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“Analysis of the European Non-Financial Information Disclosure conformity for the fiscal year 2016 with Directive 2014/95/EU guidelines.”

Focus on the non-financial information disclosure of European companies,
specifically European PIEs from: Czech Republic, Ireland, Italy, Lithuania,
Luxembourg, Malta, Netherlands, Poland and Sweden.

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“Cotidie damnatur qui semper timet”

[Publius Syrus, Sententiae]

Table of Contents

- Abstract..... 4**
- Directive 2014/95/EU Background..... 6**
 - 2.1. Non-financial information before Directive 2014/95/EU..... 9**
 - 2.2 Member States and their approaches to Directive 2014/95/EU 10**
- Regulations and Relevant Guidelines..... 12**
 - 3.1. Directive 2014/95/EU..... 13**
 - 3.1.1 Disclosure subjects and methodology set by the Directive14
 - 3.1.2 Disclosure requirements set by Directive 2014/95/EU18
 - 3.1.3 Disclosure exceptions and enforcement policies in the Directive 2014/94/EU21
- Methodology 23**
 - 4.1 Database formation process 24**
 - 4.2 From the database to the population and its random sample26**
 - 4.3 Random sample composition..... 28**
 - 4.3.1 How to choose the Member States for the random sample?29
 - 4.3.2 Methodology used to select the entities for each Member States33
- Results 38**
 - 5.1 Czech Republic 39**
 - 5.1.1 Legislation.....40
 - 5.1.2 2016 Non-Financial Information disclosure analysis.....44
 - 5.2 Ireland 50**
 - 5.2.1 Legislation.....52
 - 5.2.2 2016 Non-Financial Information disclosure analysis.....56
 - 5.3 Italy..... 62**
 - 5.3.1 Legislation.....63
 - 5.3.2 2016 Non-Financial Information disclosure analysis.....70
 - 5.4 Lithuania 78**
 - 5.4.1 Legislation.....80
 - 5.4.2 2016 Non-Financial Information disclosure analysis.....85
 - 5.5 Luxembourg..... 91**
 - 5.5.1 Legislation.....93
 - 5.5.2 2016 Non-Financial Information disclosure analysis.....101
 - 5.6 Malta..... 107**
 - 5.6.1 Legislation.....109
 - 5.6.2 2016 Non-Financial Information disclosure analysis.....112
 - 5.7 Netherlands..... 119**
 - 5.7.1 Legislation.....120
 - 5.7.2 2016 Non-Financial Information disclosure analysis.....124
 - 5.8 Poland 130**
 - 5.8.1 Legislation.....131
 - 5.8.2 2016 Non-Financial Information disclosure analysis.....136
 - 5.9 Sweden..... 143**
 - 5.9.1 Legislation.....146
 - 5.9.2 2016 Non-Financial Information disclosure analysis.....150
- Conclusion 157**
- Annex 163**

I. The strategy behind Orbis selection	163
II. Notice of explanatory Statement for the Dutch Decree dated March 24th, 2017	165
Abbreviations and tables	174
5.10 Abbreviations.....	174
5.11 Tables	174
5.11.1 Tables A.....	174
5.11.2 Table B.....	175
.....	175
Bibliography	178
Website Citations.....	181

Abstract

Purpose – The objective of this dissertation is to understand the degree of conformity between the non-financial information disclosure of European PIEs, prior to the Directive 2014/95/EU, and the guidelines set by Directive 2014/95/EU.

PIEs were randomly selected from the following European Union Member States: Czech Republic, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland and Sweden.

Design – The design of this dissertation follows a simple waterfall approach.

First, it discusses the theoretical part, which will set the basic knowledge to understand the analytical part. Second, it presents the methodology used to create the random sample of PIEs that subsequently will be used to compose the database entities, which are examined in the third part. Third, this last part is the longest one and it concretely exhibits how PIEs in different nations are conformed to Directive 2014/95/EU guidelines. To perform this analysis, this part unites the theoretical conclusion of the first part and the database constructed in the second part.

Findings – Findings in this dissertation are, for the majority, connected to the analytical section and will communicate which nations are the best and which are the worst aligned with Directive 2014/95/EU guidelines. PIEs' non-financial information analysed referred to the 2016 fiscal year. This section points out that countries like: Sweden, Netherlands, Luxembourg and Czech Republic have the most complete 2016 NFI disclosure, while they condemn Malta and Poland.

Research limitations – Main challenges encountered during the research and elaboration of this dissertation were the different methodologies, tactics and focal points in the disclosure of non-financial information by PIEs from the same or from different Member States. These differences created a big challenge for the interpretation of the data obtained.

The next challenge resulted by the disclosure freedom granted by Directive 2014/95/EU guidelines. This gives scholars, on one hand, greater autonomy to interpret the conformity degree of non-financial information in the various disclosures. On the other hand, it leaves scholars a chance to incur in a lack of scientific observations methodology due to the non-homologation of the database components.

Value – The contribution brought forward by this dissertation is to convey attention to the Corporate Social Responsibility disclosure evolution till the fiscal year 2016. Furthermore, this

analysis will allow other scholars to continue the study, extending it to the period after the Directive's implementation. This will permit stakeholders to be informed and to create common standards during the CSR disclosure analysis for their corporate interests.

Keywords – Non-Financial Information disclosure, Directive 2014/95/EU, Corporate Social Responsibility, European PIEs.

Directive 2014/95/EU Background

With the beginning of 2017, as regulated by Directive 2014/95/EU, European public undertakings would experience big changes, regarding their non-financial information (NFI) disclosure requirements and policies. To report the precise indication of Directive 2014/95/EU, it must be cited Article 4. Specifically, the part where it is cited:

“Member States shall provide that the provisions referred to in the first subparagraph are to apply to all undertakings within the scope of Article 1 for the financial year starting on 1 January 2017 or during the calendar year 2017.”¹

This chapter will thus present Directive 2014/94/EU background intended changes brought forward at the European level. It will follow an excursus of what the European corporate situation was before Directive 2014/95/EU. Finally, it will be explained which common steps European Member States will have to do to align their legislation with Directive 2014/95/EU requirements.

The focal point of Directive 2014/95/EU is to force European Union Member States to create mandatory legislations to constrain certain large undertakings to disclose NFI, as precisely summarised by Recital 5.

“Recital 5: It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public and authorities by undertakings across the Union. The undertakings subject to this Directive should give a fair and comprehensive view of their policies, outcomes, and risks.”²

The acronym NFI stands for non-financial information, otherwise known as “Corporate Social Responsibility Information”, as specified by D. G. Szabo and dr. jur. K. E. Sorensen (2005)³. This set of information was defined by the Federation of European Accountants as: “*all the information disclosed by companies that cannot be explained with a currency*”⁴. More precisely, in this dissertation, NFI will be referred as a set of information coming from: environmental matters, social and employee-related matters, respect for human rights, anti-corruption and

¹ Article 4 of Directive 2014/95/EU.

² Recital 5 of Directive 2014/95/EU.

³ D. G. Szabó, and K. E. Sørensen, “*New EU directive on the disclosure of non-financial information (CSR)*”, Nordic & European Company Law Working Paper No. 15-01, (2015), p. 1.

⁴ Federation of European Accountants, “*EU Directive on disclosure of non-financial and diversity information*”, Position paper, (2016), p.10.

bribery matters, as mentioned in the recital 7 of Directive 2014/95/EU⁵ of the European Parliament and Council.

*“Recital 7: Where undertakings are required to prepare a non-financial statement, that statement should contain, as regards environmental matters, details of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution. As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities. With regard to human rights, anti-corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery.”*⁶

Directive 2014/95/EU amends Directive 2013/34/EU, issued by the European Parliament and Council, regarding “non-financial and diversity information by certain large undertakings and groups”⁷. This new Directive has raised positive and negative academic opinions, as reported by J. Witkowska (2016).

She has affirmed that “Arguments “for” fall within the general scope of the social responsibility philosophy, while the arguments “against” are quite interesting.”⁸ These arguments against were then explained by J. Witkowska, citing a fellow scholar Naconieczna (2008), who has affirmed that: “NFI disclosure must keep its essential voluntary characteristics”. Naconieczna supported this statement, explaining that: "

*“They claim that the information covered by reports is so extensive that it cannot be verified by stakeholders, who either do not read the reports or cannot find the data they seek; there is no feedback mechanism; minor issues are reported while leaving out key questions or matters inconvenient to a company; no reliable information can be found about a company's mistakes or errors as they report only success stories; and since their content cannot be verified, it becomes a marketing tool. A poorly drafted report may do more harm than good to a company.”*⁹

It is important to remember that in the past, European legislators have always disclosed CSR regulations as “soft laws”, which have the peculiarity to use: communications, codes of conducts,

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=IT>

⁶ Recital 7 Directive 2014/95/EU.

⁷ Directive 2013/34/EU Title.

⁸ J. Witkowska, "Corporate Social Responsibility: Selected Theoretical and Empirical Aspects.", Comparative Economic Research 19.1, (2016), p.37.

⁹ J. Naconieczna, “Społeczna odpowiedzialność przedsiębiorstw międzynarodowych”, Difin, Warsaw, (2008), pp. 119-120.

guidelines and recommendations as legislation tools. To give “soft law” a more complete definition it can be cited L. Senden, who in her article stated that:

“I propose the following definition of soft law: Rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain - indirect - legal effects, and that are aimed at and may produce practical effects.”¹⁰

The freedom obtained by soft law regulations, regarding NFI disclosure, let undertakings consider this information as tools that will enable them to attract more stakeholders. As a matter of fact, European undertakings, prior to Directive 2014/95/EU disclosure, used NFI disclosure as a tool to increase customer loyalty and build reputation thanks to the greatest transparency (P. S. Bronn and A. B. Vrioni, 2015)¹¹.

With the new Directive all the undertakings, which match the characteristics of employees’ number and total capital listed by Directive 2014/95/EU¹², must disclose NFI. This new obligation can positively or negatively influence businesses. In fact, undertakings, which were already used to disclose CSR data are forecasted to incur less cost and resources for implementation. Instead undertakings that did not disclose non-financial information prior to Directive 2014/95/EU, will possibly incur additional expenses, resources usage and disclosure structure changes to render their disclosure aligned with Directive 2014/95/EU requirements.

Directive 2014/95/EU is part of a greater plan, which will not only influence European undertakings, but industries and firms worldwide. This plan was proposed during the United Nations Rio+20¹³ Conference on Sustainable Development that took place in Rio de Janeiro, Brazil on 20-22 June 2012. This conference resulted in a communitarian outcome more precisely in a document, which listed simple and pragmatic guidelines to carry out common standards for sustainable development. Specifically, as cited in the Recital 11 of Directive 2014/95/EU:

“Recital 11: Paragraph 47 of the outcome document of the United Nations Rio+20 conference, entitled ‘The Future We Want’, recognises the importance of corporate sustainability reporting and encourages undertakings, where appropriate, to consider integrating sustainability information into their reporting cycle. It also encourages

¹⁰ L. Senden, “SOFT LAW, SELF-REGULATION AND CO-REGULATION IN EUROPEAN LAW: Where Do They Meet?”, Electronic Journal of Comparative Law, vol. 9.1 (January 2005), p.23.

¹¹P. S. Bronn and A. B. Vrioni, "Corporate social responsibility and cause-related marketing: an overview", International journal of Advertising 20.2, (2001), pp. 207-222.

¹² Reference to Accounting Directive 2013/34/EU.

¹³ <https://sustainabledevelopment.un.org/rio20>

industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice, and facilitate action for the integration of financial and non-financial information, taking into account experiences from already existing frameworks.”¹⁴

The end goal of these European and International policies on CSR is to fulfil by 2020 an incentive and reward policy to award undertakings, which have heavily invested in resource efficiency and financial-transparent strategies.

2.1. Non-financial information before Directive 2014/95/EU

Before Directive 2014/95/EU, the disclosure of non-financial information was a voluntary action that has helped undertakings express greater accountability and transparency. For this reason, NFI started to become a trend that grew rapidly over the last few decades to support and assist the undertakings, which wanted to contrast and differentiate their businesses from aggressive profit oriented businesses. In addition, it was observed starting from early 2000s, that shareholders and investors were always more interested and attracted by “sustainable businesses” that care about environmental and social-employees’ matters for their long-term investments (J. Elkington, 1997)¹⁵.

Till late 2014 the disclosure of NFI was considered voluntary and therefore restricted by soft regulations.

The evolutionary process, started in 2001, led NFI disclosures to be regulated by mandatory laws. In that year, the European Union Commission published the “Green Paper”, which defines CSR as: “*CSR is an integration by the undertakings, on a voluntary basis, of the social and ecological concerns in their commercial operations and in their relations with the parties involved*”¹⁶. Regrettably, voluntary NFI disclosure has become a major political issue only after the 2008 financial crisis, when the disclosure of CSR was finally used by undertakings as a tool to regain investors’ trust (N. Yelkikalan and C. Kose, 2012)¹⁷. The authors continued to explain that companies had to wait a long period to fully regained their stakeholders’ lost trust, which was

¹⁴ Recital 11 Directive 2014/95/EU.

¹⁵ J. Elkington, “*Cannibals with forks*”, The triple bottom line of 21st century, (1997).

¹⁶ Commission of the European Communities, “*GREEN PAPER: Promoting a European framework for Corporate Social Responsibility*”, DOC/01/9, Brussels, (07.18.2001).

¹⁷ N. Yelkikalan and C. Köse. “*The effects of the financial crisis on corporate social responsibility.*”, International Journal of Business and Social Science 3.3, (2012).

recovered only after great challenges. These challenges brought undertakings to disclose better-quality and comprehensive management reports to be as transparent as possible.

The forecasted target for NFI disclosure evolution process was the development, for the European corporate environment, of CRS mandatory policies at a national and European level. This target was supported by European institutions with the publication of Directive 2014/95/EU to boost not only European community social benefits, but also to improve companies' environmental and social sustainable competitiveness, with respect to worldwide aggressive businesses.

2.2 Member States and their approaches to Directive 2014/95/EU

November 15th, 2014 represents a day of changes for European Union Member States. In fact, after the publication of Directive 2014/95/EU on the Official Journal of the European Union, Member States understood that they were going to need a legislative change in their Civil Codes. This was meant to assure that their national undertakings would be able to adapt and be ready to disclose non-financial information in the most suitable way possible with respect to the new Directive. As a matter of fact, after the amendment of Directive 2013/34/EU with Directive 2014/95/EU, European Member States went through a harmonisation period to prepare their national legislation with the new Directive's requirements.

It is important to highlight that during the preparation of the Directive 2014/95/EU, as mentioned by author D. Kinderman: *“Directive has faced stiff resistance from the business community, and attempts were made to weaken it to the point of insignificance. While in the end, a compromise was reached, the proposal was weakened substantially during the negotiations. While the Directive's supporters can rejoice that the reform was not killed, one may still be inclined to view these developments as a testament to the fragility, not the strength of politics.”*¹⁸.

The author goes on to highlight the fact that, even with the initial resistance of the business community, Directive 2014/95/EU was able to finally get the consensus once disclosed.

¹⁸ D. Kinderman, *“The Struggle over the EU Non-Financial Disclosure Directive”*, WSI-Mitteilungen Issue 06/2015, p. 11.

As soon as Directive 2014/95/EU was published the European Union Member States started a harmonisation process, because EU legislators did not establish a common format to report NFI, instead they indicated only the principal guidelines to follow. This harmonization process had to be done before the beginning of the financial year 2017, as reported by Article 4¹⁹ of the Directive.

Unfortunately, in chapter five of this dissertation, it will be shown that not every European Member State was able or wanted to fully homologate their national legislation to Directive 2014/95/EU. One example was the Lithuanian Case Study, which showed that the Lithuanian government did not disclose any national ad hoc legislation to align its undertakings disclosure with Directive 2014/95/EU regulations.

To sum up, with the release of Directive 2014/95/EU, European Union Member States will have a common minimum standard for the disclosure of non-financial information to enable stakeholders to perform quick and easy analysis between the undertakings. In fact, the European council's goal was to create common legal disclosure frameworks not only among different industries, but also throughout European undertakings that are considered "large" public interest entities ("PIEs")²⁰ with more than 500 employees and a total balance sheet of at least 20 million euro or a net turnover of at least 40 million euro.

¹⁹ For the precise extract of the Art. 4 of Directive 2015/95/EU refer to p.6 of the dissertation.

²⁰ "PIEs" definition refers to Accounting Directive 2013/34/EU of the European parliament and of the council Arts 3 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF>

Regulations and Relevant Guidelines

The following chapter is going to analyse and focus on the new Directive requirements, results and effects.

The theoretical centre of the dissertation is Directive 2014/95/EU and its progressive contents. This Directive amends the previous Directive 2013/34/EU and it is about “the disclosure of non-financial and diversity information by certain large undertakings and groups”²¹. It was published on the Official Journal of the European Union on November 15th, 2014, almost three weeks after the actual meeting, dated back to October 22th, 2014.

Directive 2014/95/EU forces Member States to transpose its principles into singular and ad hoc national laws by December 6th, 2016 with the obligation to affect European public undertakings’ disclosure from the financial year beginning on January 1st, 2017²². This Directive amends the previous Directive 2013/34/EU regarding “annual financial statements, consolidated financial statements and related reports of certain types of undertakings”²³ issued on June 26th, 2013. The old Directive 2013/34/EU was named “Accounting Directive” after having substituted Directives 78/660/EEC and 83/349/EEC, with the purpose of giving modern contents to obsolete Accounting legislations.

It is important to highlight that the accounting revolution started in 2009 when the European Union felt the need to materialised a unified statute for the disclosure of financial information for both individual and consolidated financial statements among European undertakings (M. Deac, 2014)²⁴. In addition to financial information disclosure regulations, Directive 2013/34/EU forced micro-entities, small and medium-sized undertakings and large undertakings to include a “corporate governance statement” in their management reports.

As indicated in the title of the two Directives (Directive 2014/95/EU and Directive 2013/34/EU), it could be inspected that the difference between the two is the evolution of their focus. In other words, there was a progressive and natural transformation from financial information disclosure

²¹ Directive 2014/95/EU Title.

²² Article 4 (1) of Directive 2014/95/EU.

²³ Directive 2013/34/EU Title.

²⁴ M. Deac, "The New EU Accounting Directive—A Comparison of Reporting Requirements.", Annals of the „Constantin Brâncuși” University of Târgu Jiu, Economy Series, Issue 2/2014.

regulations only to non-financial information disclosure combined with the financial one in the undertakings' management reports (M. A. Camilleri, 2017, p.6).

A major confirmation of the previous assertion, regarding the new Directive focus, can be inspected on Articles 19a.(1) and 29a.(1) of the Directive 2014/95/EU.

Article 19a.(1) regards non-financial statement and states 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, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”²⁵

While article 29a.(1) regards consolidated non-financial statement and states that:

“Public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year shall include in the consolidated management report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”²⁶

These two articles are the demonstration that Directive 2014/95/EU obliges single European undertakings, independently of their status (either singular unit or part of a group of undertakings), to disclose their non-financial information together with the financial one.

3.1. Directive 2014/95/EU

European Union legislators felt the need to issue a revolutionary Directive as soon as they have realised that there was a new trend among investors breaking through. This trend can be synthesized as the growth of stakeholders' support in encouraging businesses to implement a sustainable production and commerce. As a matter of fact, stakeholders were always more interested in understanding whether undertakings can meet their projected expectations and

²⁵ Article 19a.(1) of Directive 2014/95/EU.

²⁶ Article 29a.(1) of Directive 2014/95/EU.

business goals and if they can stand the new progress pace of macro developments in the global business environment, always maintaining their businesses sustainable. (C. Tilt, 2007)

In the before mentioned climate of legislation and investors' preferences changes, stakeholders started to give greater value to NFI to be able to be always informed on companies' actions, strategies and plans to obtain a 360° understanding on their investments. They, hence, initiate to worry and pay more attention to companies' non-financial present actions, future investments, internal and external policies, vision and values, risk management and perspectives as these subjects were considered an important and core part of every successful business. (J. Unerman, 2007)

The “non-financial information” definition is given by Directive 2014/94/EU where it described NFI as “a commercial dataset composed by Corporate Social Responsibility (CSR) and Environmental, Social and Governance Sustainability themes. These two categories, even if parts of the same value creation process, must be kept separate to have a greater understanding of the topics. Unfortunately, sometimes people tend to consider them the same thing. This creates misunderstandings and lack of precision during NFI disclosure.”²⁷

3.1.1 Disclosure subjects and methodology set by the Directive

The preamble of Directive 2014/95/EU contains all the specific information regarding disclosure matters, scopes and methodologies for non-financial information communication. These principles are listed throughout a series of 23 recitals, which compose the introduction of the before mentioned Directive. “*They mainly state that PIEs are obliged to inform stakeholders on their business model, policy, principal risks and key performance indicators (KPIs) in relation to several themes in the ambit of Corporate Social Responsibility (CSR). These themes include: environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters*”²⁸.

The Directive highlights the fact that the list of problematics mentioned in the legislation are compulsory for all undertakings, which match the requisites of a PIEs, enounced in the

²⁷ Federation of European Accountants, “*EU Directive on disclosure of non-financial and diversity information*”, (2016), Position paper, p. 1.

²⁸ D. G. Szabó and K. E. Sørensen, “*New EU Directive on the Disclosure of Non-Financial Information (CSR)*.”, Nordic & European Company Law Working Paper No. 2015-01, p. 2.

“Accounting Directive” 2013/34/EU. In addition to this information, each undertaking can decide, depending on its industrial, geographical or production variables, which other non-financial information associated with the Corporate Social Responsibility sphere to disclose that does not appear on the list of compulsory topics specified by the Directive.

Directive 2014/95/EU recommends undertakings to disclose their non-financial information either in their management report or in another distinct official document. This other official separate document must be “independent from the management report and comply with one or more than one between the national, union-based or international frameworks”²⁹. Thus, if PIEs decide to make an independent report, Member States could avoid them the duty to include non-financial information in their management report.

To gain this exclusion right, PIEs must fully comply with the following regulations:

1. *“The alternative report must refer to the same financial year as the management one.”*³⁰
2. *“The two reports must be published through the same communication means or as an alternative the non-financial information only report must cite the website of the management one.”*³¹
3. *“The alternative reports must follow the minimum disclosure requirements demanded by Directive 2014/95/EU on Corporate Social Responsibility matters.”*³²

Directive 2014/95/EU goal, in setting minimum disclosure requirements for NFI, is to allow stakeholders, when reading management reports, to be able to have a consistent and comparable knowledge of the undertaking CSR activities. On the other side, letting an addition freedom is a sign that the Directive is not trying to create a disclosure homologation, driven only by a desire of compliance, but that it is trying to make the disclosure of NFI be led by PIEs’ necessity. Necessity to combine undertakings’ CSR disclosure with their business accomplishments to be most transparent and suitable as possible. Therefore, minimum disclosure requirements can be interpreted, as express by Recital 8 of the Directive, as necessary for the undertaking to reach the minimum materiality threshold in disclosing NFI.

²⁹ Article 19a.(4) and Article 29a.(4) of Directive 2013/34/EU.

³⁰ Article 19a.(4) of Directive 2013/34/EU.

³¹ Article 19a.(4) of Directive 2013/34/EU.

³² Article 19a.(4) of Directive 2013/34/EU.

*“Recital 8: The undertakings which are subject to this Directive should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and, where relevant and proportionate, its products, services and business relationships, including its supply and subcontracting chains. This should not lead to undue additional administrative burdens for small and medium-sized undertakings.”*³³

This materiality threshold is described in Recital 6 of the preamble of Directive 2014/95/EU and it lists the topics that undertakings must disclose in their management reports.

*“Recital 6: In order to enhance the consistency and comparability of non-financial information disclosed throughout the Union, certain large undertakings should prepare a non-financial statement containing information relating to at least **environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters**. Such statement should include a description of the policies, outcomes and risks related to those matters and should be included in the management report of the undertaking concerned. The non-financial statement should also include information on the due diligence processes implemented by the undertaking, also regarding, where relevant and proportionate, its supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts. It should be possible for Member States to exempt undertakings which are subject to this Directive from the obligation to prepare a non-financial statement when a separate report corresponding to the same financial year and covering the same content is provided.”*³⁴

To sum up, Recital 6 highlights the five compulsory topics that every European PIE must disclose. For a greater understanding, it must be coupled with Recital 7, of the same Directive, that describes in greater details and with a major attention the range of each matter:

1. **Environmental matters**: “Undertakings must disclose details of the current and foreseeable impacts of their operations on the environment, health and safety, on the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution.”³⁵
2. **Social and employee-related matters**: “The information provided by the CSR statement may concern the actions taken to ensure: gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights,

³³ Recital 8 Directive 2014/95/EU.

³⁴ Recital 6 Directive 2014/95/EU.

³⁵ Recital 7 Directive 2014/95/EU.

health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities.”³⁶

3. Respect for human rights: “Undertakings must include in the list of information disclosed a section in which the undertaking shows its policies to prevent human rights abuses.”³⁷
4. Anti-corruption matters: “The information provided in this regard must be a list of the instruments used by PIEs to fight corruption.”³⁸
5. Anti-bribery matters: “The information provided in this regard must be a list of the instruments used by PIEs to fight bribery.”³⁹

To conclude, Recital 6 and 7 of Directive 2014/95/EU focus on non-financial information categories that PIEs need to disclose. Legislators have then interpreted these two recitals highlighting that there was a possibility to summarise NFI categories into five groups and that each group has to be divided and considered together with its specific subgroup or groups of emphases.

Directive 2014/95/EU proceeds its description with Recital 9, which explains the methodology that must be used to divulge the previously mentioned topics, emphasizing that undertakings can use one of the three below-mentioned frameworks or a combination of them to disclose their non-financial information.

*“Recital 9: In providing this information, undertakings which are subject to this Directive may rely on **national frameworks**, **Union-based frameworks** such as the Eco-Management and Audit Scheme (EMAS), or **international frameworks** such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’ Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation’s ISO 26000, the International Labour Organisation’s Tripartite Declaration of principles concerning multinational enterprises and social policy, the Global Reporting Initiative, or other recognised international frameworks”⁴⁰.*

³⁶ Recital 7 of the Directive 2014/95/EU.

³⁷ Recital 7 of the Directive 2014/95/EU.

³⁸ Recital 7 of the Directive 2014/95/EU.

³⁹ Recital 7 of the Directive 2014/95/EU.

⁴⁰ Recital 9 of the Directive 2014/95/EU.

3.1.2 Disclosure requirements set by Directive 2014/95/EU

This Directive, as already analysed before, presents and sets legal rules for Corporate Social Responsibility matters. It explains to the European Member States the PIEs' duties for a correct non-financial information disclosure in their annual reports. In addition, it highlights the fact that undertakings must disclose information in a way that allow them to explain their past actions, future goals and all the possible risks that could be originated by their activities. In other words, undertakings not only need to mention their policies, but also their outcomes and risks, (Recital 5 Directive 2014/95/EU).

“Recital 5: It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public and authorities by undertakings across the Union. The undertakings subject to this Directive should give a fair and comprehensive view of their policies, outcomes, and risks.”⁴¹

All the above mentioned requirements must be disclosed throughout the following list of items, if the undertaking stands as a single entity:

- “(a) a brief description of the undertaking's business model;*
- (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;*
- (c) the outcome of those policies;*
- (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;*
- (e) non-financial key performance indicators relevant to the particular business.”⁴²*

While in the case of consolidated management report, undertaking will need to refer at the following list:

- “(a) a brief description of the group's business model;*
- (b) a description of the policies pursued by the group in relation to those matters, including due diligence processes implemented;*
- (c) the outcome of those policies;*
- (d) the principal risks related to those matters linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the group manages those risks;*

⁴¹ Recital 5 of the Directive 2014/95/EU.

⁴² Article 19a.(1) of Directive 2014/95/EU.

*(e) non-financial key performance indicators relevant to the particular business.*⁴³

These two lists (from letter a to letter e) dictate how and through which tools PIEs must disclose their non-financial information. It can be noticed that the two lists have the same Components with the only different to be addressed in the first list to single undertakings, while in the second list to undertakings part of a group.

Articles 19a.(1) and 29a.(1) of Directive 2014/95/EU go further on explaining one of the Directive funding principles, named “duty to explain” that is not really different from the past European Directives slogan “comply or explain” that is part of the European corporate governance since Directive 2006/46/EC (D. G. Szabó and K. E. Sørensen, 2015)⁴⁴.

With the expression “duty to explain” legislators mean that if a PIEs do not disclose one of the Corporate Social Responsibility subjects mentioned by the Directive, PIEs must, in their non-financial statements, offer a transparent and coherent motivation for this exclusion.

This rule was adopted by legislators, because they thought that for undertakings was easier to disclose their sustainable actions, rather than to publicly affirm their ineptitude.

This reasoning was further supported by an analysis, which found that undertakings that do not disclose NFI experienced a loss on their public reputation and on investors’ trust (D. G. Szabó and K. E. Sørensen, 2015)⁴⁵. Additional explanations are given in the second paragraphs of respectively articles 19a.(1) and article 29a.(1), where Directive 2014/95/EU clearly explains that: *“Undertakings, which do not disclose on the five matters mentioned in the directives, are forced to give a clear and reasoned motivation, shared by the financial and business leadership of the firm”*⁴⁶.

The drawback of the “duty to explain” policy is that PIEs, even if forced by the Directive, will give not sufficient and pertinent explanations on the reasons of the non-disclosure. As past studies have shown⁴⁷, and in particular the one published in 2009 by the *RiskMetrics* Group, “only 39%

⁴³ Article 29a.(1) of Directive 2014/95/EU.

⁴⁴ D. G. Szabó and K. E. Sørensen. "New EU Directive on the Disclosure of Non-Financial Information (CSR).", Nordic & European Company Law Working Paper No. 2015-01, p. 26.

⁴⁵ D. G. Szabó and K. E. Sørensen. "New EU Directive on the Disclosure of Non-Financial Information (CSR).", Nordic & European Company Law Working Paper No. 2015-01, p. 26.

⁴⁶ Article 19a.(1) and 29a.(1) of Directive 2014/95/EU.

⁴⁷ Other studies confirm that explanations are often not very informative, see Iain MacNeil&Xiao Li, ‘Comply or Explain’: Market Discipline and Non-compliance With the Combined Code, Corporate Governance: An International Review, vol. 14, 2006, examining companies which comply or explain under the UK Combined Code; Maja Kragh-Schwarz, Comply or Explain, virker det?, Nordisk Tidsskrift for Selskabsret, no. 4, 2007; and Eva Parum, Does Disclosure on Corporate Governance Lead to Openness and Transparency in How Companies are

of the explanation regarding the missed disclosure given by undertakings were informative, while the rest were categorised as invalid, general or limited”⁴⁸.

It follows the texts of the legislation parts, mentioned in the previous paragraph, that were extracted respectively from article 19a.(1) and article 29a.(1) of Directive 2014/95/EU.

*“Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.”*⁴⁹

*“Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity.”*⁵⁰

Another common principle expresses by the above pieces of legislation is the so called “necessary for an understanding”. *“This principle enounces that undertakings are obliged to disclose their own non-financial information, regarding the five NFI categories till the point essential for the undertaking to be able to clearly communicate the development, position and impact of its activities to shareholders. In other words, throughout all the Directive’s text, it was never clearly cited or even mentioned any significance or materiality level required by an undertaking, during its report of NFI process”*⁵¹. This means that undertakings must understand and form their own peculiar significance level before disclosing.

Managed?, Corporate Governance: An International Review, vol. 13, issue 5, 2005, examining disclosure by companies listed on the OMX stock exchange in Copenhagen.

⁴⁸ See the RiskMetrics Group, Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, available at http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923_en.pdf, 2009, p. 84.

⁴⁹ Article 19a.(1) of Directive 2014/95/EU paragraph 2.

⁵⁰ Article 29a.(1) of Directive 2014/95/EU paragraph 2.

⁵¹ Federation of European Accountants, “EU Directive on disclosure of non-financial and diversity information”, Position paper, (2016), p. 9.

This disclosure freedom gives to PIEs the power to communicate only non-financial information important for their businesses. *“Nevertheless, this freedom could result in a handicap for the controllers. As a matter of fact, undertakings that do not want to disclose inconvenient Corporate Social Responsibility matters, will label this NFI as information of “scares pertinence” avoiding thus the disclosure obligation.*

This bad attitude, once discovered, was referred to as “negligence of communication”⁵².

3.1.3 Disclosure exceptions and enforcement policies in the Directive 2014/94/EU

As explained by Directive 2014/95/EU, the only possible exception for an undertaking to not communicate non-financial information in its management report, happens when the undertaking wants to disclose it in an alternative yearly report.

It must be pointed out that the exception, mentioned above, has a subsection, which gives, in some specific cases and only for certain specific topics⁵³ to undertakings the permission to except some themes from their NFI disclosure.

To be exact, it was inspected that a major justification, for the exclusion from reporting obligations, can be the possibility of harming the commercial position of the PIEs (D. G. Szabó and K. E. Sørensen)⁵⁴. This circumstance, to be in line with the legislators’ conditions, must not only be proved with financial data, but be agreed by all the members of the PIEs’ management body⁵⁵. Additionally, the Directive, to force the management body to take its decisional role, regarding NFI disclosure exclusion more seriously, assigning to it a collective responsibility in case of fraud⁵⁶.

As regards the enforcement policy of Directive 2014/95/EU, in its text, it is only mentioned a compulsory check by auditors. More precisely, the Directive declared that:

⁵² D. G. Szabó and K. E. Sørensen, *“New EU Directive on the Disclosure of Non-Financial Information (CSR)”*, *Nordic & European Company Law Working Paper No. 15-01*, p. 21.

⁵³ The topics has a timeframe set to refer only to future actions of the company, because, as regards past actions, they are already known by the general public and thus no more a company secret.

⁵⁴ As highlight by D. G. Szabó and K. E. Sørensen in their paper *“New EU Directive on the Disclosure of Non-Financial Information (CSR)”*. In 2005 the fourth paragraph of both Article 19a.(1) and 29a.(1) of Directive 2013/34/EU. The reason for including this exemption appears to be that otherwise there would be a risk of the disclose duty jeopardizing fundamental rights. According to recital 22 of the preamble to the Directive 2014/95/EU, the directive respects the fundamental rights including the freedom to conduct business, respect for private life and the protection of personal data. It is clear that the exemption will have to be interpreted in a way that avoids conflict with the fundamental rights.

⁵⁵ The term management body in this Directive is interpreted as a body acting with the “competencies assigned to them by national law”.

⁵⁶ Here the word “fraud” stands for the proof of an unrealistic harming consequence.

“auditors must ensure to Member States that their PIEs analysed have disclosed all the non-financial information required by the Directive”⁵⁷.

⁵⁷ Article 19a.(5) of Directive 2013/34/EU.

Methodology

From this chapter on, it will start the empirical part of the dissertation.

It is important to understand that the previous two chapters were a fundamental part of the study, because they have helped the reader to form the knowledge necessary to comprehend the legislative environment, each big European undertaking should or, even better, must possess prior to their 2018 financial disclosure (2017 NFI).

It is essential to remember that the European Union legislators have empowered Directive 2014/95/EU with a set of necessary guidelines for the forthcoming non-financial information disclosure addressed from the financial year 2017 on.

This set of “compulsory” suggestions will be then set as benchmarks for the structure of the dissertation analysis⁵⁸. In fact, it was significant, before the 2018 management reports disclosure, to examine and understand the already existent behaviour of the big European undertakings with respect to their NFI communications. In particular, the population and its sample, which are the centre of the analysis in the following chapters, is a list of the 2017 management reports or other valid NFI reports of certain specific European undertakings, containing data from 2016.

From this list, it will be analysed whether undertakings are already compliant to Directive 2014/95/EU restrictions, in particular to its Articles 19a.(1) and 29a.(1)⁵⁹, or if those undertakings will have to work a lot on the structure and contents of their next year reports (2018), to be conformed to the new legislation.

Thus, the end goal of this study was to comprehend the behaviour of the European PIEs, prior to Directive 2014/95/EU, to both recognise and predict their possible adaptation strategies and to forecast their potential costs for the following year changes in their 2018 financial reports, regarding non-financial disclosure statement. In addition, the topics and the focus of this dissertation will eventually give the possibility to other scholars to continue this study with an analysis of the European disclosure scenario after Directive 2014/95/EU, allowing all the people involved in managerial processes of European companies to have a complete view (before and after 2017) of the pros and cons of the application of Directive 2014/95/EU.

⁵⁸ More specifically, it refers to chapters 5.

⁵⁹ Articles 19a.(1) and 29a.(1) are reported in Chapter 3 p.13.

To perform this analysis, as highlighted before, there was the need to create first a database, second a list of undertakings, selected among all the European Member States undertakings, recognised as the population set and third to randomly restrict that population set to form a sample with the following compulsory characteristics for its users:

1. Being able to produce significant results.
2. Being easy to query.

4.1 Database formation process⁶⁰

To perform the previous explained steps, there was the need to create first a complete, truthful and unbiased database, which was able to embody a reliable picture of the European business environment the dissertation was going to investigate. For this reason, the database was composed by undertakings with the characteristics of being: a European undertaking, active on one of the European Stock Exchanges and located in a Western or Eastern European country. All these public limited companies were further constrained with:

1. Entity type: “Bank”, “Financial Company” or “Insurance Company”.
2. Sectors possibility: “Primary Sector”, “Food, Beverage and Tobacco”, “Textiles, Wearing Apparel and Leather”, “Wood, Cork and Paper”, “Public and Printing” etc.

It is important to highlight that from this list of companies, it was automatically excluded all undertakings that did not have recent financial data and the ones that are Public Authorities, States or Governments.

The undertakings’ selection was performed through a Database called Orbis⁶¹, software version 160. Its last update was dated back June 23th, 2017, number 16005.

The recent update date allowed to get the most current data available on the market, taking into consideration that the data exportation was performed on June 28th, 2017 at 2.42.01 pm.

To be more precise and to give a clearer idea about the steps performed to obtain the final database, the first query execute with Orbis was to search every company presented on its

⁶⁰ This all part of the dissertation refers to table A - Orbis selection process (Excel format), p. 174.

⁶¹ This database was chosen after an accurate analysis of all the various possibilities available. The motivations will be explained in the Annex I of this dissertation.

records. This research brought an amount of 13,290,891 companies worldwide spread. The second query was about the Entity type: Bank, Financial company, Insurance company and it transformed the set of 13,290,891 elements in a set of 13,077,921 entities. Right after, it was implemented another query, “Status: Active companies”, that brought the set to a range of 11,405,577 companies.

Those previous queries performed only an initial selection, while the most significant queries, in terms of quantity reduction, were:

1. Query “Major sector: 1. Primary Sector, 2. Food, Beverage and Tobacco, 3. Textiles, Wearing Apparel and Leather, 4. Wood, Cork and Paper and 5. Public and Printing etc. till category 7.” that took the total to 9,743,692 elements
2. Query “World region/Country/Region in country: Western Europe, Eastern Europe” that set the database to a total of 5,058,694.

These two variables respectively reduced the database by two and four million undertakings less each time. For this reason, it was clear that those two constraints were the most critical to the analysis. De facto, they concretely and specifically constrained not only the database to a precise geographical area, following Directive’s spectrum of application, but also to a precise business environment. In addition, these queries were purposely set to drive the database focus on the investigation of a possible presence of the conformity between European undertakings NFI disclosure prior to the 2017 financial year and Directive 2014/95/EU guidelines.

Sequentially, a second group of queries was arranged.

This group has the goal to reduce even more the database, obtained by the previous queries, to give to it more significance with respect to the dissertation focus.

This query slot started with: “Standardised legal form: Public limited companies” that reduced the database to 1,314,947 entities. Subsequently, the other important query was to compulsory set the undertakings, present in the database, to be listed in one of the European Stock Exchanges. This condition resulted in a drastic decrease of the entities from seven to six figures, more precisely the outcome was 66,778 elements.

The last query was done using a special tool named the “Boolean search”⁶², which permits the user to combine keywords with operators such as AND, NOT and OR.

In this specific case, the Boolean search was used to give the constrain “OR” for all the previous mentioned companies’ sectors.

To sum up, the outcome of this **first step** was a database composed by 9,394 elements.

4.2 From the database to the population and its random sample

Once the foundation of this analysis was established, or in other terms once the database was formed, scholars felt the need to narrow the database even more to create the most unbiased population set as possible.

They exploit the fact that from Directive 2014/95/EU they were able to find out two supplementary essential conditions for the undertakings that they would like to set to the list. First, to have a workforce equal to or bigger than 500 employees. This constrain forces the restriction of the database through the performance of the query that sets the number of undertakings’ employees bigger or equal than 500. Second, to select only European Union Member States instead of all the States present inside the Europe borders.

This action results in the exclusion of Norway from the population set.

These previous mentioned additional two restrictions set the population amount to 1,762 elements and they were referred as **second step** or “population formation process”.

It is important to remember that the initial database was formed by 9,394 elements, which represented all European public listed⁶³ undertakings.

The second process formed a list of undertakings absolutely compliant both with Directive 2014/95/EU requirements, expressed in its articles 9a.(1) and 29a.(1), and with the definition of PIEs, linked to the Accounting Directive 2013/34/EU of the European parliament and of the council Arts 3.4. These compliance conditions were essential to transform a general database of 9,394 elements into the population set of 1,762 entities. De facto, as defined by author S. M. Ross in his book “Introductory statistics” *“a population set is the total collection of elements we are*

⁶²J. F. Arnold and L. L. Voss. "System and method for incorporating concept-based retrieval within Boolean search engines.", U.S. Patent No. 6,745,161, 1 Jun. 2004.

