines material issues as "topics that represent the organization's most significant impacts on the economy, environment, and people, including impacts on their human rights,"[150] Accountability.org refers to it as "an issue that will influence the decisions, actions and performance of an organization or its stakeholders." On its part, the SASB aligns itself with the position of the court in TSC Industries v. Northway, Inc.[151] For the IASB, **"**Information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity."[152]And for the purposes of integrated reporting (IR), the IIRC states that "a matter is material if it is of such relevance and importance that it could substantively influence the assessments of providers of financial capital with regard to the organization's ability to create value over the short, medium and long term."[153]

It can be seen from the definitions that materiality in the corporate reporting context is viewed from three different perspectives: while GRI and Accountability.org define what materiality entails; the SASB and IASB highlight its purpose; and the IIRC definition seeks to

[149] See the dictum of Rtd. Justice Thurgood Marshall in TSC Industries v. Northway, Inc., 426 U.S. 438, 449 (1976)
[150] See, GRI Standards, GRI 3: Material Topics 2021
[151] Supra
[152] See https://www.ifrs.org/news-and-events/news/2018/10/iasb-clarifies-its-definition-of-material/
[153] See, "Materiality Background Paper for IR. Available at https://integratedreporting.ifrs.org/wp-content/uploads/2013/03/IR-Background-Paper-Materiality.pdf, p.2.

provide guidance on the criteria and thresholds for prioritizing those issues. Stressing the issue of non-uniformity in its definition the FASB stated

> The Board's present position is that no general standards of materiality can be formulated to take into account all the considerations that enter into an experienced human judgment. Quantitative materiality criteria may be given by the Board in specific standards in the future, as in the past, as appropriate.[154]

However, despite the difference in opinions and interpretation of the concept, the ultimate objective still remains the same, namely increasing "transparency and accountability by making the reports more focused on "what matters" and reducing the amount of unnecessary sustainability information."[155] Properly executed materiality assessments, targeting investors, stakeholders, or regulatory bodies, promote positive ESG actions. The lens defining materiality significantly impacts stakeholder engagement and drives meaningful ESG improvements. To Leach et al., "… the manner in which the stakeholder engagement is carried out in the materiality process, which stakeholder views are privileged, which inputs are filtered through, what is highlighted, and which questions are asked, depends on how the definition of materiality is framed, perceived and understood."[156]

3.3 The concept of Double Materiality

In the EU, materiality was given legal backing in the Accounting Directive[157] when it stated that materiality is derived from "the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking."[158] Unlike single materiality, DM is a new concept in SR, designed to improve information disclosure by undertakings. The purpose of applying materiality in corporate disclosure is to enhance sustainability, addressing evolving

---

[154] See, Financial Accounting Standards Board (1980). Statement of Financial Accounting Concepts (CON) No. 2, "Qualitative Characteristics of Accounting Information", p. 7

[155] Puroila, J., & Mäkelä, H. (2019). Matter of opinion: Exploring the socio-political nature of materiality disclosures in sustainability reporting. *Accounting, Auditing and Accountability Journal*, *32*(4), 1043-1072, p.1043. https://doi.org/10.1108/AAAJ-11-2016-2788

[156] Leach, M., Scoones, I. and Stirling, A. (2010), Dynamic Sustainabilities: Technology, Environment, Social Justice, Earthscan, London, p.105

[157] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, (29.6.2013) OJ L182/19.

[158] Ibid, art. 2(16)

challenges with more efficient systems. To Baumüller and Sopp,[159] this method "is opposed to the understanding of a so-called "single materiality" which would require information to be material from both perspectives–and not from either the one or the other–in order to fall under the reporting obligation defined in the [NFRD]."

Traditionally, "assessing materiality" focused on stakeholders with financial interests, leading companies to disclose only financial matters in their reports and companies were previously more concerned with the costs to their bottom line from ESG considerations, rather than the broader impacts of their activities on climate and worker productivity.

See Table 2 for the major differences between the single and the DM corporate disclosure methods. This position is outdated as modern accounting now integrates ethical, ecological, and political concerns like sustainable development and ESG issues, influencing and reflecting a company's key objectives.[160] And as environmental awareness grew, it became clear that sustainable operations extend beyond self-image to societal views. This led to greater demands for accountability, resulting in the DM concept. Opinions on material factors vary: some view it as how ESG factors impact the company, others as the company's impact on ESG. Thus, it can be said that the "GRI and Accountability.org's (arising from its inclusion of "stakeholders") standards are formulated so as to enable a company to determine and report its impact on a range of ESG issues, while on the other hand, the SASB, IASB and IIRC positions are intended to enable the company examine and disclose its exposure to this same range of factors (i.e., the potential impact of ESG sustainability matters on the company)."[161] "The idea of DM recognizes that a company's impact on the world beyond finance can be material, and therefore worth disclosing, for reasons other than the effect on a firm's bottom line."[162] And to Tager (2021), "The concept of double materiality takes this notion [materiality] one step further: it is not just climate-related impacts on the company that can be material

---

[159] Baumüller, J. and Sopp, K. (2022), "Double Materiality and the Shift from Non-Financial to European Sustainability Reporting: Review, Outlook and Implications" *Journal of Applied Accounting Research,* 23(1) 8–28, p.18

[160] See Puroila & Mäkelä, p.1044.

[161] See, Douglas, E. and Manning, T. (2017), "Sustainability Assessment Tools". Available at https://www.stern.nyu.edu/sites/default/files/assets/documents/Sustainability%20Assessment%20Tools_Final_04.2017.pdf

[162] Engler, H. (2022) '"Double materiality": New legal concept likely to play in debate over SEC's climate plan?' Available at https://www.thomsonreuters.com/en-us/posts/investigation-fraud-andrisk/sec-double-materiality-climate/

but also impacts of a company on the climate – or any other dimension of sustainability, for that matter (often subsumed under the environmental, social and governance, or ESG, label).”[163] Appreciating this position the EU was prompted to move into marrying these two aspects of materiality assessment in order to create a holistic and more efficient reporting process.

DM helps answer the question, "Material to whom?" by identifying stakeholders, since without a "victim" stakeholder, an activity may not be considered material.

To Delgado-Ceballos et. al[164] “the double materiality perspective provides a complete picture of the relationship between business and global sustainability, and the external impact of business activities.” It has also been argued that “[d]ouble materiality represents the joint consideration of financial materiality and stakeholder materiality, and can be used as a framework to reconcile investors’ interests in sustainability with the business’ external impact on the natural environment and society.”[165] In implementing DM, an undertaking must first identify and assess sustainability issues influencing its performance and business value. This is known as "financial materiality" or "outside in" approach. This definition, aimed at investors, lenders, and creditors, addresses how these factors impact funds, investments, and overall performance.[166] Next, the undertaking must identify and assess impacts on the economy, environment, and people from its activities and is referred to as "impact materiality" or "inside out" approach. This assessment addresses regulators, NGOs, citizens, and consumers.[167] Impact materiality in SR is vital on two levels- at the micro-level, it is essential for assessing the alignment of each single business with planetary boundaries, while acting as a key tool for evaluating the contribution of the economic system to sustainable development at the macro-level.[168]

---

[163] Tager, M. (2021)‘“Double materiality”: what is it and why does it matter?’ available at https://www.lse.ac.uk/granthaminstitute/news/doublemateriality-what-is-it-and-why-does-it-matter/

[164] Delgado-Ceballos, J., Ortiz-De-Mandojana, N., Antolín-López, R., & Montiel, I. (2023). Connecting the Sustainable Development Goals to firm-level sustainability and ESG factors: The need for double materiality. *BRQ Business Research Quarterly*, *26*(1), 2-10. https://doi.org/10.1177/23409444221140919, p.4

[165] See Delgado-Ceballos, supra (ibidem)

[166] This can be seen in the definitions of materiality by SASB and IASB

[167] This aspect comes within the purview of the GRI and Accounting.org’s definitions.

[168] Mähönen, J. and Palea, V. (2024) “Analyzing Double Materiality through the Lens of the European Political Constitution: Implications for Interoperability and Standards-Setting”, pp. 15, 16.

However, the DM principle is not without its limitations and criticisms. To Mezzanotte, “[A]lthough materiality in financial reporting is a well-understood concept, there is less clarity about the meaning and operation of double materiality in corporate sustainability reporting under the CSRD and the ESRS rules.”[169] Brown and Dillard (2013) argue that even “the approaches that rely on stakeholder engagement often fall short of their pluralistic and democratic intentions, remain very superficial and dilute the broader stakeholder concerns, ‘by translating them into traditional business language and criteria.’”[170] There is also the fear that the concept is vulnerable to undue manipulation. To De Cristofaro and Gulluscio (2023)[171], “fearing that stakeholders’ opinions and interests in DM could be manipulated in favour of investors, namely toward practices that would be incompatible with the expected accountability function, it is questioned whether DM is sufficient for a European reform of the NFR aimed at focusing on accountability.”[172] Others have stated that the introduction of the concept actually changes nothing as a distinction cannot be clearly made between financial materiality and sustainability materiality. To some in this school of thought, it is argued that in the long run, most sustainability matters will also have financial implications, e.g. due to reputational risks.[173]

Some scholars argue for elevating corporate SR by regulating stakeholder input, ensuring active involvement at every assessment step, requiring a mandatory dialogic approach. This approach, to Puroila, & Mäkelä (2019)[174], recognizes diverse stakeholder needs and the varying importance of sustainability topics over time and context. Instead of ranking sustainability topics, it focuses on their materiality in specific contexts. When consensus is needed, the dialogic perspective ensures it is inclusive, well-informed, and transparent about its political aspects. This is because to them “materiality should be understood as a temporal, context-specific and political method for sustainability assessment.”[175] La Torre, et. al, in

[169] Ibid, at p.634
[170] Brown, J. and Dillard, J. (2013), “Critical perspectives on accounting critical accounting and communicative action: on the limits of consensual deliberation”, *Critical Perspectives on Accounting*, 24(3), pp. 176-190, p.250
[171] See De Cristofaro T. and Gulluscio C. (2023). In Search of Double Materiality in Non-Financial Reports: First Empirical Evidence. *Sustainability*. 15(2):924. https://doi.org/10.3390/su15020924
[172] Ibid, p.7
[173] See Baumüller and Sopp supra, p.22
[174] Puroila, J., & Mäkelä, H. (2019). Matter of opinion: Exploring the socio-political nature of materiality disclosures in sustainability reporting. *Accounting, Auditing and Accountability Journal*, *32*(4), 1043-1072. https://doi.org/10.1108/AAAJ-11-2016-2788, p.1065
[175] ibidem

cementing this position, argue that (i) "… prior research demonstrates that more and compulsory information does not always mean better reporting and accountability" and (ii) "the [CSRD] and its reporting requirements are no exception to the above and are far from harmonizing NFR and achieving the comparability of information in Europe.[176] The solution being "that regulators of all forms of NFR should consider increasing the focus on the dialogic accountability perspective in defining the materiality of NFI that goes beyond double materiality."[177] Some of the advantages and disadvantages of DM will be illustrated in Table 3.

As stated earlier, the CSRD was enacted to implement a comprehensive package of capital market reforms and achieve the EU Green Deal's objectives—reducing economy-wide GHG emissions by 55% by 2030 and reaching net zero by 2050. The law is seen as a "structural feature of these reforms that will exponentially increase the volume and rigor of sustainability information that companies disclose."[178]

DM was formally proposed by the European Commission in 2019,[179] when elaborating on art. 1(1) of the Non-Financial Reporting Directive.[180] According to the Commission, the reference in the 2017 Non-Binding Guidelines on Non-Financial Reporting[181] to the "impact of [the company's] activities" introduced a new element to be taken into account when assessing the materiality of non-financial information." In the area of financial flows within the EU, the SFDR[182] bolstered this position by making it mandatory for all financial market participants to report on (a) "… information about their policies on the identification and prioritization of principal adverse sustainability impacts and indicators; (impact materiality)[183], and (b) (in addition with financial advisers) "… include in their remuneration policies information on how

[176] La Torre, M., Sabelfeld, S., Blomkvist, M. & Dumay, J. (2020). Rebuilding trust: sustainability and non-financial reporting and the European Union regulation. Meditari Accountancy Research, 28(5). https://doi.org/10.1108/MEDAR-06-2020-0914, p.1
[177] ibidem
[178] See ESG Regulation gives materiality a bigger stake. Available at ESG regulation gives materiality a bigger stake | EY - US
[179] See s.2.2 Communication from the Commission, "Guidelines on non-financial reporting: Supplement on reporting climate-related information", (2019/C 209/01)
[180] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Hereinafter,NFRD)).
[181] See s. 3.1, Communication from the Commission — Guidelines on non-financial reporting (methodology for reporting non-financial information) C/2017/4234
[182] Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.
[183] See Art. 4(2)(a)

those policies are consistent with the integration of sustainability risks, and shall publish that information on their websites."[184] Thus, it was only a matter of time before the principle was clearly spelt out in all its glory. Highlighting the critical importance of the concept of DM, Mähönen and Palea (2024) posited;

> By considering double materiality within the constitutional setting of the EU, we elevate such a concept from a mere accounting matter to a key governance element for aligning businesses with the overarching societal goals of the EU. From a legal perspective, our analysis positions double materiality as a crucial element for ensuring the consistency of the CSRD and the ESRS with the Lisbon Treaty. In this context, double materiality emerges as a constitutional concept embedded within the Treaty.[185]

The EU Accounting Directive required a company to include in its management report "a fair review of the development and performance of the undertaking's business and of its position…"[186] but the NFRD in expanding that article, inserted a mandatory requirement for companies covered by it to "… include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's… *impact of its activity*, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters…"[187] The EC thus argued that NFRD's requirement of disclosure of information based on *reference to the company's "development, performance [and] position*, and *impact of [the company's] activities* amounted to a disclosure requirement based on the assessment of two different material factors, to wit, a requirement for DM assessment.[188]

3.4. Application of the Double Materiality concept under the CSRD

The CSRD aims to unify the 'E', 'S', and 'G' of ESG reporting, requires undertakings to disclose information on the environment, staff treatment, social matters, human rights, anti-

---

[184] Ibid at Art. 5(1)
[185] Mähönen, J. and Palea, V. (2024) "Analyzing Double Materiality through the Lens of the European Political Constitution: Implications for Interoperability and Standards-Setting", p.3
[186] Ibid, s.19
[187] See s. 1(1) NFRD, supra.
[188] Ibid

bribery, corruption, and board diversity. Understanding how companies' activities affect people and the planet is crucial for actualizing the EU Green Deal objectives. Adopting impact materiality in SR is essential for shaping and monitoring the new EU green political economy, considering the risks and opportunities from these activities. As it concerns the reduction of GHGs, articles 1(4) (2) (a) (iii) and (7) (2) (a) (iii) are crucial. Article 1(4) provides for publication by prescribed enterprises "in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position,"[189] while article 1(7) makes provisions for the consolidated SR of parent companies of enterprises operating within the EU.

It is worth noting that both articles make adequate provision for undertakings to report on their strategies for complying with the Paris Agreement 1.5 degree global limitation target.[190] According to Mähönen and Palea (2024)[191], DM plays two roles of immense importance in the internalization of sustainability within economic practices in the EU, and legitimizing the intention of actualizing its 2050 net zero carbon emissions objective.[192]

The main instrument through which the provisions of the CSRD is interpreted is the European Sustainability Reporting Standards Delegated Regulation.[193] The ESRS on its part, lays out a widely extensive set of qualitative and quantitative criteria for ESG disclosures to enable the capturing of every possible issue of material importance. This includes, but is not limited to, conducting a thorough value chain risk analysis, value chain mapping, impact remediability, and documenting the DM process. The Directive aims to facilitate more

---

[189] See article 1(1)

[190] See articles 1(4)(2)(a)(iii) and 1(7(2)(a)(iii). For instance, the objective of the European Green Deal regarding the reduction of GHG emissions, at least by half, requires a reorientation of company practices so as to minimize the impact of its activity on the environment, thereby making the requirement for the publication of ESG factors in the company's non-financial reports all the more imperative. See Dănilă, A., Horga, M.G., Oprișan, O. & Stamule, T., (2022). Good Practices on ESG Reporting in the Context of the European Green Deal. *Amfiteatru Economic*, 24(61), pp. 847-860, at p.850

[191] Mähönen, J. and Palea, V. (2024) "Analyzing Double Materiality through the Lens of the European Political Constitution: Implications for Interoperability and Standards-Setting", *University of Oslo Faculty of Law Research Paper* No. 2024-05, *Nordic & European Company Law Working Paper* No. 24-03, Available at SSRN: https://ssrn.com/abstract=4731089

[192] Ibid at p.9

[193] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (OJ L,22.12.2023). (hereinafter ESRS DR).

responsible and transparent business practices. The CSRD, together with the ESRS, broadens not only the scope of reporting for a larger number of European companies. It also strengthens sustainability in reporting by explicitly introducing a requirement for 'double materiality'.[194] The general position as provided for under the ESRS is that companies are expected to disclose all sustainability matters.[195]

Also, unless otherwise stated, "the terms "material" and "materiality" are used throughout ESRS to refer to double materiality."[196] This manner of assessment of ESG matters is crucial for many reasons, but undoubtedly, the most crucial is its conferment of legitimacy to the CSRD. As has rightly been pointed out, "It is precisely the concept of DM in corporate SR that ensures the alignment of the CSRD with the Treaty [the Lisbon Treaty] and, consequently, its constitutionality."[197]

Impact materiality of sustainability topics is an "inside-out" concept, focusing on how a company's activities affect the world around it. This perspective is represented by the GRI standards and is heavily oriented towards sustainability, making it primarily qualitative in nature. Financial materiality of sustainability topics, on the other hand, is essentially an "outside-in" concept, focusing on how sustainability topics impact a company's performance and prospects. This perspective is represented by SASB/IASB standards and is heavily reliant on an accounting mindset, making it primarily quantitative in nature. It is fair to say that this position goes contrary to the extant provisions of legislation stating that "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development."[198] In other words, the enactment and interpretation of every law within the EU should be done in a manner which promotes the environment and ultimately, SD.

---

[194] Mähönen, J and Palea, V. (2024). "Double materiality and the European political constitution". Available at https://www.jus.uio.no/english/research/areas/sustainabilitylaw/blog/2024/double-materiality-european.html. Accessed on Saturday, March 16, 2024.
[195] See ESRS DR (n 5) Annex I, ESRS 1 General Requirements, s 3.2 para 29 which makes it mandatory for undertakings to comply with information disclosure requirements regardless of materiality evaluation, e.g. the requirements in ESRS 2 General Disclosures).
[196] See para 37 of the Commission Delegated Regulation (EU) 2023/2772.
[197] Mähönen, J. and Palea, V. (2024) "Analyzing Double Materiality through the Lens of the European Political Constitution: Implications for Interoperability and Standards-Setting", pp. 18
[198] See Article 11, Treaty on the Functioning of the European Union (TFEU)

A DM assessment combines both aspects of sustainability, rather than just identifying their intersection. It must be emphasized that as a "corporation mobilizes financial, manufactured, intellectual, human, social and relationship, and natural capital, each capital has one or more stakeholders who have an interest in this form of capital"[199], and by extension, the reach of stakeholder interests in its entrepreneurial value chain.

To implement a DM assessment under ESRS, the undertaking must scope its material matters. This involves refining a list of topics impacted by their activities or affecting their IROs.[200] This part is highly context-dependent relying on the nature of services being undertaken. Secondly, the undertaking must score these matters to assess materiality from an impact perspective, considering severity and likelihood on society and the environment. This involves quantitative data analysis, qualitative feedback, and examining ESG issues. Financial matters must also be scored, assessing ESG effects on financial performance, including reputational risks and opportunities. After scoring and mapping the ESG matters, the undertaking will develop DM metrics, establishing a threshold to determine material matters, triggering the disclosure obligation under the CSRD.

This then raises the need for a filtration of the corporation's materiality impacts as a whole. The result of the company's filtration of its activities through the funnel of the financial and impact materiality assessments is that it is left with information which meets the obligatory reporting threshold of the ESRS. To Eccles and Krzus, "[T]he firm's ability to determine what is and is not material through its senior management and those involved in governance symbolizes its social agency."[201]

This threshold is referred to as the "material sustainability matters".[202] These information (referred to as value chain information), functions in two ways; (a) it allows stakeholders to have a better understanding of the undertaking's material *impacts, risks and opportunities* and (b), produce a set of information that meeting the qualitative characteristics

[199] Eccles, R. G. and Youmans, T. (2015), "Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality". Working Paper 16-023, p.2
[200] This is especially the case as it relates to those material topics and sub-topics not listed in the ESRS.
[201] Eccles, R. G., and Krzus, M. P. (2014). *The integrated reporting movement: Meaning, momentum, motives, and materiality.* John Wiley & Sons, Incorporated. Created from tromsoub-ebooks on 2024-02-21 06:48:02., p.127
[202] See para 66 ESRS DR

of information.[203] It is based on the identification of these materiality sustainability matters that the company now garners information meeting the material disclosure requirements (DR) under the ESRS.[204] These DR consist of one or more data points[205], and Application Requirements (AR)[206] as applicable to those particular sustainability matters. It must be noted that this is not an easy task as the task of reducing a 'long list to what ultimately passes the materiality threshold for corporate reporting purposes demands the enormous exercise of judgment to separate the "material" from the "immaterial."[207]

A material topic can fall under either impact or financial materiality to meet SR requirements; it doesn't need to fall under both. If relevant to promoting sustainability, it must be reported. DM assessment is not about balancing positives and negatives. Instead, undertakings must transparently disclose all IROs, their impact on ESG matters, steps taken to mitigate them, and associated risks and opportunities. Disclosures must cover both actual and potential impacts. In this chapter, I sought to break down not only the CSRD, its objectives and application, but also analyze the DM concept which is the mechanism for its application. I looked at its history, meaning, steps required in conducting an assessment under it and finally, its limitations.

In the next chapter, this work will take a critical look at challenges undertakings may face and potential pitfalls to avoid, considering the novelty of the concept.

---

[203] Ibid para 65
[204] Ibid, s. 1.3
[205] Ibid para 16
[206] These requirements enhance the application of the DR and also possess equal authority as other parts of the ESRS. See para 17 ESRS
[207] See Eccles, R. G., and Krzus, M. P. (2014). *The integrated reporting movement: Meaning, momentum, motives, and materiality.* John Wiley & Sons, Incorporated. Created from tromsoub-ebooks on 2024-02-21 06:48:02., p.4

4. TOWARDS AN EFFECTIVE IMPLEMENTATION OF THE DOUBLE MATERIALITY PRINCIPLE IN SUSTAINABILITY REPORTING

The DM principle in the CSRD is a clear and suitable tool for achieving the Directive's goals. However, it has advantages and disadvantages that could impede a successful implementation. The CSRD addresses the NFRD's shortcomings, with DM intended to rectify these issues. It also aims to meet the EU's 2050 climate goals, requiring all provisions to be interpreted and applied accordingly. The dynamic nature of DM poses a risk of becoming an obstacle to progress as undertakings may face challenges while attempting to implement it. The next sub-chapters will seek to address both these challenges as well as factors which, if considered and applied, can facilitate the smooth implementation of the principle.

4.1. The place of compliance and enforcement of the Double Materiality principle

As earlier pointed out, it is a mandatory for undertakings that fall within the SR scope of the CSRD to base the reportage of such sustainability matters on the DM principle.[208] While other obligations exist for undertakings to comply with the CSRD SR requirements (e.g., being in-scope, aligning with the Taxonomy Directive, ensuring limited assurance, and presenting in electronic format), the importance of DM assessment is paramount. Legally, strict adherence to the legislature's explicitly provided procedures is required for compliance. Any deviation results in non-conformity with the law, regardless of intent, which at best mitigates the penalty for non-compliance.

As the ESRS stipulates use of the DM principle for determining sustainability matters in SR within the EU, report failing to meet the stipulation, regardless of diligence, will be null and face non-compliance consequences. Although the CSRD does not explicitly provide for penalties for non-compliance, it will be deemed that this powers have been delegated to the Member States by virtue of s.5 (1) CSRD.[209] As clearly stated in *In re Caremark International*

---

[208] See ESRS DR. 1 s.2, para 21

[209] This section provides that "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 3 of this Directive by 6 July 2024. They shall immediately communicate the text of those measures to the Commission." In furtherance of this, and considering the seriousness attached to the issue at hand, France has moved a step ahead to implement jail time for defaulters. See, Forbes online, "France Introduces Possible Jail Time As Penalty For Non-Compliance With Sustainability Disclosure". Available at https://www.forbes.com/sites/maryfoley/2023/12/21/france-introduces-possible-jail-time-as-penalty-for-non-compliance-with-sustainability-disclosure/. Accessed on Saturday, May 18, 2024

Inc. Derivative case[210] that it is the basic rule of corporate law that corporations can only conduct lawful business by lawful means. This position therefore "overlaps with and should be integrated into companies' decisions to hold themselves to even higher levels of responsibility."[211] The converse of this is that there is a presumption that an undertaking is engaged in lawful activities until it holds itself out not to abide by the law in which case, punitive measures must apply.

Non-compliance has significant financial consequences, including litigation costs, fines, penalties, and compensation settlements. It can also lead to loss of reputation, affecting cash flow, customer base, credit access, and sustainability-focused investors. Additionally, substantial investment is required to restore a damaged image, resulting in further financial losses. Non-compliance also leads to operational consequences, such as ineffectiveness from not adopting ESG strategies, reducing competitiveness against sustainability-focused businesses supported by the State and stakeholders. Non-compliance also negatively impacts future prospects and to add to that is the fact that rebuilding reputation requires significant time and effort, which will ultimately affect the balance sheet. Loss of investor confidence will also result in long-term earnings decline. And in extreme cases, stakeholder refusal to engage can lead to the undertaking's extinction, causing job losses, profit loss, and reduced taxes to the State. No responsible individual or undertaking would self-destruct by committing acts with known harmful consequences. Hence, intention, while relevant, is not a valid excuse for non-compliance. To provide guidance and protection against legal consequences, the next chapter will examine challenges and pitfalls in implementing DM. This will help undertakings achieve EU compliance and avoid unnecessary repercussions.