⁶³ For all the precise specification see the previous chapter (4.1).

interested in”⁶⁴. S. M. Ross continues the text explaining that, most of the time, population sets are too vast to possibly examine each of its components without spending too much time and resources. For these motivations, scholars randomly restricted the population set into an unbiased group called “sample”, which is defined by the author as: “*a subgroup of the population that will be studied in detail*”⁶⁵.

In addition, readers should linger over and carefully understand the adjective “random”, drawn close to the word sample. This adjective is not left to the chance, in fact S. M. Ross in his book gave an ad hoc definition to this adjective used in this context, more precisely, he explained that a random sample can be obtained only if “*its members are chosen in such a way that all possible choices of the k members are equally likely*”⁶⁶.

The **third step** of this analysis was hence to randomly form a sample with a capacity of 100 elements from the total population of 1,762 elements. A hundred was chosen as capacity level because scholars thought that the 5.68%⁶⁷ was a good proxy for a population sample.

⁶⁴ S. M. Ross, “*Introductory statistics*”, Academic Press, 3rd edition, 2013, p.5.

⁶⁵ S. M. Ross, “*Introductory statistics*”, p.5.

⁶⁶ S. M. Ross, “*Introductory statistics*”, p.6.

⁶⁷ This percentage was achieved through the following operation: $(5.68 = 100 * 100 / 1,762)$ and it stands for: the total number of the elements of the sample multiply by a hundred and divided by the total entities in the population set.

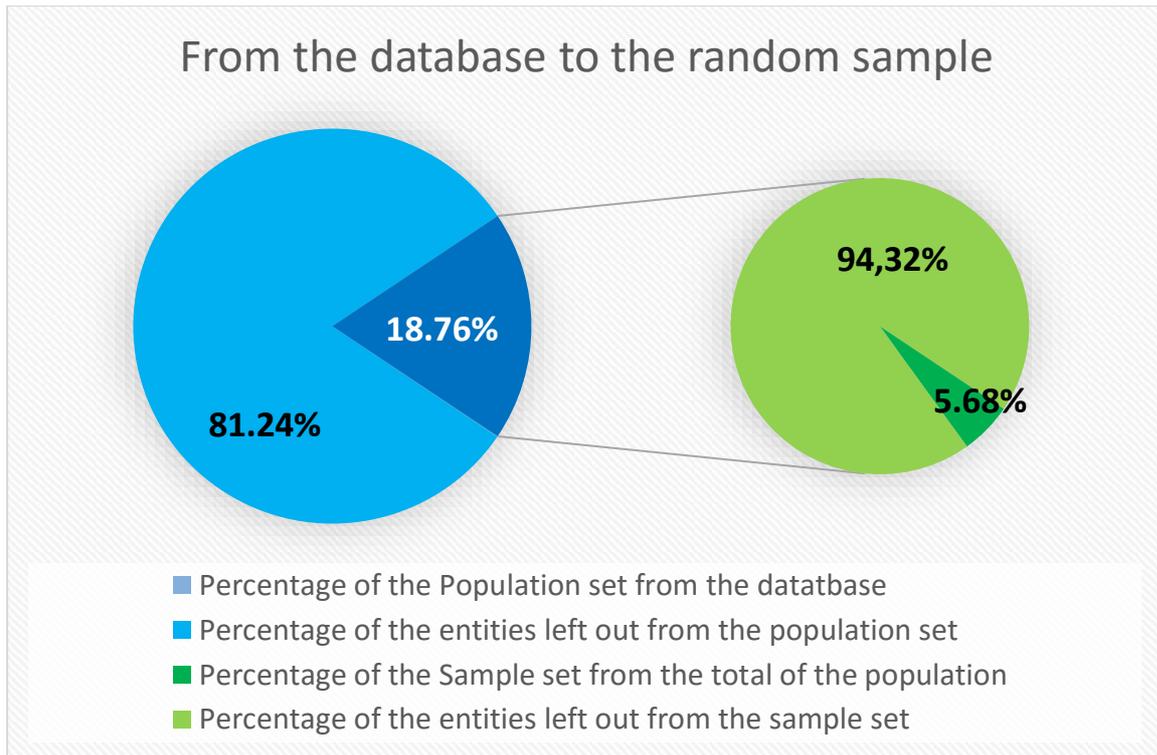


Figure 1 - From step one to step three of the database formation

More precisely, figure number one clearly summarize through the usage of two pie charts, all the previous explained data subdivision processes, from the database to the random sample, communicating their figures in a percentage form.

One important characteristic, pointed out explicitly by the image, is that the percentage decrease from the database to the population set and from the population set to the random sample was subject to an incremental decrease. As a matter of fact, they went from circa a 20 percent (more precisely 18.76%) to only a 5 percent (5.68%), undergoing through a decrease of a bit less than one third percentage point (0.3⁶⁸).

4.3 Random sample composition⁶⁹

Once it was decided that the range of the random sample had to be 100 entities, there were still two problems to solve.

⁶⁸ 0.30 is equal to 5.68/18.76 or in other words the percentage of the population set used for the random sample plotted against the percentage of the database used for the population set.

⁶⁹ A. S. Christian, W. Winston and C. Zappe, "Data Analysis & Decision Making with Microsoft Excel-Text Only.", 3rd Edition, South-Western Cengage Learning, (2006), pp. 387-431.

First, decide which countries to include in the sample (discussed through Ch. 4.3.1). Second, choose the best computational tool technique to randomly select the proper quantity of entities for each state (discussed through Ch.4.3.2).

4.3.1 How to choose the Member States for the random sample?

The population set started with a group of twenty-seven states, meaning that all the European Union Member States, beside Latvia, possessed the compulsory requirements requested by the focus of the analysis.

This is an interesting signal and must not be neglected, because it shows that all European Member States, beside one, have a possible prosper business environment, which enable them to possess at least one large public undertaking with the required characteristics (imposed by Directive 2014/95/EU). This revelation surprised a lot the scholars because, among the twenty-seven states present in the list, there were a couple that either are normally referred as “developing countries” or that could only enter the Union late due to their economic instability.

It is important to remember that states are allowed to enter in the European Union only if they are able to proof certain characteristics called the “Copenhagen Criteria”. While to enter in the negotiations for the membership a country must only demonstrate to satisfy the first criterion of the underlying list.

These conformity criteria, listed below, were formally recorded on the “Treaty of European Union”, as conditions (Article 49) and principles (Article 6(1)), during the Copenhagen European Council in 1993 and reconfirmed in the Madrid Meeting two years later, precisely in 1995. These requirements are:

1. *“The Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;”*⁷⁰
2. *“A functioning market economy and the ability to cope with competitive pressure and market forces within the EU;”*⁷¹

⁷⁰http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html?locale=en

⁷¹http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html?locale=en

3. *The ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.*⁷²

The results of the application of the previous mentioned criteria, during the undertakings selection for each European Member States, gave the following picture:

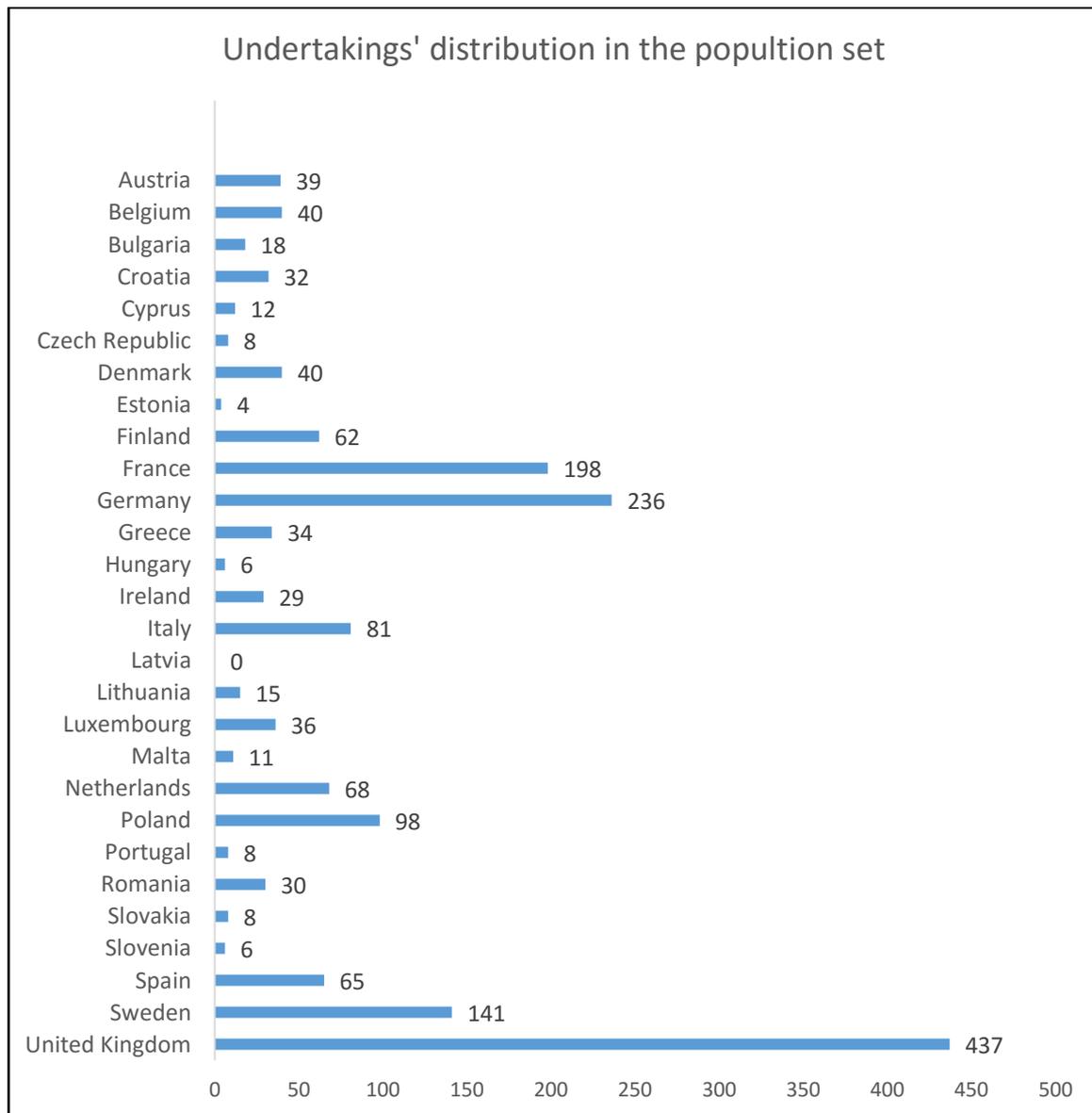


Figure 2 – Undertakings' distribution in the population set

⁷²http://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhagen.html?locale=en

It can be clearly understood that figure number two shows, through a bar graph, the division of the 1,762 entities by member States.

From a first glance, it is immediately clear that undertakings are not partition equally among Member States, but they follow other schemes. One of these schemes, after an accurate and extended study, can be identified as the positive correlation between the entrance timing in the European Union and the number of companies belonging to each country (see Figure three).

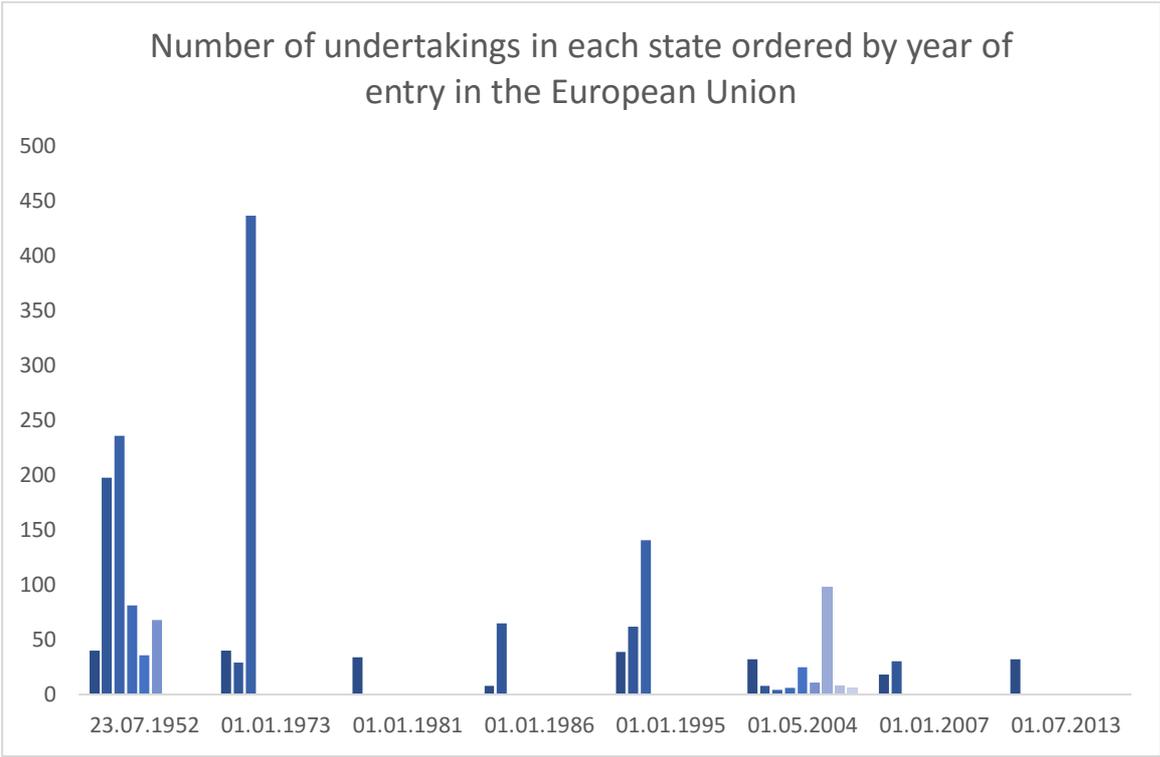
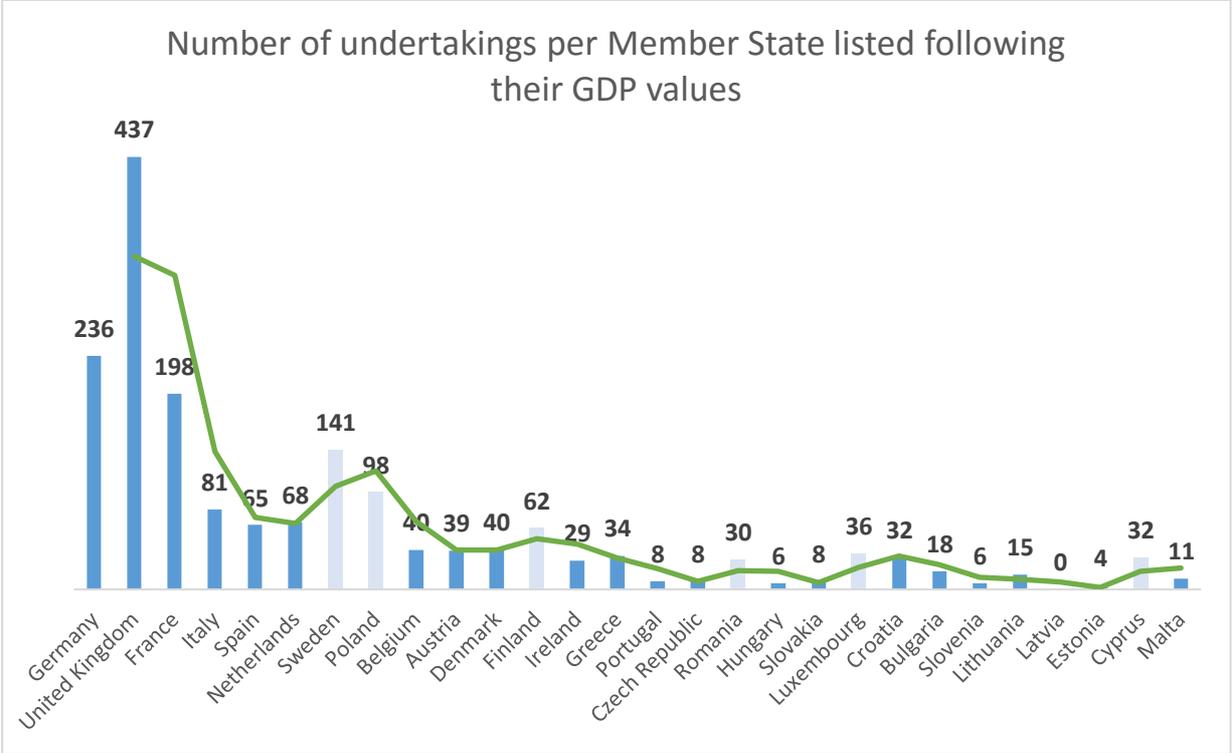


Figure 3 - Number of undertakings in each state ordered by year of entry in the European Union

The above figure illustrates to the readers the presence of a strong positive relationship between the year of entry and the today number of undertakings, in the population set, presented for each state. This positive correlation means that there is a higher possibility to be part of a state with more than fifty undertakings and, at the same time, be a first mover in the European Union.

Another positive correlation factor could be the country GDP and the number of its undertakings.

To study this factor, we rely on the data of 2012, taken from the International Monetary Fund⁷³, which creates an online database of all the European Member States GDP. The country with the highest GDP was Germany, while the one with the lowest was Malta.



74

Figure 4 - Number of undertakings per Member State

Figure number four has as variables, for the x axis, the GDP values of each Member States listed in descending order, while, for the y axis, the parameter was the number of undertakings per states. This enable the reader to clearly see the positive correlation between a high GDP and the number of undertakings.

This understanding was in addition graphically supported by the green trend line, plotted in the figure.

To sum up the two theories and their related figures (number three and four), it is important to point out, that, contrary to the first theory, the second theory revealed to be not always perfect. In fact, there were some points in the second graph, where it could be inspected a higher number

⁷³ <http://data.imf.org/?sk=388DFA60-1D26-4ADE-B505-A05A558D9A42>

⁷⁴ Here, the GDP values follow a descending order.

of undertakings that unfortunately differed from the reality expected (examples are: Sweden, Poland, Finland, Romania, Luxembourg and Cyprus). This relation, though sometimes misleading, will be helpful in the successive step, regarding the final choice of undertakings for the random sample.

Member States were thus randomly select, but, at the same time, were constrained to be as most equally distributed as possible regarding GDP values. This final choice enabled scholars to have a sample that really report a truthful picture of the reality, having even some outliers among its list like: Sweden, Poland, Luxembourg, for a total of nine states or a third of all the European Member States.

Here, it follows the random selected Member States for the sample list:

1. Czech Republic
2. Ireland
3. Italy
4. Lithuania
5. Luxembourg
6. Malta
7. Netherlands
8. Poland
9. Sweden

4.3.2 Methodology used to select the entities for each Member States

After Member States' selection, it was essential at first, in order to build the entire random sample, to choose the right undertakings quantity for each Member State.

To perform this task, in the most unbiased way possible, it was used the Excel tool called "Sampling". To be more precise, this tool is enclosed in the Excel Analysis ToolPak⁷⁵, which is normally used for data analysis scopes and, for other more specifics analyses like the ones performed by statistic and engineering experts. "Sampling" is best known to be used in the following two situations:

⁷⁵ <https://support.office.com/en-us/article/Use-the-Analysis-ToolPak-to-perform-complex-data-analysis-6c67ccf0-f4a9-487c-8dec-bdb5a2cefab6>

1. If there is the need to create a smaller sample from the dataset.
2. If there is the need to investigate the daily variation among data, collected through a period.

Surely, the situation, which represents most the analysis of this dissertation, is the one expressed by point one. Therefore, to be more precise and to make the “Sampling” tool works effectively, scholars had the need to create, as background, an Excel sheet with the list of all the possible undertakings (in this case, the list was composed by 487 companies belonging to the previously selected Member States) and their attributes, such as: Member States, Employee number, Companies sector, etc.

As for the format constraints dictate by the Excel tool “Sampling”, it was essential to respect the following two principles:

1. All the columns must be proper labelled with the attribute names on the first line of the Excel sheet.
2. The database must possess “data continuity” throughout all the Excel sheet, in other words there must be no unbroken sections.

In addition, it is important to highlight, that Excel will refer to the previously explained sheet, composed by 487 elements, as the population set⁷⁶.

The second step, after having assured the conformity of the population set, was to finally proceed with the usage of the tool “Sampling”. By selecting the Excel tool, it will appear a window upon the first Excel sheet, which enables users to choose the specifications most compatible for their analysis for three variables.

Variable number one enables users to select the input interval or, in the case of this analysis, all 487 entities. The second one was about the essence of the sample. In fact, users can choose between periodic or random sample.

For the unbiased and correctness of this analysis, it was selected the random variable with the specification of selecting 100 undertakings from the sheet. While, variable number three was

⁷⁶ This population set composed by 487 elements has nothing to do with the one explained at the beginning of the chapter and composed by 1,762 (Ch. 4.2, p. 25).

about the way the random sample had to be created. In this case, it was selected to handle the sample in a new Excel sheet.

The use of the “Sampling” tool gave as a result a random sample of undertakings, which for a more complete comprehension, is express both:

1. In Table B⁷⁷, through the list of all the companies present in the sample.
2. In Figure 5, where it is showed from the population total the ratio of the random selected undertakings for each country on the sample.

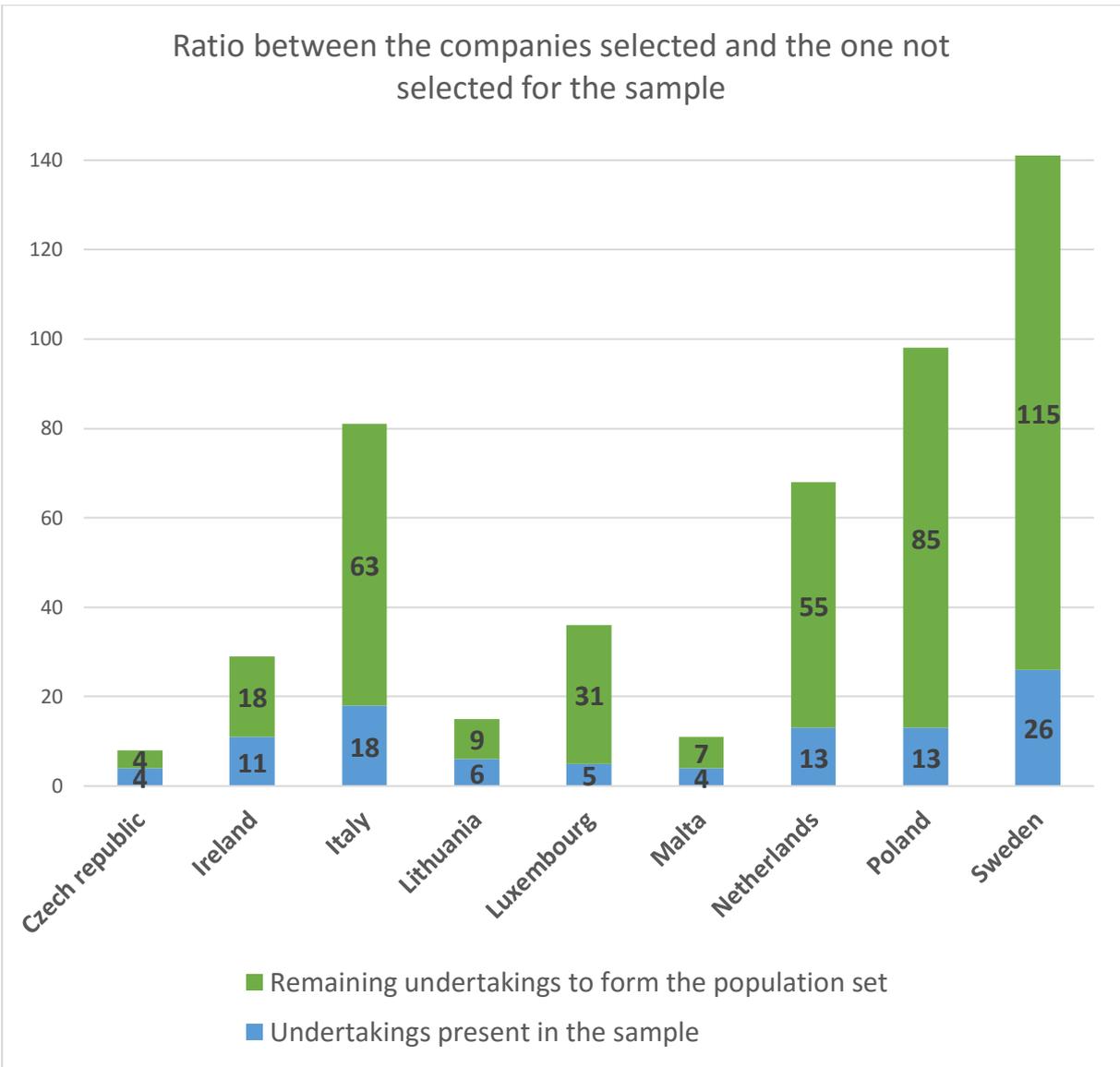


Figure 5 – Results of the random sample selection

⁷⁷ This table can be found at p. 175.

To better explain Figure five, it will be divided in two other graphs (respectively Figure six and Figure seven), which explain more in details both the percentage of the undertakings selected in each Member States from its undertakings total presented in the population set for each Member States and the percentage of each of the nine States plotted against the sample total of 100 entities.

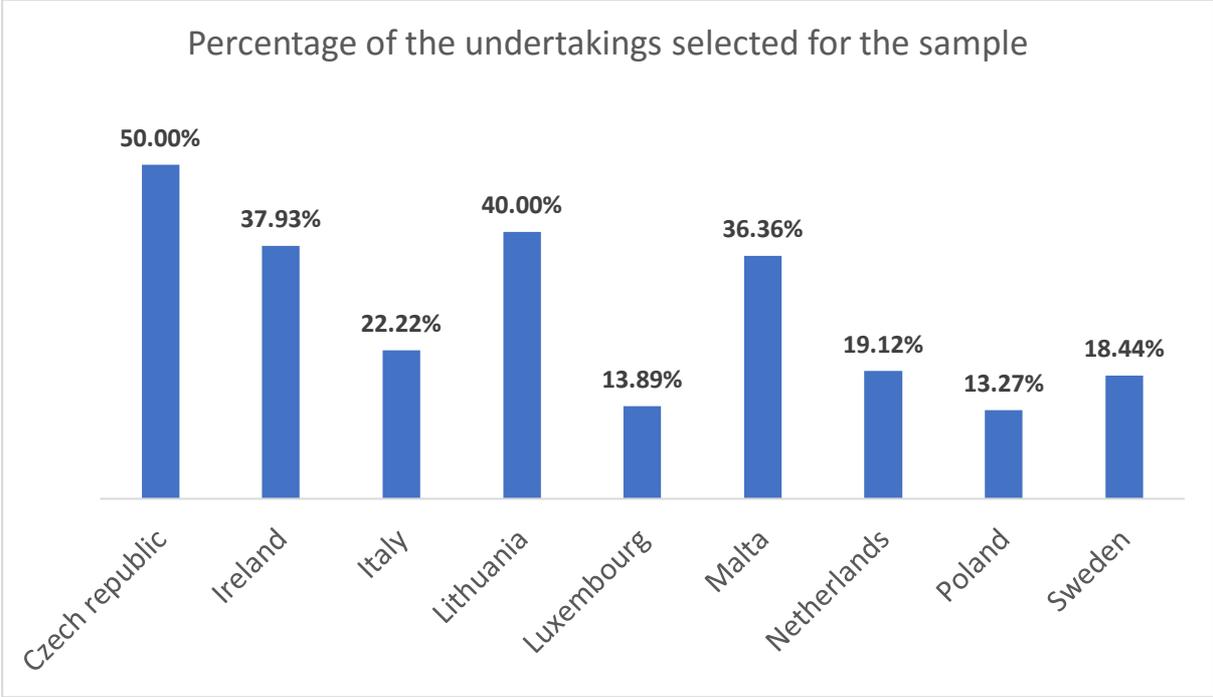


Figure 6 – Percentage of undertakings selected for the sample for each Member States

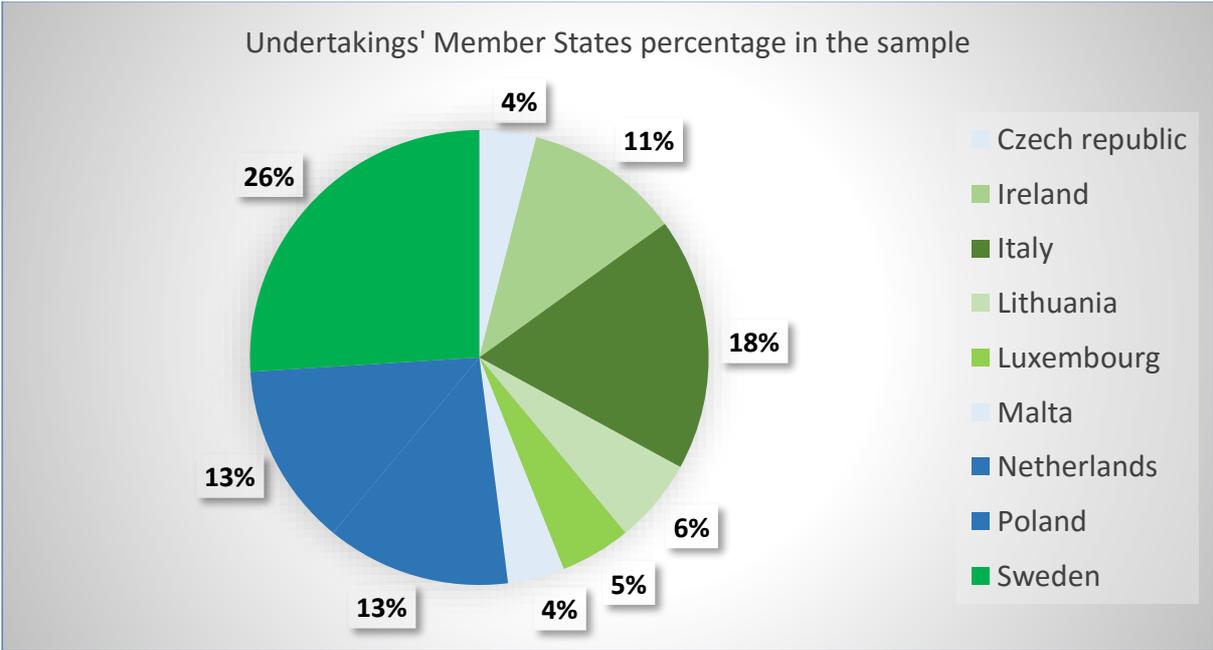


Figure 7 – Undertakings' Member States percentage in the sample (Sample total: 100 entities)

These two Figures (number six and seven), more precisely the Bar plot and the Pie chart, explain to the reader in a figurative and more clear way the fact that undertakings were selected randomly to form the sample.

Actually, Figure six shows to the readers that the portion between undertakings selected and non is neither uniform among all Member States or have a crescent or descent regular path. This is a perfect signal of the random selection characteristic. The second graph shows that some countries have the same weight, with respect to the undertakings total in the random sample, while others have a lower or higher value.

Having tried to give an explanation to this difference, it came up that the selection did not follow any fix principles, confirming another time the random composition of the sample set.

In conclusion, the various processes listed in this chapter express and explain all the procedures that scholars had to take into consideration and perform to form an initial database and transform it into a random sample set, which allow them to implement an in deep investigation about the conformity or not of the 2016 non-financial information Member States disclosure with Directive 2014/95/EU constraints. This conformity will be discussed and proved in the following chapter (number five).

Results

The fifth part of this dissertation is designed to report the different results, obtained with the analysis of the singular European Union Member States, part of the random sample.

These Member States were nine in total and were: Czech Republic, Italy, Ireland, Lithuania, Luxembourg, Malta, Netherlands, Poland and Sweden.

This chapter is divided into nine sections, one for each of the Member States.

About these sections, it could be highlighted that each one has exactly the same tripartite structure.

First part has an introductory unit, which explains with the support of academic findings, the corporate sustainability environment in the State, prior to the disclosure of Directive 2014/95/EU. Second, the legislative part, which is divided into two subsections. First subsection lists all the national legislations designed to be aligned with Directive 2014/95/EU regulations, reporting then their texts. Second subsection has an explanatory function, because it analyses in details the effective matches between the two legislations.

Third, this part is considered to be the analytical one, as it graphically pictures the selected EU Member State companies' NFI disclosure, prior to Directive 2014/95/EU implementation. In addition, it highlights the possible difficulties and positive gains national companies will face to be aligned with CSR mandatory disclosure requirements. It is important to point out that prior to the dissertation composition, there was the need to create a database, which had all the 100 entities as records (rows) and all the Directive 2014/95/EU requirements as fields (columns).

5.1 Czech Republic

In this section, it will be performed the detailed analysis of the Czech Republic legislation amendment, subsequent to the publication of the European Directive 2014/95/EU, and the disclosure of 2016 NFI by the randomly selected Czech Republic companies in the sample set. In addition, it is important to understand and analyse the different positions and opinions scholars have about the entrance into force of this new European Directive and the consequences it will have on the NFI disclosure environment of the European Member State, Czech Republic. In this case, environment meaning Czech Republic government, businesses and stakeholders.

To academically introduce this topic, it can be cited K. Kasparová and her paper, titled: “*Non-Governmental Organizations Supporting CSR in the Czech Republic – Are There Any Leaders?*”⁷⁸, where she pointed out that “*following the positive and more involved approach of the European commission to CSR, the Czech Republic Government launched a forceful national CSR strategy to support and sustain socially responsible behaviours*”⁷⁹. The author continues specifying that: “*During the creation of this National CSR strategy, the State utilized know-how of non-governmental organizations which had developed much more profound experience with the implementation of CSR in practice*”⁸⁰. Thus, the Czech Republic government, as sustained by K. Kasparová, took a first positive step toward the willingness to fully align its policies to the European new trends in CSR disclosure, referring to the more expert NGOs.

On the Czech Republic companies and stakeholders side, they are ready and willing to accept changes to be aligned with EU CSR. For this reason, quoting the authors: Z. Dvorakova, D. Krasnikova and M.D.J. Quigley and their paper, titled: “*Non-Financial Reporting: The Case of The Czech Republic*”⁸¹, in which they have highlighted how initially Czech Republic businesses and shareholders considered the new European Directive guidelines as a “contradiction to one of the basic tenets of CSR” or, in other words, “*they consider them a paradox to the main feature of the CSR reporting, voluntary disclosure*”⁸². Fortunately, this negative consideration about the

⁷⁸ Year 2016, p. 61.

⁷⁹ K. Kasparová, “*Non-Governmental Organizations Supporting CSR In The Czech Republic – Are There Any Leaders?*”.

⁸⁰ K. Kasparová, “*Non-Governmental Organizations Supporting CSR In The Czech Republic – Are There Any Leaders?*”.

⁸¹ This article was published on the 9th International Days of Statistics and Economics, Prague, (09.10-12,2015).

⁸² Z. Dvorakova, D. Krasnikova and M.D.J. Quigley, “*Non-Financial Reporting: The Case Of The Czech Republic*”, 9th International Days of Statistics and Economics, Prague, (09. 10-12,2015).

mandatory features of NFI disclosure has rapidly changed and was substitute with a more open-minded and supported view. This opinion changed was empirical confirmed by facts such as: “in Czech Republic the number of firms, which issue CSR reports, starts to increase. The topics they reported were mainly ecological and social and considered as important as the financial ones”⁸³. While theoretically explained by authors R.E. Slack, S. Corlett and R. Morris, who state that: “CSR has become not only a recognised part of a business activity, but also a part that contribute to profit achievement and increase in capital value as market share”⁸⁴. For these reasons, as authors Z. Dvorakova, D. Krasnikova and M.D.J. Quigley have stated: “even if compulsory NFI disclosure is still considered a paradox by a minority, the majority of stakeholders and businesses start to refer at it as a corporate added value”⁸⁵.

5.1.1 Legislation⁸⁶

The first step toward the adaptation of the Czech Republic Accounting Legislation to Directive 2014/95/EU was done on November 9th, 2016 with the approval, by its Chamber of Deputies, of the governmental Act draft, meant to integrate Accounting Act No. 563/1991 Coll. with the European Union CSR new principles and guidelines.

The Act No. 563/1991 became effective on January 1st, 2017.

In this part, the legislative focus is the alignment between Czech Republic non-financial information disclosure regulations and European Union guidelines. For this reason, it will be analysed the newly introduced Part Eight of the Czech Accounting Act No. 563/1991, precisely from § 32 f to § 32 i.

It is important to keep into consideration that the amendment not only regards the introduction of the new set of NFI disclosure regulations as it also modifies little aspects of the recodification of private law and other technical adjustments.

⁸³ Z. Dvorakova, D. Krasnikova and M.D.J. Quigley, “Non-Financial Reporting: The Case Of The Czech Republic”.

⁸⁴ R.E. Slack, S. Corlett and R. Morris, “Exploring Employee Engagement with (Corporate) Social Responsibility: A Social Exchange Perspective on Organisational Participation”, *Journal of Business Ethics* 127(3), (2015), pp. 537-548.

⁸⁵ Z. Dvorakova, D. Krasnikova and M.D.J. Quigley, “Non-Financial Reporting: The Case Of The Czech Republic”.

⁸⁶ References from:

1. <https://edu.deloitte.cz/m/Content/Download/accounting-news-1702>
2. <http://www.czechlegislation.com/en/563-1991-sb>
3. [file:///Users/gretasclosa/Downloads/Czech%20Act%20On%20Accounting1991%20\(As%20Amended%202007\).pdf](file:///Users/gretasclosa/Downloads/Czech%20Act%20On%20Accounting1991%20(As%20Amended%202007).pdf)
4. <http://www.cfe-eutax.org/taxation/accounting/czech-republic>

It will follow the transcription of the Amended part of the Czech Republic Accounting Act, best known as Part Eight.

Subsequently, it will present the comparison between this Accounting Act and Directive 2014/95/EU to understand their degree of conformity.

“PART EIGHT

PLACE OF NON-FINANCIAL INFORMATION

§ 32f

Scope

The entity indicating non-financial information:

- a) large entity that is a trading company and is also a public interest entity if the balance sheet date exceeds the criterion of the average number of 500 employees during the financial year,*
- b) consolidating entity of a large group of entities which is also a public interest entity if the balance sheet date exceeds the criterion on the consolidated basis of the average number of 500 employees during the financial year.*

§ 32 g

Non-financial information

(1) The entity indicating non-financial information indicating non-financial information to the extent necessary for an understanding of the development of the entity or group its performance and the status and impact of its activities and non-financial information at least issues:

- a) environment*
- b) social and employment,*
- c) respect for human rights and*
- d) fight against corruption and bribery.*

(2) Non-financial information in accordance with paragraph 1 shall be given in the following structure:

- a) a brief description of the business model of an entity indicating non-financial information, or group*
- b) a description of the measures which the entity indicating non-financial information or group in relation to these issues apply, including applicable procedures of due diligence; unless any of these questions apply any measure gives the reasons why the measures in question does not apply,*
- c) a description of the results of these measures,*
- d) a description of the principal risks related to these issues which relate to the activities of the entity showing non-financial information, or group, including, if appropriate by in her account and, if appropriate, with its business relationships, products or services that could have adverse impacts in these areas, and how the entity or non-financial information showing the group manages these risks,*
- e) non-financial key performance indicators relevant to the particular business.*

(3) Non-financial information in accordance with paragraph 1 shall entity indicating non-financial information in the annual report or in the annual report or in a separate report. An entity indicating non-financial information may

for putting this information to use the methodology governing the publication of reports on social responsibility, and if so, is obliged to indicate that the methodology was based.

(4) Non-financial information in accordance with paragraph 1 shall include, where possible and appropriate, references to amounts reported in the financial statements or the consolidated financial statements of any other more detailed commentary.

(5) Non-financial information in accordance with paragraph 1 on future development entity indicating non-financial information, or relating to matters that are just by the entity or group discussed, may be given in exceptional cases, if by a duly reasoned opinion to members of the management or supervisory body putting these non-financial information significantly damaged the commercial position of an entity indicating non-financial information or group and if their omission does not prevent objective and balanced understanding of the development of the entity showing non-financial information, or the group's performance and position and the impact of its activities.

(6) If the entity showing non-financial information, non-financial information in accordance with paragraph 1, does not provide information pursuant to § 21 para. 2 point. E).

(7) The obligations under paragraphs 1-6 may not fulfil the consolidated entity indicating non-financial information, if the non-financial information presented in the consolidated annual report and a separate report consolidating entity. This also applies to the consolidating entity indicating non-financial information, which is itself a consolidated entity.

§ 32h

Individual report

If an entity indicating non-financial information drawn up for the same period a separate report pursuant to § 32 g paragraph. 3, which includes non-financial information in accordance with § 32 g paragraph. 1, must be separate report

a) published together with the annual report or consolidated annual message, or

b) made available to the public within a reasonable period, which shall not exceed 6 months from the balance sheet date. On the website of the entity and specifying the non-financial information in the annual report or consolidated annual report, reference is made to the disclosure in a manner allowing remote access.