4.2. Challenges in implementing the Double Materiality principle under the CSRD

The critical importance of DM assessment in the CSRD has been analyzed, highlighting its advantages and disadvantages. Despite well-intentioned efforts, circumstances may hinder its smooth implementation by undertakings. These challenges arise from the nature of the concept—assessing impact and financial materiality, along with the dynamic impact of

[210] See In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).
[211] See Strine, Leo E., Jr, Smith, K. M., & Steel, R. S. (2021). Caremark and ESG, Perfect Together: A Practical Approach to Implementing an Integrated, Efficient, and Effective Caremark and EESG Strategy. *Iowa Law Review*, *106*(4), 1885–1922, p.10631

activities. The issue to address is the "materiality" of those activities, and the reasons for these challenges are manifold and will be explored below.

Although it is agreed that the concept of "materiality" is void of a universally accepted definition, this is more so in the case of the impact materiality[212] because of the vastness of issues to be considered in addressing it- economic, social and environmental-related matters[213] and in its inherent vagueness and antecedent.[214] In the case of financial materiality, this does not constitute an impediment because (i) the target audience is limited e.g. investors, lenders, financiers etc.; and (ii) it has been regulated overtime thereby setting a precedent for parties to work with. Also, overlapping assessment angles complicate implementation, posing challenges for undertakings new to sustainability.

These issues have to be adequately addressed as failure to do so may result in label adoption and greenwashing by undertakings who, not wanting to fall on the wrong side of the law, will resort to selective reporting of material matters, thus defeating the goal of the CSRD. As noted by ESMA, "[g]reenwashing is a complex and multifaceted issue which takes various forms, has different causes and has potential to detrimentally impact investors looking to make sustainable investments."[215] It is also worth noting that due to the interconnectedness of the

---

[212] According to, Baumüller & Schaffhauser-Linzatti, '"Impact" is one of the most elusive terms in sustainability accounting, given a wide range of definitions and logics for determining them.' See Baumüller, J., & Schaffhauser-Linzatti, M.-M. (2018). In search of materiality for nonfinancial information—reporting requirements of the Directive 2014/95/EU. *Sustainability Management Forum = NachhaltigkeitsManagementForum*, *26*(1-4), 101–111. https://doi.org/10.1007/s00550-018-0473-z, p.104. To "no agreed accounting standards or laws for IM exist, and methodologies compete with each other. Although the Sustainable Finance Disclosure Regulation (EU SFDR) has provided clearer guidelines for measuring and reporting impact, the European financial market context is still pervaded by ambiguity and confusion in its application." See Hehenberger, L., & Andreoli, C. (2024). Impact measurement and the conflicted nature of materiality decisions. Current Opinion in Environmental Sustainability, p.68. https://doi.org/10.1016/j.cosust.2024.101436, p.2

[213] It has been argued that "impact materiality is more contested, primarily because— lacking any regulatory guidelines—the definition of what constitutes relevant impact data is far less clear. In contrast to financial materiality, the dimensions of impact relevance cannot—sui generis—be confined only to financial metrics." See Nicholls, A., Yee, E. (2022). Enhancing Impact Materiality: Lessons from Evidenced-Based Policy Making. In: Hazenberg, R., Paterson-Young, C. (eds) Social Impact Measurement for a Sustainable Future. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-83152-3_13, p.250

[214] Hehenberger & Andreoli (ibidem) posit that the "institutionalization of IM has been managed mainly by non-state actors who developed and implemented tools in an environment lacking IM laws and worldwide integrated accounting standards."

[215] European Securities and Markets Authority (ESMA), "ESMA prioritises the fight against greenwashing in its new Sustainable Finance Roadmap". Available at ESMA prioritises the fight against greenwashing in its new Sustainable Finance Roadmap (europa.eu). Accessed on Monday, April 29, 2024.

concept of sustainability, most of these issues actually delve into one another. A closer look at these challenges and how they may impact on the operations of undertakings is necessary and can be seen below.

4.2.1. Identifying and Scoping of Material Matter

DM requires evaluating sustainability matters from both impact and financial materiality angles, reporting any that meet either threshold. This new reporting method will challenge undertakings, requiring time to learn and perfect, potentially causing unintended defaults. Those already reporting financial activities or conducting voluntary non-financial reporting may find the transition easier. However, the ability to identify material matters can become more challenging, especially for those undertakings that do not have any prior history of sustainability reporting.[216] This is due to the fact that, as already noted, the definition of a material matter is dependent on the relevancy of that matter. The question now is, what, who or how is the relevancy determined? Since different interests view materiality differently[217], it makes it extremely difficult for the undertaking to establish an acceptable standard applicable in assessing topics, thus resulting in the process of framing of topics where corporations compartmentalize topics based on similarity. The problem however was that "[t]hese framings were not consistently used, meaning that within one assessment, some topics were framed as a business activity or immediate output while others were framed on a societal level."[218]

The vastness of the value chain also complicates the identification conundrum as it widens the scope of not only positive/negative impacts, but also actual/potential risks and opportunities and the variedness of stakeholders. To Hehenberger and Andreoli, "[a] pivotal dimension generating controversy in IM is materiality, which shapes corporations' decisions on which ESG factors to measure and report and provides information to users beyond just

---

[216] According to Mezzanotte (supra, p.72), "[the] problem of determining impacts may produce information of poor quality, or information that contains misstatements or omissions that diminish market transparency and expose investors."
[217] To Brunsson (2007), organizations often respond to conflicting stakeholder demands through engaging in organized hypocrisy which is "a way of handling conflicts by reflecting them in inconsistencies among talk, decisions, and actions." See Brunsson, N. (2007). *The consequences of decision-making* (1st ed.). Oxford University Press, p.115
[218] Garst, J., Maas, K., & Suijs, J. (2022). Materiality Assessment Is an Art, Not a Science: Selecting ESG Topics for Sustainability Reports. California Management Review, 65(1), 64–90. https://doi.org/10.1177/00081256221120692, p.72

financial factors…. As the scope widens to encompass a larger stakeholder base, defining the boundaries of materiality becomes increasingly intricate.”[219]

4.2.2. Scoring of Topics

Another challenge in conducting a DM assessment is scoring the materiality of topics. Beyond ESRS 1 requirements, undertakings face numerous topics demanding attention, complicating their position. Stakeholders' differing interests affect the perceived importance of topics, and some topics span both social and environmental considerations, impacting stakeholders differently. Additionally, it is sometimes impossible to score a material impact. For example, calculating the financial impact of chemical pollution in a community's drinking water or determining the most impacted societal topic among several affected by an undertaking can be highly challenging. To Nicholls and Yee (2022)[220], another reason for this is that despite the importance of valid non-financial and how impact performance data is crucial for organizational decision-making, the field of impact measurement and management remains underdeveloped, still lacking standardized metrics, disclosure practices, and regulatory frameworks similar to those in financial reporting. The scoring of topics is also hampered by the reliability and accuracy of applicable data. To Garst et. al, “[a]s with any data collection, the reliability and validity of the method determine the quality of the data. The three sustainability characteristics complicate ensuring this reliability and validity. Data reliability concerns whether the data were consistently produced and analyzed.”[221]

4.2.3. Complexity of the Concept

Another challenge with DM is its complexity. It starts with defining material matters from either an impact or financial perspective, then listing all related disclosure requirements. Undertakings must use various standards to establish immateriality and address each topic's performance impact, needing significant time, money, and human resources. Additionally, assessments must cover short-term, medium-term, and long-term horizons.[222] This raises the complex challenge of accurately understanding the interaction and relationship of

[219] Hehenberger, L., & Andreoli, op cit, p.1
[220] Nicholls, A., Yee, E. (2022). Enhancing Impact Materiality: Lessons from Evidenced-Based Policy Making. In: Hazenberg, R., Paterson-Young, C. (eds) Social Impact Measurement for a Sustainable Future. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-83152-3_13, p.4
[221] Garst, J et al, ibid at p.77
[222] See s.3.3, para 38

interconnected, yet changing matters over time. For example, an extractive industry undertaking struggles to predict long-term stakeholder responses, like host communities, the State, the environment, financial institutions, and customers, and how these will impact its performance and financial flows.

First, one must define what constitutes a material topic in their operations and determine if it falls under impact or financial materiality, or both, providing evidence for conclusions. Data must then be gathered across a broad value chain. Following this is determining the threshold for materiality to meet EU standards, which is left to the undertaking. Materiality hinges on "relevance," but defining relevant matters is challenging. The undertaking must identify relevant topics from many options and make subjective decisions on which to report.

There is also the issue of complexity arising from the process of data collection. According to Lopez & Alcaide (2022),[223] this complexity arises from the variety of information sources, both internal and external, and the range of themes involved. Data must be gathered from people (via surveys, community evaluations, and individual behaviors), environmental sources (such as IoT devices, geolocation, and digital media), and the organization's economic data (including self-reported operational and financial details, proprietary data sets, and audits).

4.2.4. Lack of certainty in the understanding of certain concepts

According to the EU, the essence of the provision of high-quality corporate sustainability information is to "contribute to the European public good"[224] but this is not always the case. As we have seen, the CSRD makes assessment based on the DM principle as the basis for the assessment of ESG matters when preparing SRs. However, to achieve these, several procedures are to be stringently followed with these procedures been founded on concepts that are not clearly defined by the law, thus creating ambiguities in their interpretation and subsequent implementation. For instance, in the determination of what constitutes a material matter, it has been argued that "… the understandings and implications of the concept of materiality are more ambiguous and wide-reaching than they often appear, as, through constituting the legitimized set of claims and information on corporate sustainable performance,

[223] Lopez, B. S., & Alcaide, A., V. (2021). Innovation Management, from Materiality Assessment to Sustainability Reporting, opening the Social Impact Black Box. Socioeconomic Challenges, 5(1), 13–27. https://doi.org/10.21272/sec.5(1).13-27.2021, p.22
[224] See Recital 39 of the CSRD

it impacts our understanding of sustainable development at large, and affects the corporate and policy-level transition towards sustainability."[225]

This difficulty arising from the inability to accurately determine the intent of the lawmakers thus poses a challenge for the undertaking in the course of carrying out its work. These difficulties in fully understanding and interpreting concepts may ultimately lead to inaccuracies in information presented in reports, or a lack of clarity. Some illustrations will suffice in this regard.

On the issue of IM, the position of the CSRD is that a sustainability matter will be deemed material for purposes of assessment "when it pertains to the undertaking's material actual or potential, positive or negative impacts on people or the environment over the short-, medium- and long-term time horizons."[226] To meet this requirement, such impact can be either actual or potential, positive or negative and bearing upon people in society or the environment over the course of the short-term, medium-term or long-term time zones. Referring to the requirement of "significance of information" for determining materiality, it is argued that

> The criterion based on the 'significance of information' that renders information to be 'relevant' for the purpose of disclosure requires deeper elaboration. Without further clarification, the determination of materiality of impact-related information may prove an ambiguous exercise, allowing multiple interpretations during the implementation process, and creating legal uncertainty about the requisite scope of disclosures.[227]

As noted earlier, these parameters must be met across the entire value chain, regardless of whether the impact is direct or indirect. The vast scope of topics makes identifying these impacts challenging, complicating effective implementation. Assessing impact materiality (IM) based on likelihood and severity (scale, scope, and irremediability) burdens undertakings to make assumptions about event occurrences and severity levels without control over the circumstances. Additionally, they must present this information to an audience relying on their

[225] See Puroila & Mäkelä, ibid at p.1060
[226] See, ESRS DR 1, s.3.4 para 43.
[227] Mezzanotte, F. E. (2023) "Corporate sustainability reporting: double materiality, impacts, and legal risk", *Journal of Corporate Law Studies*, 23(2), 633-663, DOI: 10.1080/14735970.2024.2319058, p. 655

assumptions. The challenge is determining these likelihoods and severities while protecting their reputations and fulfilling legal duties. As pointed out by Nicholls and Yee, "[d]espite the material importance of valid non-financial, 'impact', performance data in terms of organizational decision-making, the landscape of impact measurement and management remains under-institutionalized and lacks both the standards of metrics and disclosure, and the regulatory structures of financial reporting."[228]

The DM assessment requires evaluating gross impacts based on likelihood and severity, not net assessment. This poses a challenge in deciding the right methodology to meet CSRD requirements. Defining the threshold for material impacts isn't specified by law, so undertakings must choose between independent methods, industry standards, or other SR bodies' standards. The complexity increases with various topics, sub-topics, and value chain levels. Deciding whether to use high-level or granular approaches is also challenging. Assessing human rights impacts under IM is tough due to varied interests, making prioritizing and defining material interests complex.