§ 32i

Auditor Verification of developing non-financial information

The auditor will verify whether the entity showing non-financial information prepared and non-financial information is stated in the annual report or consolidated annual report or whether it has prepared a separate report pursuant to § 32 g paragraph. 3rd”⁸⁷

The part of the Act, just presented, shows the obligation for large entities or consolidated entities of large groups to disclose their NFI in the management or non-report. It, then, indicates as subjects, affected by the Act, undertakings independently of their identity (singular companies or

⁸⁷ <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&fulltext=563~2F1991&rpp=15#seznam>

part of a group) that have more than 500 employees and are considered public entities part of the Czech Republic Stock Exchange.

In the following table, the Accounting Act of the Czech Republic No. 563/1991 will be analysed to find out all various equivalents with the European Directive. To do so, the part of the Accounting Act presented before was divided in ten subclasses, each of which formed by an entire article or, in the case of article 32 g, formed by its singular subparts (§ 32 g – part 1,2,3,4,5,6,7).

Czech Republic Accounting Act No. 563/1991 Coll.	Directive 2014/95/EU	Thematic
§ 32 f	Art. 19a part 1	Scope
§ 32 g – part 1	Art. 19a part 1	Non-financial information
§ 32 g – part 2	Art. 19a part 1	Non-financial information
§ 32 g – part 3	Art. 19a part 3	Non-financial information
§ 32 g – part 4	Art. 19a part 1	Non-financial information
§ 32 g – part 5	Art. 19a part 1	Non-financial information
§ 32 g – part 6	N.C. ⁸⁸	Non-financial information
§ 32 g – part 7	Art. 29a	Non-financial information
§ 32 h	Art. 19a part 4	Individual report
§ 32 i	Art. 19a part 5	Auditor Verification of developing non-financial information

Table A – Comparison between Czech Accounting Act and Directive 2014/95/EU non-binding guidelines.

From this table, it is confirmed that the transposition of the European Directive into the Czech Republic Accounting Law has all the principal elements necessary to nationally and conformingly constrain the disclosure of NFI.

Czech Republic legislators have divided the Act into three parts.

First part named “**scope**”, which sets the NFI disclosure limitations to public companies, standing alone or part of a consolidated group, which have more than 500 employees in their workforce.

⁸⁸ N.C. stands for Not Clear and means that the translation of the Act from the language of the Member State (in this case Czech) to English is not fully understandable.

Second, entitled “**Non-financial information**”, is the most detailed one, because it has the need to set:

1. The arguments that must be compulsory disclosed (WHAT),
2. The structure through which disclose NFI (HOW),
3. In which report to disclose NFI (WHERE) and the possibility to include financial information connected to the CSR topics (SPECIFICATIONS)
4. The possibility to exclude specific NFI (EXCEPTIONS).

Third, named “**Auditor Verification of developing non-financial information**”. It regards the fact that there must be an audit figure, who must oversee the analysis of the NFI disclosure of the various entities to assure that their disclosure followed the previous listed rules.

5.1.2 2016 Non-Financial Information disclosure analysis

The previous part was meant to describe Czech Republic legislation on NFI matters, this part empirically analyses the situation of all Czech Republic companies, part of the random sample, and how they position themselves a year before entering into the amended Accounting Law No. 563/1991.

The total number of Czech Republic companies analysed were four, coming from three different industrial sectors and being either part of a consolidated group of entities or being a single entity. More precisely the companies were:

1. O2 Czech Republic A.S. part of the “Post and telecommunication” sector and single entity.
2. Komerční Banka part of the “Banks” sector and single entity.
3. Moneta Money Bank part of the “Banks” sector and part of a consolidated group.
4. Kofola Československo A.S. part of the “Food, beverages and tobacco” sector and part of a consolidated group.

The academic studies mentioned before gave reasons to await positive results. As a matter of fact, Czech Republic companies were known to be familiar with the voluntary disclosure of NFI prior to 2017.

To prove this assumption, it was performed a second analysis, with the support of the database, mentioned in the previous introduction, created for the analysis of the conformity between the national disclosure tendency prior to Directive 2014/95/EU and the Directive guidelines. From this analysis, it could be inspected the following milestones and results:

- 1. **DISCLOSURE FRAMEWORKS:** The 50% of the Czech Republic companies analysed in the set used International frameworks, while 25 % used National frameworks and the other 25% used Union-based frameworks (see table below).

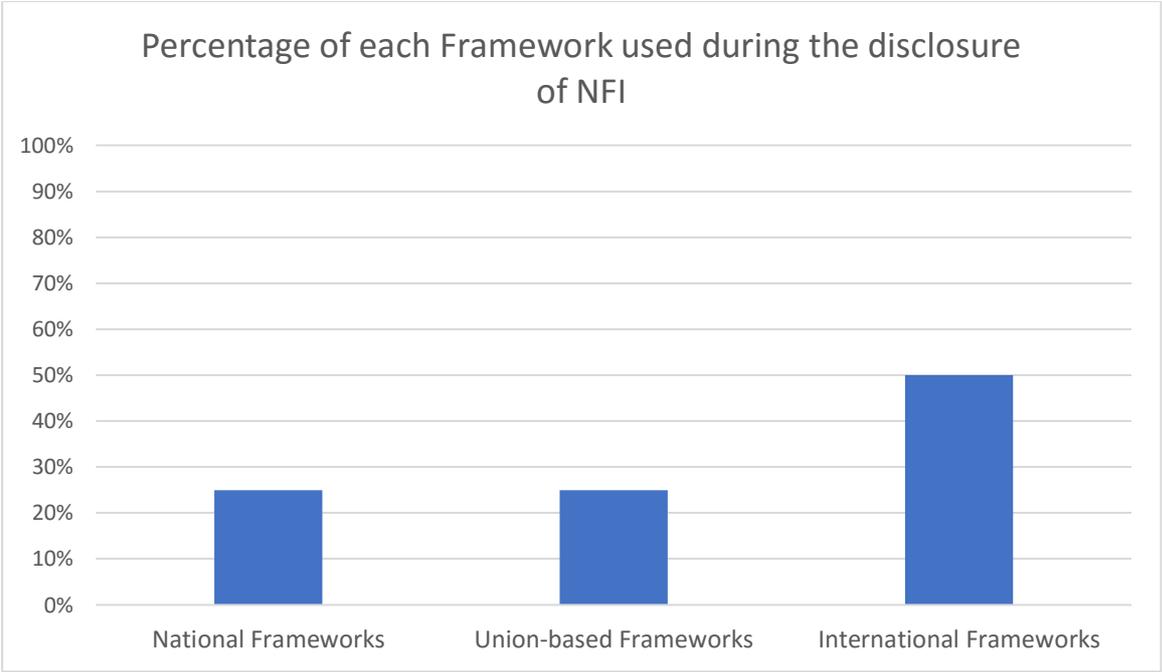


Table B – This table shows Czech Republic companies and their disclosure frameworks choice

2. **DISCLOSURE TOOLS:** The 100% of the Czech Republic companies analysed in the set disclosed their NFI in their yearly management report, while 0% has created an ad hoc sustainability report (see table below).

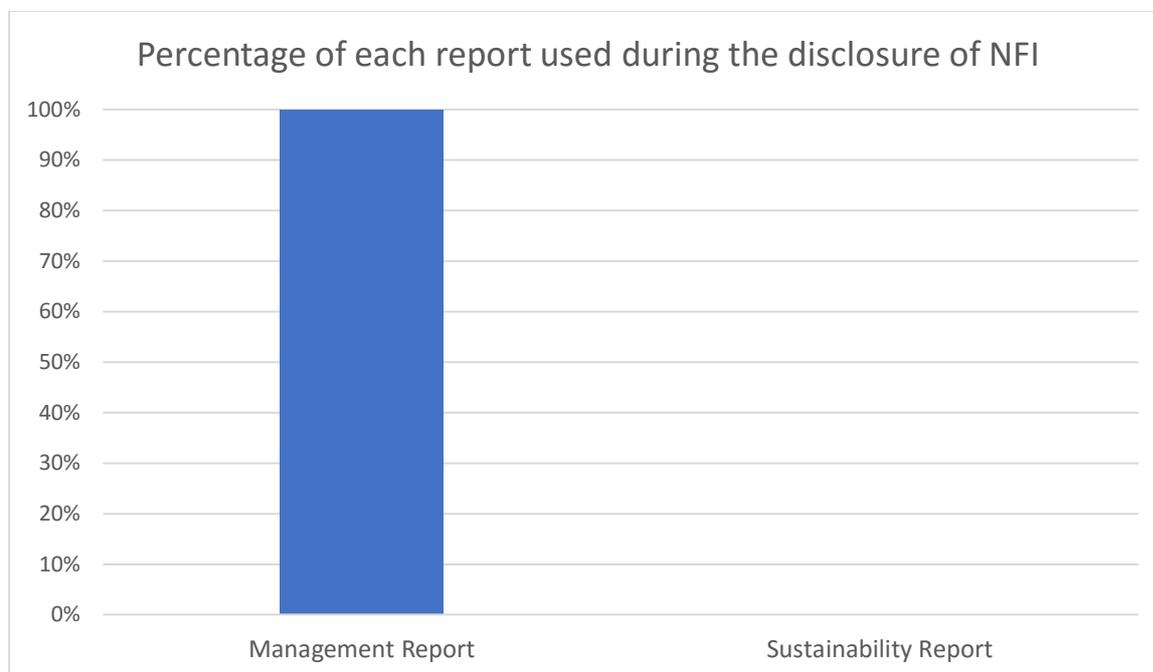


Table C - This table shows Czech Republic companies and their disclosure tools choice

3. **ENVIRONMENTAL MATTERS:** The 50% of the Czech Republic companies analysed in the set included “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 100% have included the “Use of renewable and/or non-renewable energy” matters, 50% “Greenhouse gas emissions reduction strategy” matters, 25% “Water use” matters and 25% “Air pollution” matters (see table below).

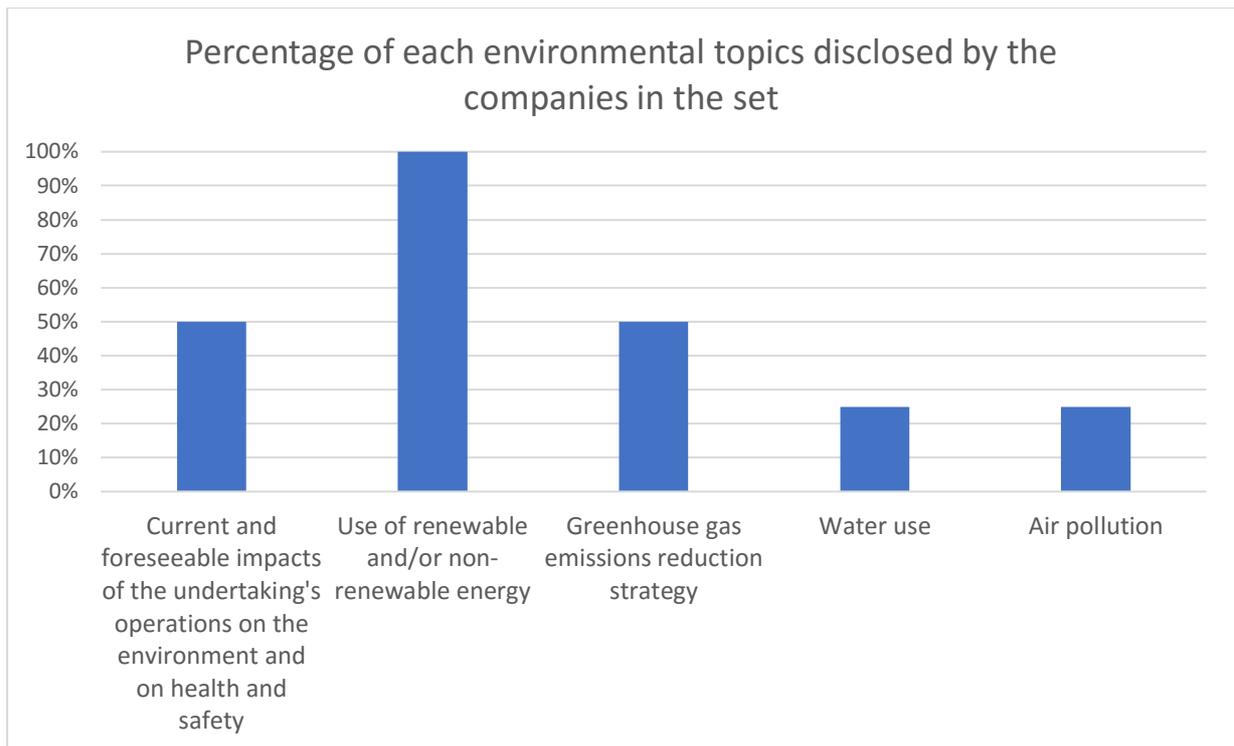


Table D - This table shows Czech Republic companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 25% of the Czech republic companies analysed in the set included “Actions taken to ensure gender equality” among their disclosed topics, 0% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 50% “Respect for the right of workers to be informed and consulted” matters, 25% “Respect for trade union rights” matters, 75% “Health and safety at work” matters, 100% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 75% “Prevention of human rights abuses” matters (see table below).

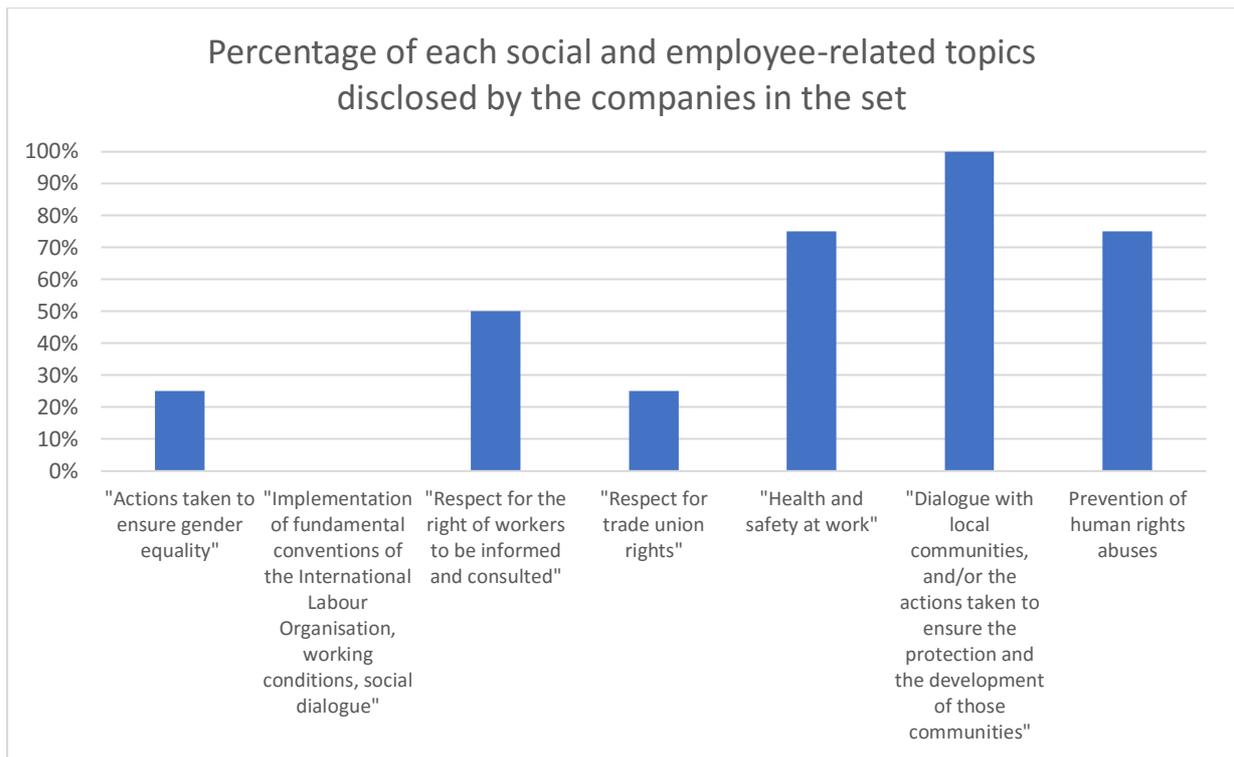


Table E - This table shows Czech Republic companies and their disclosure inclinations toward social and employee-related matters

5. **ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES:** The 100% of the Czech Republic companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 75 % of them disclosed “Instruments in place to fight bribery” (see table below).

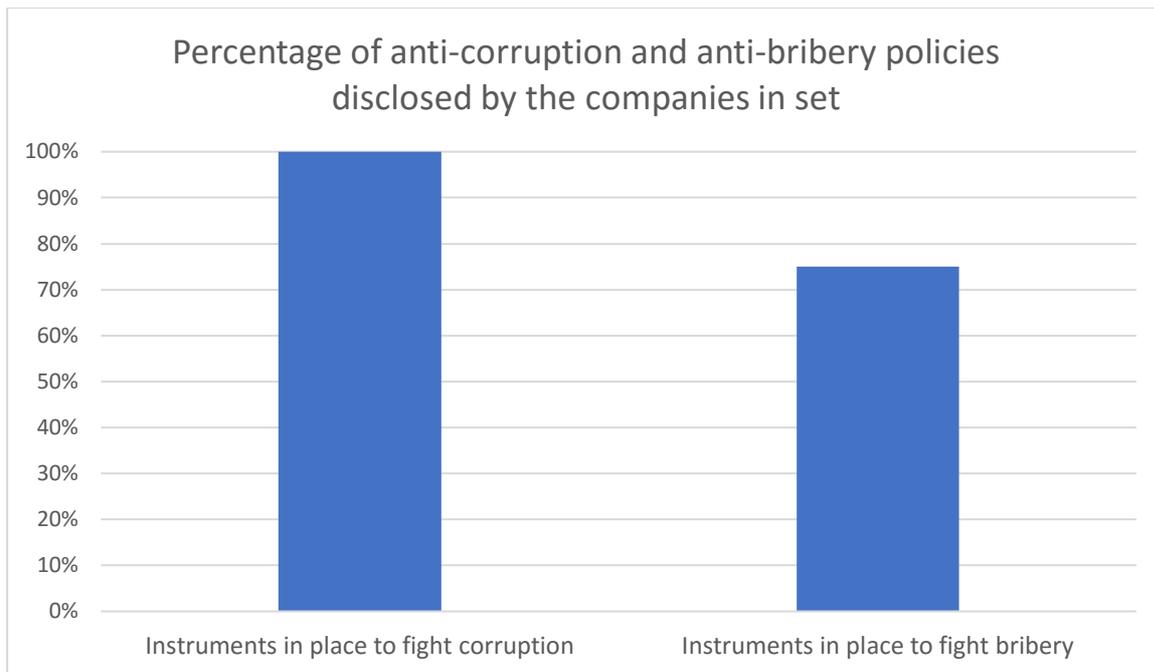


Table F - This table shows Czech Republic companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important conclusions.

First, Czech Republic companies disclose their NFI only through management reports, avoiding all the efforts and additional costs that a sustainability report could implicate.

Second, at least one of the four Czech Republic companies, presented in the random sample, disclose environmental issues, but, most of the time (four out of five), the number of companies disclosing the singular issue is less than or equal to 50% of the total companies presented in the set.

Third, Czech Republic companies used to disclose more social and employee-related topics with respect to the environmental ones with the exception of topics regarding the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” that are disclosed or even mentioned by no companies in the set.

Finally, it is important to take into consideration that the management reports analysed were not affected by the amendment of the Accounting Act No. 56371991, since the Act came into effect as of January 1st, 2017 and the reports refer to the data from 2016. Nonetheless, it can be forecasted that, depending on the previous conclusions, Czech Republic public companies will possibly be ready to align their disclosure methodologies and contents to the new legislation in a timely, economic and more effective manner.

5.2 Ireland

In this part, a detailed analysis will be performed of both the theoretical part concerning the Irish legislation evolution, after the publication of the European Directive 2014/95/EU, and the practical part with the analysis of the randomly selected Irish companies NFI disclosure (data from 2016) on the sample set. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Irish environment prior to the entrance into this new European Directive and its consequences.

To perform this analysis, it was important to make an excursus to the 2007 economic situation in Ireland. This year represented the prelude of the two years' period (2008-2009), which were for the Irish economy the toughest years, after the crisis created by WWII. In fact, as A. Burke has affirmed: "*the financial and economic meltdown, which started to manifest in 2007 and went throughout 2008*"⁸⁹, has created an economic environment of instability and uncertainty till the early 2010s. The author supported as solution to this unfavourable situation the incentive to implement CSR policies.

In support of her theory, A. Burke reported that:

*"There is little written academically on CSR in an Irish context and it is perceived as only a relatively recent activity aligned to the most recent economic boom and the large-scale benefits from foreign direct investment the practice of CSR is not new to Irish society."*⁹⁰

The author goes on highlighting that while CSR matters were already known in the Irish business environment, companies did not know the positive incentives of properly disclosing the CSR, such as the positive reputational growth and trust of their stakeholders.

"A global survey by Grant Thornton (2011) reveals that Ireland ranks highly in promoting CSR, showing that 88 % of Irish companies donate to charity, compared to 62 % in Europe. The survey also revealed that 81 % of Irish organisations promoted diversity and equality in the workplace, compared to 50 % globally (Grant Thornton, 2011). An Accenture commissioned study by the Economic Intelligence Unit (EIU) of organisations based in Ireland split roughly equally between large organisations (51 % from organisations with over US\$ 500 m in annual global revenue) and small organisations (49 % from organisations with annual global revenue below US\$ 500 m) revealed that 73 % of these organisations are going to increase investment on CSR activities in the coming years (Economist

⁸⁹ A. Burke, "Corporate social responsibility in Ireland: A snapshot.", Corporate Social Responsibility in Europe, Springer International Publishing, (2015), p. 18.

⁹⁰ A. Burke, "Corporate social responsibility in Ireland: A snapshot.", p. 18.

Intelligence Unit, 2012). Historically there was little recognition by the Irish Government of the need or power of CSR. However, there has been recognition within government in recent times."⁹¹

Other Authors have analysed the 2008 Irish economic crisis. These authors were Stohs and Brannick (1999)⁹² and O'Dwyer, Unerman and Bradley (2005)⁹³, who stated that the lack of trust and confidence in Irish companies could be regained if companies, together with the Irish government, would start to "promote good corporate governance and CSR"⁹⁴. CSR, which in the Irish business environment used to receive little attention, since the early years of 2000s.

In addition, authors, named Williams and A. Cynthia, stated that "*Ireland, specifically to state-support financial institution after the 2008 financial crisis, has enacted legislation to require public companies to issue reports including environmental and/or social information*"⁹⁵ ⁹⁶.

In summary, it can be affirmed that scholars have analysed the quantity and quality of CSR policies disclosed and followed by Irish companies for the period from 2008 to 2014. Scholars have confirmed that Irish companies have already started to take into consideration CSR matters. Their only hindrance was the absence of best practices to disclose NFI that would help companies to obtain economic and reputational benefits.

In addition, Irish government should find better way to regulate CSR and its disclosure. For these reasons, there are big expectations from the Irish Statutory Instrument No. 360 inspired by Directive 2014/95/EU.

⁹¹ A. Burke, "*Corporate social responsibility in Ireland: A snapshot.*" Corporate Social Responsibility in Europe, (2015), p. 19.

⁹² J. H. Stohs and T. Brannick, "*Code and conduct: predictors of Irish managers' ethical reasoning.*", Journal of Business Ethics 22.4 (1999), pp. 311-326.

⁹³ B. O'Dwyer, J. Unerman and J. Bradley, "*Perceptions on the emergence and future development of corporate social disclosure in Ireland: Engaging the voices of non-governmental organisations.*", Accounting, Auditing & Accountability Journal 18.1, (2005), pp. 14-43.

⁹⁴ A. Burke, "*Corporate social responsibility in Ireland: A snapshot.*", Corporate Social Responsibility in Europe, (2015), p. 18.

⁹⁵ See Initiative for Responsible Investment, Corporate Social Responsibility Disclosure Efforts by National Governments and Stock Exchanges (March 12, 2015), <http://hausercenter.org/iri/wpcontent/uploads/2015/04/CSR-3-27-15.pdf>.

⁹⁶ Williams and A. Cynthia, "*The Global Reporting Initiative, Transnational Corporate Accountability, and Global Regulatory Counter-Currents.*", UC Irvine Journal of International, Transnational and Comparative Law 1.1 (2016): 67, p.7.

5.2.1 Legislation⁹⁷

The first step toward the adaptation of the Irish Legislation to the European Directive 2014/95/EU was done on August 1st, 2017 with the governmental approval of the Statutory Instrument No. 360, containing the new European Union principles and guidelines for NFI disclosure.

This regulation became official on August 21th, 2017 with its publication on the Irish Statute Book.

The legislative focus in this part will be the alignment between Irish non-financial information disclosure regulations and the European Union guidelines. For this reason, Irish Statutory Instrument No. 360 will be reported here after precisely **part two** and its sections of “Applicable company and Non-financial statement”.

From a first analysis, it could be inspected that the Irish translation of the European Directive was done in a short, simple and not dispersive way. To have further confirmation of the previous statement, there will be a part, where the comparison between the new regulation and Directive 2014/95/EU will be presented to understand their degree of conformity.

“PART 2

Applicable company

4. (1) For the purposes of these Regulations, a company—

(a) which, in relation to a financial year—

(i) qualifies as a large company under section 280H of the Principal Act,

(ii) has an average number of employees which exceeds 500, and

(iii) is an ineligible entity, or

(b) in the case of a holding company, a company which, in relation to a financial year—

(i) qualifies as a large company under section 280H of the Principal Act,

(ii) is the holding company of a group, the aggregate average number of employees of which exceeds 500, and

⁹⁷ References from:

1. <https://dbei.gov.ie/en/Consultations/Consultation-on-transposition-of-EU-Directive-2014-95-EU-as-regards-disclosure-of-non-financial-and-diversity-information-by-certain-large-undertakings-and-groups.html>
2. <https://dbei.gov.ie/en/Consultations/Consultations-files/Consultation-on-transposition-of-EU-Directive-2014-95-EU-as-regards-disclosure-of-non-financial-and-diversity-information-by-certain-large-undertakings-and-groups.pdf>
3. <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html>
4. http://www.algoodbody.com/insightpublications/new_nonfinancial_and_diversity_disclosure_obligations_affecting_directors_of_some_large_companies
5. <https://www.pila.ie/resources/bulletin/2017/08/30/new-regulations-implementing-eu-directive-on-csr-reporting-introduced-in-ireland>
6. <https://dbei.gov.ie/en/Legislation/SI-No-360-of-2017.html>

(iii) is an ineligible entity,

shall, in these Regulations, be referred to as an “applicable company”.

(2) For the purposes of paragraph (1)(a)(ii), the average number of employees of a company shall be determined by applying the methods specified in section 317 of the Principal Act in respect of determining the average number of persons employed by a company for purposes of subsection (1)(a) of that section.

(3) For the purposes of paragraph (1)(b)(ii), the aggregate figure shall be ascertained by aggregating the equivalent figures determined in accordance with paragraph (2) for each member of the group.

(4) For the purposes of paragraph (3), the figures for each subsidiary undertaking of the holding company shall be those included in its entity financial statements for the relevant financial year—

(a) where its financial year ends with that of the holding company, that financial year, and

(b) where it does not, its financial year ending last before the end of the financial year of the holding company.

Non-financial statement

5. [...]

(2) The non-financial statement shall—

(a) subject to this Regulation, be included as a specific section of the applicable company’s directors’ report,

(b) contain information, to the extent necessary for an understanding of the development, performance, position and impact of its activity relating to, at least, the following matters:

(i) environmental matters;

(ii) social and employee matters;

(iii) respect for human rights;

(iv) bribery and corruption,

(c) include a brief description of the applicable company’s business model,

(d) include a description of the policies pursued by the applicable company in relation to the matters referred to in subparagraph (b), including due diligence processes implemented and a description of the outcome of those policies,

(e) include a description of the principal risks related to the matters referred to in subparagraph (b), linked to the applicable company’s operations including, where relevant and proportionate—

(i) its business relationships, products or services which are likely to cause adverse impacts in those areas, and

(ii) how the applicable company manages those risks, and

(f) include an analysis of the non-financial key performance indicators relevant to the particular business.

(3) Where the directors of an applicable company do not pursue policies in relation to one or more of the matters referred to in subparagraph (b) of paragraph (2), the non-financial statement shall include a clear and reasoned explanation for not so doing.

(4) The non-financial statement shall also, where appropriate, include references to, and additional explanations of, amounts included in the statutory financial statements of the applicable company.

(5) An applicable company may omit, from its non-financial statement, information relating to impending developments or matters in the course of negotiation whose disclosure, in the opinion of the directors, could seriously prejudice the applicable company’s competitive position, provided that such omission does not prevent a fair and balanced understanding of the applicable company’s development, performance, position and impact of its activity.

(6) Where information has been omitted in accordance with paragraph (5), the applicable company shall state in its non-financial statement the fact that such information has been omitted and the reason for such omission.

(7) In preparing a non-financial statement, an applicable company may rely on national, European Communities or international frameworks, and where it does so, it shall specify which frameworks it has relied upon.

(8) The information required under paragraphs (2) to (7) may be set out in a separate statement in accordance with paragraphs (9) and (10).

(9) Where an applicable company provides the information required under paragraphs (2) to (7) in the form of a separate statement, a copy of such statement shall—

(a) be published on the website of the company within 6 months of the financial year end date of the company, and a statement that a copy of the statement has been so published or will be so published, together with the address of the website of the company, shall be included in the directors' report, or

(b) (i) be annexed to the annual return of the company, or

(ii) where the applicable company is an investment company, be delivered to the Registrar together with the documents referred to in section 1401A(2) of the Principal Act, or

(iii) where the applicable company is an investment company within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), be delivered to the Registrar together with the documents referred to in Regulation 42A(3) of those Regulations.

*(10) Where an applicable company provides the information required under paragraphs (2) to (7) in the form of a separate statement, such statement shall be attached to every balance sheet, referred to in section 341 of the Principal Act, laid before the annual general meeting of the company and shall be signed on behalf of the directors by 2 of the directors of the company.*⁹⁸

This Statutory Instrument part shows the obligation for large entities or consolidated entities of large groups to disclose their NFI in the management or non-reports. Even in this precise Member State legislation as expressed by the European Directive, entities, independently of their identity (singular companies or part of a group), must have more than 500 employees and must be considered public entities presented in the Irish Stock Exchange to be affected by the new legislation.

The below table displaces the Irish Statutory Instrument no. 360 with the goals of finding the various correspondences with the European Directive 2014/95/EU. In order to achieve the results to comply with the text of the Irish Statutory Instrument, previously presented, it was divided in two areas each of which formed by an entire article. It is important to point out that Art. 5 was not selected in its entirety, but only specific parts were considered, which resemble Directive 2014/95/EU constrains.

⁹⁸ <https://dbei.gov.ie/en/Legislation/Legislation-Files/SI-No-360-of-2017.pdf>

Irish Statutory Instrument no. 360	Directive 2014/95/EU	Thematic
Art. 4	Art. 19a part 1 and Art, 29a part1	Applicable company
Art. 5 – part 2	Art. 19a part 1 and Art. 29a part 1	Non-financial statement
Art. 5 – part 3, 4, 5, 6 and 7	Art. 19a part and Art. 29a part 1	Non-financial statement
Art. 5 – part 9 and 10	Art. 19a part and Art. 29a part 4	Non-financial statement

Table G – Comparison between Irish Statutory Instrument no. 360 and Directive 2014/95/EU non-binding guidelines.

From table G and the previously inserted text extract of the Irish Statutory Instrument, it could be verified that the transposition of the European Directive 2014/95/EU into the Irish Statute Book has all the principal elements necessary to carefully constrain the disclosure of NFI into the European Union Member State, Ireland.

There were two principal articles of the European Directive 2014/95/EU, presented in the new Irish Statutory Instrument. From these two articles, legislators were able to set all essential principles to constrain Irish NFI disclosure and be compliant with the European Directive.

The main thematic areas of this translation can be divided in two parts. The first part is about the “**Applicable company**” and describes the characteristics (such as number of employees and capital dimension) of the firms to which the Decree is addressed. The second part is called “**Non-financial statement**” and contains several major regulations, which will be listed below.

The first regulation is formed only by one section and rules HOW and WHAT to disclose.

The second regulation is composed by several parts, which indicate:

1. HOW to communicate disclosure EXCEPTIONS from the rule and WHEN these exceptions can be possibly applied,
2. Financial information that must be included,
3. WHICH frameworks must be utilised for companies’ disclosure.

The last regulation, comprehends two subsections of the Irish Statutory Instrument, Article five - parts nine and ten that show HOW to disclose NFI in a report alternative to the management report and the relative financial information to include.

5.2.2 2016 Non-Financial Information disclosure analysis

While the previous part was meant to describe the Irish legislation on NFI matters, this part will empirically analyse the situation of all Irish companies, part of the random sample, and how they position themselves a year before the duty to comply with the Statutory Instrument No. 360.

The total number of Irish companies analysed were eleven, coming from seven different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Accenture PLC part of the “Other services” sector and single entity.
2. Eaton Corporation PLC part of the “Machinery, equipment, furniture and recycling” sector and single entity.
3. Seagate Technology PLC part of the “Machinery, equipment, furniture and recycling” sector and single entity.
4. Willis Towers Watson PLC part of the “Banks” sector and part of a consolidated group.
5. Kingspan Group PLC part of the “Metals and metal products” sector and part of a consolidated group.
6. Greencore Group PLC part of the “Food, beverages and tobacco” sector and part of a consolidated group.
7. Origin Enterprises PLC “Food, beverages and tobacco” sector and part of a consolidated group.
8. Applegreen PLC part of the “Wholesale and retail trade” sector and part of a consolidated group.
9. CPL Resources PLC part of the “Other services” sector and part of a consolidated group.
10. Kenmare resources PLC part of the “Primary sector” and part of a consolidated group.
11. IFG Group PLC part of the “Other services” sector and part of a consolidated group.

At a first glance, it could be observed that the majority of these Irish companies, presented in the random sample, disclose in a clear, complete and appropriate manner their CSR matters. Among them were some exceptions, which were: company number seven (Origin Enterprises PLC), which provided NFI to its stakeholder only barely mentioning the various subjects, and companies number four and nine (Willis Towers Watson PLC and CPL Resources PLC) that did disclose their managerial reports, but did not mention the compulsory NFI matters, pointed out

by Directive 2014/95/EU. For these reasons, the following parts (all the graphical results) will take into consideration a total set of eight companies instead of the initial eleven companies⁹⁹.

With the support of the database created for the analysis of the conformity between the Irish disclosure prior to Directive 2014/95/EU and the Directive guidelines, following milestones and results could be observed:

- 1. **DISCLOSURE FRAMEWORKS:** The 87,5% of the Irish companies analysed¹⁰⁰ in the set used International frameworks, while 25 % used National frameworks and the other 12,5% used Union-based frameworks. It must be highlighted that summing all three percentage together it come out a sum of higher than 100% due to the fact that some companies use multiple frameworks (see table below).

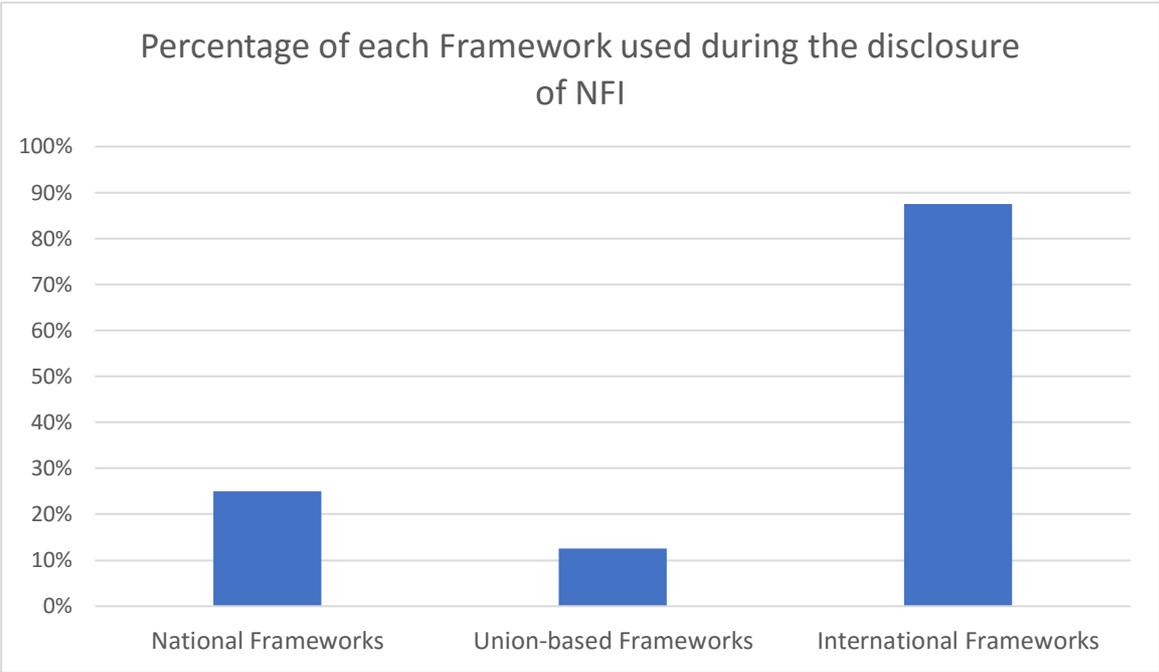


Table H – This table shows Irish companies and their disclosure frameworks choice

⁹⁹ In the initial list of Irish companies, extrapolated from the random sample set, there were present eleven companies. From that number (eleven), it was taken out three companies due to either their non-availability or correctness of data with the research purpose. This subtraction resulted in a subset of eight companies that will be used through all this part analysis.

¹⁰⁰ For this part, the total of Irish companies amount to twelve entities.

2. **DISCLOSURE TOOLS:** The 75% of the Irish companies analysed in the set disclosed their NFI in their yearly management report, while 25% created an ad hoc sustainability report (see table below).

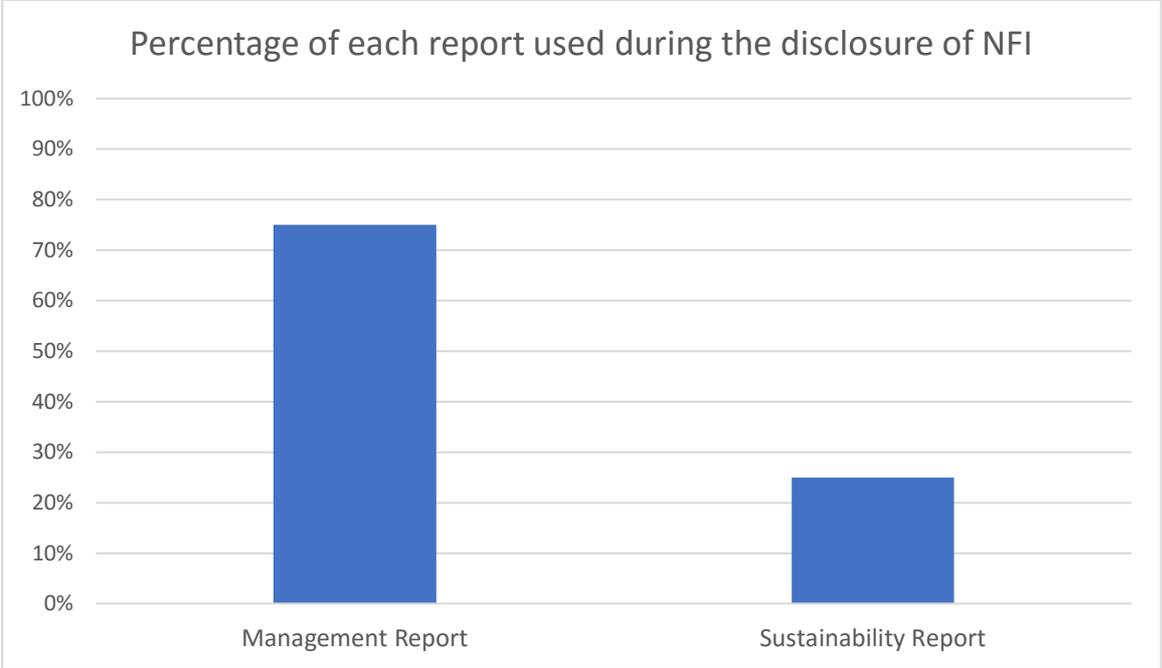


Table I - This table shows Irish companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 50% of the Irish companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 75% included the “Use of renewable and/or non-renewable energy” matters, 62,5% “Greenhouse gas emissions reduction strategy” matters, 50% “Water use” matters and 25% “Air pollution” matters (see table below).

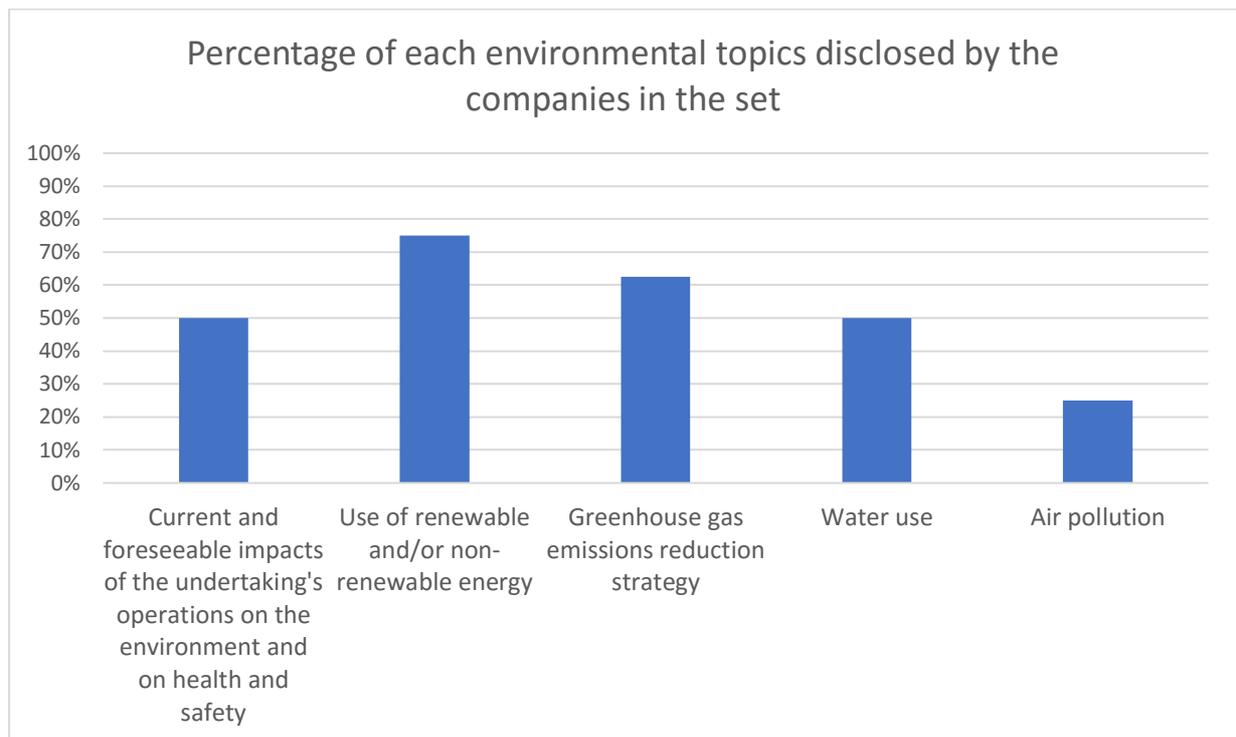


Table J - This table shows Irish companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 37,5% of the Irish companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 25% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 25% “Respect for the right of workers to be informed and consulted” matters, 12,5% “Respect for trade union rights” matters, 62,5% “Health and safety at work” matters, 62,5% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 50% “Prevention of human rights abuses” matters (see table below).

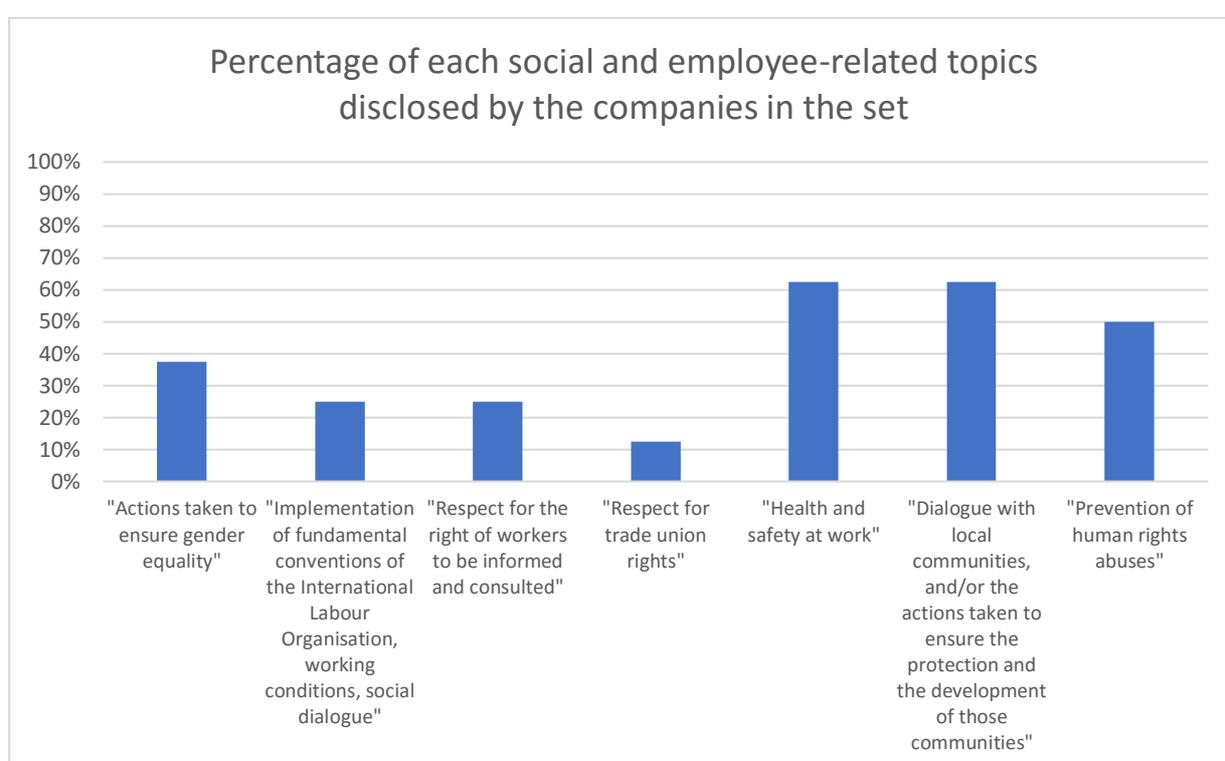


Table K - This table shows Irish companies and their disclosure inclinations toward social and employee-related matters

5. **ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES:** The 50% of the Irish companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 50 % of them disclosed “Instruments in place to fight bribery” (see table below).

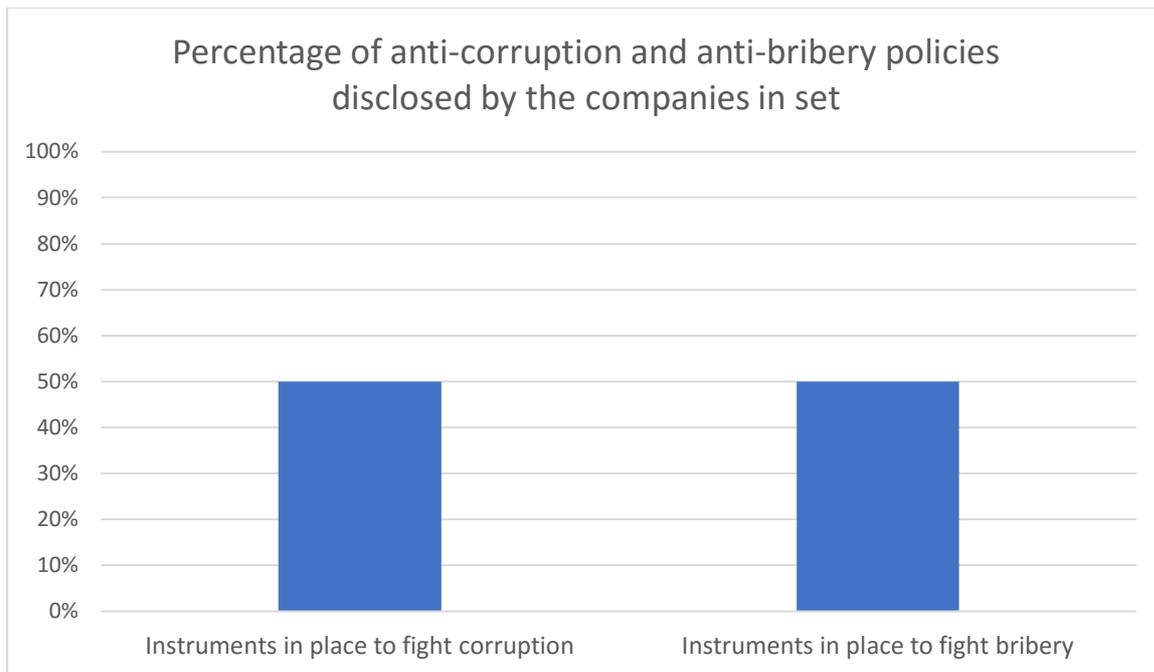


Table L - This table shows Irish companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show two important conclusions.

First, there are some resemblance between Italian and Irish companies' willingness to disclose NFI before year 2017. These were: both national companies use different frameworks together to help them disclosing their CSR data and both national companies communicate their NFI either through a managerial report or, in a smaller percentage (25%), through ad hoc sustainability report.

Second, at least one of the companies, presented in the random sample and analysed, disclosed a different Corporate Social Responsibility topic, highlighted by Directive 2014/95/EU. This gives the possibilities to the last three histograms (Table J, K, and L) to have at least the 12,5% in each column.

Finally, it is important to take into consideration that the management reports analysed were not affected by Statutory Instrument No. 360, since this regulation came into effect on August 21th, 2017 and the reports showed data from 2016. Nonetheless, it can be forecasted that, depending on the previous conclusions, Irish public companies will be ready to align their disclosure, methodologies and contents to the new legislation in a non-cumbersome way, due to their voluntary NFI disclosure methods.

5.3 Italy

In this section, it will be performed the detailed analysis of both the theoretical part, concerning the Italian legislation evolution following the publication of the European Directive 2014/95/EU, and the practical part with the analysis of the disclosure of 2016 NFI of the randomly selected Italian companies in the sample set.

It is important to understand and analyse the different positions and opinions scholars have of the Italian sustainable business environment, prior to the European Directive 2014/95/EU implementation.

To get a clear understanding of what was the Italian NFI disclosure environment, before year 2017 and before the translation of Directive 2014/95/EU into the Italian legislations, it could be cited Mio, Venturelli and Leopizzi and their article, “*Management by objectives and CSR*”, in which they pointed out that “*Italy was still considered a place where the business culture on sustainability was certainly not deep rooted*”¹⁰¹. This consideration is empirically confirmed and sustained by the analysis explained in Ch. 5.3.2 and academically by the study published by A. Venturelli, F. Caputo, S. Cosma, R. Leopizzi and S. Pizzi in their article, “*Directive 2014/95/EU: Are Italian Companies Already Compliant?*”¹⁰².

In this article, they affirmed that “*there is still an important information gap between Italian NFI disclosure and the standards established by Directive 2014/95/EU*”. They then added that “*the potential contribution of the EU Directive to non-financial disclosure in Italy appears to be greater than expected, allowing companies to improve the quality of the information they disclosed*”¹⁰³.

Another important topic related to Italian CSR tradition is the one linked to corporate disclosure of the “**Instruments put in place to fight corruption and bribery**”. Citing: M. Sargiacomo, L. Ianni, A. D’Andreamatteo and S. Servalli and their article titled “*Accounting and the fight against*

¹⁰¹ C. Mio, A. Venturelli and R. Leopizzi, “*Management by objectives and corporate social responsibility disclosure – First results from Italy*”, Accounting, Auditing & Accountability Journal, Vol. 28 no.3, (2015), p. 326.

¹⁰² A. Venturelli, F. Caputo, S. Cosma R. Leopizzi and S. Pizzi, “*Directive 2014/95/EU: Are Italian Companies Already Compliant?*”, Sustainability, Vo.9, Iss. 8; (05.08.2017), p. 12.

¹⁰³ A. Venturelli, F. Caputo, S. Cosma R. Leopizzi and S. Pizzi, “*Directive 2014/95/EU: Are Italian Companies Already Compliant?*”.

corruption in Italian government procurement: A longitudinal critical analysis (1992-2014)”¹⁰⁴. It could be understood that there is a misalignment between Italian legislation mandatory regulations and what in effect companies disclose. As a matter of fact, from their article it can be read: “*The provided chronology*¹⁰⁵ *suggests that the Italian government has been a very active anti-corruption crusader. But, this does not mean that the crusade has been successful. As a matter of fact, investigations by institutions such as the European Commission have indicated that corruption continues to be a pernicious problem in Italy*”¹⁰⁶. This proved that historically Italian alignment between the theory (regulations) and the practice (companies’ disclosure) has always been difficult to actuate and to restrict.

In summary, it can be affirmed that even if Italy has tried in the past to legislate the disclosure of non-financial information, in particular the ones regarding the policies put in place by companies to fight corruption and bribery, Italian companies have barely homologated themselves to the standards required. Therefore, the European Directive 2014/95/EU and its translation into the Italian Civil Code with the Legislative Decree n.254 have the possibility to bring, with their mandates, a big positive change toward a more clear and fair disclosure of non-financial matters.

5.3.1 Legislation¹⁰⁷

The first step to the adaptation of the Italian Legislation towards the European Directive 2014/95/EU was completed on December 30th, 2016 with the governmental approval of the Legislative Decree N. 254, containing the new Italian principles and guidelines for NFI disclosure.

¹⁰⁴ M. Sargiacomo, L. Ianni, A. D’Andreamatteo and S. Servalli, “*Accounting and the fight against corruption in Italian government procurement: A longitudinal critical analysis (1992-2014)*”, *Critical Perspectives on Accounting*, (2015), p. 7.

¹⁰⁵ Here, the word chronology stands for the timeline, from 1992 till 2014, of Italian disclosure, regarding NFI such as anti-corruption and bribery policies.

¹⁰⁶ Precise sentence: “... corruption remains a serious challenge in Italy [...] a new wave of political corruption cases has emerged, involving a number of top regional elected officials and revealing illegal financing of electoral campaigns and political parties, as well as ties with mafia groups. Cases against high-level officials in which dissuasive sanctions were actually enforced remain scarce (European Commission, 2014, p. 13)”.

¹⁰⁷ References from:

1. <http://www.gruppobilanciosociale.org/news-en/legislative-decree-30-december-2016-n-254-non-financial-disclosure/?lang=en>
2. [https://uk.practicallaw.thomsonreuters.com/1-503-2608?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/1-503-2608?transitionType=Default&contextData=(sc.Default))
3. http://www.italiaonline.it/wp-content/uploads/2017/04/170404_Relazione-gov-2017_ENG_CLEAN_FINAL.docx.pdf

This Legislative Decree finally became official on January 10th, 2017 with its publication on the Official Gazette no. 7.

The legislative focus of this part is the alignment between Italian non-financial information disclosure regulations and the European Union guidelines. For this reason, it will analyse the Italian Legislative Decree N. 254, precisely from Art. 2 to Art. 5 plus Art. 8 and 12.

Analysing these specific articles, it came up that, as opposed to the section regarding Czech Republic and the broad range of thematic covered by its amendment, the Italian Decree is focused only on disclosing regulations regarding the communication of non-financial and diversity information.

It will follow the Italian Legislative Decree text section and, subsequently, it will be presented the comparison between this Legislative Decree and Directive 2014/95/EU to understand their conformity degree.

“Art. 2

Scope of application

1. Public-interest entities shall draw up for each financial year a declaration conforming to the provisions of Article 3 where they have had, on average, during the financial year a number of employees more than five hundred and, at the balance sheet date, have passed at least one of the following two dimensional limits: (

a) balance sheet total: 20,000,000 euro;

(b) the total net revenues from sales and services: 40,000,000 euros;

2. Public-interest entities which are company mothers of a large group shall draw up for each financial year a declaration conforming to the provisions of Article 4.

Art. 3

Individual declaration of non-financial information

1. The individual declaration of non-financial, to the extent necessary to ensure the understanding of the activity of a company, its evolution, its results and the impact from the same produced, covers environmental issues, social, relating to staff, to the respect of human rights, the fight against bribery and corruption that are relevant considering the activities and of the characteristics of the undertaking, describing at least: (

a) the business model of management and organization of activities of the enterprise, including models of organization and management may be adopted pursuant to Article 6, paragraph 1, letter a) of Legislative Decree of 8 June 2001, n. 231, also with reference to the management of the above themes;

b) policies practiced by the company, including those of due diligence, the results achieved through them and their fundamental indicators for the provision of non-financial;

(c) the main risks, generated or suffered, connected to the abovementioned themes and that derive from the activities of the company, its products, services or commercial relations, including, where relevant, supply chains and subcontracting;

2. In relation to the areas referred to in paragraph 1, the declaration of non-financial contains at least the information concerning: (

a) the use of energy resources, distinguishing between those produced from renewable and non-renewable energy sources and the use of water resources;

(b) the emissions of greenhouse gases and pollutant emissions into the atmosphere;

(c) the impact, where possible based on assumptions or realistic scenarios even in the medium term, on the environment and on health and safety, associated to the risk factors referred to in paragraph 1(c), or other relevant environmental risk factors and health;

d) social aspects and related to the management of the staff, including actions implemented in order to ensure gender equality, measures in order to implement the conventions of international and supranational organizations in the field, and the manner in which it is realized the dialog with the social partners;

e) respect for human rights, the measures taken to prevent violations, as well as the actions put in place to prevent attitudes and actions however discriminatory;

f) fight against corruption both active and passive, with indication of the means to this end adopted.

3. The information referred to in paragraphs 1 and 2 are provided with a comparison in relation to those provided in previous years, in accordance with the methodologies and the principles laid down by the standards of accounting used as reference or from the methodology of autonomous reporting used for the purposes of drafting the declaration and, where appropriate, shall be accompanied by a reference to the entries and the amounts contained in the budget. In the report is made explicit mention of the standard adopted reporting and in the case in which the standard of accounting used differs from the one to which reference has been made to the wording of the declaration referred to in the previous exercise, it is illustrated the motivation.

4. If recourse is had to a methodology of autonomous reporting is provided a clear and articulated description of itself and of the reasons for its adoption within the declaration does not finance. Likewise, are described any changes compared to the previous years, with the reasons for that decision.

5. For the purposes of reporting the performance indicators used, referred to in paragraph 1(b), are those provided by the standard adopted reporting and are representative of the various fields, as well as consistent with the activities carried out and the impacts it products. In the case where recourse is had to a methodology of autonomous reporting, i.e. in the case in which the performance indicators provided by the standard adopted reporting are not entirely appropriate or sufficient to represent with consistency the activity carried out and the impacts it products, the firm select indicators more suitable to this purpose, providing in a clear manner and articulated the reasons underlying this choice. The choice of performance indicators is also carried out considering, where appropriate, the guidelines issued by the European Commission under the provisions of Directive 2014/95/EU.

6. Public-interest entities subject to the obligation to draw up the declaration of non-financial who do not practice policies in relation to one or more of the areas referred to in paragraph 1, provide to the inside of the same declaration, for each of these areas, the reasons for this choice, stating the reasons therefor in a clear manner and articulated.

7. The responsibility to ensure that the report is drawn up and published in accordance with the provisions of this decree is the responsibility of the administrators of the public-interest entity. In the fulfilment of their obligations they act according to criteria of professionalism and diligence. The control member, within the framework of the

progress of the functions assigned to it by law, shall ensure compliance with the provisions laid down in this decree and shall report its findings in its annual report to the house.

8. Without prejudice to the obligations arising from the admission or by a request for the admission of securities to trading on a regulated market, previous deliberation motivated of the administrative organ, heard the control member, in the declaration of non-financial may be omitted, in exceptional cases, information concerning upcoming developments and operations during the negotiation, where their disclosure could seriously affect the commercial position of the undertaking. If avails itself of this option, the public-interest entity mentions it in the declaration not a financial with explicit reference to this paragraph. The omission is not however permitted when this may affect a correct understanding and balanced view of the evolution of the company, its results and its situation as well as the impacts produced by its activities in relation to the areas referred to in paragraph 1.

9. For subjects who fulfil the obligations of this article presenting the declaration of non-financial management report within the meaning of Article 5, paragraph 1(a), shall be deemed to be fulfilled the obligations referred to in the first and second subparagraphs of Article 2428 of the Civil Code, Article 41, paragraph 2, of Legislative Decree 18 August 2015, n. 136, and referred to in Article 94, paragraph 1-bis of Legislative Decree of 7 September 2005, n. 209, limited to the analysis of non-financial information.

10. The person responsible for carrying out the statutory audit of budget verifies the successful preparation by the administrators of the declaration of non-financial. The same subject, or other qualified entity to the conduct of legal review specially designated, expresses, with suitable separate report from that referred to in Article 14 of the legislative decree of 27 January 2010, n. 39, a statement about the conformity of the information provided with respect to that required by the present legislative decree and respect the principles, methodologies and procedures laid down in paragraph 3. The conclusions are expressed on the basis of knowledge and understanding that the person responsible for carrying out the control activities on the Declaration on non-financial has the public-interest entity, the adequacy of the systems, processes and procedures used for the purposes of the preparation of the statement of non-financial. In the case where the declaration of non-financial is contained in the report on operations within the meaning of Article 5, paragraph 1(a), the judgment referred to in Article 14, paragraph 2(e), of the legislative decree of 27 January 2010, n. 39, does not comprise said declaration, which remains subject to the obligation of attestation referred to in this subparagraph. The report, dated and signed by the subject with the purpose designated, is attached to the declaration of non-financial and jointly published thereto in accordance with the procedures laid down in Article 5.

Art. 4

Consolidated Statement of non-financial information

1. To the extent necessary to ensure the understanding of the work of the group, its development, its results and the impact from the same produced, the consolidated statement includes the data of the parent company and its subsidiaries fully consolidated and covers the subjects referred to in Article 3, paragraph 1.

2. Apply integrally, in so far as they are compatible, the provisions referred to in Article 3.

3. For the parent companies to fulfil their obligations under the present article presenting the consolidated statement of non-financial management report within the meaning of Article 5, paragraph 1(a), shall be deemed to be fulfilled the obligations laid down in paragraph 1-bis of Article 40 of the Legislative Decree 9 April 1991, n. 127, Article 41, paragraph 2, of Legislative Decree 18 August 2015, n. 136, and referred to in Article 100, paragraph 1-bis of Legislative Decree of 7 September 2005, n. 209, limited to the analysis of non-financial information.

Art. 5

Placement of the declarations

1. *The individual declaration of non-financial may: (*

a) be contained depending on the cases, in the report on management referred to in Article 2428 of the Civil Code, Article 41 of the legislative decree 18 August 2015, n. 136, Article 94 of the legislative decree of 7 September 2005, n. 209, which in this case constitutes a specific section as such marked;

b) constitute a separate report, without prejudice to the obligation to be marked from any similar wording. Once approved by the administrative organ, the separate report is put at the disposal of the control organ and of the entity in charge of carrying out the tasks referred to in Article 3, subparagraph 10 within the same deadlines for the presentation of the draft budget, and this is the object of publication on the register of companies, to the care of the administrators themselves, together with the annual report.

2. *The specific section of the report on individual management contains the required information or may indicate the other sections of the report on the management or other reports provided by law, including the separate report referred to in paragraph 1(b), where to find the required information, indicating also the section of the website of the public-interest entity where these are published.*

3. *The consolidated statement of non-financial may: (*

a) be contained, depending on the cases, in the report on management referred to in Article 40 of the Legislative Decree 9 April 1991, n. 127, Article 41 of the legislative decree 18 August 2015, n. 136, Article 100 of the legislative decree of 7 September 2005, n. 209, which in this case constitutes a specific section as such marked;

b) constitute a separate report, without prejudice to the obligation to be marked from any similar wording. Once approved by the administrative organ, the separate report is put at the disposal of the control organ and of the entity in charge of carrying out the tasks referred to in Article 3, subparagraph 10 within the same terms provided for by the law for the presentation of the draft consolidated financial statements and is the object of publication, on the register of companies, to the care of the administrators themselves, together with the consolidated annual report.

4. *The specific section of the report on operations contains the required information or may indicate the other sections of the report on the management or other reports provided by law, including the separate report referred to in paragraph 3(b), where to find the required information, indicating also the section of the website of the public-interest entity where these are published.*

Art. 8

Penalties

1. *Administrators of public-interest entity, obliged under this decree, which fail to deposit within the prescribed period with the Companies Registry in the individual statement consolidated or non-financial, applies a pecuniary administrative sanction of from euro 20,000 to 100,000 euro. If the deposition takes place within thirty days of the expiry of the prescribed time-limit, an administrative penalty is reduced to one third.*

2. *The sanction referred to in paragraph 1 shall apply to administrators of public-interest entity i.e. reduced by half, administrators of the person referred to in Article 7 that may not derogate from the monitoring activities referred to in Article 3, paragraph 10, that fail to attach to the individual statement consolidated or non-financial, filed at the Registry of Enterprises, the certificate referred to in the aforesaid paragraph 10 of Article 3.*

3. Except that the fact unhealthy administrative offenses referred to in paragraph 4, when the individual statement consolidated or non-financial filed at the Registry of Enterprises is not drawn up in accordance with the requirements laid down in Articles 3 and 4, administrators applies a pecuniary administrative sanction of from euro 20,000 to 100,000 euro. The same penalty applies to the components of the control member which, in breach of their duties of supervision and of the report provided for in Article 3, subparagraph 7, fail to report to the House that the individual statement consolidated or non-financial is not drawn up in accordance with the requirements laid down in Articles 3 and 4. The penalty referred to in this subparagraph, be reduced by half, applies to administrators and to the components of the control member, if present, of the entities referred to in Article 7, paragraph 1, which have certified the conformity to the present decree of an individual statement consolidated or non-financial, filed at the Registry of Enterprises, not drawn up in accordance with Articles 3 and 4.

4. Except that the fact constitutes a criminal offense, when the individual statement consolidated or non-financial filed at the Registry of Enterprises contains facts relevant materials not conforming to the true or omit facts relevant materials whose information is provided pursuant to Articles 3 and 4 of this decree, administrators and to the components of the control member of the public-interest entity applies a pecuniary administrative sanction of from euro 50,000 to Euro 150,000. The penalty referred to in this subparagraph, be reduced by half, applies to administrators and to the components of the control member, if present, of the entities referred to in Article 7, subparagraph 1, when at the register of companies is deposited a declaration individual consolidated or non-financial, which abuts the conformity within the meaning of Article 7, subparagraph 1, containing facts relevant materials not conforming to the true or in which they are omitted facts relevant materials whose information is set by Articles 3 and 4 of this decree.

5. The person referred to in Article 3, subparagraph 10, first period, which omits to verify the readiness of the declaration of non-financial applies a pecuniary administrative sanction of from euro 20,000 to 50,000 euros. The person referred to in Article 3, paragraph 10, second period, which omits to make the attestation of conformity referred to in the same provision applies a pecuniary administrative sanction of from euro 20,000 to 100,000 euro. At the same subject applies the penalty referred to in the previous period when, in breach of the principles of conduct and of the modes of carrying out the duties of the verification referred to in Article 9, paragraph 1, letter c), certifies the conformity to the present decree, pursuant to Article 3, subparagraph 10, of a declaration individual consolidated or non-financial, filed at the Registry of Enterprises, not drawn up in accordance with Articles 3 and 4.

6. For the investigation and the imposition of administrative penalties referred to in this Article shall be competent to Consob and observe the provisions of Articles 194-bis, 195, 195-bis and 196-bis of Legislative Decree of 24 February 1998, n. 58. The sums deriving from the payment of the fines shall be paid at the entrance of the State budget.

Art. 12

Entrance into force

1. The provisions of this Decree shall apply, with reference to the declarations and reports relating to the financial years commencing from 1 January 2017.

2. In the first application of the discipline, public-interest entities referred to in Article 2 and in Article 7 of this decree may provide a comparison summary only qualitative and compared with previous years.

The present decree, provided with the seal of the State, will be inserted in the Official Compilation of the laws of the Italian Republic. It is compulsory to anyone wishing to observe it and do observe."¹⁰⁸

At first glance, these articles of the Decree show the obligation for large entities or consolidated entities of large groups to disclose NFI in their management or sustainability reports.

In this precise Member State legislation, as in the European Directive, is highlighted that the entities, independently of their identity (singular companies or part of a consolidated group), must have more than 500 employees and must be considered public entities presented in the Italian Member State Stock Exchange to be affected by the new Italian legislation.

In the following table, the Italian Legislative Decree n. 254 will be analysed to find the various equivalents with the European Directive 2014/95/EU. To perform this task, the section of the Decree, presented before, was divided in six subclasses, each of which formed by an entire article.

Italian Legislative Decree N. 254	Directive 2014/95/EU	Thematic
Art. 2	Recital 14	Scope of application
Art. 3	Art. 19a and Recital 7	Individual declaration of Non-financial information
Art. 4	Art. 29a	Consolidated statement of Non-financial information
Art. 5	Recital 6	Placement of the declarations
Art. 8	Art. 19a and 29a	Penalties
Art. 12	Art.5	Entrance into force

Table M – Comparison between Italian Legislative Decree N. 254 and Directive 2014/95/EU non-binding guidelines.

From table G and the previously inserted text extract, it could be verified that the transposition of the European Directive 2014/95/EU into the Italian Civil Code has all the principal elements, described with great details and focus, necessary to carefully constrain the disclosure of NFI in the European Union Member State, Italy. In fact, the principal articles presented in the

¹⁰⁸ <http://www.gruppobilanciosociale.org/wp-content/uploads/2017/01/Decr.-Lgs.-254-2016-Implementazione-della-Direttiva-europea-sulla-non-financial-information.pdf>

Legislative Decree n. 254, linked to the European Directive 2014/95/EU, are six and are all about different aspects of Italian NFI communication and regulations.

It could be important to point out that the NFI disclosure of single entities and entities that are part of a consolidated group is regulated by two different articles, as in the European Directive 2014/95/EU, to be able to better point out the differences and achieve the best and most correct disclosure.

The first article, listed in Table G, is about the “**Scope of the application**”, which described the characteristics (such as number of employees and capital dimension) of the undertaking to which the Decree is addressed.

The second one is called “**Individual declaration of Non-financial information**” and explained HOW and WHAT to disclose if the company is a single entity.

The third article is titled “**Consolidated statement of Non-financial information**” and explained HOW and WHAT to disclose if the company is a part of a consolidated group.

The fourth article is about “**Placement of the declarations**” or, in other words, it explained WHERE to disclose those NFI.

The fifth article is about “**Penalties**” and it listed all the sanction that the company will incur in case of wrong or imperfect disclosure.

Finally, the last article on the list is about the “**Entrance into force**” and it shows WHEN those rules will come into effect for all Italian companies.

5.3.2 2016 Non-Financial Information disclosure analysis

If the previous part describes the Italian legislation on NFI matters, this part will empirically analyse the situation of all Italian companies, part of the random sample, and how they positioned themselves a year before the Legislative Decree n. 254, dated December 30th, 2016, comes into effect.

The total number of Italian companies analysed were eighteen, coming from six different industrial sectors and being either part of a consolidated group of entities or not. More precisely, the companies were:

1. Parmalat S.P.A. part of the “Food, beverage and tobacco” sector and part of a consolidated group.

2. CIR S.P.A. - Compagnie Industriali Riunite part of the “Publishing and printing” sector and single entity.
3. Danieli & C. Officine Meccaniche SPA part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
4. Davide Campari - Milano S.P.A. part of the “Food, beverages and tobacco” sector and single entity.
5. Sogefi S.P.A. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
6. Safilo Group S.P.A. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
7. Amplifon S.P.A. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
8. Geox S.P.A. part of the “Textiles, wearing apparel and leather” sector and part of a consolidated group.
9. Reno De Medici S.P.A. part of the “Wood, cork and paper” sector and part of a consolidated group.
10. Openjobmetis S.P.A. part of the “Other services” sector and part of a consolidated group.
11. Elica S.P.A. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
12. Brunello Cucinelli S.P.A. part of the “Textiles, wearing apparel and leather” sector and part of a consolidated group.
13. Prima Industrie S.P.A part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
14. RAI WAY S.P.A part of the “Other services” sector and single entity.
15. Biancamano S.P.A. part of the “Other services” sector and N.A.
16. Ratti S.P.A. part of the “Textiles, wearing apparel and leather” sector and part of a consolidated group.
17. CAD IT S.P.A part of the “Other services” sector and part of a consolidated group.
18. Eukedos S.P.A. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.

From a first study, it could be observed that the majority of the Italian companies, presented in the random sample, disclose in a clear, complete and appropriate manner their CSR matters. The exceptions were: company number fifteen (Biancamano S.P.A.), which was not able to provide

any data to its stakeholders, and companies number: five, ten, eleven, twelve and eighteen (Sogefi S.P.A., Openjobmetis S.P.A., Elica S.P.A., Brunello Cucinelli S.P.A. and Eukedos S.P.A.) that did disclose their management reports, but did not mention the compulsory NFI matters pointed out by Directive 2014/95/EU. For these reasons, the following part (all the graphical results) will take into consideration a total set of twelve companies instead of the initial set formed by eighteen companies¹⁰⁹.

In the second phase, with the support of the database, created for the analysis of the conformity between the national disclosure tendency prior to Directive 2014/95/EU and the Directive guidelines, it could be inspected the following milestones and results:

1. **DISCLOSURE FRAMEWORKS:** The 83,33% of the Italian companies analysed¹¹⁰ in the set used International frameworks, while 25 % used National frameworks and the other 25% used Union-based frameworks. It must be highlighted that summing all three percentage together gives us a sum of higher than 100% due to the fact that some companies use multiple frameworks (see table below).

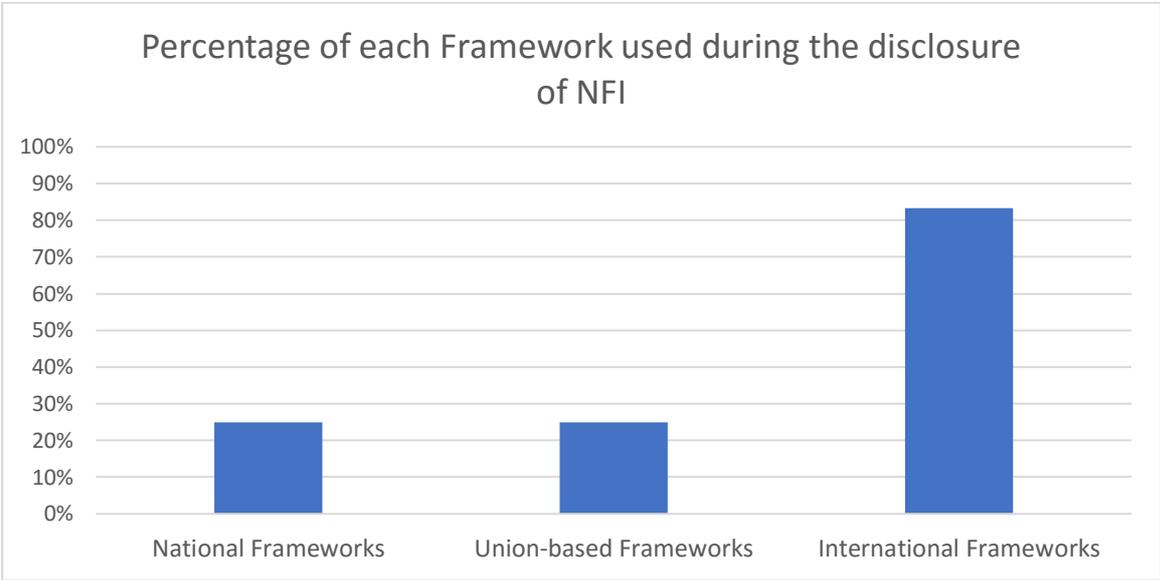


Table N – This table shows Italian companies and their disclosure frameworks choice

¹⁰⁹ In the initial list of Italian companies, extrapolated from the random sample set, there were present eighteen companies. From that number (eighteen), it was taken out six companies due to either their non-availability of data or presence of non-coherent information with the research purpose. This subtraction resulted in a subset of twelve companies that will be used through all this part analysis.

¹¹⁰ For this part, the total of Italian companies amount to twelve entities.

2. DISCLOSURE TOOLS: The 83,33% of the Italian companies analysed in the set¹¹¹ disclosed their NFI in their yearly management reports, while 16,67% created an ad hoc sustainability report (see table below).

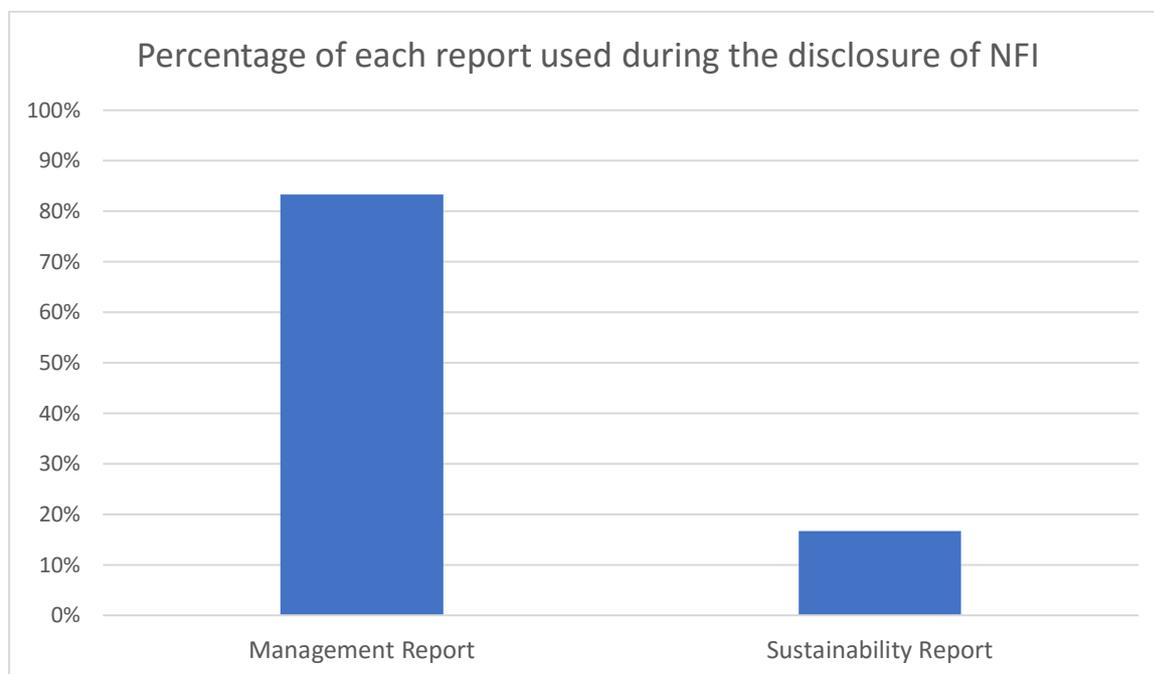


Table O - This table shows Italian companies and their disclosure tools choice

¹¹¹ For this part, the total of Italian companies amount to twelve entities.

3. ENVIRONMENTAL MATTERS: The 83,33% of the Italian companies analysed in the set¹¹² include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 50% included the “Use of renewable and/or non-renewable energy” matters, 33,33% “Greenhouse gas emissions reduction strategy” matters, 41,67% “Water use” matters and 8,33% “Air pollution” matters (see table below).

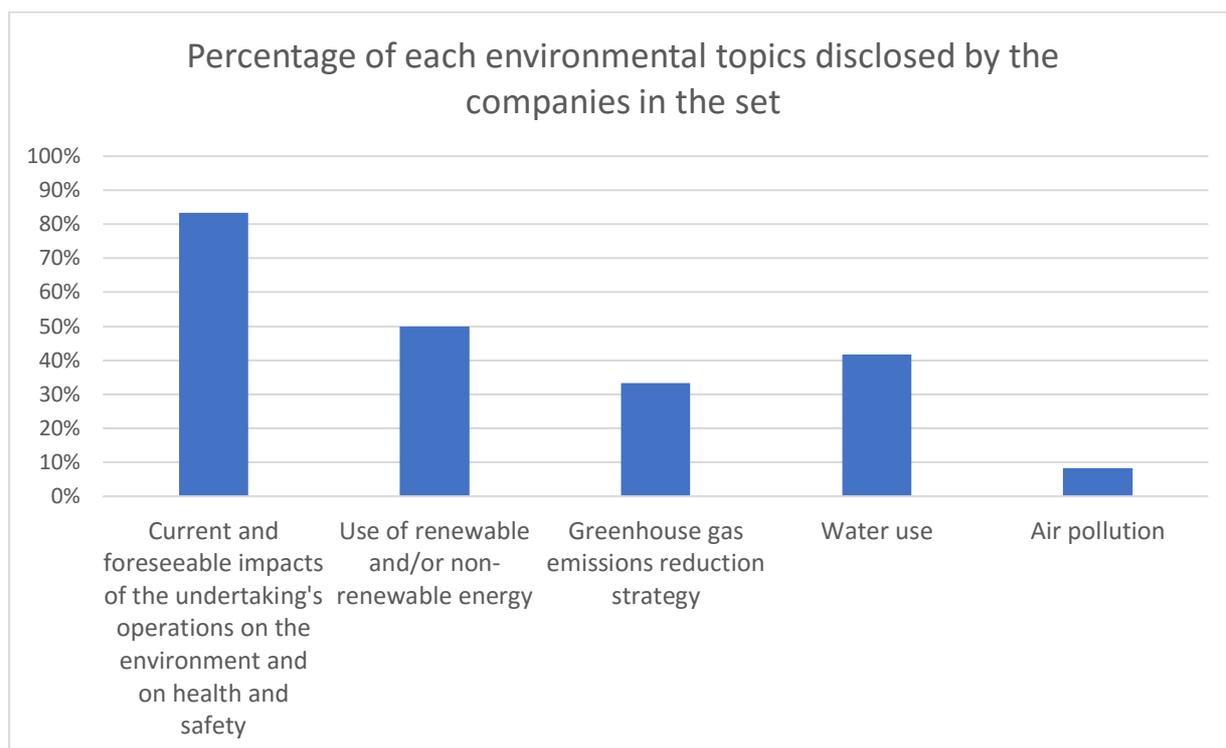


Table P - This table shows Italian companies and their disclosure inclinations toward environmental matters

¹¹² For this part, the total of Italian companies amount to twelve entities.