So also is the case while attempting to interprete financial materiality under such circumstances. The ESRS provides that a sustainability matter is financially material "if it triggers or could reasonably be expected to trigger material financial effects on the undertaking."[229] As against IM, it goes on to say that these matters are those "that have a material influence, *or could reasonably be expected* to have a material influence, on the undertaking's development, financial position, financial performance, cash flows, access to finance or cost of capital over the short-, medium- or long-term"[230], which said risks are directly linked to the undertaking operating within the environment. In other words, these are risks and opportunities linkable to ESG factors in the undertakings sphere of operations.

Furthermore, the materiality of these risks and opportunities are to be assessed based strictly on the likelihood of their occurrence and the size of the potential financial effects of such occurrences.[231] The challenges that undertakings are likely to face in such a situation will

[228] Supra, p.251
[229] See s.3.5, para 49
[230] Ibidem.
[231] See s.3.5, para 51

be the difficulty in identifying these actual and potential risks and opportunities along the entire value chain, since as we have already stated above while discussing impact materiality, the chain embraces both topics and sub-topics directly and indirectly attributable to the activities and decisions of the undertaking. It therefore means that at every point where the activity of the undertaking impacts ESG considerations (whether directly or indirectly), it must also pause to assess what risks and opportunities arise at such point.

Undertakings must choose between high-level or granular approaches for assessing gross impacts, similar to IM. Defining proper methodology and making presumptive calculations over uncertain circumstances is challenging. Variable factors like human behavior, government policies, and environmental changes complicate quantifying risks and opportunities, leading to potential inaccuracies and unclear reports.

Reacting to such results, Mezzanotte (2023)[232] posits that "[s]uch determinations contain factual uncertainty, namely uncertainty about facts in the world, and may be affected by observability and/or measurement problems."[233]

4.2.5. Cost of compliance

Another challenge that undertakings are likely to face is the cost of implementing the principle. By its very nature, SR is a multifaceted and complex interdisciplinary field and as such conducting an assessment as required under the CSRD demands the incorporation of many experts (accountants, bio-scientists, climatologists, auditors, lawyers etc.) in its implementation from start to finish, to facilitate efficiency. It has been argued that "the degree to which human observational capacities and resources constrain our ability to learn relevant facts."[234]This thus results to increased costs for the undertaking. Secondly, when faced with the decision of assessing impacts, expense can play a huge role in tilting the balance either towards the application of a high-level approach where the impacts are assessed primarily at the topic level (with its attendant consequences), or an assessment carried out at the level of the granularity of impacts or gross impacts, as the case may be.

---

[232] Ibid

[233] Ibid, at pp. 648 & 649.

[234] Muchmore, A. I. (2016), "Uncertainty, Complexity, and Regulatory Design", *Houston Law Review*, 53(5), 1321-1367. Available at SSRN: https://ssrn.com/abstract=2799075, p. 1338.

Another point worthy of note is that this new system brings with it the potential of a complete reorientation and change of strategy by the undertaking. With this comes the retraining of employees and investments in line with this change in style and strategy, further increasing the financial burden on the undertaking. According to de Villiers (2022), this will require the continuous training of professionals such as lawyers, accountants, analysts and financial advisers so as to enable them remain abreast with the requirements of the law.[235] ESG considerations evolve over time, leading to changing sustainability standards and new obligations for undertakings. This requires constant re-strategizing and updating reports, potentially causing inefficient linkages between identified topics and actual risks. Additionally, as materiality definitions change, the CSRD's annual assessment requirement may lead to increased conflicts and expenses, forcing undertakings to repeatedly "start from scratch" in preparing their reports.

4.2.7. Issue of stakeholder engagement

The ESRS explicitly states that an undertaking's engagement with affected stakeholders is a substantial means of implementing its due diligence process.[236] It goes further to split stakeholders into two main classes, [237]- "… individuals or groups whose interests are affected or could be affected – positively or negatively – by the undertaking's activities and its direct and indirect business relationships across its value chain;[238] and "users of sustainability statements…"[239] In respect of the latter, the term "*users*" ranges from those in the financial sector to trade unions, civil society, NGOs, governments, business partners, right to academics.[240] The ESRS further posits that "[m]ateriality assessment is informed by dialogue with affected stakeholders. The undertaking *may* engage with affected stakeholders or their representatives."[241] When read in conjunction with para 24, it can be said that while the ESRS rightfully situates the critical role of the stakeholder in the due diligence space, it goes further to reemphasize that the assessment of materiality is achieved as a result of effective engagement

---

[235] See Villiers, C. (2022). New Directions in the European Union's Regulatory Framework for Corporate Reporting, Due Diligence and Accountability: The Challenge of Complexity. *European Journal of Risk Regulation*, *13*(4), 548–566. https://doi.org/10.1017/err.2022.25, p.560

[236] See s.3.1, para 24, Appendix A, AR8 and AR9

[237] See s.3.1, para 22

[238] Ibid, para 22(a)

[239] Ibid, para 22(b)

[240] Ibidem

[241] Appendix A, AR8 (italics mine)

with affected stakeholders, it then goes ahead to tamper this requirement by making it discretionary for the undertaking to carry out such engagements.

Conducting DM assessment raises legal challenges for undertakings. They must identify and prioritize "affected" stakeholders significantly impacted by their activities across a vast value chain. Cost-effective stakeholder engagement is crucial for comprehensive feedback. Although undertakings can choose whether to engage, this must align with Article 11 TEU, mandating environmental protection in all EU policies. Failure to engage may result in civil actions by affected stakeholders. Regarding the second class of stakeholders, considering the fact that the sole aim of the CSRD is enforcing ESG reporting, and the environment constitutes a major fulcrum of the considerations, it is trite to state that in addition to individuals and groups, the environment also comes within the purview of a "stakeholder" (albeit silent), whose interests are affected by the activities of the undertaking.[242] In such cases, who can be defined as the proper party to act on behalf of the environment during the engagement process?

In addition to the vastness of this definition which increases the bar of an undertaking's ability to successfully engage with stakeholders (the wider the value chain, the wider the reach of parties that will either be affected, may need the information for a variety of reasons, or both be affected and in need of such information. Take for instance a multinational oil and gas company headquartered in the EU and operating in Africa and Oceania while transacting majorly in Asia. Engagement in this case has the tendency of raising the operational costs of the company. Another issue worthy of note is the legal consequence of the feedback received after such engagement. Are the undertakings bound to implement all the opinions of stakeholders so long as they address ESG issues? In essence, the question must be answered whether the obligation to engage is a mere formality promoting an aspiration to do good, or is actually a catalyst for receiving required data for which ESG reporting is effected.

[242] This can be seen in the CSRD's obligation to include in their management report, information clearly stating how the undertaking plans to, and steps already taken to ensure that its business model and strategy are compatible with the transition to a sustainable economy, limiting of global warming to 1,5 °C in line with the Paris Agreement and the EU's objective of achieving climate neutrality by 2050 , and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities. See, Art. 1(4)(2)(a)(iii)

4.3. Recommendations

The challenges faced in the implementation of DM can be seen as those impediments arising from the nature of the concept that may stand in the way of an undertaking successfully realizing its intention. From the foregoing, it is right to say that the challenges and potential pitfalls mentioned above clearly detract from the acceptable principles for defining Report quality, and by extension, acceptability. These include, balance, comparability, accuracy, timeliness, clarity and reliability.[243] Thus, in this sub-chapter, this work will seek to highlight ways corporations can overcome these challenges while also making recommendations for possible ways through which DM as presently structured, can be optimally implemented.

Firstly, it is my humble view of that to enable an accelerated and result-oriented implementation of the CSRD, the topics that should come mandatorily within the purview of reporting for undertakings should be enlarged to cover other areas such as labour, human rights, money laundering etc. Currently, this falls only within the ambit of climate change disclosures. In the case of other topics, the undertaking has the discretion based on an industry-context to decide what topics are material to it, and as a result, deserving of being reported on. A problem with this position is that within the industry, if the standard is low, the tendency is that the threshold for materiality will drop, thus causing the undertaking to elope reporting on matters which otherwise, are impacting on ESG considerations. To Levin[244] "… were corporate sustainability data to prove insufficient or inaccurate, this problem would necessarily distort the functioning and development of financial markets." It is also the case that there are issues that are not industry-specific but pervade all areas of endeavor. For topics like these, an undertaking should not be accorded the discretion to decide whether or not to report on it.

Secondly, the CSRD, although being a mandatory ESG reporting piece of legislation, still falls short in a lot of respects. One of these is its seeming pandering to the whims of undertakings. This can be seen in the fact that it majorly makes provisions for obligations of result- obligations are stated, but the way and manner these obligations are actualized, are left

---

[243] Global Reporting Initiative (2014), "GRI G4 Guidelines and ISO 26000: 2010 How to use the GRI G4 Guidelines and ISO 26000 in conjunction". Available at https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso-gri-26000_2014-01-28.pdf, p.10. accessed on Thursday, May 9, 2024

[244] Supra, at p.23

to the discretion of the party to whom the obligation is directed. In the present case, the major concern is that the CSRD allows corporate officials a wide bait to exercise discretion in the selection of sustainability matters, as well as in determining the information to be disclosed for each one the selected sustainability matters.[245] This has the tendency to be exploited and even abused.[246] And as pointed out by Garst, et al, the "lack of standardized methods facilitates greenwashing, that is, "disclosure of positive information about a company's environmental or social performance, without full disclosure of negative information on these dimensions, so as to create an overly positive corporate image".[247] By reducing the discretionary powers of undertakings, a lot of gains stand to be made. Firstly, it improves upon the due diligence implementation. It also creates more room for the materiality of issues to be assessed. Thirdly, it creates an avenue for innovation by undertakings[248] who, knowing that they will definitely give explanations for their decisions, will also seek out viable ways of addressing the several IROs.

The expansion of the scope of undertakings obligated to make disclosures on sustainability matters to include SMEs is highly commendable as the fact is undeniable that, though individually their impact on ESG considerations might seem small, collectively they represent a major player in ESG matters and as such, information relating to their activities is also of immense importance in the actualization of the objectives of the CSRD. To this effect, it is my humble suggestion that the disclosure requirements under the CSRD for SMEs be further expanded so as to reduce their discretionary powers and make them more accountable for their actions. In so doing, not only will a greater population of undertakings would have been compelled to report, but the quality of disclosure, and a fortiori, results obtained, greatly

---

[245] For instance, the discretion in determining thresholds of severity and likelihood of impacts and in prioritizing impacts etc. See ESRS DR n. 2, Annex I, ESRS 1 'General Requirements', Appendix A, AR 9(c).

[246] According to Biondi, et. al, op. cit, (while analyzing a particular case), "The result is that the EU Directive leaves leeway and flexibility when it comes to preparing the statement on non-financial information that the IIRC and other organizations can use to either erode or improve the original vision of EU lawmakers." p.15 However, the resulting consequence in that case, they found out was that the IIRC was "using the letter of the law to defeat its spirit." (Ibidem)

[247] Ibid, p.66

[248] It has been established that "the process of developing a sustainability reporting framework did result in some organizational change with the most significant impact being the integration of sustainability issues into the strategic planning process and an increased focus on KPIs not previously reported." See Adams, C. A., & McNicholas, P. (2007). Making a difference: Sustainability reporting, accountability and organizational change. *Accounting, Auditing, & Accountability*, *20*(3), 382–402. https://doi.org/10.1108/09513570710748553, p.399

increased. While costly for undertakings, the long-term benefits will be advantageous for all, including the undertakings. The EU can offer short-term incentives to ease compliance effects, but disclosure is essential for immediate issue resolution.

The CSRD lacks clearly defined measures for compelling compliance, hindering strict adherence. Without specific penalties for non-compliance, enforcement may become cumbersome for the EU, which must define defaults and appropriate punishments. Currently, penalties are limited to national measures, litigation compensation, and taxes. The problem with this lack of certainty on what will befall defaulters is that as in the case of a lack of standards[249] (which the Directive has cured), there will abound a plurality of punitive measures, thus counter-acting the objectives of the law. Again, because penalties are not defined, resort will often times be made to the courts. Taking the length of time required to pursue litigation to a logical conclusion, undertakings which are able to afford it will always choose the court option where they can perpetuate their non-compliance while delaying in court, and also cause the State or other interested stakeholders expend scarce resources that would ordinarily have been put to better use.

Another challenge that undertakings will find hindering their well-intended acts of compliance with the provisions of the CSRD may be attributable to the complexity, non-standardization and non-uniformity in the interpretation of concepts arising from the process of corporate disclosures. Such concepts include "sustainability", "relevance", "material matter", etc. To de Villiers (2022),[250] it has been established that "complexity is a prominent feature of reporting and that the lack of standardized or clear regulatory requirements contribute to unclear, minimalist and low-level comparability of corporate sustainability and non-financial reports, which in turn result in companies finding it difficult to report on relevant issues, with this usually leading to confusion." To enable undertakings to conduct assessments with certainty, critical issues and concepts need explicit definitions in legislation and guidelines. The

[249] The result of this laxity can be deduced from the position of Kaspersen, et al that "despite this growing interest, the quality of sustainability reports remains unsatisfactory, and sustainability reporting has attracted widespread criticism. Sustainability reports are characterized by low levels of transparency, completeness, and credibility, resulting in an inadequate discharge of accountability to civil society and fulfilment of user needs." p.73

[250] See de Villiers, C. (2022). New Directions in the European Union's Regulatory Framework for Corporate Reporting, Due Diligence and Accountability: The Challenge of Complexity. *European Journal of Risk Regulation*, *13*(4), 548–566. https://doi.org/10.1017/err.2022.25, p.557

novelty of the process leaves room for errors, placing undertakings in burdensome positions and risking avoidable costs and penalties despite well-intentioned plans.

Another factor that may hinder the accelerated implementation of the CSRD relates to the ignorance of stakeholders as regarding their right and duties. It is a statement of fact that both the CSRD and ESRS DR amplify the need for stakeholder engagement in the materiality assessment process. To Eccles & Sterafeim, "[t]he most effective reporting is as much about listening as talking, and it serves as a key platform for stakeholder engagement. It's a way to establish a conversation that considers a company's performance in a holistic way, identifies the tough trade-offs, and builds a case for innovation and the benefits it can generate. This engagement is also central to eliciting feedback on how sustainably the activities of the entity are carried out and what actions could be taken to improve upon same."[251] And as rightly stated, "… it is clear that if no stakeholders are engaged in materiality assessments, internal interests will arguably dominate these processes."[252] Hehenberger & Andreoli point out that "[d]iscussing materiality in IM involves exploring change from the perspective of the ones suffering from the problem. If we are able to understand how they perceive and value the change, we can become better at steering organizational activities in the direction of meaningful impact."[253] To Nielsen,[254] "one of the fundamental mechanisms that can hold businesses accountable for their sustainability goals is the interest and power of customers."[255]

Although the procedure for stakeholder engagement isn't specified, conducting a DM assessment clearly requires active stakeholder involvement. ESG issues center on managing environmental, societal, and operational concerns, thus highlighting the need to engage all parties directly or indirectly impacted by an entity's decisions. However, actualizing this need is challenging, as stakeholders often lack interest, awareness of their rights and duties as they relate to SR. This lack of engagement can hinder effective SR and the achievement of CSRD objectives. A means of changing this narrative is investing in the education of these

[251] Supra, p.58
[252] See Kaspersen, et al, supra, p.78
[253] Supra, p.4
[254] Supra, p.2
[255] Ibidem

stakeholders as to their rights and duties and how they can protect and exercise them.[256] Avenues such as schools, churches, mainstream media, social media, work places, etc. should all be employed in carrying out this duty.

The benefit of this is that with greater stakeholder interest, the transparency and accuracy of reports is hugely increased. Stakeholder engagement also promotes a sense of purpose in the general organization of the undertaking, and "entities are motivated to move beyond "business as usual" by contextual challenges that necessitate organized efforts at a systemic level."[257] Furthermore, there are instances where undertakings intend to engage in greenwashing but will be prevented from making false disclosures when their every steps are being monitored by actively interested stakeholders.

The EU highlighted this point when it stated that "Many companies are also dependent on human and social capital, such as the skills and motivation of employees, and the level of trust the company enjoys amongst external stakeholders.[258] The CSRD also makes provision for limited assurance of the sustainability management report, making it mandatory that at the conclusion of the preparation of the report, an auditor must endorse same as having gone through and fulfilled all requirements. Howbeit, due to the multidisciplinary nature of the subject-matter, it is reliant on so much technicalities that it is critical that experts in specific fields are employed to assist in the interpretation of concepts so as to aid efficient application. To achieve this, it is therefore important that these experts are carried along from the very start of the assessment process.

In the course of this work repeated recourse have been made to concepts like "sustainability", "sustainable development", "material" etc. and the fact that they are fluid and keep changing as circumstances change. Others like the idea of "significance" under the law, are not even given a precise definition that undertakings are to apply in their assessment, and a failure to appreciate the constantly evolving nature of these concepts can drastically alter the outcome of an assessment. This is because the data points, matrices, thresholds, etc. keep

[256] According to Villiers (supra, at p.553), "reporting and disclosure of information should allow shareholders and stakeholders to be confident about their investments or relationships with the company and to be able to hold boards to account."
[257] See Chopra et al, (supra, at p.7)
[258] See European Commission. (2019). Guidelines on reporting climate-related information. https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf, p.10

changing as the interpretation of the concepts change, and for this reason, and more, undertakings have the duty of maintaining an up-to-date data base of concepts so as to enable them put the information to functional use. The EU must also monitor evolving circumstances to periodically amend SR rules to reflect current realities.

In conclusion, this chapter sought to analyze the potential challenges that may hinder a smooth implementation of the DM principle under the CSRD. It commenced by elaborating on the importance of compliance and implementation of the law in aiding its success or failure before then listing the challenges and describing how they particularly acted as encumbrances towards undertakings. Finally, in considering the importance of incentivizing entities to take up the mantle and partner with the State, recommendations were made on things that could be effected both by the State, undertakings, and stakeholders to ensure a successful implementation of the DM principle.

5. CONCLUSIONS

This work is entitled “A critical appraisal of the EU Corporate Sustainability Reporting Directive: Unpacking the double materiality principle”. Its aim was to achieve two major goals, to wit, attempt an unbiased assessment of the recently introduced CSRD, looking at its objectives, key innovations, and how it aims to achieve these objectives. This was to be done particularly by way of an assessment through the lens of the DM principle which both the CSRD and ESRS DR have provided for as the standard for the assessment of materiality while preparing SRs by undertakings. The unpacking of this concept would involve the definition of the concept and tracing its antecedent, while also analyzing how it will be applied in the CSRD to enable a successful implementation and subsequent achievement of set objectives. In unpacking the DM principle, the work also sought to highlight the benefits and disadvantages of the incorporation of the principle in the CSRD to enable help provide a balanced argument for its incorporation. It set out to answer the questions, “How does the double materiality principle impact the effectiveness of EU CSRD sustainability reporting obligations as a means of achieving the EU 2050 Net Zero target?” The goal here was to interrogate the basis for the EU’s decision to employ the DM as its sustainability assessment tool for the purpose of sustainability reporting. A second reason was to examine how the principle will lead to the actualization of the goal of its inclusion. The work is divided into five (5) main chapters which in turn were further divided into sub-chapters.

Chapter one dealt with the introduction and rationale behind the work, stating its importance and also providing the reader with an understanding of the course the work sought to take. In addition to the background, purpose and research question, the scope, methodology, literature review, research gap and the structure which it intended to follow. The purpose of this was to place the reader in a vantage position to better understand the sustainability challenge facing the EU, that it had taken action in a particular way to tackle it (sustainability reporting), and how it intended to achieve it (the CSRD, through the instrumentality of DM)

Chapter two sought to address the issue of undertakings as a driving force for sustainable development. In achieving this, it tried to rationalize the reasons why undertakings should become a part of the global push to achieve SD and also, why it is best suited to achieve this. To achieve this, a close analysis of the concepts of SD, CSR and ESG were examined.

Their interpretations, origins, objectives etc. were assessed in a bid to rationalize why they are important at a time like this. In addition, an attempt was made to highlight differences and areas of similarity where applicable together with the advantages and disadvantages of the concepts.

In chapter three, I attempted not only to critically dissect the CSRD to shine light on its objectives and application, but also to analyze the DM concept being the requisite tool for the preparation of an SR. By so doing, I tried to find an acceptable definition for the concept, dug into history to trace its antecedent, and how find out it is meant to be applied under the CSRD. I also looked at the steps required in conducting an assessment under it and finally pointed out some opined limitations.

Chapter four sought to analyze the potential challenges that may hinder a smooth implementation of the DM under the CSRD. It commenced by elaborating on the importance of compliance and implementation of the law in aiding its success or failure then went on to outline possible challenges that undertakings may face in the course of implementing DM. It then closed with a litany of recommendations, which it is hoped if implemented, could go a long way in facilitating the successful implementation of the concept, and a fortiori, ultimately lead to the set Green Deal objectives of the EU.

To present the reader with a clearer view, DM, as seen from the perspectives of different academic scholars from different fields of endeavor vital to the sustainability discourse were presented. As expected, some were fully in support of the introduction, others kicked against the use of the concept, while others sought the application of a different approach to tackling the issue of SR. The NFRD failed to fulfill its stated objective "to increase the relevance, consistency and comparability of information disclosed by certain large undertakings and groups across the Union"[259] and as a result was replaced by the CSRD and the cure for this mischief is found in DM. Supporters of the concept provide many arguments as to why it will act as the needed tonic to boost the success of SR within the EU. In stressing the importance of the linkage between DM and SD, it has been argued that;

> We believe that double materiality allows businesses to engage investors and shareholders in ESG integration, while simultaneously contributing to sustainable

[259] See recital 21 NFRD

> development and helping to achieve the SDGs. Double materiality serves as a framework that can help a company design its sustainability practices in a way that takes the interests of all stakeholders into account and reconciles the "opposing" positions of investors (financial materiality) and other stakeholders (stakeholder materiality) in relation to sustainability.[260]

And as pointed out earlier, several other authors also argue in this line. And indeed the point is valid. Humankind having exploited the planet for so long, and to his own detriment, it is time for a reassessment of the techniques used for both production and consumption to be made. And since this will necessarily involve a tradeoff, it is only logical that the pendulum be slanted towards ESG considerations. That being the case, the natural question to be answered here is "does DM assessment requirement lead to the achievement of this? Baumüller and Sopp posit thus;

> We assume that the concept of double materiality leads to a larger quantity of information needing to be reported upon. In terms of the effect of reporting, this increase in volume implies, on the one hand, that reporting may become more complete. On the other hand, the risk of an increased "information overload" also has to be considered, especially if certain information is too specific and only of relevance to a limited number of stakeholders.[261]

Therefore, DM can be seen as a coin with two different faces providing different options for users. But having looked at the arguments in support of the principle, for the purposes of this work, the following findings will be presented which may act as limitations to the concept. First is that when one considers the lengths required for an undertaking to go, and the process of implementing the principle (for example the scale of the value chain, assumptions to be made in determining certain unpredictable issues ESG issues, the scoring of topics, and prediction of future results etc.), it can be said that just like the SDGs, DM is almost wholly aspirational. The fact remains that most of these problems are way beyond the capabilities of various undertakings and as such, irrespective of the intent or work put in, the hope of success is extremely minute. For example, reporting on climate change by an undertaking in the EU is at

[260] See Delgado-Ceballos, et al, supra, p.8
[261] Ibid, p.20

best that- a report- since the issue of GHG emissions knows no international boundaries. The second is that the concept lacks clarity which makes implementation a huge task for would-be practitioners. DM is seen as a consolidation of definition of aspects of materiality but "[w]hile this consolidation of definitions is the first step toward transparency regarding materiality decisions, it does not address the methods to assess materiality. Without consensus on these methods and how to report on them, descriptions of materiality assessment can be incomplete and vague, making it difficult for readers to evaluate and compare materiality decisions of firms."[262]

Basically, SR entails the introduction of IM into the hitherto known accounting system of financial reporting. Here, undertakings are obligated to report on IROs (it is the inclusion of impact that distinguishes between "non-financial" and "sustainability" reporting). However, since financial reporting has been long established, it is easy to report on ROs. But the problem now is the introduction of the "I" element as, despite its numerous advantages, is fraught with a lot of issues which might hinder the successful achievement of the goal for which it was intended to facilitate. This lack of clarity can work both ways in the implementation process. It can either serve as a major challenge hindering the work of an undertaking or serve the purpose of fraudulent undertaking's to manipulate the system. As stated by Nicholls and Yee, "[a]bsent clear regulation on impact reporting and disclosure—and absent any common standards or metrics—the opportunity for investors to over-claim their impact will always be a material issue."[263]

A third issue is the fact that antecedent has shown that SR, for the sake of reporting, has rarely produced positive results. Thus, if history is to be taken as a guide, then this new approach is poised to fail from the start. The reason being its inability to influence behavioral change which is a key purpose of the law. Without the law being implemented in a way that makes entities see the need both to act and how to act, then it has no functional import. To Kaspersen, et al, "if sustainability reporting mimics financial reporting without being regulated in the same manner as financial reporting, companies can largely decide which aspects of company activities are to be made visible and which aspects are to remain invisible.[264] To guard against

[262] Garst, et al., supra, p.67
[263] Ibid, p.252
[264] Supra, p.74

this, as suggested by Mähönen, J. and Palea, "[i]n short, a 'command-and-control' approach is required to address private sector free-riding behavior and mismatched resource allocation, in addition to market-led sustainable finance developments. This must include binding, mandatory public law and regulation."[265]

Another issue worth noting is that the concept is deeply flawed by its susceptibility to undue manipulation by vested interests. Already as it stands, the issue of stakeholder engagement is not firmly rooted in its application, but that then is followed by the saddening fact that even when embarked upon, key stakeholders may still end up on the losing end. As illustrated by Papafloratos, et al.[266] while reporting on the result of a research it conducted;

> We scanned the reports and looked for information and data on hazardous management. The review we carried out revealed that all chemical companies, examined in this work, refer to managing plastic waste and they all refer to zero waste and/or the circular economy. They utilize their sustainability reports to describe how they manage these topics in substantial detail, and they set specific targets, to minimize waste quantities and implement relevant projects to better manage such waste streams. However, they do not describe their approaches and practices when it comes to hazardous waste management.[267]