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 50% of the Italian companies analysed in the set¹¹³ include “Actions taken to ensure gender equality” among their disclosed topics, 33,33% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 25% “Respect for the right of workers to be informed and consulted” matters, 41,67% “Respect for trade union rights” matters, 83,33% “Health and safety at work” matters, 50% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 25% “Prevention of human rights abuses” matters (see table below).

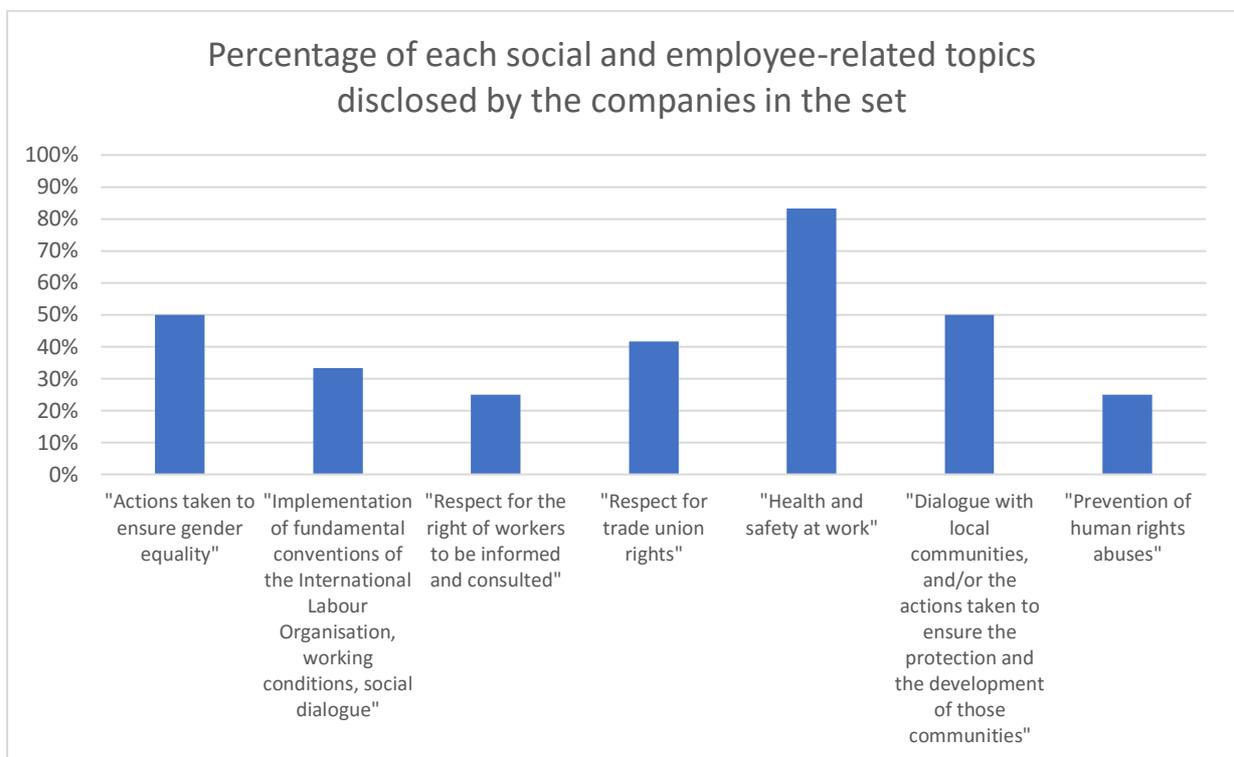


Table Q - This table shows Italian companies and their disclosure inclinations toward social and employee-related matters

¹¹³ For this part, the total of Italian companies amount to twelve entities.

5. ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES: The 25% of the Italian companies analysed in the set¹¹⁴ disclosed policies regarding “Instruments in place to fight corruption”, while only 0 % of them disclosed “Instruments in place to fight bribery” (see table below).

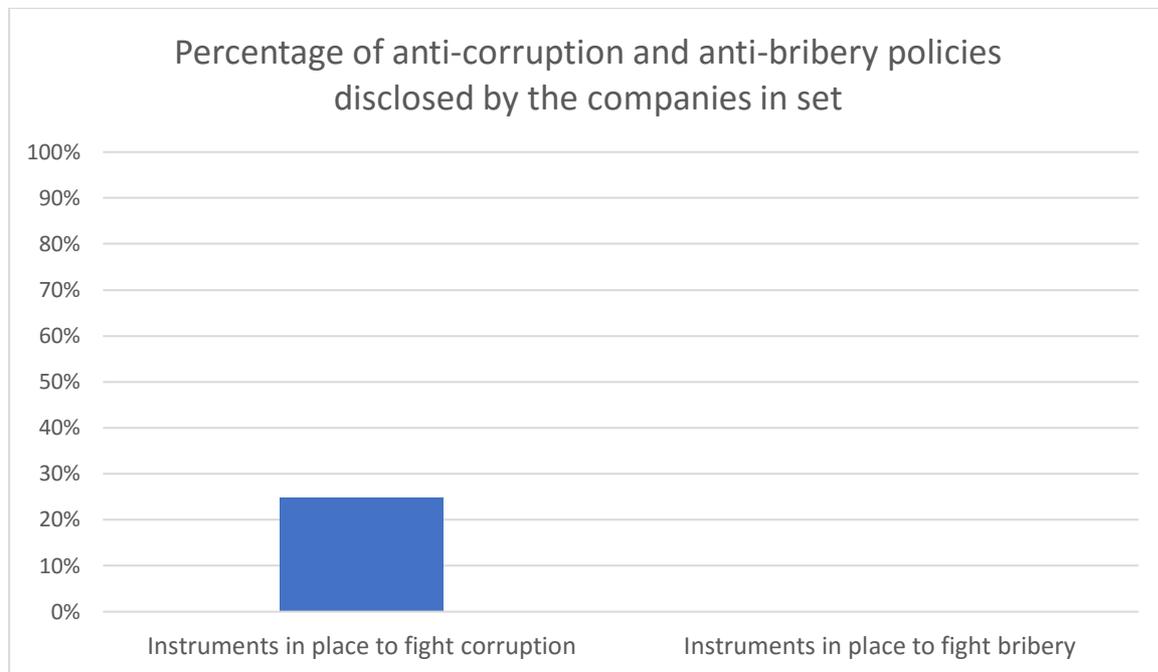


Table R - This table shows Italian companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important conclusions.

First, some Italian companies use different frameworks contemporaneously to help them disclose their CSR data.

Second, some of the Italian companies, precisely 16,67% have disclosed their NFI through a management report. This situation could be explained by the fact that those companies had a long tradition in disclosing their NFI and that, in the past years, an ad hoc sustainability report was considered the best and most appropriate choice for the communication of the company’s NFI.

Third, Italian companies used to disclose more environmental and social and employee-related issues with respect to the regulations put in place to fight corruption and bribery. As a matter of fact, it can be noticed that except for “air pollution” all the other disclosure topics, pointed out by Directive 2014/95/EU, were disclosed constantly by more than the 25% of the companies.

¹¹⁴ For this part, the total of Italian companies amount to twelve entities.

Instead, the percentage of instruments put in place to fight corruption and bribery were respectively 25% and 0%.

Finally, it is important to take into consideration that the management and sustainability reports analysed were not affected by the amendment of the Legislative Decree n. 254, since it came into effect on January 25th, 2017 and the reports analysed referred to data from 2016. Thus, it can be forecasted that, with the support of the previous mentioned academic reasoning¹¹⁵, Italian public companies will be ready to align their disclosure methodologies and contents to the new legislation in a quick and inexpensive way for environmental and social-employee related topics. It will be more costly and cumbersome to develop and create the correct corporate environment to disclose and implement policies to fight corruption and bribery.

¹¹⁵ Ch. 5.3, pp. 61-62.

5.4 Lithuania

In this section, a detailed analysis will be performed of both the theoretical part with the Lithuanian legislation evolution in terms of NFI policies and the practical part with the analysis of the randomly selected Lithuanian companies' NFI disclosure¹¹⁶. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Lithuanian environment prior to the translation of this new European Directive in the Lithuanian legislation and its consequences.

As P. Horvath and J. M. Putter, in their book, affirmed:

“Currently¹¹⁷, sustainability or nonfinancial reporting is not regulated under Lithuanian law. [...] To implement the European Directive 2014/95/EU, dated 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, the Ministry of Economics in Lithuania is developing nonfinancial reporting guidelines for state companies, as well as governmental and municipal bodies and the necessary amendments to the state legislation to bring these guidelines into force by 2017.”¹¹⁸

The authors go on highlighting that:

“From around 180.000 legal entities registered and active in Lithuania, less than 1% are joint-stock companies, only 27 of them being publicly traded (NASDAQ OMX 2016)” (Lursoft Data Bases 2016). Therefore, only an insignificant number of Lithuanian companies would be affected by the European Directive regulations. In addition, it is important to point out that these companies already either voluntarily disclose sustainability reports or are involved in sustainability actions.”¹¹⁹

All these reasoning clarified that the Lithuania government does not have as its priorities to legislate about NFI disclosure for public-traded companies. To further support the theory of the non-presence of a Lithuanian CSR disclosure environment, it could be cited article, written by L. Dagiliene, S. Leitoniene and A. Grencikova in which they summarised all the institutional and organizational problems of CSR reporting in Lithuania (see Figure eight).

¹¹⁶ NFI disclosed refers to the year 2016.

¹¹⁷ Currently is referred to the year 2016.

¹¹⁸ P. Horváth, "Sustainability reporting in Central and Eastern European companies: Results of an international and empirical study", Sustainability Reporting in Central and Eastern European Companies, Springer International Publishing, (2017), p.79.

¹¹⁹ P. Horváth, "Sustainability reporting in Central and Eastern European companies: Results of an international and empirical study ", p.79.

Institutional problems	
<i>Problems</i>	<i>Influence on corporate social reporting</i>
Legal acts for mandatory reporting	Traditional accounting principles and limitation of BAS are one of the main reasons not to disclose social information in traditional financial statements
Conditions for voluntary reporting	A relatively small number of companies make social reports.
Legal options	A relatively small number of companies use legal options for social initiatives.
Lack of methodological guidelines	There is no single system for social reporting. Thus, social reports are different in content and structure and not always comparable.
Single information sources about state institutions initiatives and promotion issues	There is no one central source in Lithuania, where, under the „one-stop shop“, you can get all the information.
Organizational problems	
<i>Problems</i>	<i>Influence on corporate social reporting</i>
Voluntary social disclosure	Passive voluntary social reporting for stakeholders. International large companies are much more involved into social reporting than national ones.
Management system standards	Slow implementation of management system standards. Only 16 companies have implemented SA 8000 standards in 2010 and only 12 in 2012 06 01.
Business and NGO's partnership	Slow participation in partnership with NGO

Figure 8 - Institutional and organizational problems of corporate social reporting in Lithuania¹²⁰

Figure eight accurately describe that the Lithuanian concerns regarding CSR disclosure can be summarized in two points:

1. *“Institutional problems - related to current inadequate legal framework for social accounting and reporting; they could be solved with the support of state institutions and professional organizations. These problems could be attributed to traditional legal acts and standards for accounting, limitations of regulation for mandatory and voluntary reporting, lack of application of legal options for social initiatives, promotion of business and NGOs' partnership, creation and coordination of single source for social information, lack of methodological guidelines.”*¹²¹
2. *“Organizational problems - As the key insight, it should be noted that still more declaratory socially responsible business ideas dominate in Lithuania, while the actual manifestation of social accounting and reporting is in the initial level. At the same time the most important thing should be the process of implementation of socially responsible business, as social reporting is rather a process for better business transparency than just a document. The process of corporate social reporting may be improved by strengthening legal framework and improving legal conditions for voluntary reporting. But at the same*

¹²⁰ L. Dagiliene, S. Leitoniene and A. Grecnikova, "Increasing business transparency by corporate social reporting: development and problems in Lithuania." Engineering economics 25.1, (2014), p. 57.

¹²¹ L. Dagiliene, S. Leitoniene and A. Grecnikova, "Increasing business transparency by corporate social reporting: development and problems in Lithuania.", p. 59.

time, regulatory mechanism is not enough because trust is always related to values driving the companies and their managers."¹²²

In support of the previous academic citations, it can be mention the article titled "*Theoretical issues and practical implications of corporate social accounting and reporting in Lithuania*" written by S. Leitoniene, A. Sapkauskiene and L. Dagiliene. In this article, authors affirmed that social accounting and reporting have slowly started to become a discussed topic in the Lithuanian academic, legislative and corporate environment from 2010. They continued their paper affirming that: "*In 2010, Lithuanian companies have to face institutional and organizational problems, which hamper the development of corporate social reporting. Institutional problems are related to current inadequate legal framework for social accounting and reporting; they could be solved with the support of state institutions and professional organizations. These problems could be attributed to traditional legal acts and standards for accounting, limitations of regulation for mandatory and voluntary reporting, lack of application of legal options for social initiatives, promotion of business and NGO's partnership, management system standards, creation and coordination of single source for social information, lack of methodological guidelines.*"¹²³

In conclusion, it can be stated that there are two main reasons why Lithuanian mandatory disclosure of non-financial information is so laggard. First, due to the small presence of PIEs companies in the Lithuanian Stock Exchange, the government feels no urgency to create ad hoc legislations for a so restricted population set. Second, Lithuania lacked a government entities, which want to take a serious commitment to translate the European Directive 2015/95/EU into a new Lithuanian legislation.

For these two reasons, there is still a climate of uncertainty and insecurity about the consequences of Directive 2014795/EU in Lithuania.

5.4.1 Legislation

The Lithuanian government did not yet create an ad hoc legislation to homologate its Civil Code with Directive 2014/95/EU requirements. Instead, it tried to conform itself through two different

¹²² L. Dagiliene, S. Leitoniene and A. Grencikova, "*Increasing business transparency by corporate social reporting: development and problems in Lithuania.*", *Engineering economics* 25.1, (2014), p. 59.

¹²³ L. Dagiliene, S. Leitoniene and A. Grencikova, "*Theoretical issues and practical implications of corporate social accounting and reporting in Lithuania.*", *Procedia Economics and Finance* 32, (2015), p. 1721.

actions, which were taken during the last ten years to help the government create a “mandatory culture” for the disclosure of non-financial information. These two actions were:

1. Planning to and disclosing the “Sustainable Development Strategy until 2030”¹²⁴
2. “Adjusting some contents of the Lithuanian Labour Code articles”¹²⁵.

It is important to remember that these two previously mentioned Lithuanian Legislative Actions would never be able to substitute the completeness and correctness, obtained with ad hoc amendment designed to nationally regulate Directive 2014/95/EU requirements. As a matter of fact, during the analysis of those two actions, it was impossible to precisely find references of all the Directive 2014/95/EU restrictions and guidelines.

*5.4.1.1 Sustainable Development Strategy until 2030*¹²⁶

This strategy was approved by the Lithuanian government and subsequently adopted by its parliament on June 10th, 2010. It was a core long-term strategic planning document, which lists all the urgencies, objectives and accomplishments that the Lithuanian companies and state must achieve by 2030. Inside, it also contains some medium-term plans, like “The National Development Plan for 2014-2020”¹²⁷ (NDP2020), and sectoral policy planning documents.

To check if the scheduled goals would be reached the government appointed a guarantor who uses mid-term scheduled reviews of the “Cross-sectoral Coordination Centre”¹²⁸ for his/her checking. This controlling institution was established on December 1st, 2011 and had the duty to directly report his/her findings to the Prime Minister.

To have a closer view of that strategy objectives, they were summarized under seven broad range dimensions and pictured on the below table (see table T).

Principle	Strategy’s application
<i>(1) Common vision and strategic objectives</i>	<ol style="list-style-type: none"> 1. Strategy defines a common long-term vision; 2. The vision is operationalised with strategic objectives that are SMART, i.e.:

¹²⁴ http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹²⁵ <https://e-seimas.lrs.lt/portal/legalAct/en/TAD/TAIS.191770>

¹²⁶ References from:

1. <http://www.sdnetwork.eu/?k=country%20profiles&s=single%20country%20profile&country=Latvia>
2. <http://www.sd-network.eu/?k=about%20us%20and%20contact>

¹²⁷ http://www.pkc.gov.lv/sites/default/files/imageslegacy/NAP2020%20dokumenti/NDP2020_English_Final.pdf

¹²⁸ <http://www.pkc.gov.lv/kontakti-1>

	<ul style="list-style-type: none"> ○ Specific (it states a quantified target); ○ Measurable (with indicators); ○ Achievable (neither too easy nor too demanding); ○ Realistic (it is achieved with the given resources and political circumstances); ○ Time-bound (it has a starting date on a targeted year).
(2) High-level commitment	The strategy is backed by high-level political commitment
(3) Horizontal integration	<p>Economic, environmental and social issues are integrated:</p> <ul style="list-style-type: none"> ○ In the strategy document ○ In the governance of the strategy (e.g. by establishing inter-ministerial bodies that are responsible for implementing the strategy).
(4) Vertical integration	The strategy is in line with priorities and implementation activities at other levels of governments (EU, national/federal, regional, local).
(5) Participation	Different stakeholder groups should be involved in the development and implementation of the strategy (participatory activities can be informational, consultative or decisional, and they can make use of different tools and mechanisms, such as permanent Councils, ad-hoc stakeholder dialogues, informative/consultative internet actions, etc).
(6) Implementation mechanisms and capacity-building	<p>The objectives of the strategy are addressed with:</p> <ul style="list-style-type: none"> ○ Provisions and mechanisms of implementation (budgeting, annual or bi-annual work/action plans) in which political responsibilities are clearly defined; ○ Adequate institutional and/or personal capacities or capacity building activities that are necessary to achieve the objectives.
(7) Monitoring, evaluation and strategy renewal	<ol style="list-style-type: none"> 1. The effectiveness of the strategy in achieving its objectives is: <ul style="list-style-type: none"> ○ Monitored continuously with a set of indicators (mostly quantitatively); and ○ Reviewed/evaluated in regular intervals (mostly qualitatively); 2. Monitoring and reviewing results/reports is considered during the continuous adjustment and the cyclical renewal of the strategy so that evidence-based policy learning takes place.

Table S – Sustainable Development Strategy macro-areas¹²⁹

While, to have a clear view of the contents regulated by the “Sustainable Development Strategy until 2030”, they can be summarized as follow:

1. “**Development of cultural space** – Preservation, interaction and enrichment of Cultural Space”¹³⁰
2. “**Long-term investments in human capital:**

¹²⁹ <http://www.sd-network.eu/?k=basics%20of%20SD%20strategies>

¹³⁰ http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

- 2.1 Base value and productivity of human capital
- 2.2 Equal opportunities and formation of middle class”¹³¹
- 3. **“Change of paradigm in education – Qualitative and available lifelong education”**¹³²
- 4. **“Innovative and Eco-efficiency in economy:**
 - 4.1 Mass creative activity and innovation
 - 4.2 Renewable and safe energy”¹³³
- 5. **“Nature as future capital – Sustainable management of natural values and services”**¹³⁴
- 6. **“Spatial development perspective:**
 - 6.1 Improvement of accessibility
 - 6.2 Settlement
 - 6.3 Spaces of national interest”¹³⁵
- 7. **“Innovative Government and public participation:**
 - 7.1 Increase in the social capital value”¹³⁶

5.4.1.2 Lithuanian Labour Code¹³⁷

The most recent version of the Lithuanian Labour Code is dated June 6th, 2017. In this date, the Lithuanian Parliament (*Seimas*) adopted the amendment to the Code to clarify certain specific topics that were still lagging behind. The modified Code will finally come into effect on July 1st, 2017.

The mention of the Labour Code “timeline” is important for the readers to understand that, even if the last amendment was made way after the 2014, the Lithuanian legislation decided to not homologate itself to Directive 2014/95/EU requirements. Thus, the only common trait that could be inspected was in Art. 2 of the Code that lists all the rights a worker has.

“Article 2.

Principles of Legal Regulation of Labour Relations

1. The following principles shall apply to the regulation of relations specified in Article 1 of this Code:

¹³¹http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³²http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³³http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³⁴http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³⁵http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³⁶http://www.pkc.gov.lv/sites/default/files/images-legacy/LV2030/LIAS_2030_en.pdf

¹³⁷http://eur-lex.europa.eu/n-lex/info/info-It/index_it

- 1) *freedom of association;*
- 2) *freedom of choice of employment;*
- 3) *state aid to persons in realising the right to employment;*
- 4) *equality of subjects of labour law irrespective of their gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities;*
- 5) *provision of safe and healthy working conditions;*
- 6) *fair remuneration for work;*
- 7) *prohibition of all forms of forced and compulsory labour;*
- 8) *stability of labour relations;*
- 9) *uniformity of labour laws and their differentiation on the basis of and psychophysical qualities of the employees;*
- 10) *freedom of collective bargaining for the purpose of reconciliation of interests of the employees, the employers and the state;*
- 11) *liability of the parties to the collective bargaining agreement for their obligations.*

2. *The state shall support the exercise of labour rights. The labour rights may be in exceptional cases restricted only by law or court judgement, if such restrictions are necessary in order to protect public order, the principles of public morals, public health, property, rights and legal interests.*¹³⁸

It must be pointed out that the majority of the principles contained in Article 2 matched with the ones listed by Recital 7 of Directive 2014/95/EU. This recital states that:

“Recital 7: As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities.”¹³⁹

In conclusion, it could be affirmed that in the Lithuanian legislation, both in the Civil or Labour Code, there is no mention of the main requirements of Directive 2014/95/EU, such as:

1. There is no mention of either the Disclosure frameworks or type of reports companies should use to communicate their NFI.
2. Environmental matters are not listed.
3. There is no indication to mandatory disclose policies to fight corruption and bribery.

¹³⁸ <https://e-seimas.lrs.lt/portal/legalAct/en/TAD/TAIS.191770>

¹³⁹ Recital 7, Directive 2014/95/EU.

In addition, there are no references of the legislation sanctions that would regulate: how to avoid NFI miscommunication, when it is possible to be excluded from NFI communications and to which companies the restrictions are referred (number of employees - whether or not it is compulsory to be publicly traded).

5.4.2 2016 Non-Financial Information disclosure analysis

While the previous section was meant to look for the possible resemblances of the Lithuanian legislations with Directive 2014/95/EU principles, this part will empirically analyse the situation of all Lithuania companies, part of the random sample, and how they position themselves a year before the European deadline to the homologation of the singular state, part of the Union, to implement mandatory NFI disclosure policies.

The total number of Lithuanian companies analysed were six, coming from five different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Linas Agro Group AB part of the “Primary sector” and part of a consolidated group.
2. Rokiskio Suris AB part of the “Food, beverages and tobacco” sector and single entity.
3. Zemaitijos Pienas AB part of the Primary sector” and single entity.
4. Siaulių Bankas part of the “Banks” sector and single entity.
5. Vilniaus Baldai AB part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
6. Auga Group AB part of the “Wholesale and retail trade” sector and part of a consolidated group.

From a first study, it could be observed that unfortunately the majority of the Lithuanian companies, presented in the random sample, disclosed in a non-clear, non-complete and inappropriate manner their CSR matters. For these reasons, from the initial sample set, it must be taken out three companies, which have not even mentioned the principal topics, highlighted by the European Directive 2014/95/EU. These companies were: number three (Zemaitijos Pienas AB), number five (Vilniaus Baldai AB) and number six (Auga Group AB).

The following graphical results would be obtained out of a total set composed by three companies instead of the initial set formed by six companies¹⁴⁰.

With the support of the database created for the study of the conformity between the Lithuanian disclosure prior to Directive 2014/95/EU and the Directive guidelines, following milestones and results could be observed:

- 1. DISCLOSURE FRAMEWORKS: The 33,3% of the Lithuanian companies analysed¹⁴¹ in the set used International frameworks, while 33,3 % used National frameworks and the other 33.3% used Union-based frameworks (see table below).

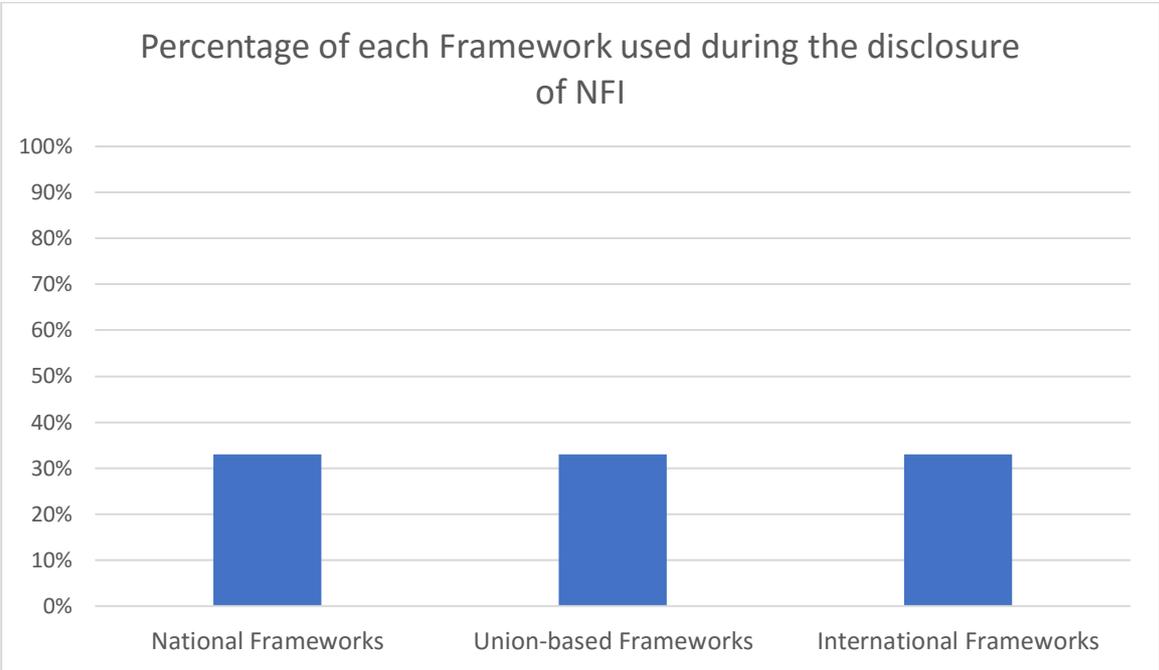


Table T – This table shows Lithuanian companies and their disclosure frameworks choice

¹⁴⁰ In the initial list of Lithuanian companies, extrapolated from the random sample set, there were present six companies. From that number (six), it was taken out three companies due to either their non-availability or correctness of data with the research purpose. This subtraction resulted in a subset of three companies that will be used through all this part analysis.

¹⁴¹ For this part, the total of Lithuanian companies amount to three entities.

2. **DISCLOSURE TOOLS:** The 66,7% of the Lithuanian companies analysed in the set disclosed their NFI in their yearly management reports, while 33,3% created an ad hoc sustainability report (see table below).

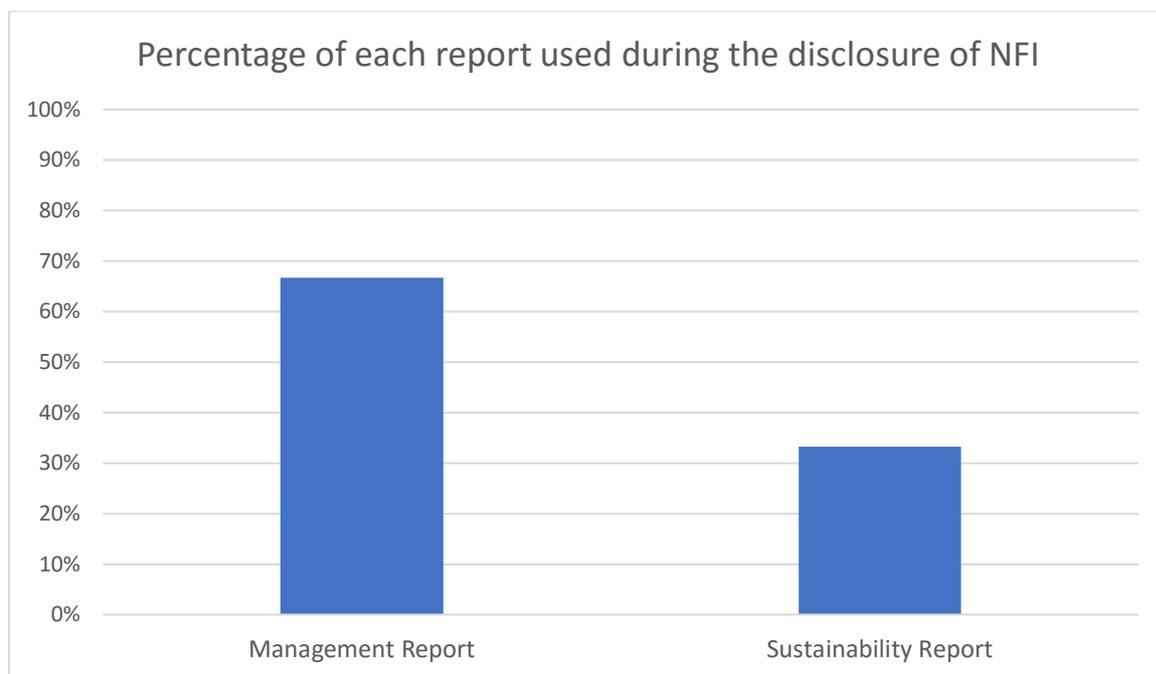


Table U - This table shows Lithuanian companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 66,7% of the Lithuanian companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 33,3% included the “Use of renewable and/or non-renewable energy” matters, 33,3% “Greenhouse gas emissions reduction strategy” matters, 33,3% “Water use” matters and 66,7% “Air pollution” matters (see table below).

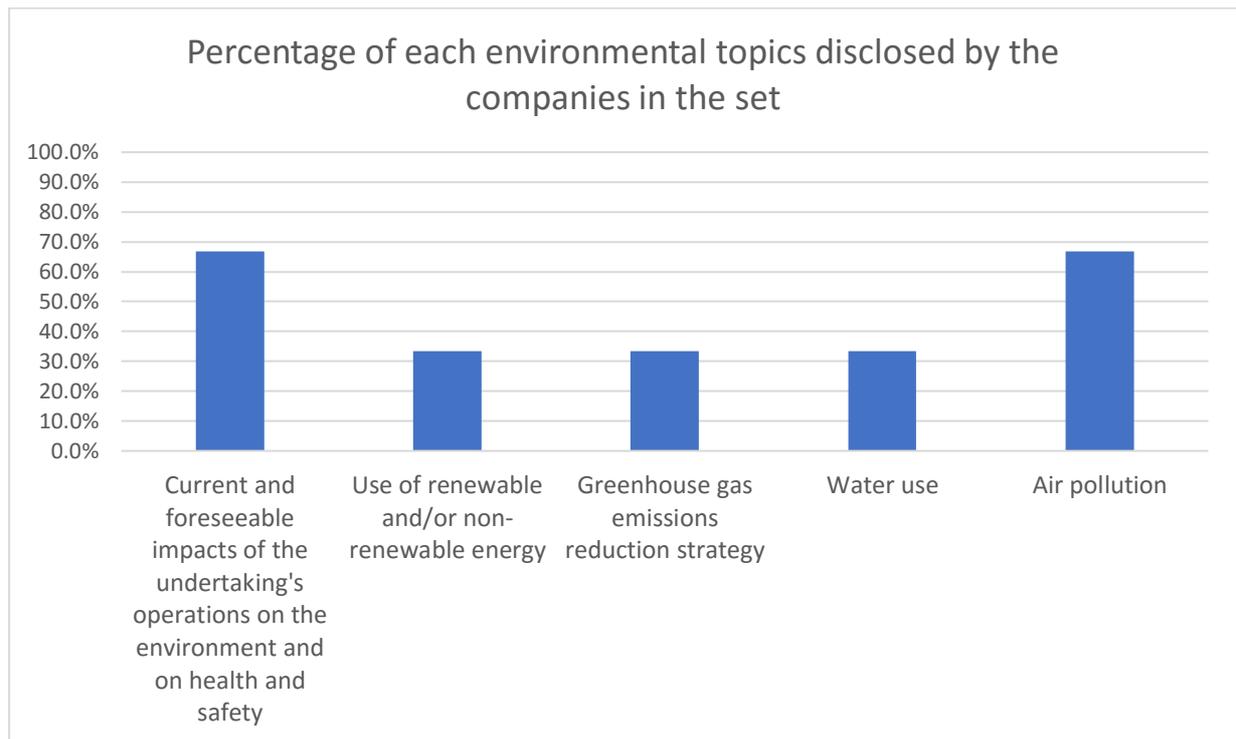


Table V - This table shows Lithuanian companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 66,7% of the Lithuanian companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 0% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 0% “Respect for the right of workers to be informed and consulted” matters, 33,3% “Respect for trade union rights” matters, 100% “Health and safety at work” matters, 100% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 66,7% “Prevention of human rights abuses” matters (see table below).

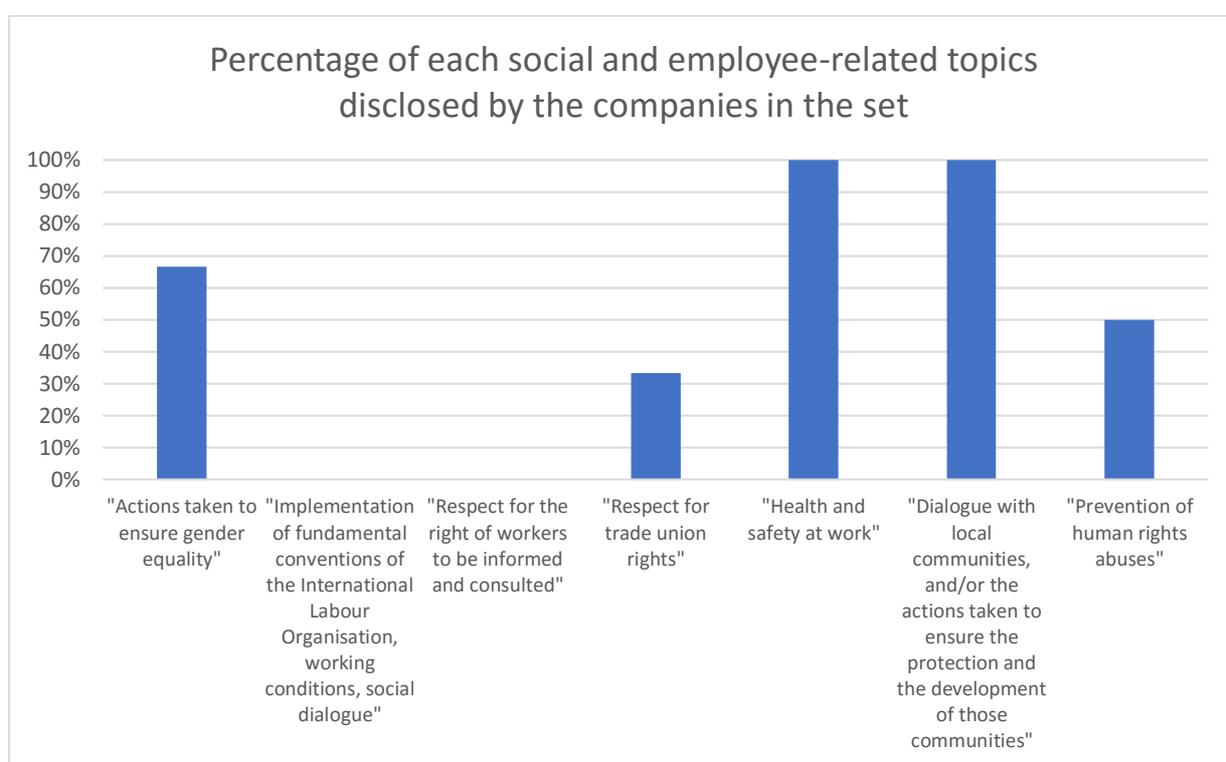


Table W - This table shows Lithuanian companies and their disclosure inclinations toward social and employee-related matters

5. **ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES:** The 33,3% of the Lithuanian companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 33,3 % of them disclosed “Instruments in place to fight bribery” (see table below).

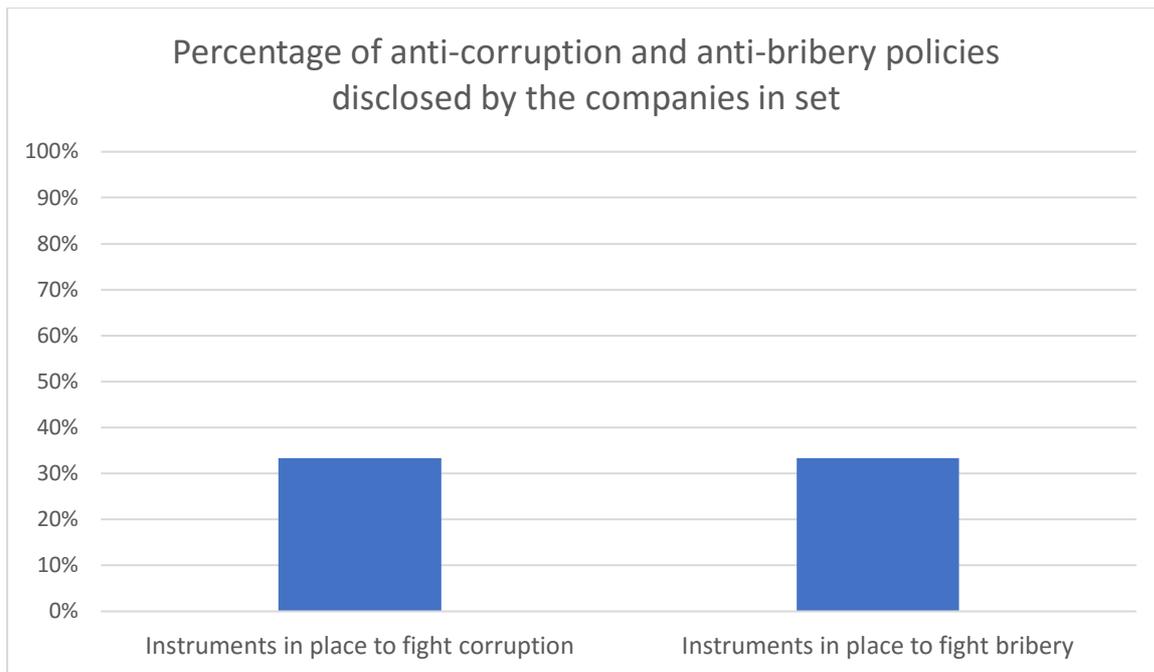


Table X - This table shows Lithuanian companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important considerations.

First, the Lithuanian companies, analysed by this set, disclose their NFI equally using all three frameworks available (each company used a different framework).

Second, the report typologies used shows that NFI disclosure were communicate either through a management report or, an ad hoc one, called sustainability report.

This data was pretty surprisingly for a country like Lithuania, which has a big history of disclosing only voluntary policies for the communication of NFI.

Third, there is a big difference between the way the companies, analysed in the sample set, disclose environmental information and employee-related ones. As a matter of fact, it is graphically proved that environmental matters are disclose constantly throughout (at least one company of the sample disclose each environmental topic presented on the list). The second set of information instead is disclosed inconstantly, having sometimes all the companies disclosing about a precise topic, like the one regarding “*Health and safety at work*” or “*Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities*” and times where there are no companies disclosing about it, like “*Implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue*” or “*Respect for the right of workers to be informed and consulted*”.

5.5 Luxembourg

In this section, a detailed analysis will be performed of both the theoretical part with the Luxembourgian legislation evolution, in terms of NFI policies, and the practical one with the analysis of the randomly selected Luxembourgian companies' NFI disclosure – 2016 data. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Luxembourgian environment, prior to the entrance into of the amendment, and its consequences.

Since the early 2000s, CSR promotion has always been a priority for the Luxembourgian government. That period was a phase in which the government understood the importance of CSR for its businesses and wanted to make them aware of its potentialities through a massive campaign of sponsorship of CSR. The formal proof can be found in a Manuscript of the European Commission, more precisely of the Directorate-Generale for Employment, Social Affairs and Equal Opportunities, entitled “*Corporate Social Responsibility National public policies in the European Union*”, where it is stated that:

“Since 2003, the Minister of Labour and Employment, François Biltgen, has been actively promoting CSR on a national basis, through speeches and more specifically by leveraging the Luxemburg 'tripartite model' - bringing together the diverse entities of government, labour and corporate sectors to educate, inform and drive support for the development of CSR within Luxemburg.