Again, it is worth reiterating that the DM principle still has a long way to go in incorporating the interests of a varied number of stakeholders in the process. Although the ESRS stresses its importance, by refraining from defining how this is to be done, the justice desired in the reporting process will still remain an illusion. The question now is, "was the failure of past attempts a result of the use of the wrong tools or as a consequence of the wrong use of available tools?" to answer this question, I will humbly refer to the result of a research carried out to assess the importance of stakeholder engagement (in this case, the dialogic approach to SR);

[265] Mähönen and Palea, supra, p.12
[266] See, Papafloratos, T., Markidis, I., Kotzaivazoglou, I., & Fragidis, G. (2023). Sustainability Material Topics and Materiality Analysis in the Chemical Industry. Sustainability, 15(18), 14014. https://doi.org/10.3390/su151814014
[267] Ibid, p.18

Interestingly, Generali voluntarily undertook the above initiatives to develop an effective dialogic communication (shared understanding of conflicting issues, transparency of stakeholder impact, learning-based approach to stakeholder dialogue, and managerial commitment). In doing so, Generali has by far exceeded the reporting requirements imposed by the EU Directive 2014/95/EU. After providing the non-financial information under the EU Directive 2014/95, during the following months, Generali answered to stakeholders' concerns and questions continuously, in a fluent dialogue with them, even though Generali was not legally forced by Directive 2014/95/EU to do so. Therefore, while the monologic report informed the stakeholders about the company's ESG activities, it was the dialogic exchange that allowed stakeholders to hold Generali accountable and eventually induced changes in the company's policies.[268]

This bolsters the notion that transparency, reliability, accuracy and acceptability of an SR is hugely dependent on the ability of vested parties to be made aware of accurate facts and allowed to democratically decide on those that matter most and how to go about tackling them. In this way long-term conflicts are avoided while sustained progress in engendered. As stated by Woods (2018), "[i]f we're going to make lasting and significant progress in the big challenges in our world, we need business, both the companies and the investors, to drive the solutions."[269] Achieving the EU Green Deal and Action Plan objectives requires accurately quantifying the impact of human activity on society and the environment. The need to assess impact materiality has become crucial, contrasting with the previous single materiality system focused on financial flows. The EU, via EFRAG, has adopted the DM for materiality assessment. DM helps undertakings align their activities with the Green Deal by disclosing their impacts and mitigation efforts. These disclosures are essential for promoting sustainable investment. I firmly believe that achieving the EU's net zero GHG emissions target by 2050 requires accelerating the transition. This involves collective action by public and private

[268] See, Masiero, E., Arkhipova, D., Massaro, M. & Bagnoli, C. (2019). Corporate accountability and stakeholder connectivity. A case study, Meditari Accountancy Research, 28(5). https://doi.org/10.1108/MEDAR-03-2019-0463, p.17

[269] Woods, W. (2018). "The business benefits of doing good". TED Institute. Retrieved from https://www.ted.com/talks/wendy_woods_the_business_benefits_of_doing_good. Accessed on Thursday, May 30, 2024.

sectors, full disclosure, and a shift towards green investments. The EU Climate Act enforces this ambition. But does DM present the solution to this challenge?

In conclusion, it is the submission of this work that the provision for use the DM for SR purposes under the CSRD is a major step in the right direction, to the extent that it raises the consciousness of both the undertakings and stakeholders to the ESG-related issues facing the globe. However, as a solution to the problem- which will lead to the actualization of the EU Green Deal ambitions, it is lacking in many ways and for this reason, a closer look be made towards the development of a dialogic approach in order to legitimize the interests of stakeholders in a sustainable pluralistic and democratic atmosphere.

Figures and Tables

Table 1

S/N.	NFRD	CSRD
1.	The scope of reporting is limited to only 500 undertakings	It has an increased scope of applicability.
2.	It was based on a comply or complain approach in its implementation	It has a clearly standardized mechanism regulating its implementation
3.	It does not provide for assurance of the sustainability statement	It introduces the requirement for assurance of sustainability statements by auditors
4.	Its makes no specific provision for reports to be digitalized	Sustainability statements are to be submitted only via a digital format
5.	The enforcement of its provisions was delegated to the Member States	

The table above outlines the major differences between the NFRD and the CSRD.

Table 2

S/N.	Single Materiality	Double Materiality
1.	It focuses majorly on the risks and performance of entities (inward-looking)	It widens the materiality assessment scope by incorporating ESG considerations
2.	It is based on the assessment of the financial impacts	It is both inward and outward-looking in its application
3.	It elevates the interests of financial stakeholders (investors, lenders, financiers etc.) far and above that of other stakeholders	It integrates both financial and non-financial factors
4.	It concentrates almost entirely on interests having a direct bearing on the entity	There is increased stakeholder engagement.

The table above outlines the major differences between the single and the double materiality corporate disclosure methods.

Table 3

S/N.	Advantages	Disadvantages
1.	Double Materiality assessment enhances stakeholder engagement	It is difficult to calculate the materiality of impacts
2.	It places the entities always in a position for proactive decision-making	It often lacks clarity in the definition and application of concepts
3.	The double materiality assessment broadens the scope of materiality assessment	It is mired with enormous complexity
4.	It also takes sustainability reporting beyond the sphere of only the reporting of "non-financial" matters	Its implementation is highly cost-intensive
5.		It is difficult to strike a balance between financial materiality and impact materiality while conducting an assessment.

The table above outlines the advantages and disadvantages of the double materiality principle.

Works Cited

"A European Green Deal". Available at https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-european-green-deal-investment-plan

"European Green Deal". Available at https://www.consilium.europa.eu/en/policies/green-deal/

"Materiality Background Paper for IR". Available at https://integratedreporting.ifrs.org/wp-content/uploads/2013/03/IR-Background-Paper-Materiality.pdf

A Clean Planet for all - A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy COM (2018) 773

A Practical Guide to Sustainability Reporting Using GRI and SASB Standards". Available at https://www.globalreporting.org/media/mlkjpn1i/gri-sasb-joint-publication-april-2021.pdf

Adams, C. A. and Abhayawansa, S. (2021) Conceptualizing how companies engage with the Sustainable Development Goals, working paper.

Adams, C. A., & McNicholas, P. (2007). Making a difference: Sustainability reporting, accountability and organisational change. *Accounting, Auditing, & Accountability*, *20*(3), 382–402. https://doi.org/10.1108/09513570710748553

Adams, C., Alhamood, A., He, X., Tian, J., Wang, L., & Wang, Y. (2021). The Double-Materiality Concept: Application and Issues. Global Reporting Initiative

Adams, C.A., Druckman, P.B. and Picot, R.C. (2020), "Sustainable development goal disclosure (SDGD) recommendations, published by ACCA, chartered accountants ANZ, ICAS, IFAC, IIRC and WBA". Available at: Sustainable Development Goals Disclosure (SDGD) Recommendations | IFAC

Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128 (1972)

Alessi, L., Alemanni, B., Frati, G. (2022). Financial Regulation for Sustainable Finance in the European Landscape. In: Linciano, N., Soccorso, P., Guagliano, C. (eds) Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_8

Alessi, L., Guagliano, C., Linciano, N., Soccorso, P. (2022). Sustainable Growth in the European Framework and the Role of Finance. In: Linciano, N., Soccorso, P., Guagliano, C. (eds) Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_2

Alessi, Sustainable Growth in the European Framework and the Role of Finance (A)

Al-Shaer, H., & Hussainey, K. (2022). Sustainability reporting beyond the business case and its impact on sustainability performance: UK evidence. *Journal of Environmental Management*, *311*, 114883–114883. https://doi.org/10.1016/j.jenvman.2022.114883

Bachmann, G. (2010): Verbürgte statt beliebige Nachhaltigkeit. Unpublished manuscript

Barral, V., (2012), "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm". *EJIL*, 23 (2), 377-400

Baumüller, J. and Sopp, K. (2022), "Double Materiality and the Shift from Non-Financial to European Sustainability Reporting: Review, Outlook and Implications" *Journal of Applied Accounting Research,* 23(1) 8– 28.

Baumüller, J., & Schaffhauser-Linzatti, M.-M. (2018). In search of materiality for nonfinancial information—reporting requirements of the Directive 2014/95/EU. *Sustainability Management Forum = NachhaltigkeitsManagementForum*, *26*(1-4), 101–111. https://doi.org/10.1007/s00550-018-0473-z

Bean, L. and Thomas, D. W. (1990), "The development of the judicial definition of Materiality", *The Accounting Historians Journal,* 17(2), pp. 113-123.

Bennett, M., James, P., & Klinkers, L. (Eds.). (1999). *Sustainable measures: Evaluation and reporting of environmental and social performance*. Taylor & Francis Group.

Bernstein, L. A. (1967). The Concept of Materiality. *The Accounting Review*, *42*(1), 86–95. http://www.jstor.org/stable/243978

Biles, B. (2021). Two Sides of the Same Coin: Why Companies Need CSR and ESG. Available at https://www.americanvetsgroup.com/two-sides-of-the-same-coin-why-companies-need-csr-and-esg. Accessed on Tuesday, 5th March, 2024.

Biondi, L., Dumay, J. & Monciardini, D. (2020). Using the International Integrated Reporting Framework to comply with EU Directive 2014/95/EU: can we afford another reporting façade?, *Meditari Accountancy Research,* 28(5). https://doi.org/10.1108/MEDAR-01-2020-0695

Black's Law Dictionary, 7th edn.

Blewitt, John (2014). *Understanding Sustainable Development*. Routledge. ISBN 978-0-415-70782-4

Boyle, A. (2021) Soft Law. In: Rajamani, L., & Peel, J. (eds.). The Oxford Handbook of International Environmental Law (Second edition). Oxford University Press. https://doi.org/10.1093/law/9780198849155.001.0001

Brown, J. and Dillard, J. (2013), "Critical perspectives on accounting critical accounting and communicative action: on the limits of consensual deliberation", *Critical Perspectives on Accounting*, 24(3), pp. 176-190.

Brown, J., (2015), "The Oxymoron of Sustainable Development", *BioScience*, 65(10), pp. 1027–1029, https://doi.org/10.1093/biosci/biv117

Brunsson, N. (2007). *The consequences of decision-making* (1st ed.). Oxford University Press

Calace, D. (2019). Materiality: From Accounting to Sustainability and the SDGs. In: Leal Filho, W., Azul, A., Brandli, L., Özuyar, P., Wall, T. (eds) Responsible Consumption and Production. Encyclopedia of the UN Sustainable Development Goals. Springer, Cham. https://doi.org/10.1007/978-3-319-71062-4_43-1

Câmara, P., & Morais, F. (2022). *The Palgrave Handbook of ESG and Corporate Governance* (1st ed.). Springer International Publishing AG. https://doi.org/10.1007/978-3-030-99468-6

Canton, E., Colasanti, F., Durán, J., Garrone, M., Hobza, A., Simons, W. and Vandeplas, A. (2021). The Sectoral Impact of the COVID-19 Crisis An Unprecedented and Atypical Crisis. Available at https://commission.europa.eu/system/files/2021-12/eb069_en.pdf

Cho, C. H., Laine, M., Roberts, R. W., & Rodrigue, M. (2015). Organized hypocrisy, organizational façades, and sustainability reporting. *Accounting, Organizations and Society*, *40*, 78–94. https://doi.org/10.1016/j.aos.2014.12.003

Chomová, K. (2022), "The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure". Available at [(2) (PDF) The evolution of sustainability reporting in the European Union: From voluntary to mandatory disclosure (researchgate.net)]

Chopra, S. S., Senadheera, S. S., Dissanayake, P. D., Withana, P. A., Chib, R., Rhee, J. H., & Ok, Y. S. (2024). Navigating the Challenges of Environmental, Social, and Governance (ESG) Reporting: The Path to Broader Sustainable Development. *Sustainability (Basel, Switzerland), 16*(2), 606. https://doi.org/10.3390/su16020606

Ciscar, J. C., Feyen, L., Ibarreta, D., & Soria, A. (Eds.). (2018). Climate impacts in Europe: Final report of the JRC PESETA III project. Publications Office of the European Union. (D.)

Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (OJ L,22.12.2023).