The first significant manifestation of this activity was the development of a Charter on Sustainable Development (2003) by the Union des Entreprises Luxembourgeoises (which includes large corporations and SMEs), in response to the green paper. Since 2003 there have been a number of regular events, seminars and symposia to generate awareness, educate and inform, and drive support for and proactive participation in CSR:

- August 2004: a Summer University, the first national CSR awareness-raising symposium took place. This was sponsored by the Ministry of Labour and Employment, the European Commission and the Chambre des Employés Privés. Topics covered were social auditing, CSR and sustainable development.*
- March 2005: during the EU Presidency (January-June 2005) and at the initiative of the Ministry of Labour and Employment and Caritas, Luxemburg hosted its first European forum on CSR, supported by Eurochambers and the Union des Entreprises Luxembourgeoises.*
- March 2006: a conference was held on Managing Diversity in Companies.*
- October 2006: the first Luxemburg corporate charter was published with the support of the Minister of Labour and Employment. Since September 2005 an informal platform consisting of leading corporations in Luxemburg and supported by the Ministry of Labour and Employment is regularly meeting to show its interest in actively supporting the development of a set of ethics for companies, which would lead to corporate values that support CSR. This group of corporations includes Arcelor Mittal, Banque et Caisse d'Epargne de L'Etat, Cargolux and SES Global.*

- December 2006: a seminar was held on 'Sustainable Development: Companies' responsibility in Luxembourg'.
- Recently the leading global adviser on CSR, Professor Klaus Leisinger, President of Novartis Foundation and CSR advisor to Kofi Annan, was engaged by the government to highlight the link between the global perspective/imperatives on CSR and the role Luxembourg can play.

A CSR website is currently under development. The objective of this project is to create an interactive forum to promote all CSR initiatives, as well as provide examples of best practice and stimulate discussion and cross-fertilisation.¹⁴²

In addition, to evaluate the progresses made by the government and corporate Luxembourgian environment in the period between 2007 (publication date of the previous article) and 2011 (publication date of the ICT survey), regarding CSR and their disclosure, it can be cited the article “Corporate Social Responsibility” authored by C. F. A. Riilo and F. Sarracino. These authors concluded, after a detailed econometrical analysis of the data contained in the ICT (Information, Communication, Technology) Survey performed on Luxembourgian 2011 companies, that:

“Overall, the empirical analysis shows that the typical firm that adopts CSR practices is a large market leader, part of an international group, has a strong international reputation and operates in the utilities sector.

Looking at the reasons behind the CSR, it appears that both intrinsic and extrinsic motivations are important. In other words, these figures suggest that firms choose CSR both as a tool to promote their image and as part of their corporate culture.

*However, the investigation shows as well that CSR is perceived as a marketing tool to improve the corporate image. The fact that a firm is motivated by marketing reasons does not prevent from effectively implementing CSR practices that promote social, environmental and sustainable practices. If brand reputation acts as a trigger for the proper implementation of CSR practices, public opinion and relevant stake-holders can promote the adoption of CSR practices among the less active firms by increasing pressure on the reputation of their brands.*¹⁴³

They continued pointing out that:

“This study stemmed from the belief that if economic analysis should inform public policy, than it is important to take a close look at who are the actors mainly involved in CSR strategies and which are the features that might ensure a successful and durable adoption of CSR. This is pivotal for policy makers who have to choose among the best possible strategies to support the adoption of virtuous economic practices. A wide array of policies is available from this point of view, but they require to be calibrated on the specific context to reduce waste of resources and to promote the effective achievement of the expect goals. As far as the consumer dimension is concerned, public CSR

¹⁴² Directorate-Generale for Employment, Social Affairs and Equal Opportunities, “Corporate Social Responsibility National public policies in the European Union”, European Commission, (09. 2007), p. 51.

¹⁴³ C. F. A. Riilo and F. Sarracino, “Corporate Social Responsibility: a firm level analysis of Luxembourg”, (2014), p. 201.

*policies serve to raise consumers' awareness (e.g. through information campaigns), ensure credibility (e.g. through eco-labels) or influence prices (e.g. taxes or tax reductions)."*¹⁴⁴

To summarise the two pieces of their article, C. F. A. Riilo and F. Sarracino stated that their researches have proven that CSR disclosure for Luxembourgian companies in 2011 was an action that allow companies to improve their image and, therefore, to obtain greater stakeholders' trust and consensus. For these reasons, authors added that it will be important for the Luxembourgian government to regulate the disclosure of NFI in a mandatory way to allowed a broader spectrum of companies to exploit the positive reputation gain resulted from CSR disclosure.

5.5.1 Legislation¹⁴⁵

The first step toward the adaptation of the Luxembourgian Legislation to Directive 2014/95/EU was done on July 23th, 2016 with the Parliament approval of the amendment meant to integrate:

1. *"The Title II of the amended law of 19 December 2002, concerning the trade and company register and the accounts and annual accounts of undertakings;"*¹⁴⁶
2. *"Section XVI of the amended law of 10 August 1915 on commercial companies;"*¹⁴⁷
3. *"The amended law of 8 December 1994 on the annual accounts and consolidated accounts of insurance undertakings and reinsurance undertakings governed by Luxembourg law and the obligations relating to the preparation and publicity of accounting documents for branch-insurance under foreign law"*¹⁴⁸

Luxembourg had to wait no more than few weeks to complete the three enforcement processes, precisely August 4th, 2016, date in which also the Amendment to Luxembourgian Law N°156 came into effect.

The legislative focus of this law was the alignment between Luxembourgian non-financial information disclosure regulations and the European Union guidelines. For this reason, it will be

¹⁴⁴ C. F. A. Riilo and F. Sarracino, "Corporate Social Responsibility: a firm level analysis of Luxembourg", (2014), p. 202.

¹⁴⁵ References from:

1. <http://www.luxembourg.public.lu/en/le-grand-duche-se-presente/systeme-politique/constitution-lois/index.html>
2. <http://www.arendt.com/publications/documents/newsflash/2016.07.06%20-%20luxembourg%20newsflash%20-%20disclosure%20of%20non-financial%20and%20diversity%20information.pdf>

¹⁴⁶ <http://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n19/jo>

¹⁴⁷ <http://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n19/jo>

¹⁴⁸ <http://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n19/jo>

analysed the newly introduced parts, that in a clear, specific and very detailed way tried to translate Directive 2014/95/EU guidelines into the Luxembourgian Civil Code.

It will follow the selected parts of Luxembourgian Amended Act and, subsequently, it will be presented the comparison between this Accounting Act and Directive 2014/95/EU to understand their degree of conformity.

“Art.I

[...]

Part.2

A new article 68bis concerning the declaration non-financial and wording as follows, is inserted between the Article 68 relating to the report of the management and the current article 68bis - renumbered 68ter on this occasion - relating to the Declaration on the government to business: "Art. 68bis. (1) This section applies to the undertakings referred to in Article 25 which fulfil all the following conditions:

a) be organised in the form of anonymous society, European company (SE), a partnership limited by shares, limited liability company or in one of the forms of companies referred to in Article 77, subparagraph 2, points 2° and 3°; and

(B) be an entity of public interest within the meaning of Article 2, point 1) of the Directive 2013/34/EC of the European Parliament and of the Council of 26 June 2013 relating to the annual financial statements, to the consolidated financial statements and the reports of certain forms of companies; and (

c) Exceed, the closing date of the balance sheet and for two consecutive years, the limits of at least two of the three criteria referred to in Article 47; and

d) Exceed, the closing date of the balance sheet, the criterion of average number of 500 employees on the exercise.

(2) The companies referred to in paragraph (1) Include in the management report a statement not including financial information, to the extent necessary for the understanding of the evolution of business, performance, the situation of the enterprise and the implications of its activity, relating at least to the environmental issues, social issues and of staff, respect of human rights and the fight against corruption, including:

a) a brief description of the commercial model of the business;

(b) a description of the policies applied by the company in respect of these matters, including due diligence procedures implemented; (

c) the results of these policies; (

d) the main risks related to these questions in relation with The activities of the business including, when this proves relevant and proportionate, business relations, the products or services of the undertaking, which are likely to result in negative impacts in these areas, and the manner in which the company manages these risks;

(e) The key performance indicators of a non-financial nature concerning the activities in question. when the company does not have a policy with regard to the one or more of these questions, the statement Non-financial includes a clear explanation and motivated the reasons that justify it. The declaration non-financial referred to in the first subparagraph of this paragraph also contains, where applicable, references to the amounts shown in the annual accounts and additional explanations relating thereto. The omission of information on developments in

imminent or business in the course of negotiation is allowed in exceptional cases where, in the duly motivated opinion of the members of the organs of the administration, management and monitoring, acting in the framework of the competences assigned to them by the Act and the title of their collective obligation with respect to this notice, the communication of such information would cause serious harm to the commercial position of the company, on condition that this omission does not obstacle to an understanding balanced and fair of the evolution of business, performance, the situation of the enterprise and the implications of its activity. For the publication of the information referred to in the first subparagraph, the companies can rely on national frameworks, the European Union or international. The businesses indicate the frames on which they are supported.

[...]

(4) A company that is a subsidiary within the meaning of Article 309, paragraph (2) of the amended Act of 10 August 1915 concerning the commercial companies, is exempted from the obligation set out in paragraph (2), if the company and its subsidiaries are included in the consolidated report of management or the separate report of another company, established in accordance with Articles 29 and 29bis of the Directive 2013/34/EU.

(5) When a company establishes, relying or not on national frameworks, the European Union or international, a separate report that focuses on the same fiscal year and which covers the information required for the declaration non-financial such that they are provided for in paragraph (2), this company is exempted from the obligation to establish the declaration non-financial provided for in paragraph (2) to the extent that this separate report:

A) be published at the same time as the report of Management, in accordance with Article 79; or

(b) be made available to the public within a reasonable period of time, and no later than six months after the closing date of the balance sheet, on the Internet site of the company, and is referred to in the management report.

[...]

Part 3.

Article 68ter - such as renumbered - relating to the Declaration on the Government of enterprise is amended as follows:

- The paragraphs are renumbered in Figures Arab Cardinals placed between parentheses in place of figures Arab Cardinals followed by a point.

- Within the paragraph (1), a point g) wording as follows is added:

"g) a description of the diversity policy applied to the organs of the administration, management and monitoring of the company in terms of criteria such as, for example, age, the kind or the professional qualification and experience, as well as a description of the objectives of this policy of diversity, its modalities of implementation and of the results obtained during the period of reference. In default of such a policy, the statement includes an explanation of the reasons justifying."

- The text of paragraph (2) is removed and replaced by two new numbered paragraphs (2) and (3), labels, as follows:

"(2) The information referred to in paragraph (1) may be included in:

a) a separate report published together with the report of Management according to the modalities provided for in Article 79;

or

(b) a document made available to the public on the Internet site of the company, in which reference is made in the management report. This separate report or this document referred to in points (a) and (b), respectively, may refer

to the management report, when the information required in paragraph (1), point (d), are accessible in the said management report.

[...]

"(5) Subsection (1) point (g), does not apply to public interest entities which do not exceed, at the date of closure of the balance sheet and for two consecutive years, the limits of at least two of the three criteria referred to in Article 47 of this Act."

[...]

"Sub-section 3bis. - Not financial Declaration for consolidated"

Art. 339bis

(1) This article aims the parent companies within the meaning of Article 309 paragraph (2) which fulfil all the following conditions: (

- a) be an entity of public interest within the meaning of Article 2, point 1) of the Directive 2013/34/EC of the European Parliament and of the Council of 26 June 2013 relating to the annual financial statements, to the consolidated financial statements and the reports thereon of certain forms of companies; and
- (b) Exceed, jointly with its subsidiaries within the meaning of Article 309 paragraph (2), on the date of closing of its balance sheet on a consolidated basis, and during two consecutive years, the limits of at least two of the three criteria referred to in Article 313; and
- c) Exceed, jointly with its subsidiaries in the Meaning of the Article 309 paragraph (2), on the date of closing of its balance sheet, on a consolidated basis, the criterion of average number of 500 employees on the exercise. For the purposes of the declaration non-financial, the whole of the undertakings included in the consolidation within the meaning of Article 319 is designated by group.

(2) The parent companies referred to in paragraph (1) Include in the consolidated management report a statement not consolidated financial comprising information, to the extent necessary for the understanding of the evolution of business, performance, the situation of the group and the implications of its activity, relating at least to the environmental issues, social issues and of staff, respect of human rights and the fight against corruption, including:

- A) a brief description of the business model of the group;
- (b) a description of the policies applied by the group in respect of these matters, including for due diligence procedures implemented; (
- c) the results of these policies;
- d) the major risks related to these questions in relation with the activities of the group, including when it is relevant and proportionate, business relations, the products or the services of the group, which are likely to result in negative impacts in these areas, and the manner in which the group manages these risks;
- e) The key performance indicators of a non-financial nature concerning the activities in question.

When the group does not apply a policy on the one or more of these questions, the statement not consolidated financial includes a clear explanation and motivated the reasons that justify it. The Declaration not consolidated financial referred to in the first paragraph also contains, where applicable, references to the amounts indicated in the consolidated accounts and additional explanations relating thereto. The omission of information on developments in imminent or business in the course of negotiation is allowed in exceptional cases where, in the duly motivated opinion of the members of the organs of the administration, management and monitoring, acting in the framework of the competences assigned to them by the Act and the title of their collective obligation with respect to

this notice, the communication of such information would cause serious harm to the commercial position of the group, provided that this omission does not obstacle to an understanding balanced and fair of the evolution of business, performance, the situation of the group and the implications of its activity. For the publication of the information referred to in the first subparagraph, the parent company can rely on the support of national frameworks, the European Union or international. The parent company indicates the frameworks on which it is supported.

[...]

(5) When a parent company establishes, relying or not on national frameworks, the European Union or international, a separate report that focuses on the same fiscal year and on the whole of the group, and which covers the information required for the declaration not consolidated financial provided for in paragraph (2), this parent company is exempted from the obligation to establish the declaration not consolidated financial provided for in paragraph (2)

to the extent that this separate report: (

*a) be published at the same time that the consolidated report of Management, in accordance with Article 341; or
(b) be made available to the public within a reasonable period of time, and no later than six months after the closing date of the balance sheet, on the Internet site of the company Mother, and be referred to in the consolidated report of Management.*

Subsection (3) applies to parent companies which prepare the separate report referred to in the first subparagraph of this paragraph.

[...]

Art. III

Part. 2

A new article 85-2 concerning the declaration non-financial and is inserted as follows:

"Art. 85-2. 1. This article aims to insurance companies who:

A) Exceed, the closing date of the balance sheet and for two consecutive years, the limits of at least two of the three following criteria:

- the balance sheet total: EUR 17.5 million

- gross premiums issued: 35 million euros

- Number of staff members employed full time and on average during the fiscal year: 250

and

(b) Exceed, the closing date of the balance sheet, the criterion of average number of 500 employees on the exercise.

2. Insurance companies referred to in paragraph 1 include in the management report a statement including not financial information, to the extent necessary for the understanding of the evolution of business, performance, the situation of the enterprise and the implications of its activity, relating at least to the environmental issues, social issues and of staff, respect of human rights and the fight against corruption, including:

a) a brief description of the commercial model of the business;

(b) a description of the policies applied by the company in respect of these matters, including due diligence procedures implemented; (

c) the results of these policies; (

d) the main risks related to these questions in relation with the activities of the business including, when this proves relevant and proportionate, business relations, the products or services of the undertaking, which are likely to result in negative impacts in these areas, and the manner in which the company manages these risks;

(e) The key performance indicators of a non-financial nature concerning the activities in question. When the insurance company does not apply policy with regard to the one or more of these questions, the statement Non-financial includes a clear explanation and motivated the reasons that justify it. The Declaration not financial support referred to in the first paragraph also contains, where applicable, references to the amounts shown in the annual accounts and additional explanations relating thereto. The omission of information on developments in imminent or business in the course of negotiation is allowed in exceptional cases where, in the duly motivated opinion of the members of the organs of the administration, management and monitoring, acting in the framework of the competences assigned to them by the Act and the title of their collective obligation with respect to this notice, the communication of such information would cause serious harm to the commercial position of the company, on condition that this omission does not obstacle to an understanding balanced and fair of the evolution of business, performance, the situation of the enterprise and the implications of its activity. for the publication of the information referred to in the first subparagraph, the insurance companies can rely on the support of national frameworks, the European Union or international. Insurance companies indicate the frames on which they are supported.

[...]

4. An insurance undertaking which is a subsidiary within the meaning of Article 92, paragraph 2, is exempted from the obligation set out in paragraph 2, if this company and its subsidiaries are included in the consolidated report of management or the separate report of another company, established in accordance with Articles 29 and 29bis of the Directive 2013/34/EU.

5. When an insurance undertaking establishes, relying or not on national frameworks, the European Union or international, a separate report that focuses on the same fiscal year and which covers the information required for the declaration non-financial such that they are provided for in paragraph 2, this company is exempted from the obligation to establish the declaration non-financial provided for in paragraph 2 to the extent that this separate report: (

a) be published at the same time as the report of Management, in accordance with Article 87;

or

(B) is made available to the public within a reasonable time, and no later than six months after the closing date of the balance sheet, on the Internet site of the company, and is referred to in the management report.

Paragraph 3 applies to insurance companies which prepare the separate report referred to in the first subparagraph of this paragraph.

[...]

Part 3

A new article 124-1 worded as follows, is inserted as a result of Article 124:

"Art. 124-1. 1. This article aims the parent companies within the meaning of Article 92, paragraph 2: (

a) which are of insurance undertakings,

and

(b), which, in conjunction with their subsidiary undertakings within the meaning of Article 92, paragraph 2, exceed, by the closing date of their balance sheet, on a consolidated basis, and during two consecutive years, the limits of at least two of the three criteria of Article 85-2, paragraph 1, point (a), and (

c), which, in conjunction with their subsidiary undertakings within the meaning of Article 92, paragraph 2, exceed, by the closing date of their balance sheet, on a consolidated basis, the criterion of average number of 500 employees on the exercise. For the purposes of the declaration non-financial, the whole of the undertakings included in the consolidation is designated by group.

2. The parent companies referred to in paragraph 1 to include in the consolidated management report a statement not consolidated financial comprising information, to the extent necessary for the understanding of the evolution of business, performance, the situation of the group and the implications of its activity, relating at least to the environmental issues, social issues and of staff, respect of human rights and the fight against corruption, including:

a) a brief description of the business model of the group;

(b) a description of the policies applied by the group in respect of these matters, including for due diligence procedures implemented; (

c) the results of these policies; (

d) the main risks related to these The questions in relation with the activities of the group, including when it is relevant and proportionate, business relations, the products or the services of the group, which are likely to result in negative impacts in these areas, and the manner in which the group manages these risks;

e) The key performance indicators of a non-financial nature concerning the activities in question. When the group does not apply a policy on the one or more of these questions, the statement not consolidated financial includes a clear explanation and motivated the reasons that justify it. The Declaration not consolidated financial referred to in the first paragraph also contains, where applicable, references to the amounts indicated in the consolidated accounts and additional explanations relating thereto. The omission of information on developments in imminent or business in the course of negotiation is allowed in exceptional cases where, in the duly motivated opinion of the members of the organs of the administration, management and monitoring, acting in the framework of the competences assigned to them by the Act and the title of their collective obligation with respect to this notice, the communication of such information would cause serious harm to the commercial position of the group, provided that this omission does not obstacle to an understanding balanced and fair of the evolution of business, performance, the situation of the group and the implications of its activity. for the publication of the information referred to in the first subparagraph, the parent company can rely on the support of national frameworks, the European Union or international. The parent company indicates the frameworks on which it is supported.

3. A parent company which is fulfilling the obligation set out in paragraph 2 is deemed to have satisfied the obligation relating to the analysis of non-financial information contained in article 85, paragraph 1, point (b). The same goes for the obligation relating to the analysis of non-financial information contained in article 124, paragraph 1, point (b) of this Act.

[...]

5. When a parent company establishes, relying or not on national frameworks, the European Union or international, a separate report that focuses on the same fiscal year and on the whole of the group, and which covers the information required for the declaration not consolidated financial laid down in paragraph 2, this parent company

is exempted from the obligation to establish the declaration not consolidated financial laid down in paragraph 2 to the extent that this separate report:

- a) be published at the same time that the consolidated report of Management, in accordance with Article 126; or
- (b) be made available to the public within a reasonable period of time, and no later than six months after the closing date of the balance sheet, on the Internet site of the parent company, And either referred in the consolidated report of Management. Paragraph 3 applies to parent companies which prepare the separate report referred to in the first subparagraph of this paragraph.”¹⁴⁹

These parts of the amendment Law show the obligation for large entities or consolidated entities of large groups to disclose their NFI in their management or non-reports.

The other resemblance between this precise Member State legislation and the European Directive 2014/95/EU is to address their regulation only to companies that have more than 500 employees and that are traded in the Luxembourgian Stock Exchange.

The peculiarity of this national Law is that it put as threshold for insurance companies to either have more than 500 employees or to have more than 250 employees and a balance sheet total of EUR 17.5 million. This legislation peculiarity can be interpreted at a first positive signal to have in the future the possibility to expand NFI disclosure regulations to SMEs.

Table Y analyses the Amendment to Luxembourgian Law N°156 to find its various equivalents with the European Directive. To do so, the amendment will be divided in three parts, each one addressed to a different type of companies (1. Single entity, 2. Entity part of a consolidate group and 3. Insurance company), to find out whether each part is aligned with Directive 2014/95/EU requirements.

Directive 2014/95/EU principles	Amendment to Luxembourgian Law N°156		
	Single entity	Entity part of a consolidate group	Insurance company
NFI disclosure matters	✓	✓	✓
How to disclose NFI matters	✓	✓	✓
Disclosure exceptions	✓	✓	✓
Disclosure frameworks	✓	✓	✓
Disclosure tools	✓	✓	✓

¹⁴⁹ Mémorial A n° 156 de 2016 - Legilux.

Table Y confirms that the transposition of the European Directive 2014/95/EU into the Luxembourgian Law was designed to assigning all the principal elements, necessary to positively constrained the disclosure of NFI, to each separate entity type. These elements were divided into five categories.

The first element is the “**NFI disclosure matters**”, which highlights **WHAT** subjects to disclose. The second one is “**How to disclose NFI matters**”, which explains the **HOW** or, in other words, which corporate tools must be presented during the disclosure, like “undertaking’s business model” etc.

The third element is about “**Disclosure exceptions**”, which helps the company understand **WHAT AND WHY** could be excluded from the mandatory disclosure requirements.

The fourth one is called “**Disclosure frameworks**” and describes **WHICH** frameworks can be followed to implement the disclosure.

The last element is named “**Disclosure tools**” and gives indications such as **WHERE** to have to disclose their NFI.

It is important to remember that the previous mentioned categories were derived by directive 2014/95/EU, specifically from: “NFI disclosure matters” => Recital 7, “How to disclose NFI matters” =>Section 1 of articles 19a and 29a, “Disclosure exceptions” => Section 1 of articles 19a and 29a, “Disclosure frameworks” => Recital 9 and “Disclosure tools” => Section 4 of articles 19a and 29a.

5.5.2 2016 Non-Financial Information disclosure analysis

While the previous part was meant to describe the Luxembourgian legislation on NFI matters, this part will empirically analyse the situation of all Luxembourgian companies in the random sample and how they position themselves a year before the Luxembourgian Law N’156 became effective.

The total number of Luxembourgian companies analysed were five, coming from four different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Adecoagro S.A. part of the “Primary sector” and single entity.
2. Pacific Drilling S.A. part of the “Primary sector” and part of a consolidated group.
3. Edreams Odigeo S.A. part of the “Other services” sector and single entity.
4. IVS Group S.A. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
5. Globant S.A. part of the “Other services” sector and single entity.

From a first study of this previously listed set of companies, it could be observed that all the companies analysed disclose in a clear, complete and appropriate manner their CSR matter. Thus, in the database were included all five companies for the analysis of the conformity between the Luxembourgian disclosure tendency, prior to Directive 2014/95/EU, and the Directive guidelines. From this analysis, it could be inspected the following milestones and results:

1. **DISCLOSURE FRAMEWORKS:** The 100% of the Luxembourgian companies analysed in the set used International frameworks, while 0% used National frameworks and the other 0% used Union-based frameworks (see table below).

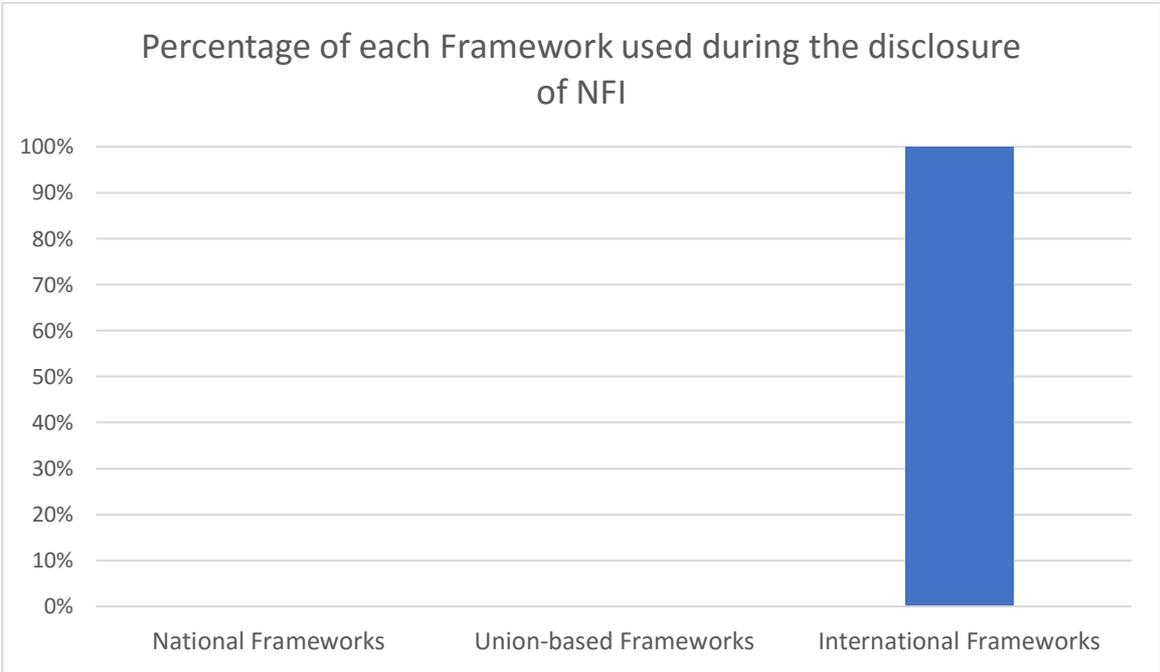


Table Z – This table shows Luxembourgian companies and their disclosure frameworks choice

2. **DISCLOSURE TOOLS:** The 20% of the Luxembourgian companies analysed in the set disclosed their NFI in their yearly management reports, while 80% created an ad hoc sustainability report (see table below).

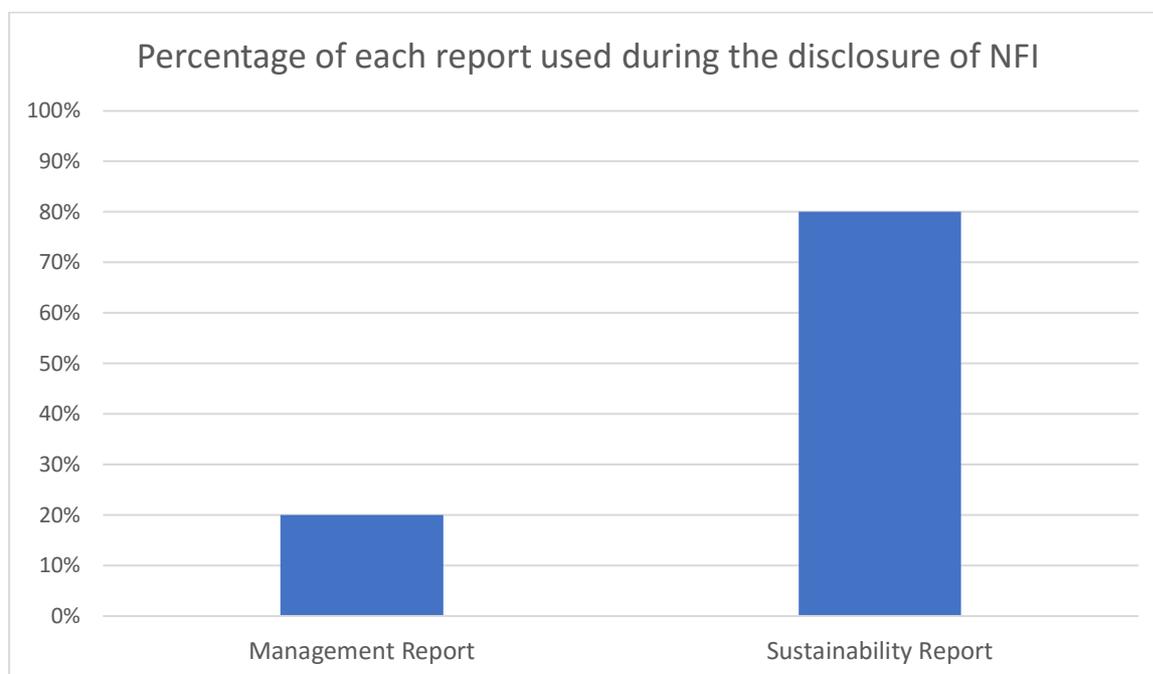


Table AA - This table shows Luxembourgian companies and their disclosure tools choice

3. **ENVIRONMENTAL MATTERS:** The 40% of the Luxembourgian companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 80% included the “Use of renewable and/or non-renewable energy” matters, 80% “Greenhouse gas emissions reduction strategy” matters, 60% “Water use” matters and 20% “Air pollution” matters (see table below).

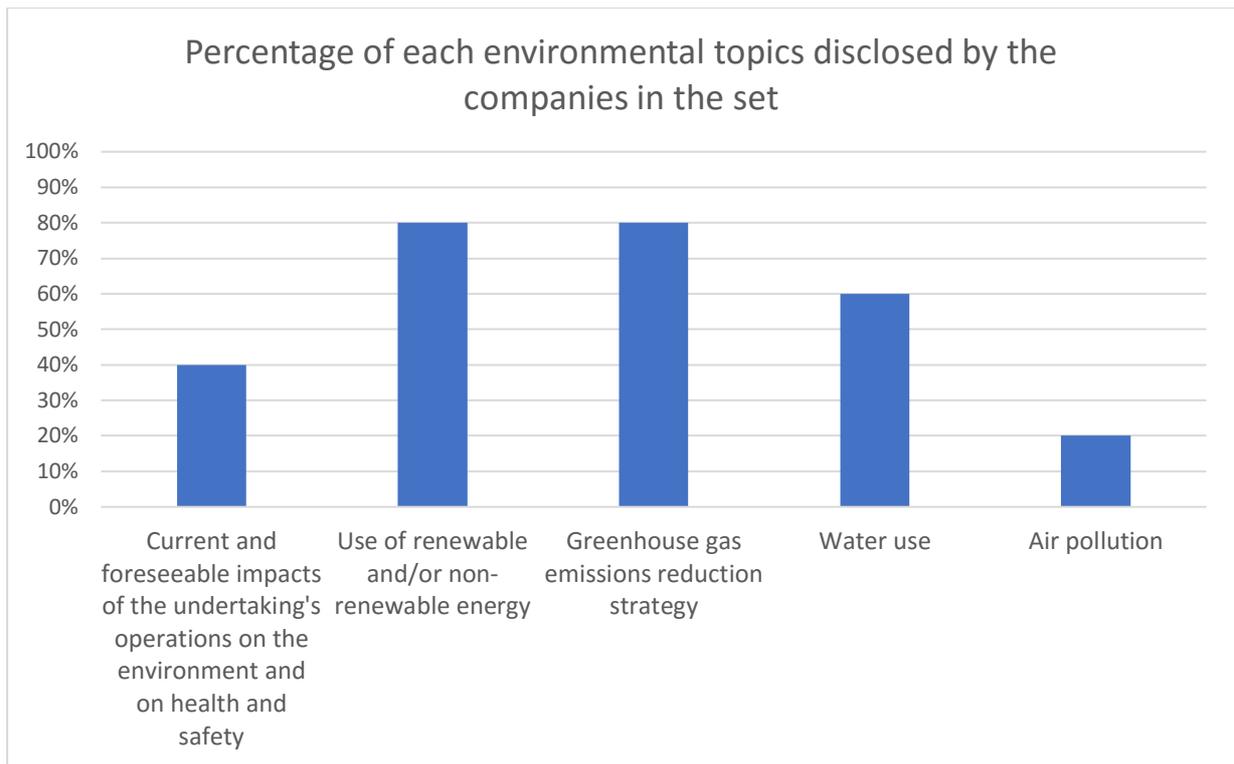


Table BB - This table shows Luxembourgian companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 40% of the Luxembourgian companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 60% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 60% “Respect for the right of workers to be informed and consulted” matters, 40% “Respect for trade union rights” matters, 80% “Health and safety at work” matters, 100% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 40% “Prevention of human rights abuses” matters (see table below).

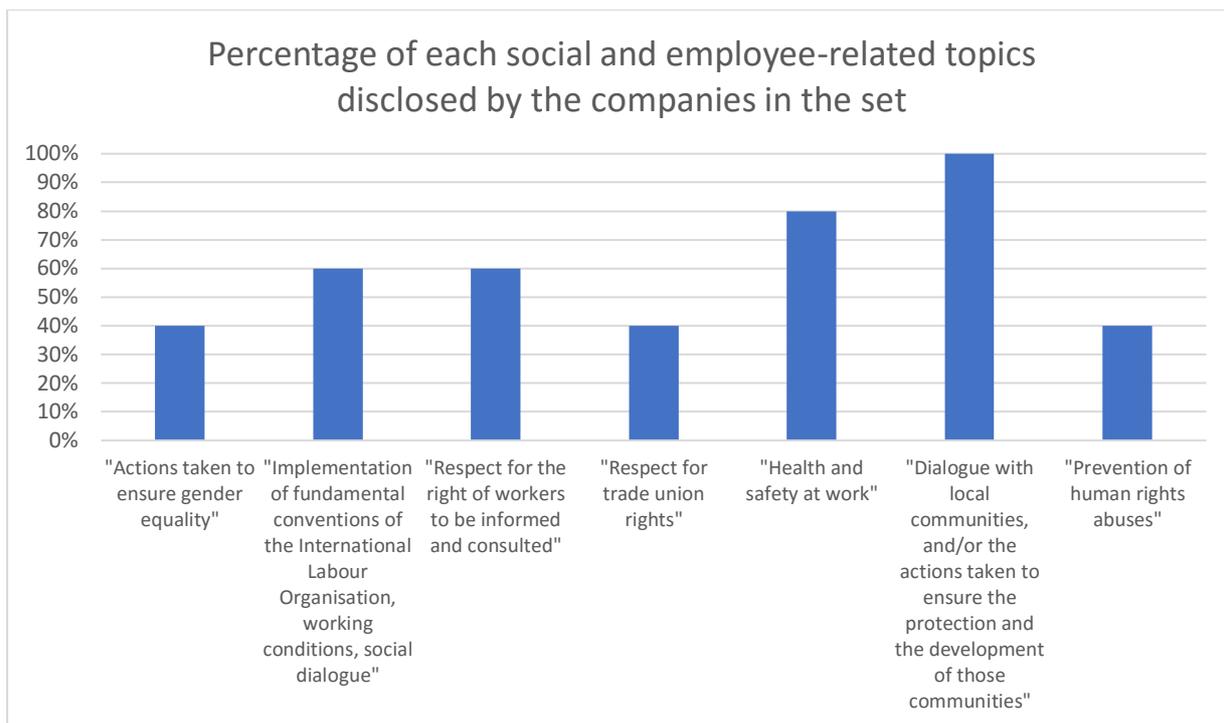


Table CC - This table shows Luxembourgian companies and their disclosure inclinations toward social and employee-related matters

5. ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES: The 60% of the Luxembourgian companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 40 % of them disclosed “Instruments in place to fight bribery” (see table below).

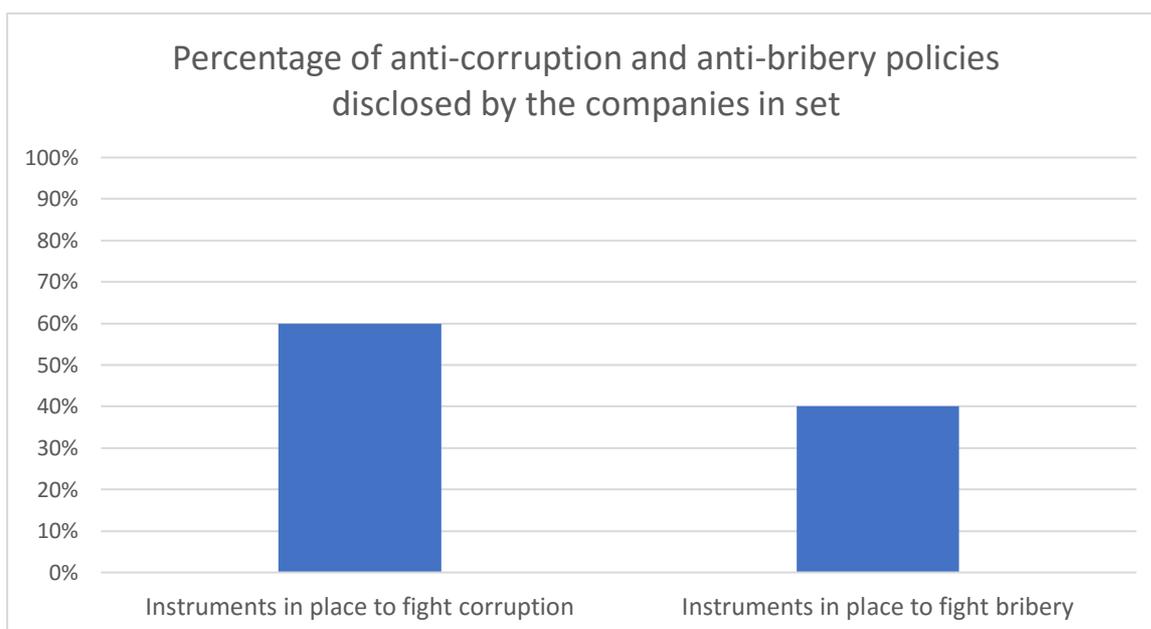


Table DD - This table shows Luxembourgian companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important conclusions.

First, for the first time all the national companies analysed, used to disclose their NFI only with the support of “International frameworks”.

Second, four out of five companies in Luxembourg used to communicate their CSR policies through an ad hoc report, called sustainability report.

Third, all NFI macro areas (environmental matters, employee-related matters and anti-corruption and anti-bribery policies) were evenly disclosed by the companies analysed.

Finally, it is important to take into consideration that even if the management reports analysed were not affected by the Luxembourgian Law N°156, this regulation would start to affect 2017 NFI disclosure, Luxembourgian companies were already disclosing CSR matters.

These positive results gave to Luxembourg the credit to be one of the first European Member States to uniform its legislation to Directive 2014/95/EU requirements. Thus, it can be forecasted, depending on the previous conclusions, that Luxembourgian public companies will not encounter difficulties in their homologation process to the new NFI disclosure policies. This will allow companies to not waste important resources, such as: money, technology, people and procedures, instead use them as value added to increase undertakings’ profitability¹⁵⁰.

¹⁵⁰ K. E. Pearlson, C. S. Saunders and D. F. Galletta, “*Managing and Using Information Systems*”, Binder Ready Version: A Strategic Approach, John Wiley & Sons, (2016).

5.6 Malta

In this section, a detailed analysis will be performed of both the theoretical part, with the Maltese legislation evolution in terms of NFI policies, and the practical one with the analysis of the randomly selected Maltese companies' NFI disclosure – data from 2016. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Maltese environment prior to the entrance into effect of its Act and the consequences it will have on national companies.

In 2004, as pointed out by M. Harwood in his article “*Corporate Responsibility in Small States Like Malta: A Luxury Companies Can Still Afford?*” “*Maltese businesses have such relatively small profit margin, as well as operating ones in sectors where personnel turnover is relatively flexible and rapid (retail, hotels and catering), that it would be surprising for these companies to adopt CSR practices based on internal drivers stimulated by cost-profit exercises.*”¹⁵¹. This consideration highlighted the need of a super partes bodies, like the government, that with the support of the European Union would create a set of rules to constrain NFI disclosure. However, before the government would be able to implement mandatory CSR guidelines, it has to make companies accept these guidelines with the support of a multi-steps process.

Multi-steps process would start with the promotion of governmental initiatives to support NFI disclosure among Maltase companies. In support of this proposition, the European general Director for Employment, Social Affairs and Equal Opportunities rules, stated that:

“The Maltese Government recognises that CSR can be mutually beneficial to the organisation itself and to the society in which it operates. Therefore, prior to drafting a strategy for a nation-wide promotion of CSR, the Maltese Government has embarked on initiatives to promote a culture whereby public entities become best practitioners of CSR. The initiatives include:

- *The Management and Personnel Office introduced gender equality and family-friendly measures for all government employees.*
- *The Office of the Prime Minister also appointed a Green Leader within every ministry for promoting environmental awareness and implementing eco-friendly practices within the ministry.*

The benefits of these initiatives are twofold, namely ensuring that public entities achieve their social dimension in a more efficient manner and also providing solid ground for promoting CSR, by showing the private sector how it can copy public entities' practices. The Building Industry Consultative Council (BICC) has been set up by the

¹⁵¹ M. Harwood, “*Corporate Responsibility in Small States Like Malta: A Luxury Companies Can Still Afford?*”, p. 145.

government to ameliorate the performance of the local construction industry. This council publishes various guidelines for the construction industry, supporting energy efficiency in building designs, conservation and restoration, and health and safety guidelines. BICC also organises training programmes, including the promotion of the health and safety card concept and training to increase awareness of the baroque built environment in Malta. organises training programmes, including the promotion of the health and safety card concept and training to increase awareness of the baroque built environment in Malta.”¹⁵²

Some years later, scholars realised that the gradual positive evolution of CSR policies in the Maltese business environment, forecasted some years before by M. Harwood, was a reality. As a matter of fact, D. G. Szabó and E. S. Karsten in their article “*Integrating corporate social responsibility in corporate governance codes in the EU*” stated that:

“Similarly to the recommendations for CSR transparency, recommendations for integrating CSR into business operations are also scarce and diverse. The issue is addressed most directly and clearly in the Maltese and Romanian codes. In dealing with the responsibilities of the board, the Maltese code provides, that the board should be ‘committed to corporate social responsibility especially in regard to the environment, health and safety, employee relations, ethical consumer conduct and social accountability’. This recommendation seems to promote CSR directly and clearly. There is a similar recommendation in the Romanian code, which states that ‘issuers shall endeavour their best efforts to integrate economic, social and environmental concerns in their business operations’. This recommendation does not require companies to integrate CSR into their operations, it only requires companies to make their best efforts to integrate CSR into their operations; this makes this recommendation soft and open to interpretation.”¹⁵³

This text section is a confirmation of the active role played by the Maltese government to ensure the integration of CSR policies in its national corporate environment through the sponsorship of a voluntary direct involvement of the companies’ board of directors.

This can be thus considered the last step before the implementation of the mandatory code of conduct for companies to disclose their NFI, that will be explain and analysed in the next section (Ch. 5.6.1).

¹⁵² Directorate-Generale for Employment, Social Affairs and Equal Opportunities, “*Corporate Social Responsibility National public policies in the European Union*”, European Commission, (09. 2007), p. 55.

¹⁵³ D. G. Szabó and K. E. Sørensen, “*Integrating corporate social responsibility in corporate governance codes in the EU*”, LSN Research Paper Seres No. 10-28, (2013), p. 27.

5.6.1 Legislation¹⁵⁴

The fundamental step toward the adaptation of the Maltese Legislation to the European Directive 2014/95/EU was done on December 2nd, 2016 with the governmental approval of the Act No. LIV of 2016.

This Act contains the Maltese equivalent of the new European Union principles and guidelines for NFI disclosure. In particular, the section, named “*Amendment of the Sixth Schedule to the principal Act*” of Part I, is focused on aligning Maltese non-financial information disclosure regulations to the European Union guidelines.

It will be then presented a second part, which compares the new Maltese regulation with Directive 2014/95/EU to understand their degree of conformity.

The extract of the Act, enacted by the parliament of Malta, amends Maltese Companies Act with the goal to integrate Directive 2014/95/EU into the Maltese Civil Code. This extract is reported below:

“PART I

Amendment of the Sixth Schedule to the principal Act

Section 5.

Immediately after paragraph 7 of the Sixth Schedule to the principal Act there shall be added the following new heading and paragraphs:

"Additional disclosures of non-financial information applicable to certain large undertakings and groups

8. Large undertakings, as referred to in paragraph 1 of the Third Schedule, 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, in addition to the other requirements of this Schedule, include in the directors' report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(a) a brief description of the undertaking's business model;

(b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;

(c) the outcome of those policies;

¹⁵⁴ References from:

1. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8853&l=1>
2. <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./malta>

(d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;

(e) non-financial key performance indicators relevant to the business.

Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.

The non-financial statement referred to in this paragraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the directors, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

In requiring the disclosure of the information referred to in this paragraph, undertakings may rely on existing national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon.

9. Undertakings fulfilling the obligation set out in paragraph 8 of this Schedule shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in sub-article (2) of article 177.

10. An undertaking which is a subsidiary undertaking shall be exempted from the obligation set out in paragraph 8 if that undertaking and its subsidiary undertakings are included in the consolidated directors' report.

11. Public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year shall include in the consolidated directors' report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

(a) a brief description of the group's business model;

(b) a description of the policies pursued by the group in relation to those matters, including due diligence processes implemented;

(c) the outcome of those policies;

(d) the principal risks related to those matters linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the group manages those risks;

(e) non-financial key performance indicators relevant to the particular business.

Where the group does not pursue policies in relation to one or more of those matters, the consolidated non-financial statement shall provide a clear and reasoned explanation for not doing so.

The consolidated non-financial statement referred to in this paragraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the consolidated financial statements. Information relating to impending developments or matters in the course of negotiation may be omitted in exceptional cases where, in the duly justified opinion of the directors, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group’s development, performance, position and impact of its activity.

In requiring the disclosure of the information referred to in this paragraph the parent undertaking may rely on existing national, Union-based or international frameworks, and if it does so, the parent undertaking shall specify which frameworks it has relied upon.

12. A parent undertaking fulfilling the obligation set out in paragraph 11 of this Schedule shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in sub-articles (2), (5) and (6) of article 177.

13. A parent undertaking which is also a subsidiary undertaking shall be exempted from the obligation set out in paragraph 11 if that exempted parent undertaking and its subsidiaries are included in the consolidated directors’ report, drawn up in accordance with sub articles (5) and (6) of article 177 and this Schedule.”¹⁵⁵

At a first glance, this part of the Act shows the obligation for large entities or consolidated entities of large groups to disclose NFI in their management or non-reports.

In this precise Member State legislation, as in the European Directive 2014/95/EU, it is highlighted that entities independently of their identity (singular companies or part of a group) must have more than 500 employees and must be traded in the Maltese Stock Exchange to be affected by the new legislation.

The Maltese Legislative Act will be analysed in the below Table to find its various equivalents with the European Directive. To do so, the text of the article presented before was divided into six subclasses each of which corresponding to a precise part of Directive 2014/95/EU.

Maltese Act No. LIV of 2016	Directive 2014/95/EU
Art. 5 – part 8	Art. 19a part 1
Art. 5 – part 9	Art. 19a part 2
Art. 5 – part 10	Art. 19a part 3

¹⁵⁵<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28189&l=1>

Art. 5 – part 11	Art. 29a part 1
Art. 5 – part 12	Art. 29a part 2
Art. 5 – part 13	Art. 29a part 3

Table EE – Comparison between Maltese Act No. LIV of 2016 and Directive 2014/95/EU non-binding guidelines.

From table EE and the previously inserted text extract of the Maltese Act, it could be verified that the transposition of the European Directive 2014/95/EU into the Maltese Civil Code has all the principal elements necessary to carefully constrain the disclosure of NFI in the European Union Member State, Malta. In effect, it can be observed that the Maltese Act has a linear structure that can be perfectly divided in two parts.

From the top to the middle, it amends the part regarding single entities, with a work force bigger than 500 employees, while, from the middle to the bottom, it lists the constrains, regarding the entities part of a consolidated group, with a workforce bigger than 500 employees.

However, both entity typologies are constrained by the same regulations, which are:

1. Disclosure subjects (WHAT),
2. Disclosure requirements (TOOLS),
3. When it is possible to avoid disclosure and how (EXCEPTIONS and HOW TO PERFORM THEM),
4. The possibility to make a reference to the financial part (POSSIBLE LINKS),
5. Frameworks companies have to use to disclose those NFI (SUPPORTS).

5.6.2 2016 Non-Financial Information disclosure analysis

While the previous section was meant to look for the resemblance of the Maltese legislation with the principles of Directive 2014/95/EU, this part will empirically analyse the situation of all Maltese companies, part of the random sample, and how they position themselves a year before entering the legislative Act No. LIV of 2016.

The total number of Maltese companies analysed were four, coming from four different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Bank of Valletta PLC part of the “Banks” sector and single entity.

2. Simonds Farsons Cisk PLC part of the “Food, beverages and tobacco” sector and part of a consolidated group.
3. Lombard Bank (Malta) PLC part of the “Banks” sector and single entity.
4. Maltapost PLC part of the “Other services” sector and single entity.

From a first study, it could be observed that even if the majority of the Maltese companies, presented in the random sample, disclose in a clear, complete and appropriate manner their CSR matters, it was presented an exception. This company was the number three (Lombard Bank (Malta) PLC), which did not disclose the compulsory NFI matters pointed out by Directive 2014/95/EU in its managerial report. For this exception, the following part (all the graphical results) will take into consideration a total set of three companies, instead of the initial four companies¹⁵⁶.

With the support of the database formed by the three companies, it could be inspected the following milestones and results:

1. **DISCLOSURE FRAMEWORKS:** The 100% of the Maltese companies analysed¹⁵⁷ in the set used International frameworks, while 0 % used National frameworks and the other 0% used Union-based frameworks (see table below).

¹⁵⁶ In the initial list of Maltese companies, extrapolated from the random sample set, there were present four companies. From that number (four), it was taken out one company due to its non-availability of data with the research purpose. This subtraction resulted in a subset of three companies that will be used through all this part analysis.

¹⁵⁷ For this part, the total of Maltese companies amount to three entities.

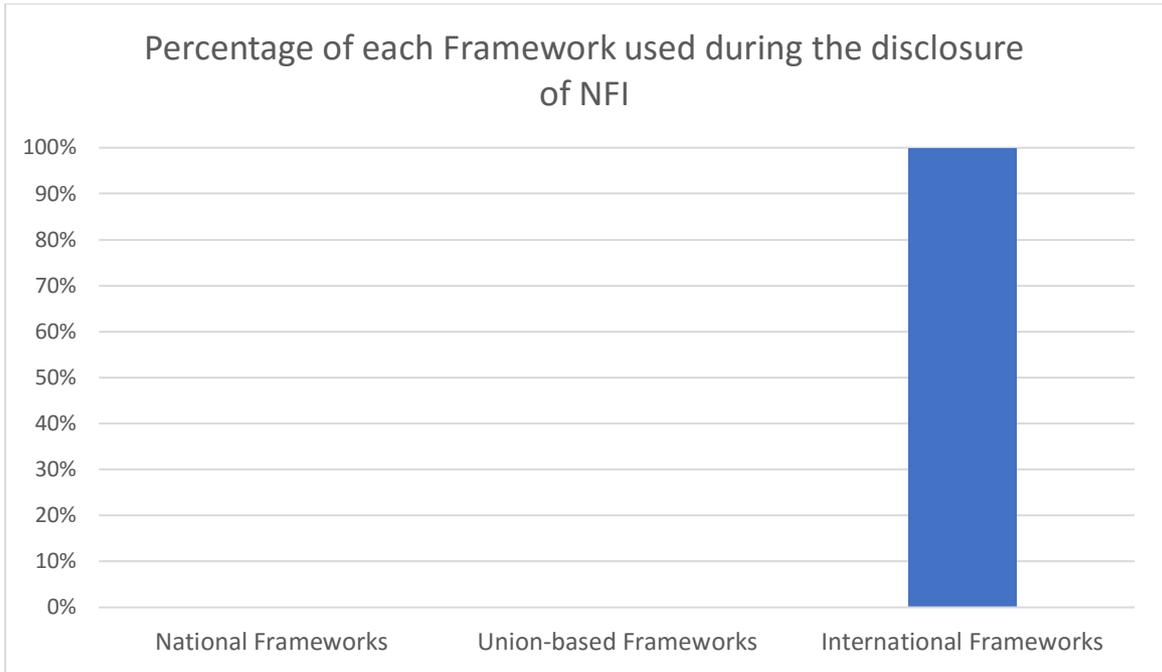


Table FF – This table shows Maltese companies and their disclosure frameworks choice

2. **DISCLOSURE TOOLS:** The 66,7% of the Lithuanian companies analysed in the set disclosed their NFI in their yearly management report, while 33,3% created an ad hoc sustainability report (see table below).

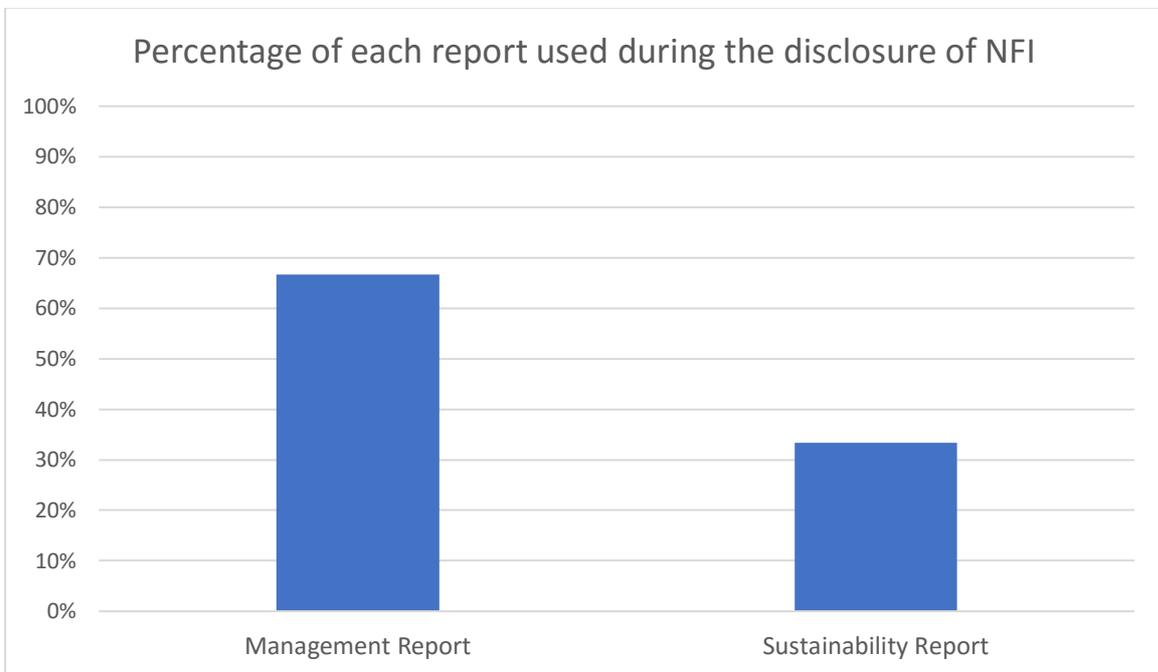


Table GG - This table shows Maltese companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 33,3% of the Maltese companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 0% included the “Use of renewable and/or non-renewable energy” matters, 100% “Greenhouse gas emissions reduction strategy” matters, 33,3% “Water use” matters and 0% “Air pollution” matters (see table below).

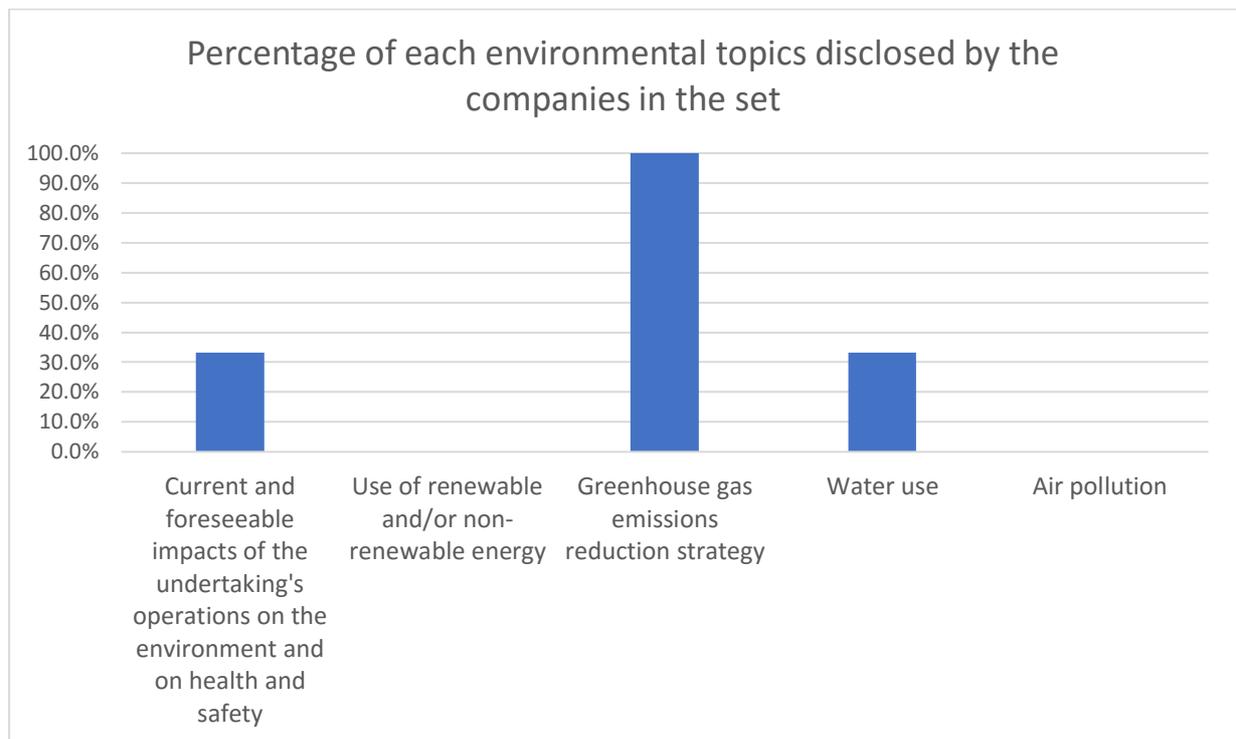


Table HH - This table shows Maltese companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 66,7% of the Maltese companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 0% include the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 0% “Respect for the right of workers to be informed and consulted” matters, 0% “Respect for trade union rights” matters, 33,3% “Health and safety at work” matters, 100% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 0% “Prevention of human rights abuses” matters (see table below).

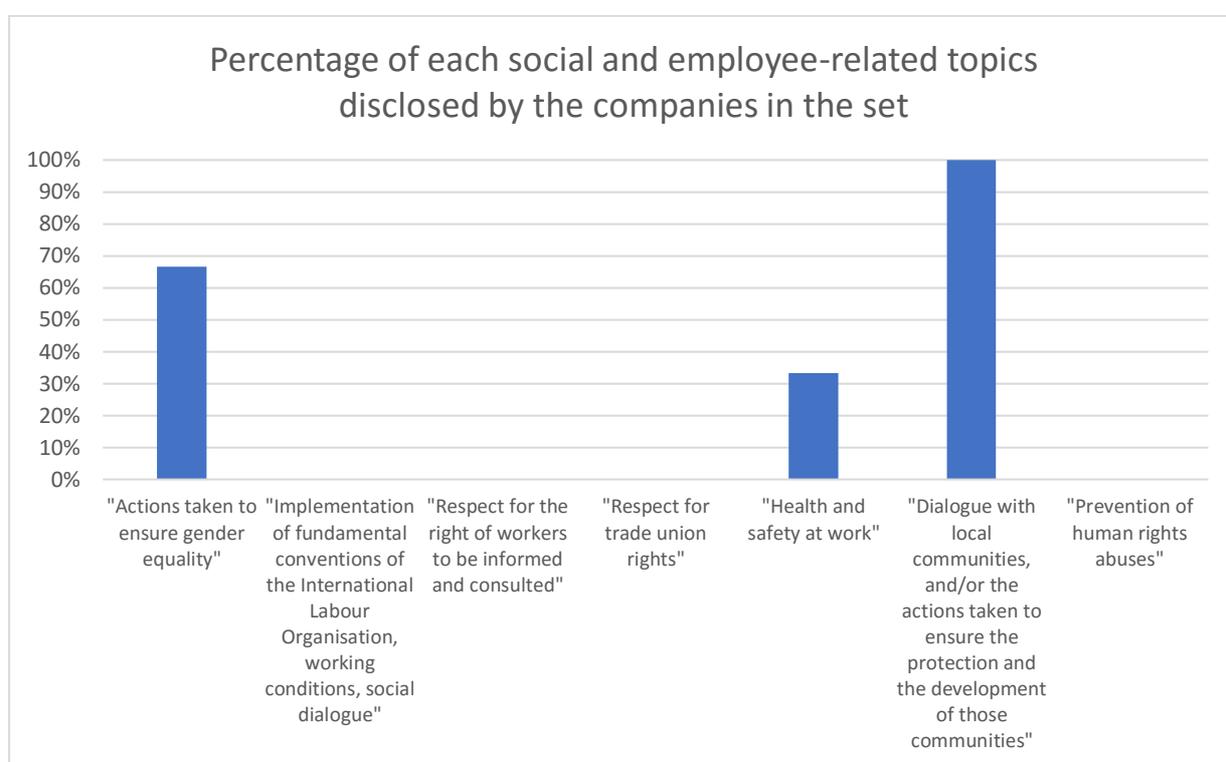


Table II - This table shows Maltese companies and their disclosure inclinations toward social and employee-related matters

5. ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES: The 33,3% of the Maltese companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 33,3 % of them disclosed “Instruments in place to fight bribery” (see table below).

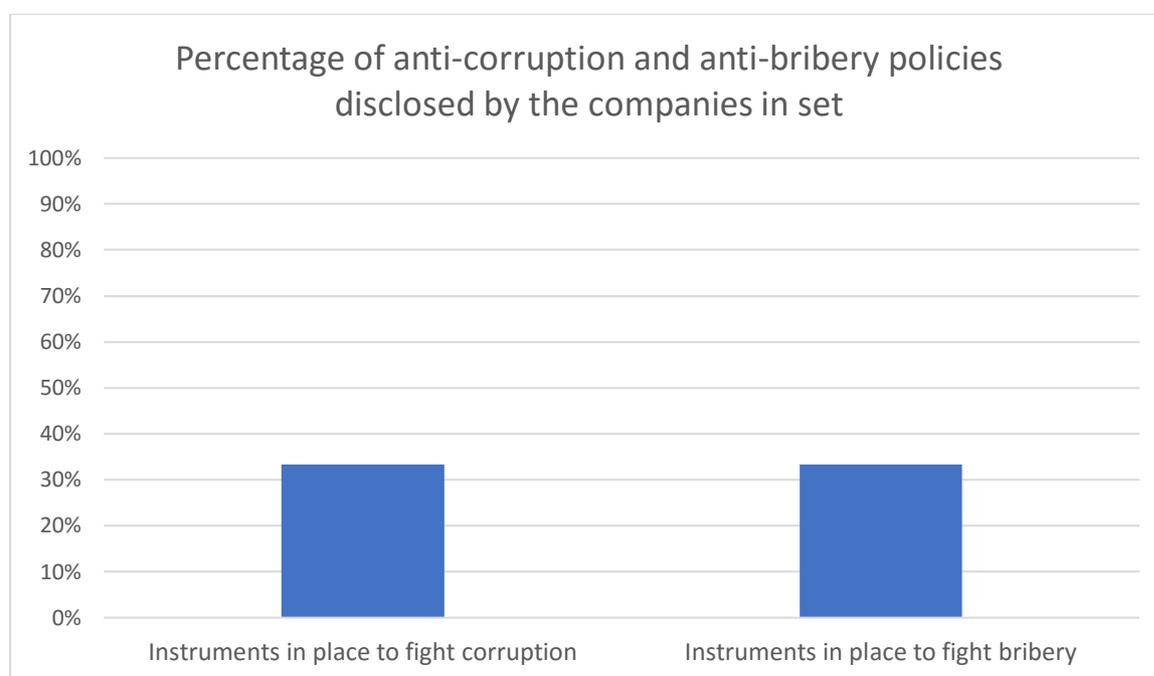


Table JJ - This table shows Maltese companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important considerations.

First, together with the Luxembourgian companies the Maltese companies presented in the sample used to disclose their NFI only with the support of “International frameworks”.

Second, the report typologies show that NFI disclosures were communicate either through a management report or through ad hoc report, called sustainability report.

Third, there is a big difference between the way companies, analysed in the sample set, disclose environmental information and employee-related one with respect to the way they disclose their policies, put in place to fight corruption and bribery. As a matter of fact, it is graphically proved that the first set (environmental information and employee-related one) is disclosed unevenly by the Maltese companies with opposite peak like: the 100% of the companies disclose their information about “**Greenhouse gas emissions reduction strategy** “ and “**Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities**”, while a 0% disclosed about “**Use of renewable and/or non-renewable energy**”, “**Air pollution**”, “**Implementation of fundamental conventions of the International**

Labour Organisation, working conditions, social dialogue”, “Respect for the right of workers to be informed and consulted”, “Respect for trade union rights” and “Prevention of human rights abuses”.

Instead, the second set had two thematic, anti-corruption and anti-bribery policies, that were both disclosed by 33.3% of the companies presented in the database.

Finally, it is important to take into consideration that the management reports analysed were not affected by the amendment of the Maltese legislative ACT No. LIV of 2016, since this Act will affect data from 2017 on, while those reports have data of the year 2016. Nonetheless, it can be forecasted that, depending on the previous conclusions, Maltese public companies will encounter serious difficulties to align their disclosure contents to the new legislation in a timely, economic and more effective manner.

5.7 Netherlands

In this section, a detailed analysis will be performed of both the theoretical part, with the Dutch legislation evolution in terms of NFI policies, and the practical part with the analysis of the randomly selected Dutch companies NFI disclosure – data from 2016. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Dutch environment prior to the entrance into the Act and its consequences on the national companies.

To academically introduce the CSR environment, prior to Directive 2014/95/EU, in the Netherlands, it could be cited the article entitled “*Corporate Nonfinancial Disclosure Practices and Financial Analyst Forecast Ability Across Three European Countries*” written by authors A. Vanstraelen, M. T. Zarzeski and S. W. G. Robb. In this 2003 article, they have stated that, after a quantitative analysis of 120 companies from three European States (Belgium, Germany and Netherlands): “*Dutch companies have the highest level of total forward-looking nonfinancial disclosure and the highest level in all three individual forward-looking nonfinancial disclosure categories.*”¹⁵⁸ This affirmation shows the future willingness of Dutch companies to keep getting involved in CSR policies at a voluntary level and the possibility of favourably embrace super partes regulatory actions. It was shared a couple of year later in the book “*Corporate Social responsibility across Europe*”¹⁵⁹, by the authors A. Habisch, J. Jonker, M. Wegner and R. Schmidpeter, who were inspired by the academic research of J. Cramer named: “*Focused on the evolution of CSR in Netherlands*”. These authors affirmed that:

*“In recent years corporate social responsibility has gained increase attention in the Dutch society. Due to a shift in power relations between enterprises, government and civil society, which also resulted in a changing political and cultural climate, a fertile soil was gradually developing for the rise if corporate social responsibility.”*¹⁶⁰

Then, they added that:

“The Dutch government at national level focused on initiatives to stimulate and facilitate corporate social responsibility in industry. Local governments are busy formulating their own role in this process. Other important stakeholders promoting the issue within industry are the financial sector, the NGOs and the workers themselves

¹⁵⁸ A. Vanstraelen, M. T. Zarzeski and S. W. G. Robb, “*Corporate Nonfinancial Disclosure Practices and Financial Analyst Forecast Ability Across Three European Countries*”, *Journal of International Financial Management and Accounting* 14:3 2003, p. 261.

¹⁵⁹ A. Habisch, J. Jonker, M. Wegner and R. Schmidpeter, “*Corporate social responsibility across Europe*”, Springer Science & Business Media, (2005), pp. 94-95.

¹⁶⁰ J. Cramer, “*Learning about Corporate Social responsibility-The Dutch Experience*”, Amsterdam: IOS press.

(and their organisations). And finally the knowledge institutions (including consultancy firms began to play a role in the public debate about the social responsibility of companies. In response to all the influences Dutch industry began to integrate corporate social responsibility in their daily business practices. However, its implantation is still in an early phase. The larger, multinational corporations take the lead in putting corporate social responsibility high on the agenda, while SMEs are slowly following. The Dutch soil is fertile though for further penetration of corporate social responsibility into the business organisation. So, it is to be expected that in ten to twenty years time the issue will form an integrated part of the business strategy of most Dutch companies."¹⁶¹

This second quote is an evolution of the first one, since it showed how, from a mere voluntary corporate action, disclosure of NFI became an important issue for the Dutch government to be sponsored. This statement is further supported by scholars (H. S. Brown, M. de Jong and D. L Levy, 2009) in their article "*Building institutions based on information disclosure: lessons from GRI's sustainability reporting*" where they state that:

*"For the most part, governments have maintained a distance from the reporting and CSR movements, considering them voluntary private initiatives. France and the Netherlands have been the most notable exceptions to the general absence of public mandates for reporting. Specifically, The Dutch have incorporated the OECD Guidelines for Multinational Enterprises into its legislation on export credit guarantees, and are actively promoting CSR and reporting through various regulatory and voluntary measures and initiatives. The government has created an independent benchmark on sustainability performance."*¹⁶²

5.7.1 Legislation¹⁶³

The first step to adapt the Dutch legislation to the mandatory rules on NFI disclosure presented by Directive 2014/95/EU was done: firstly, on December 6th, 2016 with the implementation of the Act, secondly, with the Disclosure of Diversity Policy Decree on December 31th, 2016 and thirdly, through the Disclosure of Non-Financial Information Decree that would become valid on March 24th, 2017¹⁶⁴.

All these previously listed legislative actions are all focused on aligning Dutch legislation to the European Directive 2014/95/EU guidelines.

¹⁶¹ J. Cramer, "*Learning about Corporate Social Responsibility-The Dutch Experience*" Amsterdam:IOS press.

¹⁶² H. S. Brown, M. de Jong and D. L Levy, "*Building institutions based on information disclosure: lessons from GRI's sustainability reporting.*", Journal of cleaner production 17.6 (2009), p. 575.

¹⁶³ References from:

1. <http://www.dutchcivillaw.com/legislation/dcctitle2299aa.htm>
2. J. Cremers, "*The implementation process of Directive 2014/95/EU in the Netherlands*", Dimaso-Lab Directive 2014/95/EU – Impact Assessment on Labour Relations, (2017).

¹⁶⁴ <https://www.stibbe.com/en/news/2017/april/act-implementing-the-directive-on-disclosure-of-non-financial-information-and-diversity>

Below, it will be reported the text, of the Dutch Decree, dated March 24th, 2017 and enacted by the government of Netherlands, that amends article 391 paragraph 5 of book 2 of the Civil Code. Its scope is to translate Directive 2014/95/EU guidelines into national mandatory regulations. Then, the second part will present the comparison between this new Dutch regulation and Directive 2014/95/EU to understand their degree of conformity.

It is important to point out that it was chosen to insert only the Decree text, dated March 24th, 2017, from the previously listed legislation changes, because it is considered to be the one most focused on mandatory disclosure regulation of PIEs' NFI.

“Article 1

This Decision shall apply to a legal person referred to in Article 398 paragraph 7 of Book 2 of the Dutch Civil Code if:

- a. the average number of employees of the legal person for the financial year more than 500; and*
- b. the legal person on two successive balance sheet data, subsequently without interruption on two successive balance sheet data, has not complied with at least one of the requirements referred to in Article 397 paragraph 1, parts A and B, of Book 2 of the Dutch Civil Code.*

2. A legal person referred to in paragraph 1 shall be exempt from the requirements of this Decision if its financial data and the financial information that he should consolidate are included in the consolidated financial statements of another legal person in his administrative report the communications referred to in Article 3, has done.

Article 2

1. As a part of the Board's report, the legal person makes public a non-financial statement public.

2. The statement includes, to the extent necessary for a proper understanding of the development, the results, the position of the legal person and the effects of his activities, at least the communications mentioned in Article 3.

3. If the legal person compiles consolidated financial statements in accordance with article 406 of Book 2 of the Civil Code, the statement includes, to the extent necessary for a good understanding of the development, the results, the position of the group and the securities of the group's activities, at least the communications mentioned in Article 3 in respect of its group.

Article 3

1. The right person does Communication concerning:

a. The business model of the legal person, in a short description;

b. The policy including the due diligence procedures as well as the results of this policy as regards:

- i. environment-, social and staff matters;*
- ii. respect for human rights;*
- iii. the fight against corruption and bribery;*

c. The main risks with regard to the subjects listed in part b in connection with the activities of the legal person, including, where relevant and proportionate, the business relations, products or services of the legal person which is likely to have negative effects on these topics and how the legal person manages these risks;

- d. Non-financial performance indicators which are of interest for the specific business activities of the legal person.*
- 2.If the person has no policy as referred to in paragraph 1(b), he makes of the reasons for this motivated task.*
- 3.Where this is deemed appropriate, contains references to the declaration and additional explanations of items in the financial statements.*
- 4.The communications may in exceptional cases be omitted if they relate to the imminent developments or business which shall be negotiated and the communications serious damage to the commercial position of the legal person. The omission of the notices must not stand in the way of a fair and balanced understanding of the development, the results, the position of the legal person and the impact of its activities.*

Article 4

The legal person may, when giving the notification referred to in Article 3 use of national and international frameworks and guidelines of the European Union, provided that the legal person in the management report lists the guidelines he has used.

Article 5

The accountant referred to in article 393 paragraph 1 of Book 2 of the Dutch Civil Code will check whether the non-financial statement is prepared in accordance with this decision and is compatible with the financial statements and whether the statement in the light of the examination of the financial statements acquired knowledge and understanding of the legal person and his environment contains material inaccuracies.

Article 6

The legal person who disclosed a non-financial statement has thereby fulfilled the obligation in paragraph 391 of Article 391 of Book 2 of the Civil Code that the analysis referred to in that paragraph includes non-financial performance indicators.

Article 7

This decision shall enter into force on the day following the date of issue of the Official Gazette in which it is posted. The decision applies to board reports relating to financial years commenced on or after 1 January 2017.

Article 8

This decision is cited as: Decision disclosure non-financial information.¹⁶⁵

These Articles of the Decree showed the obligation for Dutch large entities or consolidated entities of large groups to disclose NFI in their management or non-reports. Even in this precise Member State legislation as in the European Directive, it is highlight that the entities, independently of their identity (singular companies or part of a group), must have more than 500 employees and be considered public entities, traded in the Dutch State Stock Exchange, to be affected by the new legislation. For a deeper understanding of this Decree, Annex II¹⁶⁶ was add

¹⁶⁵ <https://zoek.officielebekendmakingen.nl/stb-2017-100.html>

¹⁶⁶ Annex II is reported at pp. 165-173.

to provide a supplementary explanation of the previously mentioned Articles. This Annex was entitled “Notice of Explanatory Statement”¹⁶⁷.

The below table pictures the Dutch Decree and its various similarities with European Directive 2014/95/EU. To complete the comparison, it was divided into eight subclasses, each of which represented by an Article of the Decree and corresponding to a precise part of Directive 2014/95/EU.

March 24th, 2017 Dutch Decree	Directive 2014/95/EU
Art. 1	Art. 19a part 1
Art. 2	Art. 19a part 1
Art. 3	Art. 19a part 1
Art. 4	Art. 19a part 1
Art. 5	Art. 19a part 1
Art. 6	N.L. ¹⁶⁸
Art. 7	N.L. ¹⁶⁹
Art. 8	N.L. ¹⁷⁰

Table KK – Comparison between March 24th, 2017 Dutch Decree and Directive 2014/95/EU non-binding guidelines.

From table KK and the previously inserted text extract of the Decree, it could be verified that the transposition of the European Directive 2014/95/EU into the Dutch Civil Code has all the principal elements necessary to carefully constrain the disclosure of NFI in the European Union Member State, Netherlands.

It could be observed that the Dutch Decree has a linear structure, which follows the chronology of Art. 19a of Directive 2014/95/EU, and describes:

¹⁶⁷ <https://zoek.officielebekendmakingen.nl/stb-2017-100.html>

¹⁶⁸ N.L. stands for not linked and it means that it was not possible to find a correspondence between the National law, in this case 24th March 2017 Dutch Decree, and Directive 2014/95/EU.

¹⁶⁹ N.L. stands for not linked and it means that it was not possible to find a correspondence between the National law, in this case 24th March 2017 Dutch Decree, and Directive 2014/95/EU.

¹⁷⁰ N.L. stands for not linked and it means that it was not possible to find a correspondence between the National law, in this case 24th March 2017 Dutch Decree, and Directive 2014/95/EU.

1. The typology of the companies involved (public and with more than 500 employees) (WHO),
2. Disclosure subjects (WHAT),
3. The disclosure requirements (TOOLS),
4. When it is possible to avoid disclosure and how (EXCEPTIONS and HOW TO PERFORM THEM),
5. The possibility to make a reference to the financial part (POSSIBLE LINKS),
6. Frameworks companies must use to disclose those NFI (SUPPORTS).

5.7.2 2016 Non-Financial Information disclosure analysis

While the previous section was meant to look for the resemblance of the Dutch legislation with Directive 2014/95/EU principles, this part instead will empirically analyse the situation of all the Dutch companies, part of the random sample. In addition, it will be studied how those companies position themselves a year before the entrance into the amendment of article 391 paragraph 5 of Book 2 of the Civil Code.

The total number of Dutch companies analysed were thirteen, coming from six different industrial sectors, being a single entity or a part of a consolidated group of entities or.

More precisely those companies were:

1. Koninklijke Ahold Delhaize N.V. part of the “Wholesale & retail trade” sector and part of a consolidated group.
2. Heineken N.V. part of the “Food, beverages and Tobacco” sector and part of a consolidated group.
3. Chicago Bridge & Iron Company N.V. part of the “Other services” sector and single entity.
4. NXP Semiconductors N.V. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
5. ASML Holding N.V. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
6. Aalberts Industries N.V. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
7. Fugro N.V. part of the “Other services” sector and single entity.

8. Brunel International NV part of the “Other services” sector and single entity.
9. Amsterdam Commodities N.V. part of the “Wholesale & retail trade” sector and part of a consolidated group.
10. Telegraaf Media Groep N.V. part of the “Publishing and Printing” sector and single entity.
11. Ordina N.V. part of the “Post and telecommunication” sector and single entity.
12. Nederlandsche Apparatenfabriek 'Nedap' N.V. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
13. Jubii Europe N.V. part of the “Post and telecommunication” sector and part of a consolidated group.

From a first study, it could be observed that even if the majority of the Dutch companies, presented in the random sample, disclose in a clear, complete and appropriate manner their CSR matters, it was present an exception. This company was the number thirteen (Jubii Europe N.V.), which did not disclose the compulsory NFI matters pointed out by Directive 2014/95/EU in its managerial report. For this reason, the following part (all the graphical results) will take into consideration a total set of twelve companies, instead of the initial thirteen companies¹⁷¹.

With the support of the database created for the study of the conformity between the Dutch disclosure customs prior to Directive 2014/95/EU and the Directive guidelines, following milestones and results could be observed:

1. **DISCLOSURE FRAMEWORKS:** The 91,7% of the Dutch companies analysed¹⁷² in the set used International frameworks, while 0% used National frameworks and the other 16,7% used Union-based frameworks. It must be highlight that summing all the three percentage together it come out a number bigger then 100% due to the fact that some companies use multiple frameworks (see table below).

¹⁷¹ In the initial list of Dutch companies, extrapolated from the random sample set, there were present thirteen companies. From that number (thirteen), it was taken out one company due to its non-availability of data with the research purpose. This subtraction resulted in a subset of twelve companies that will be used through all this part analysis.

¹⁷² For this part, the total of Dutch companies amount to twelve entities.

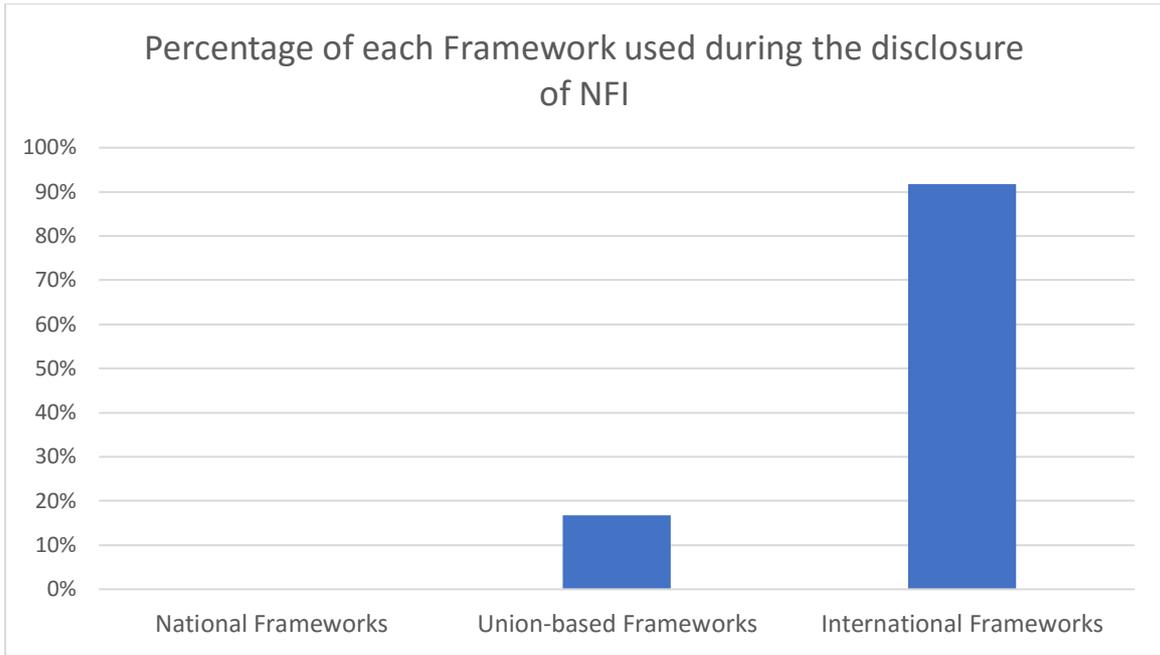


Table LL – This table shows Dutch companies and their disclosure frameworks choice

2. **DISCLOSURE TOOLS:** The 100% of the Dutch companies analysed in the set disclosed their NFI in their yearly management report, while 0% created an ad hoc sustainability report (see table below).