Communication from the Commission — Guidelines on non-financial reporting (methodology for reporting non-financial information) C/2017/4234

Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of Regions Action Plan: Financing Sustainable Growth (COM/2018/097)

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The Green Deal (COM(2019) 640)

Communication from the Commission, "Guidelines on non-financial reporting: Supplement on reporting climate-related information" (2019/C 209/01)

Communication of the Commission, "Guidelines on non-financial reporting (methodology for reporting non-financial information)", 2017/C 215/01

Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union (2016/C 202/01). Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL

Cooper, D.J. and Morgan, W. (2013), "Meeting the evolving corporate reporting needs of government and society: arguments for a deliberative approach to accounting rule making", Accounting and Business Research, Vol. 43 No. 4, pp. 418-441 (P)

Council of the European Union Press Release, "Environmental, social and governance (ESG) ratings: Council and Parliament reach agreement". Available at https://www.consilium.europa.eu/en/press/press-releases/2024/02/05/environmental-social-and-governance-esg-ratings-council-and-parliament-reach-agreement/

D'Eri, A., & Novembre, V. (2022). Future Perspectives on Sustainable Corporate Governance and Disclosures. In *Information as a Driver of Sustainable Finance* (pp. 243–265). Springer International Publishing. https://doi.org/10.1007/978-3-030-93768-3_9

Dănilă, A., Horga, M.G., Oprișan, O. & Stamule, T., (2022). Good Practices on ESG Reporting in the Context of the European Green Deal. *Amfiteatru Economic*, 24(61), pp. 847-860

Dathe, T., Dathe, R., Dathe, I., Helmold, M. (2022). Corporate Social Responsibility (CSR) Versus Environmental Social Governance (ESG). In: Corporate Social Responsibility (CSR), Sustainability and Environmental Social Governance (ESG). Management for Professionals. Springer, Cham. https://doi.org/10.1007/978-3-030-92357-0_9

De Cristofaro T. and Gulluscio C. (2023). In Search of Double Materiality in Non-Financial Reports: First Empirical Evidence. *Sustainability*. 15(2):924. https://doi.org/10.3390/su15020924

De Cristofaro, T., Gulluscio, C. (2019). Integrated Reporting and Materiality Process Disclosure in European Sustainability Oriented Companies. In: Idowu, S.O., Del Baldo, M. (eds) Integrated Reporting. CSR, Sustainability, Ethics & Governance. Springer, Cham. https://doi.org/10.1007/978-3-030-01719-4_14

de Villiers, C. (2022). New Directions in the European Union's Regulatory Framework for Corporate Reporting, Due Diligence and Accountability: The Challenge of Complexity. *European Journal of Risk Regulation*, *13*(4), 548–566. https://doi.org/10.1017/err.2022.25

Declaration of the United Nations Conference on the Human Environment, [From *Report of the United Nations Conference on the Human Environment*, Stockholm, June 1972.]

Deegan, C. (2002). Introduction: The legitimising effect of social and environmental disclosures – a theoretical foundation. *Accounting, Auditing, & Accountability*, *15*(3), 282–311. https://doi.org/10.1108/09513570210435852

Delgado-Ceballos, J., Ortiz-De-Mandojana, N., Antolín-López, R., & Montiel, I. (2023). Connecting the Sustainable Development Goals to firm-level sustainability and ESG factors: The need for double materiality. *BRQ Business Research Quarterly*, *26*(1), 2-10. https://doi.org/10.1177/23409444221140919

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, (29.6.2013) OJ L182/19.

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

Douglas, E. and Manning, T. (2017), "Sustainability Assessment Tools". Available at https://www.stern.nyu.edu/sites/default/files/assets/documents/Sustainability%20Assessment%20Tools_Final_04.2017.pdf

Dragomir, V. D., Dumitru, M., Chersan, I. C., Gorgan, C., & Păunescu, M. (2024). Double Materiality Disclosure as an Emerging Practice: The Assessment Process, Impacts, Risks, and Opportunities. *Accounting in Europe*, 1–38. https://doi.org/10.1080/17449480.2024.2339264

Easterly, W. (2015). The Trouble with the Sustainable Development Goals. In *Current history (1941)* (Vol. 114, Issue 775, pp. 322–324). Current History, Inc. https://doi.org/10.1525/curh.2015.114.775.322

Eccles, R. G. and Youmans, T. (2015), "Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality". Working Paper 16-023

Eccles, R. G., & Serafeim, G. (2013). The performance frontier: innovating for a sustainable strategy. In *Harvard business review* (Vol. 91, Issue 5, pp. 50–150). Harvard Business Review.

Eccles, R. G., and Krzus, M. P. (2014). *The integrated reporting movement: Meaning, momentum, motives, and materiality.* John Wiley & Sons, Incorporated. Created from tromsoub-ebooks on 2024-02-21 06:48:02.

Engler, H. (2022) '"Double materiality": New legal concept likely to play in debate over SEC's climate plan?' Available at https://www.thomsonreuters.com/en-us/posts/investigation-fraud-andrisk/sec-double-materiality-climate/

Epstein, M. J., & Rejc, B. A. (2014). *Making sustainability work: Best practices in managing and measuring corporate social, environmental, and economic impacts*. Berrett-Koehler Publishers, Incorporated.

ESG- See UNPRI. Principles for Responsible Investment. 2006. Available at

European Banking Authority (EBA) Action Plan on Sustainable Finance (2019).

European Commission (2018), "Sustainable finance: Commission's Action Plan for a greener and cleaner economy". Available at https://climate.ec.europa.eu/news-your-voice/news/sustainable-finance-commissions-action-plan-greener-and-cleaner-economy-2018-03-08_en.

European Commission (2021), “Questions and Answers: Corporate Sustainability Reporting Directive proposal- Revision: why was there a need to review the Non-Financial Reporting Directive (NFRD)? Available at https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_21_1806/QANDA_21_1806_EN.pdf

European Commission (2023), Questions and Answers on the Adoption of European Sustainability Reporting Standards. Available at https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043

European Commission, “Communication from the Commission – Guidelines on non-financial reporting: Supplement on reporting climate-related information” (2019/C 209/01).

European Commission, “Proposal for a Regulation of the European Parliament and of the Council on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities”. Available at https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2023/0314/COM_COM(2023)0314_EN.pdf

European Commission. (2019). Guidelines on reporting climate-related information. https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf

European Commission. (2023). Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (Text with EEA relevance). Retrieved December 23, 2023, from https://eur-lex.europa.eu/legal-content/EN/TXT/ HTML/?uri=OJ:L_202302772

European Financial Reporting Advisory Group (2023), Draft Implementation Guidance for Materiality Assessment

European Financial Reporting Advisory Group. Final Report. Proposals for a Relevant and Dynamic EU Sustainability Reporting Standard-Setting. Final Report. 2021. Available online:

https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/210308-report-efrag-sustainability-reporting-standard-setting_en.pdf

European Securities and Markets Authority (ESMA), "ESMA prioritises the fight against greenwashing in its new Sustainable Finance Roadmap". Available at ESMA prioritises the fight against greenwashing in its new Sustainable Finance Roadmap (europa.eu).

European Union (2014), Directive as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups: 2014/95/EU, available at: L_2014330EN.01000101.xml (europa.eu) (N)

European Union Action Plan on financing sustainable Growth 2018 (I)

Eurostat, "Losses from climate change: €145 billion in a decade". Available at https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20221024-1

Fagerlin, W. P., Shimamoto, M., & Li, R. (2019). Boundary Objects as a Learning Mechanism for Sustainable Development Goals-A Case Study of a Japanese Company in the Chemical Industry. *Sustainability*, *11*(23), 6680. https://doi.org/10.3390/su11236680

Financial Accounting Standards Board (1980). Statement of Financial Accounting Concepts (CON) No. 2, "Qualitative Characteristics of Accounting Information".

Financing a sustainable European economy', Report by the EU High level expert group on sustainable finance, 2018

Forbes online, "France Introduces Possible Jail Time As Penalty For Non-Compliance With Sustainability Disclosure". Available at https://www.forbes.com/sites/maryfoley/2023/12/21/france-introduces-possible-jail-time-as-penalty-for-non-compliance-with-sustainability-disclosure/

Förster, P. (2023). The Double Materiality Principle (Article 19a NFRD) as Proposed by the Corporate Sustainability Reporting Directive: An Effective Concept to Tackle Green Washing?

In *European Yearbook of International Economic Law 2022* (pp. 345–364). Springer International Publishing. https://doi.org/10.1007/8165_2022_90

Friedman, M. (2007). The Social Responsibility of Business Is to Increase Its Profits. In: Zimmerli, W.C., Holzinger, M., Richter, K. (eds) Corporate Ethics and Corporate Governance. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-540-70818-6_14

Galbreath, J. (2012). “ESG in Focus: The Australian Evidence.” *Journal of Business Ethics,* 10th September, pp. 529-541.

Garst, J., Maas, K., & Suijs, J. (2022). Materiality Assessment Is an Art, Not a Science: Selecting ESG Topics for Sustainability Reports. *California Management Review*, *65*(1), 64–90. https://doi.org/10.1177/00081256221120692

GHG emissions in the EU- Statistics and facts. Available at https://www.statista.com/topics/4958/emissions-in-the-european-union/

Global Reporting Initiative (2014), “GRI G4 Guidelines and ISO 26000: 2010 How to use the GRI G4 Guidelines and ISO 26000 in conjunction”. Available at https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso-gri-26000_2014-01-28.pdf

Gole, I., Francu, L.G., Balu, O., Balu, P.E. (2021). The Transition of Corporate Social Responsibility to Environmental, Social, and Governance. In: R. Pamfilie, V. Dinu, L. Tăchiciu, D. Pleșea, C. Vasiliu eds. 2021. 7th BASIQ International Conference on New Trends in Sustainable Business and Consumption. Foggia, Italy, 3-5 June 2021. Bucharest: ASE, pp. 52-58 DOI: 10.24818/BASIQ/2021/07/006.

Goodsell, D. (2021), “Values alignment is only the tip of the iceberg for ESG: Six insights from the 2021 Natixis Global Survey of Individual Investors”. Available at https://www.im.natixis.com/sg/research/esg-insights-from-2021-individual-investors-survey.

Goodsell, D. (2021). “ESG Investing: Everyone’s on the bandwagon. But where’s it actually going? *2021 ESG Investor Insight Report.* Available at https://www.im.natixis.com/en-institutional/insights/esg-investing-survey-insight-report.

GRI G4 Guidelines and ISO 26000:2010 How to use the GRI G4 Guidelines and ISO 26000 in conjunction (S)

GRI Standards, GRI 3: Material Topics 2021

GRI Sustainability Reporting Guidelines 3.1, p.3. Available at https://www.mas-business.com/docs/G3.1-Guidelines-Incl-Technical-Protocol.pdf

Grober, U. (2007), “Deep roots – A conceptual history of ‘sustainable development (Nachhaltigkeit)”. Available at https://www.ssoar.info/ssoar/bitstream/handle/document/11077/ssoar-2007-grober-deep_roots_-_a_conceptual.pdf?sequence=

Hanson, L. L. (2018). Wicked Problems and Sustainable Development. In *Encyclopedia of Sustainability in Higher Education* (pp. 2090–2098). Springer International Publishing. https://doi.org/10.1007/978-3-030-11352-0_522

Hehenberger, L., & Andreoli, C. (2024). Impact measurement and the conflicted nature of materiality decisions. *Current Opinion in Environmental Sustainability*, *68*. https://doi.org/10.1016/j.cosust.2024.101436

Helfaya, A., Morris, R. & Aboud, A. (2023). Investigating the Factors That Determine the ESG Disclosure Practices in Europe. *Sustainability*, 15(6), https://doi.org/10.3390/su15065508

Henderson, K., & Loreau, M. (2023). A model of Sustainable Development Goals: Challenges and opportunities in promoting human well-being and environmental sustainability. *Ecological Modelling*, *475*, 110164. https://doi.org/10.1016/j.ecolmodel.2022.110164

Here's why companies should assess double materiality | GreenBiz (R)

Herremans, I. (2020). *Sustainability performance and reporting*. Business Expert Press.

Herzig, C., & Schaltegger, S. (2006). Corporate Sustainability Reporting. An Overview. In *Sustainability Accounting and Reporting* (pp. 301–324). Springer Netherlands. https://doi.org/10.1007/978-1-4020-4974-3_13

Holmes, O. W. (1881), "The common law." In: Gutenberg Project version: [308] Lecture IX. Contract.- III. Void and voidable.

https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/.

https://corporatefinanceinstitute.com/resources/esg/greenwashing/.

https://dictionary.cambridge.org/dictionary/english/short-termism

https://sdgs.un.org/goals

https://www.ifrs.org/news-and-events/news/2018/10/iasb-clarifies-its-definition-of-material/

https://www.manifestclimate.com/blog/what-is-single-and-double-materiality/

https://www.merriam-webster.com/dictionary/goal

https://www.un.org/en/conferences/environment/rio1992.

https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs)

Hummel, K. & Jobst, D. (2024). "An Overview of Corporate Sustainability Reporting Legislation in the European Union", *Accounting in Europe*, DOI: 10.1080/17449480.2024.2312145

Idowu, S. O. and Del Baldo, M. (Eds.) (2019), *Integrated Reporting: Antecedents and Perspectives for Organizations and Stakeholders.* Available at https://link.springer.com/chapter/10.1007/978-3-030-01719-4_14

In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).

Information as a Driver of Sustainable Finance (C)

Intergovernmental Panel on Climate Change [IPCC] (2014). IPCC fifth assessment synthesis report.

ISO 26000:2010 "Guidance on social responsibility"

Jones, P., Comfort, D. and Hillier, D. (2016), "Managing materiality: a preliminary examination of the adoption of the new GRI G4 guidelines on materiality within the business community", *Journal of Public Affairs*, Vol. 16, No.3, pp.222-230.

Jonsdottir, B., Sigurjonsson, T. O., Johannsdottir, L. and Wendt, S. (2022). "Barriers to Using ESG Data for Investment Decisions" *Sustainability* 14, no. 9: 5157. https://doi.org/10.3390/su14095157

Jørgensen, S. Mjøs, A. and Pedersen, L. J. T. (2022), "Sustainability reporting and approaches to materiality: tensions and potential resolutions", Sustainability Accounting, Management and Policy Journal, Vol. 13 No. 2, pp. 341-361. Available at: https://doi.org/10.1108/SAMPJ-01-2021-0009

Kardon v. National Gypsum Co. [73 F.Supp. 798 (E.D.Pa. 1947

Karwowski, M., & Raulinajtys-Grzybek, M. (2021). The application of corporate social responsibility (CSR) actions for mitigation of environmental, social, corporate governance (ESG) and reputational risk in integrated reports. *Corporate Social-Responsibility and Environmental Management*, *28*(4), 1270–1284. Available at https://doi.org/10.1002/csr.2137.

Kaspersen, M & Johansen, T. R. (2023). Stakeholder Engagement and Materiality Assessments in Sustainability Reporting. In Kacanski, S., Kabderian Dreyer, J., & Sund, K. J. (eds,), *Measuring Sustainability and CSR: From Reporting to Decision-Making* (Vol. 64, pp. 73–83). Springer International Publishing AG. https://doi.org/10.1007/978-3-031-26959-2_8

Kaźmierczak, M. (2022). “A literature review on the difference between CSR and ESG.” *Scientific Papers of Silesian University of Technology. Organization and Management Series*.

Khan, M., Serafeim, G. and Yoon, A. (2016), “Corporate sustainability: First evidence on materiality”, The Accounting Review, Vol. 91, No.6, pp.1697-1724.

La Torre, M., Sabelfeld, S., Blomkvist, M. & Dumay, J. (2020). Rebuilding trust: sustainability and non-financial reporting and the European Union regulation. *Meditari Accountancy Research,* 28(5). https://doi.org/10.1108/MEDAR-06-2020-0914

Leach, M., Scoones, I. and Stirling, A. (2010), Dynamic Sustainabilities: Technology, Environment, Social Justice, Earthscan, London.

Levin, K., Cashore, B., Bernstein, S., & Auld, G. (2012). Overcoming the tragedy of super wicked problems: constraining our future selves to ameliorate global climate change. *Policy Sciences*, *45*(2), 123–152. https://doi.org/10.1007/s11077-012-9151-0

Levin, S., Reeves, M. & Levina, A. (2020). The Social Responsibility of Business Is to Increase Its Profits. In: Brill, H., Kell, G., & Rasche, A. (eds.) *Sustainable Investing: A Path to a New Horizon*. Routledge Publishers.

Linciano, N., Soccorso, P., Guagliano, C. (eds) (2022). *Information as a Driver of Sustainable Finance. Palgrave Studies in Impact Finance.* Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-93768-3_2.

Linh, N. V., Hung, D. N. & Binh, T. Q. (2022) Relationship between sustainability reporting and firm’s value: Evidence from Vietnam, Cogent Business & Management, 9:1, DOI: 10.1080/23311975.2022.2082014

Lyon, T. P., & Maxwell, J. W. (2011). Greenwash: Corporate Environmental Disclosure under Threat of Audit. *Journal of Economics & Management Strategy*, *20*(1), 3–41. https://doi.org/10.1111/j.1530-9134.2010.00282.x

Mähönen, J. and Palea, V. (2024) "Analyzing Double Materiality through the Lens of the European Political Constitution: Implications for Interoperability and Standards-Setting", *University of Oslo Faculty of Law Research Paper* No. 2024-05, *Nordic & European Company Law Working Paper* No. 24-03, Available at SSRN: https://ssrn.com/abstract=4731089

Mähönen, J. and Palea, V. (2024). "Double materiality and the European political constitution". Available at https://www.jus.uio.no/english/research/areas/sustainabilitylaw/blog/2024/double-materiality-european.html

Mähönen, J., & Cullen, J. T. (2019). *Taming Unsustainable Finance: The Perils of Modern Risk Management*. Cambridge University Press.

Masiero, E., Arkhipova, D., Massaro, M. & Bagnoli, C. (2019). Corporate accountability and stakeholder connectivity. A case study, *Meditari Accountancy Research,* 28(5). https://doi.org/10.1108/MEDAR-03-2019-0463

Mezzanotte, F. E. (2023) "Corporate sustainability reporting: double materiality, impacts, and legal risk", *Journal of Corporate Law Studies*, 23(2), 633-663, DOI: 10.1080/14735970.2024.2319058

Mezzanotte, F. E. (2024), "Examining the Reasons for Impact Materiality in EU Corporate Sustainability Reporting", *European Business Law Review* (Forthcoming), Available at SSRN: https://ssrn.com/abstract=4637172

Muchmore, A. I. (2016), "Uncertainty, Complexity, and Regulatory Design", *Houston Law Review*, 53(5), 1321-1367. Available at SSRN: https://ssrn.com/abstract=2799075

Nancu, D. & Mihai, C. (2021). Trading Companies in Romania. Ovidius University Annals, Economic Sciences Series, XXI(2/2021), pp.428 -435.

Neto, M A. (2024), "Why ESG is failing sustainable development". Available at https://sdgfinance.undp.org/news/why-esg-failing-sustainable-development

Nicholls, A., Yee, E. (2022). Enhancing Impact Materiality: Lessons from Evidenced-Based Policy Making. In: Hazenberg, R., Paterson-Young, C. (eds) Social Impact Measurement for a Sustainable Future. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-83152-3_13

Nielsen, C. (2023). ESG Reporting and Metrics: From Double Materiality to Key Performance Indicators. *Sustainability*, *15*(24), 16844. https://doi.org/10.3390/su152416844

Non-financial Reporting Directive Implementation Appraisal briefing at https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf

O'Dwyer, B. (2002). Managerial perceptions of corporate social disclosure: an Irish story. *Accounting, Auditing & Accountability Journal*, 15(3), pp. 406-36.

Oh, W. Y., Chang, Y. K. and Martynov, A. (2011), "The effect of ownership structure on Corporate Social Responsibility: Empirical evidence from Korea", Journal of Business Ethics, Vol. 104, No. 2, pp. 283-297.

Palmiter, A. (2021) *Capitalism, Heal Thyself*. Available at SSRN 3950395.

Papafloratos, T., Markidis, I., Kotzaivazoglou, I., & Fragidis, G. (2023). Sustainability Material Topics and Materiality Analysis in the Chemical Industry. *Sustainability*, *15*(18), 14014. https://doi.org/10.3390/su151814014

Pieraccini, M., & Novitz, T. (2020). *Legal perspectives on sustainability*. Bristol University Press.

Puroila, J., & Mäkelä, H. (2019). Matter of opinion : Exploring the socio-political nature of materiality disclosures in sustainability reporting. *Accounting, Auditing and Accountability Journal*, *32*(4), 1043-1072. https://doi.org/10.1108/AAAJ-11-2016-2788 (Q)

Puroila, J., & Mäkelä, H. (2019). Matter of opinion: Exploring the socio-political nature of materiality disclosures in sustainability reporting. *Accounting, Auditing and Accountability Journal*, *32*(4), 1043-1072. https://doi.org/10.1108/AAAJ-11-2016-2788

Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Articles 3, 8, 9, 10, 11, 16, 17)

Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999

Renewed sustainable finance strategy and implementation of the action plan on financing sustainable growth. Available at https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth_en

Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) Annex I Rio Declaration on Environment and Development. Available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.

Report of the World Commission on Environment and Development: Our Common Future. Available at https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf.

Report on the Commission Green Paper on Promoting a European framework for Corporate Social Responsibility
(COM(2001) 366 – C5-0161/2002 – 2002/2069(COS))

Richardson, B. J. (2009). Keeping ethical investment ethical: Regulatory issues for investing for sustainability. *Journal of Business Ethics*, 87, 555–572

Roadmap for a Sustainable Financial System (B)

Rosenbloom, D., Markard, J., Geels, F. W., & Fuenfschilling, L. (2020). Why carbon pricing is not sufficient to mitigate climate change—And how "sustainability transition policy" can help. Proceedings of the National Academy of Science of the United States of America, 117 (16), 8664–8668. https://doi. org/10.1073/pnas.2004093117 (E.)

Salis H., Jansen, D., Roeder, R. W., Straub, C. & Coker, A. (2023), Sustainability Reporting Under the CSRD for EU and non-EU Companies. Available at https://www.willkie.com/-/media/files/publications/2023/10/sustainability_reporting_under_the_csrd_for_eu_and_non-eu_companies.pdf

Securities and Markets Stakeholder Group "Advice to ESMA: SMSG Advice to ESMA on the ESAs' Call for Evidence on Greenwashing" 18 January 2023, ESMA22-106-4384

Songini, L., Pistoni, A., Baret, P., & Kunc, M. H. (Eds.). (2020). *Non-financial disclosure and integrated reporting: Practices and critical issues*. Emerald Publishing Limited.

Spence, C. (2007). Social and environmental reporting and hegemonic discourse. *Accounting, Auditing, & Accountability*, *20*(6), 855–882. https://doi.org/10.1108/09513570710830272

Statista, "Global ESG ETF assets from 2006 to November 2023". Available at https://www.statista.com/statistics/1297487/assets-of-esg-etfs-worldwide/.

Stolowy, H., & Paugam, L. (2023). Sustainability Reporting: Is Convergence Possible? *Accounting in Europe*, *20*(2), 139–165. https://doi.org/10.1080/17449480.2023.2189016

Strine, Leo E., Jr, Smith, K. M., & Steel, R. S. (2021). Caremark and ESG, Perfect Together: A Practical Approach to Implementing an Integrated, Efficient, and Effective Caremark and EESG Strategy. *Iowa Law Review*, *106*(4), 1885–1922.

Stubbs, W., & Higgins, C. (2014). Integrated Reporting and internal mechanisms of change. *Accounting, Auditing & Accountability Journal, 27*(7), 1068–1089. https://doi.org/10.1108/AAAJ-03-2013-1279

Tager, M. (2021)'"Double materiality": what is it and why does it matter?' available at https://www.lse.ac.uk/granthaminstitute/news/doublemateriality-what-is-it-and-why-does-it-matter/

The European Green Deal- Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2019) 640. Available at https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF

The United Nations Sustainable Development Group (2023), The Sustainable Development Goals Report (Special Edition). Available at https://sdgs.un.org/sites/default/files/2023-07/The-Sustainable-Development-Goals-Report-2023_0.pdf

Transforming our World: The 2030 Agenda for Sustainable Development" (A/RES/70/1). Available at https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf.

Tsagas, G., & Villiers, C. (2020). Why "Less is More" in Non-Financial Reporting Initiatives: Concrete Steps Towards Supporting Sustainability. *Accounting, Economics, and Law*, *10*(2). https://doi.org/10.1515/ael-2018-0045

UN (2000), General Assembly resolution 55/2, “United Nations Millenium Declaration”. Available at https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-millennium-declaration

UNESCO, (2012), “Education for Sustainable Development in Action”. Available at https://unesdoc.unesco.org/ark:/48223/pf0000216383.

United Nations (1972). Stockholm Declaration of the UN Conference on the Human Environment. http://www.un-documents.net/unchedec.htm.

United Nations Industrial Development Organization (2020). What is CSR? Retrieved from https://www.unido.org/our-focus/advancing-economic-competitiveness/competitivetrade-capacities-and-corporate-responsibility/corporate-social-responsibility-marketintegration/what-csr, 29.02.2024

UNPRI Annual Report 2021. Available at Enhance our global footprint | PRI Web Page | PRI (unpri.org)

Vasseur, L & Baker, J. (2022), “Sustainability Versus Sustainable Development: What’s the difference?”. Available at https://brocku.ca/unesco-chair/2022/01/10/sustainability-versus-sustainable-development-whats-the-difference/

Walker, J. (2020). Neoliberalism, Environmentalism, and the Crisis of the 1970s. In: More Heat than Life: The Tangled Roots of Ecology, Energy, and Economics. Palgrave Macmillan, Singapore. https://doi.org/10.1007/978-981-15-3936-7_1

Woods, W. (2018). “The business benefits of doing good”. TED Institute. Retrieved from https://www.ted.com/talks/wendy_woods_the_business_benefits_of_doing_good

World Bank Group (*Who cares wins: connecting financial markets to a changing world (English).* Washington, D.C.: World Bank Group. http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world

Wynn, M., & Jones, P. (2019). *The sustainable development goals: Industry sector approaches*. Taylor & Francis Group.

Zhenmin, L. and Espinosa, P. (2019), "Tackling climate change to accelerate sustainable development", *Nature Climate Change*, 9, 493–496. www.nature.com/natureclimatec,ange.

Zipse, O., Hornegger, J., Becker, T., Beckmann, M., Bengsch, M., Feige, I., & Schober, M. (Eds.). (2024). *Road to net zero: Strategic pathways for sustainability-driven business transformation*. Springer International Publishing AG.