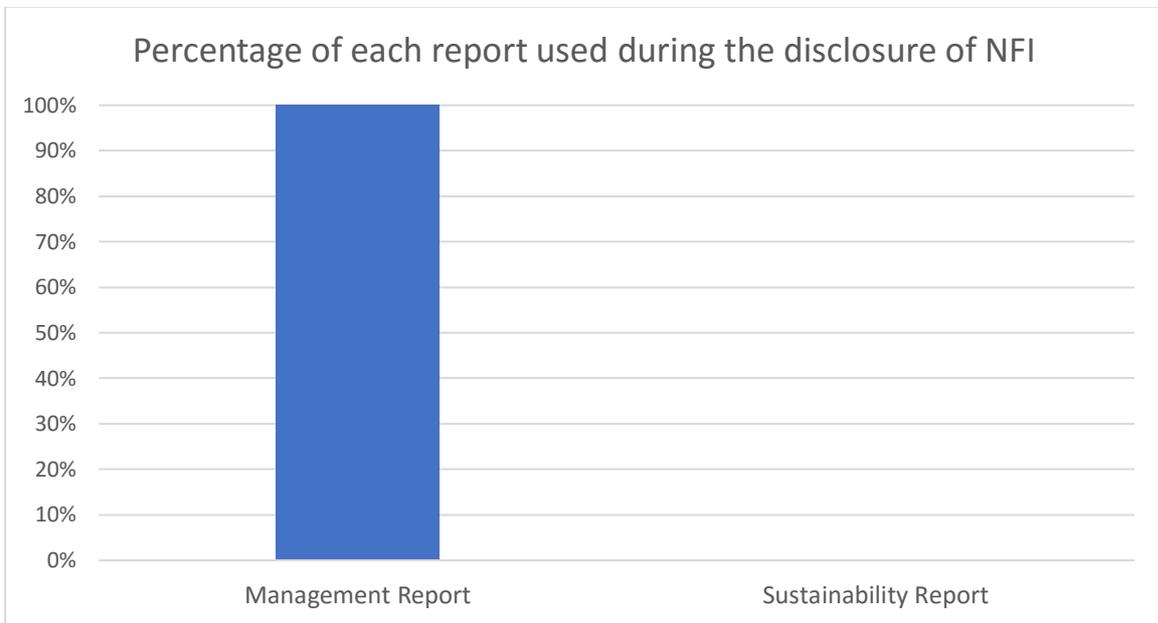


Table MM - This table shows Dutch companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 83,3% of the Dutch companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 91,7% included the “Use of renewable and/or non-renewable energy” matters, 75% “Greenhouse gas emissions reduction strategy” matters, 41,7% “Water use” matters and 33,3% “Air pollution” matters (see table below).

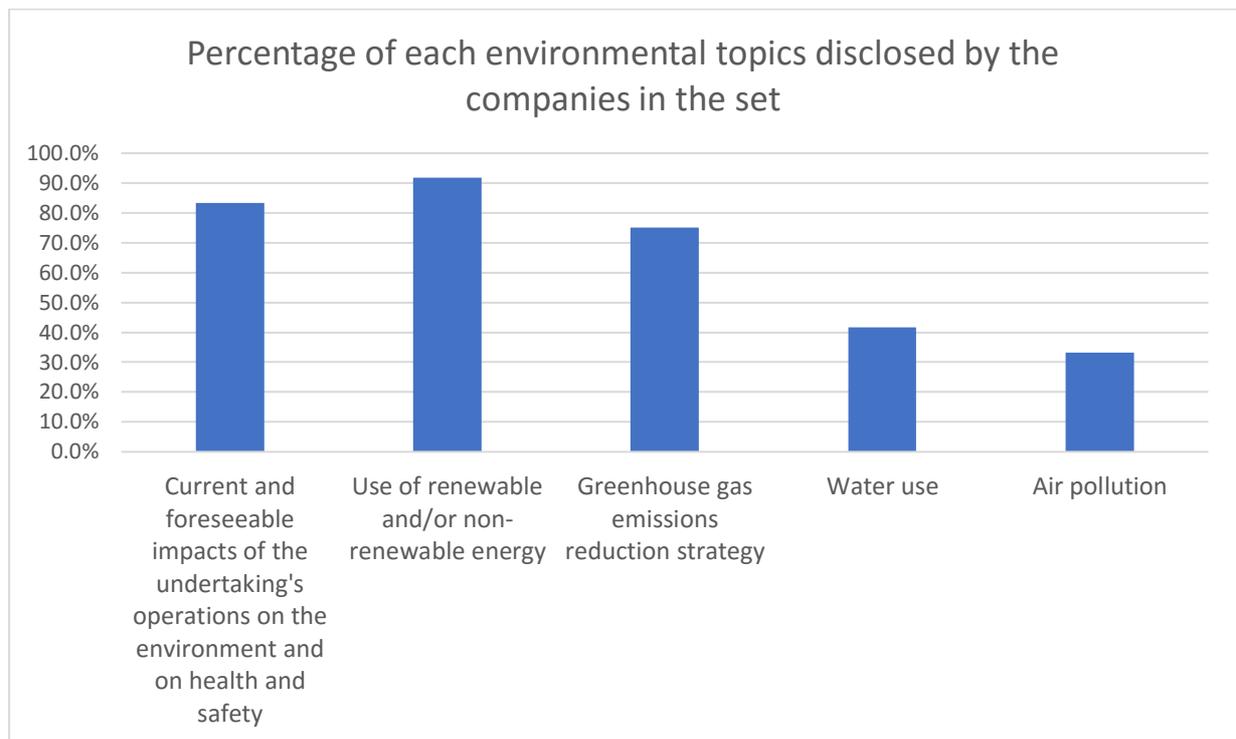


Table NN - This table shows Dutch companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 66,7% of the Dutch companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 33,3% include the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 33,3% “Respect for the right of workers to be informed and consulted” matters, 25% “Respect for trade union rights” matters, 91,7% “Health and safety at work” matters, 75% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 75% “Prevention of human rights abuses” matters (see table below).

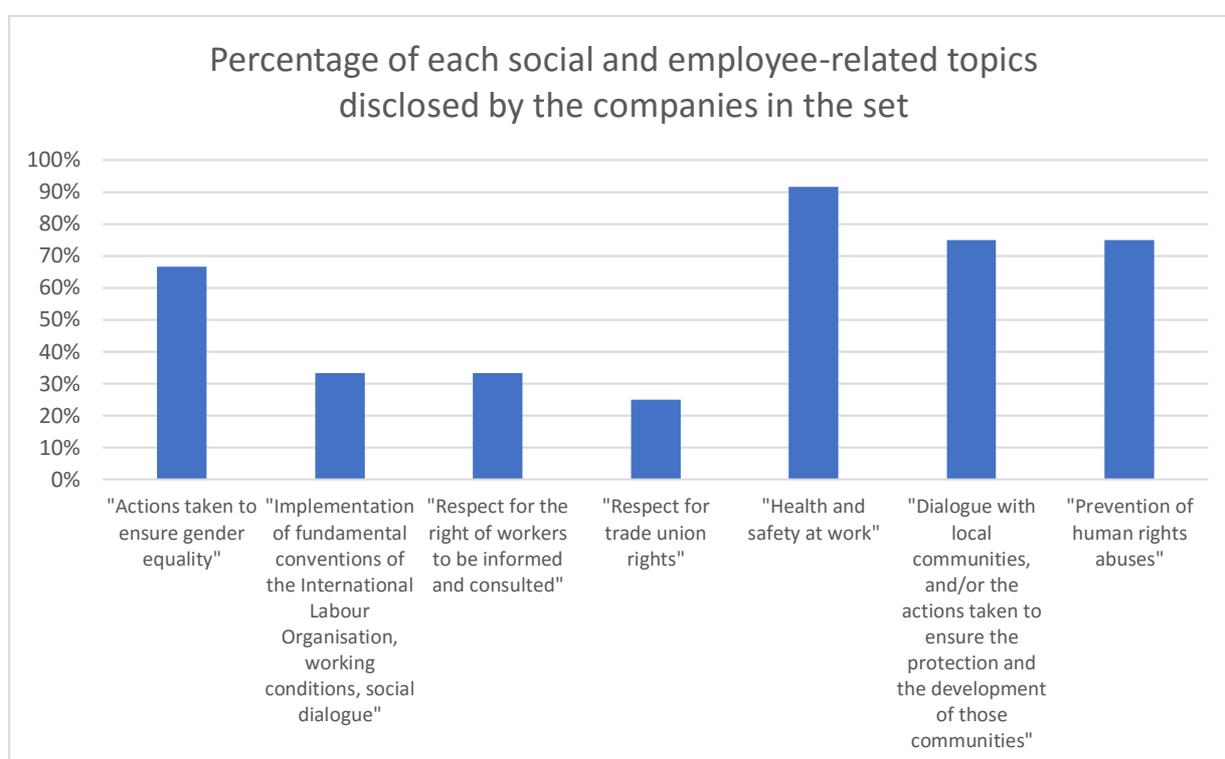


Table OO - This table shows Dutch companies and their disclosure inclinations toward social and employee-related matters

5. **ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES:** The 58,3% of the Dutch companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 66,7% of them disclosed “Instruments in place to fight bribery” (see table below).

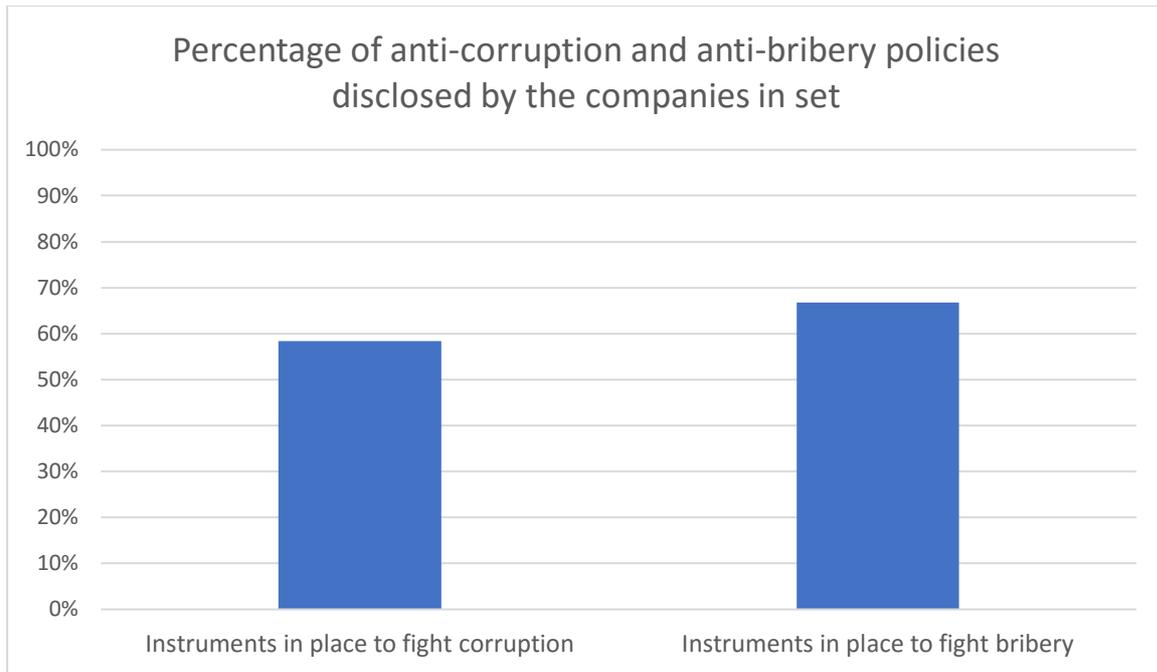


Table PP - This table shows Dutch companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important considerations.

First, together with the Italian and Irish companies, Dutch companies used to disclose their NFI with the support of more frameworks at the same time, as graphically proved by table KK.

Second, they used only one report typology, the management reports.

Third, Dutch companies disclosed environmental information, employee-related one and the policies, put in place to fight corruption and bribery, in similar percentages. As a matter of fact, it is graphically proved that all the three categories do not have less than the 25% of companies disclosing each singular topic, normally with an average of 66,7% of the sample. This last result symbolised that Dutch companies, prior to the national amendment entrance into force, were already half way aligned with Directive 2014/95/EU NFI disclosure guidelines.

5.8 Poland

In this section, a detailed analysis will be performed of both the theoretical part, with the Polish legislation evolution in terms of NFI disclosure policies, and the practical part with the analysis of the randomly selected Polish companies NFI disclosure – data from 2016. In addition, it is important to understand and analyse the different positions and opinions scholars have of the Polish environment prior to the entrance into the amendment Bill, dated December 6th, 2016, of the Polish legislation and its consequences on Polish companies.

Through the literature study on the relationship between CSR disclosure and Polish legislation, it seemed that all authors agreed on the need of mandatory regulation for the Polish companies. They continue affirming that government involvement would help national companies to disclose and integrate CSR in their businesses, since till 2016 the majority of the Polish companies do not disclose or used to disclose any NFI.

Academic example, to support the previous mention theory, could be Dr. J. Maj, from the Opole University of Technology, Poland. She affirmed in her article, entitled “*Corporate Social Responsibility and diversity reporting in polish companies from companies from the basic materials and oil & gas sectors listed on the Warsaw stock exchange*”, that:

*“After having studied 15 Polish companies part of the Warsaw Stock Exchange and working in the Basic Materials and Oil & Gas Sector, she found out that those companies have largely a lot of work ahead if they want to meet the Directive’s requirements for 2017.”*¹⁷³

Here, the author highlights the problematic of the scare presence of sustainable businesses in Poland. This statement was further confirmed by national academic representatives, who felt the need to have a government that would be in charge and would support the diffusion of a sustainable awareness in the Polish corporate sector. In fact, as author E. Papaj affirmed:

*“Lack of regulation may result in 'information chaos'. The absence of clear guidelines is often a huge challenge for people responsible for preparing financial reports, as they have to make their own decisions regarding the scope of disclosed information.”*¹⁷⁴

¹⁷³ J. Maj, “*Corporate Social Responsibility and diversity reporting in polish companies from companies from the basic materials and oil & gas sectors listed on the Warsaw stock exchange*”, 16th International Multidisciplinary Scientific GeoConference SGEM, (2016), p. 8.

¹⁷⁴ E. Papaj, “*Non-financial information regarding the amended accounting act bill*”, Scientific Journal WSiP Nr (01.2017), p. 67.

To sum up all the academic references, it can be cited Potocki (2015, p.259), who affirmed that the only way to incentivise sustainability among their national companies was to “*introduce minimum legal requirements that would regulate corporate responsibility practices*”¹⁷⁵. His view was supported by Paliwoda-Matiolańska (2015)¹⁷⁶ and other scholars like Chojnacka (2014b)¹⁷⁷, who accentuate the necessity to include CSR disclosure issues in the accounting regulations, and Krasdomska (2015)¹⁷⁸, who affirmed that “*a more standardized approach to the management commentary content would be beneficial in terms of its transparency and value for users.*”¹⁷⁹.

5.8.1 Legislation¹⁸⁰

After all the literature references of the previous part, it could be possible to affirm that a governmental action to restrict NFI disclosure is supported by the majority of the Polish academics. The fundamental step toward the adaptation of the Polish Legislation to the European Directive 2014/95/EU was done on December 6th, 2016 with the amendment Bill of the article 49 (addressed to single entities) and 55 (addressed to entities part of a consolidate group) of the Accountancy Act, containing the Polish equivalent of the European Union principles and guidelines for NFI disclosure. This Act will enter into effect on December 15th, 2016. It is focused, in particular its Article I parts eight and nine (amending article 49) and ten (amending

¹⁷⁵ T. Potocki, “*Corporate Social Responsibility in Poland: From Theory to practice*”, (2015) in: S. O. Idowu, R. Schmidpeter, M. S. Fifka (Eds.) *Corporate Social Responsibility in Europe. United in Sustainable Diversity*, Springer, Switzerland, p. 259.

¹⁷⁶ A. Paliwoda and A. Matiolańska “*Corporate Social Responsibility in Poland: is there a place for value creation?*”, (2015), in: *CSR Trends. Beyond Business as Usual*, J.Reichel (Ed.), Centrum Strategii i Rozwoju Impact (CSR Impact), Łódź, pp. 7-28.

¹⁷⁷ Chojnacka E. (2014b) “*Sprawozdanie z działalności jako dokument służący raportowaniu danych ESG*” [Report of the management board on operations as a document used to report ESG data]. *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu*, vol. 329, pp. 261-270

¹⁷⁸ J. Krasdomska, (2015), “*Informacje niefinansowe w sprawozdawczości spółek*” [Non-financial information and corporate reporting], Wydawnictwo Uniwersytetu Ekonomicznego w Krakowie, Kraków.

¹⁷⁹ J. Dyczkowska, J. Krasdoma and J. Michalak, “*CSR in Poland: Institutional context, legal framework and voluntary initiatives*”, *Accounting and Management Information Systems* Vol. 15, No. 2, pp. 212-213.

¹⁸⁰ References from:

1. http://siteresources.worldbank.org/EXTCENFINREPREF/Resources/4152117-1293059093099/neswletter_december_2016_web.html
2. “*Polish National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights 2017-2020*”, pp. 30-31.
3. B. Kwiatkowski, M. Jakubowski and A. Langowska-Krok, “*Basic analysis of the current situation in Poland regarding access to remedy in cases of business-related abuse*”, *Polski Instytut Praw Człowieka i Biznesu*, (11.03.2016).
4. M. Wypych and P. Trippner, “*Practical and Theoretical Issues in Contemporary Financial Management*”, *Społeczna Akademia Nauk* (University of Social Sciences), Volume XVII, Issue 1, Part I, (2016).

article 55), on aligning Polish non-financial information disclosure regulations to the European Directive 2014/95/EU.

It will follow a second part of this section with the comparison between this new Polish regulation and Directive 2014/95/EU to understand their degree of conformity.

Below the extract of the amended Bill, enacted by the Polish government and proposed by the Ministry of Finance, that modifies the Accountancy Act:

“8) Art. 49:

a) paragraph. 3 is replaced by the following:

"3. An entity's report should also include - if relevant to the development, performance and situation of the entity - at least:

- 1) key financial performance indicators related to the entity's business;*
- 2) key non-financial performance indicators related to the entity's activities and information on employee issues and the environment. ",*

b) after paragraph 3. The following 3a is added:

"3a. Where there is a link between the values disclosed in the annual financial statements and the information included in the entity's annual report, the entity's report of operations should include references to the amounts disclosed in the financial statements and additional explanations of those amounts.",

c . 6 is replaced by the following:

"6. A small unit and a micro unit may not show indicators and information referred to in paragraph 3 (2) in the activity report.";

9) after art. 49a. The following 49b is added:

Article 49b 1. An entity referred to in Article 3 (1e) (1) to (6), a limited liability company, limited partnership or joint venture, or a partnership or partnership of which all partners with unlimited liability are limited liability companies. limited partnerships or companies from other countries with a legal form similar to those companies, provided that in the financial year for which the financial statements are prepared and in the year preceding that year it exceeds the following amounts:

- 1) 500 people - in the case of annual average full-time employment and*
 - 2) PLN 85,000,000 - in the case of the balance sheet total assets at the end of the financial year or PLN 170,000,000 - in the case of net sales of goods and products for the financial year*
- additionally included in the activity report - as a separate section - statement on non-financial information.*

2. The statement of non-financial information shall include at least:

- 1) a brief description of the entity's business model;*
- 2) key non-financial performance indicators related to the entity's business;*
- 3) a description of the policies applied by the individual in relation to social, labour, environmental, human rights and anti-corruption issues, and a description of the results of their application;*
- 4) description of due diligence procedures - if an entity applies them under the policies referred to in point 3;*

5) a description of the material risks associated with the activities of an entity that may have an adverse effect on the matters referred to in point 3, including risks associated with the entity's products or its external relations, including the counterparty, and a description of the management of those risks.

3. When making a statement on non-financial information, an entity shall provide non-financial information insofar as they are necessary for evaluating the development, performance and circumstances of the entity and its impact on the matters referred to in paragraph 1. 2 pt. 3.

4. Where there is a link between the values disclosed in the annual accounts and the information in the statement of non-financial information, the statement should include references to the amounts disclosed in the financial statements and additional explanations of those amounts.

5. If an entity does not apply a policy to one or more of the issues referred to in paragraph 2 pt. 3, in a statement on non-financial information, the entity shall state the reasons for non-financial information.

6. An entity may, in exceptional cases, omit information in the statement of non-financial information on expected events or matters in the course of ongoing negotiations where, in the reasonable opinion of the head of the unit and of the supervisory board or other body supervising the entity, disclosure of such information would be significantly harmful. influence on the market situation of the individual. An entity may not omit this information if it fails to properly and objectively evaluate the development, performance and circumstances of the entity and its impact on the matters referred to in paragraph 1. 2 pt. 3.

7. If an entity omits in the statement of non-financial information the information referred to in paragraph 6, informs in this statement.

8. An entity may make use of any rules, including its own rules, national, EU or international standards, standards or guidelines when making a declaration on non-financial information. In the statement, the unit shall state what rules, standards, standards or guidelines apply.

9. An entity may not make a statement of non-financial information if it reports separately on its non-financial information together with the activity report and publishes it on its website within 6 months of the balance sheet date. The entity shall include in its operating report information on the preparation of a separate report on non-financial information in accordance with the requirements set out in paragraph 1. 2-8. To the report on non-financial information, 2-8, art. 4a. 1, art. 45 sec. 4 and 5, art. 52 sec. 3 point 2, art. 68 and Art. 73 sec. 3 applies accordingly.

[...]

10) in Art. 55:

a) in para. The first sentence of Article 2a is replaced by the following:

"The annual consolidated financial statements shall be accompanied by a report on the activities of the capital group drawn up in accordance with the requirements referred to in Article 49 (2) to (3a), provided that in the case of the information referred to in Article 49 (2) Information on own shares owned by the parent, entities forming part of the group and persons acting on their behalf. ",

b) after paragraph 2a. 2b-2e in the wording:

2b the parent company being:

1) the unit referred to in art. 3 sec. 1e items 1-6, and

2) a limited liability company, a joint stock limited liability company or such limited partnership or joint venture company, of which all partners with unlimited liability are limited liability companies, joint stock limited liability companies or companies of other jurisdictions with similar legal status;

3) parent company of the capital group if the aggregate data of the parent company and all subsidiaries of each level as at the balance sheet date of the financial year and as at the balance sheet date of the year preceding the financial year:

a) after the consolidation exclusions referred to in art. 60 sec. 2 and 6, exceed the quantities referred to in art. 49b para. 1, or

b) before the consolidation exclusions referred to in art. 60 sec. 2 and 6 exceed the following:

- 500 persons - for full-time employment and

- PLN 102,000,000 - in the case of the balance sheet assets at the end of the financial year or PLN 204,000,000 - in the case of net sales of goods and products for the financial year

- additionally includes in the statement of operations of the capital group - as a separate part - a statement of the group on non-financial information prepared in accordance with the requirements set out in art. 49b para. 2-8.

2c. The Parent Company may not make a statement of the Group on non-financial information, provided that the Group's financial statements together with the Group Business Report shall prepare a separate report on the non-financial information on the Group and publish them on its website within 6 months of the balance sheet date. The entity shall include in its report on the activities of the capital group the information on the preparation of a separate group report in accordance with the requirements set out in art. 49b para. 2-8. To the Group's report on non-financial information, Art. 4a. 1, art. 45 sec. 4 and 5, art. 49b para. 2-8, art. 52 sec. 3 point 2, art. 68 and Art. 73 sec. 3 applies accordingly.

2d. It is understood that a parent undertaking which makes a corporate statement on non-financial information or a group report on non-financial information as required by law meets the obligation to disclose the indicators and information referred to in art. 49 sec. 3 point 2.

2e. A lower-tier entity may not make a capital group statement on non-financial information or a group report on non-financial information if its parent or its head office in the European Economic Area draws up a corporate statement on non-financial information. or a group report on non-financial information in accordance with the laws of the European Economic Area, to which this entity and its subsidiaries at all levels are subject. In such case, the entity shall disclose in its operating report the name and registered office of its parent company,¹⁸¹

This amended Bill shows the obligation for large entities or consolidated entities of large groups to disclose NFI in their management or non-reports.

Even in this precise Member State legislation as in Directive 2014/95/EU, it is highlighted that entities, independently of their identity (singular companies or part of a group), must have more than 500 employees and be considered public entities, traded in the Polish Stock Exchange, to be affected by the new legislation.

¹⁸¹<http://www.lex.pl/du-akt/-/akt/dz-u-2017-61>

In the table QQ, it will be projected the resemblances between the Polish amendment and the European Directive 2014/95/EU. To do so, the Polish Bill text, presented before, was divided into four subclasses, each of which represented by a part of the amended Bill and corresponding to a precise part/parts of Directive 2014/95/EU.

December 6th, 2016 Polish amendment Act	Directive 2014/95/EU
Art. 49a	Recital 11
Art. 49b – Part 1, 2, 3, 4, 5, 6 and 7	Art. 19a part 1
Art. 49b – Part 8 and 9	Art. 19a part 4
Art. 55	Art. 29a part 1 and 4

Table QQ – Comparison between December 6th, 2016 Polish amendment Act and Directive 2014/95/EU non-binding guidelines.

From the above table and the previously text extract of the Polish Act, it could be verified that the transposition of the European Directive 2014/95/EU into the Polish Civil Code has all the principal elements necessary to carefully constrain the disclosure of NFI in the European Union Member State, Poland.

After having studied the Polish situation, it can be easily observed that the part of the Polish Bill, reported in this section of the dissertation, is divided into two thematic areas.

The first area regards Article 49a and b of the Polish Civil Code, addressed to single entity, which described:

1. the typology of the companies involved (public and with more than 500 employees) (WHO),
2. Disclosure subjects (WHAT),
3. Disclosure requirements (TOOLS),
4. When it is possible to avoid disclosure and how (EXCEPTIONS and HOW TO PERFORM THEM),
5. The possibility to make a reference to the financial part (POSSIBLE LINKS),
6. Frameworks companies have to use to disclose those NFI (SUPPORTS).

The second area regards companies part of a consolidated group and can be identified with Article 55 of the Polish Civil Code. This part is really shorter in length, compared with the previous one. Its size is due to the conciseness of the subjects discussed. As a matter of fact, this Article explains only that public companies part of a consolidated group, with more than 500 employees, are obliged to disclose their NFI. While, for all the other specific restrictions, companies must refer to Article 49a and b of the same Bill.

5.8.2 2016 Non-Financial Information disclosure analysis

While the previous section was meant to look for the resemblance of the Polish legislation with the principles of Directive 2014/95/EU, this part will empirically analyse the situation of all Polish companies, part of the random sample. In addition, it will be research how they disclose the required NFI by Directive 2014/95/EU a year before entering the amendment bill of the article 49 and 55 of the Accountancy Act.

The total number of Poland companies analysed were thirteen, coming from five different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Action S.A. part of the “Wholesale & retail trade” sector and part of a consolidated group.
2. Grupa Zywiec S.A. part of the “Food, beverages and Tobacco” sector and part of a consolidated group.
3. Gobarto S.A. part of the “Wholesale & retail trade” sector and part of a consolidated group.
4. Zakłady Miesne Henryk Kania S.A. part of the “Wholesale & retail trade” sector and N.A.
5. Elemental Holding S.A. part of the “Wholesale & retail trade” sector and part of a consolidated group.
6. Kopex S.A. part of the “Wholesale & retail trade” sector and single entity.
7. Alchemia S.A. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
8. ZPUE S.A. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
9. Newag S.A. part of the “Metals and metals products” sector and N.A.

10. Eurocash S.A. part of the Wholesale & retail trade” sector and single entity.
11. J.W. Construction Holding S.A. part of the “Other services” sector and single entity.
12. KGHM Polska Miedz S.A. part of the “Metals and metals products” sector and single entity.
13. Asseco Business Solution S.A. part of the “Other services” sector and single entity.

From a first study, it could be observed that, even if there were presented some exceptions, the majority of the Polish companies in the random sample, disclosed in a non-clear, non-complete and inappropriate manner their CSR matters. These companies were: companies number four (Zaklady Miesne Henryk Kania S.A.) and number nine (Newag S.A.), which were not able to provide any data to its stakeholders, and companies number: one, three, five, seven, ten, eleven and thirteen (Action S.A., Gobarto S.A., Elemental Holding S.A., Alchemia S.A., Eurocash S.A., J.W. Construction Holding S.A. and Asseco Business Solution S.A.) that did disclose their managerial reports, but did not mention the compulsory NFI matters pointed out by Directive 2014/95/EU. For these reasons, the following part (all the graphical results) will take into consideration a total set of four companies, instead of the initial thirteen companies¹⁸².

It is important to notice that this was the most drastic reduction, because of national companies’ poor disclosure of NFI attitude (almost 70% volume reduction).

With the support of the database created to study of the conformity between the national disclosure tendency prior to Directive 2014/95/EU and the Directive guidelines, following milestones and results could be observed:

1. **DISCLOSURE FRAMEWORKS:** The 75% of the Polish companies analysed¹⁸³ in the set used International frameworks, while 25% used National frameworks and the other 0% used Union-based frameworks (see table below).

¹⁸² In the initial list of Polish companies, extrapolated from the random sample set, there were present thirteen companies. From that number (thirteen), it was taken out nine companies due to either their non-availability of data or presence of non-coherent information with the research purpose. This subtraction resulted in a subset of four companies that will be used through all this part analysis.

¹⁸³ For this part, the total of Polish companies amount to four entities.

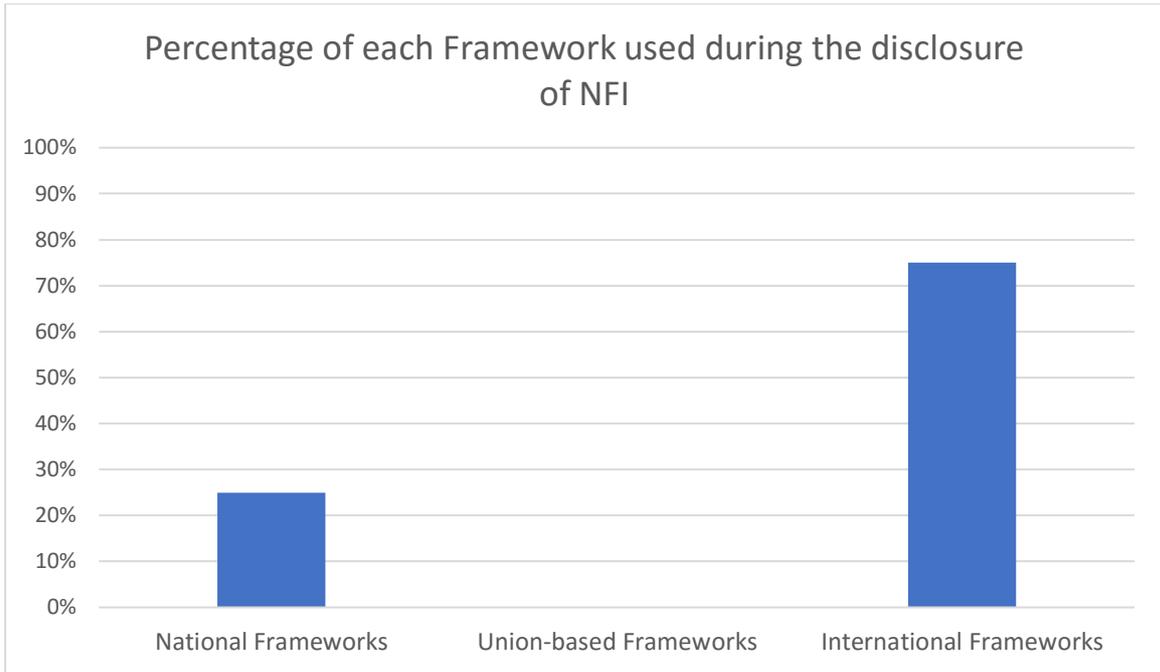


Table RR – This table shows Polish companies and their disclosure frameworks choice

2. **DISCLOSURE TOOLS:** The 25% of the Polish companies analysed in the set disclosed their NFI in their yearly management report, while 75% created an ad hoc sustainability report (see table below).

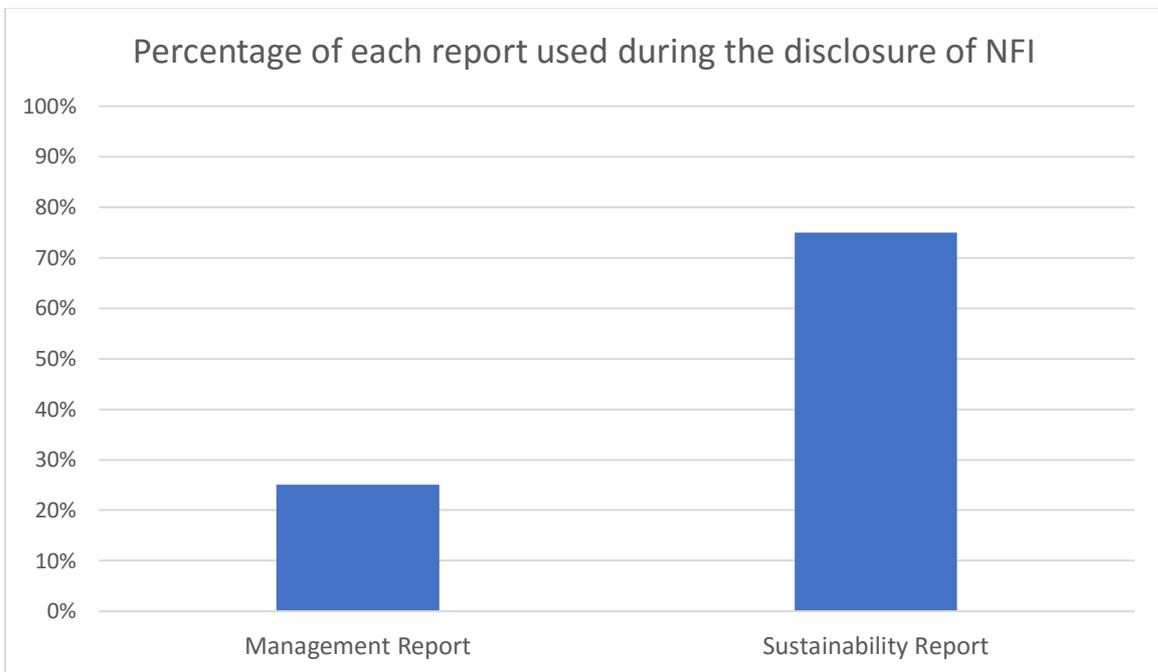


Table SS - This table shows Polish companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 75% of the Polish companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 50% included the “Use of renewable and/or non-renewable energy” matters, 50% “Greenhouse gas emissions reduction strategy” matters, 50% “Water use” matters and 0% “Air pollution” matters (see table below).

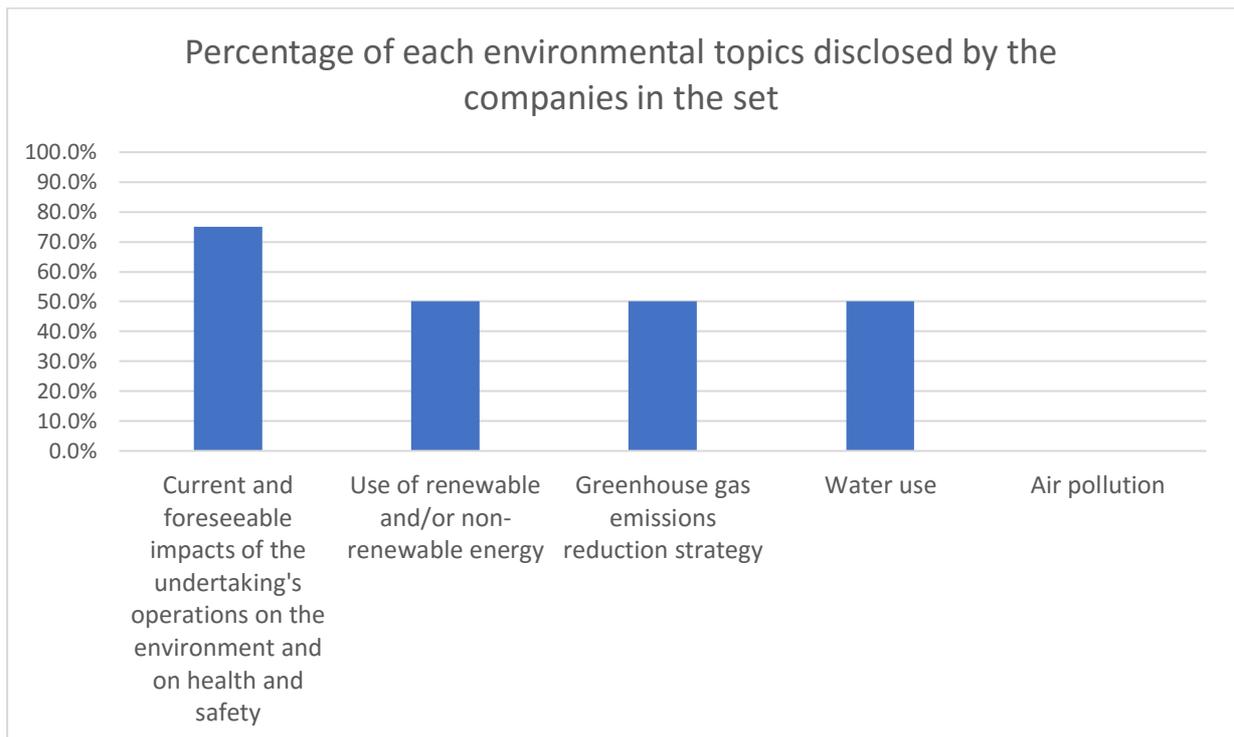


Table TT - This table shows Polish companies and their disclosure inclinations toward environmental matters

4. SOCIAL AND EMPLOYEE-RELATED MATTERS: The 75% of the Polish companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 25% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 25% “Respect for the right of workers to be informed and consulted” matters, 50% “Respect for trade union rights” matters, 75% “Health and safety at work” matters, 100% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 75% “Prevention of human rights abuses” matters (see table below).

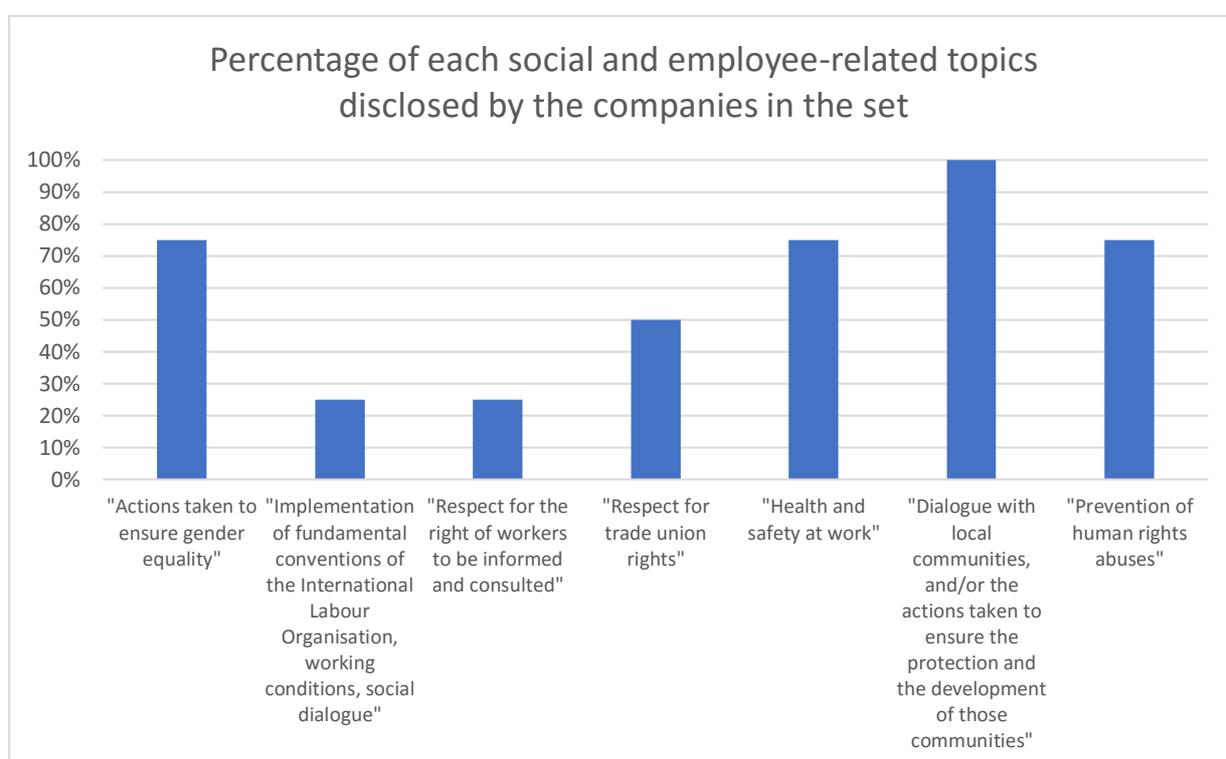


Table UU - This table shows Polish companies and their disclosure inclinations toward social and employee-related matters

5. ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES: The 25% of the Polish companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 25% of them disclosed “Instruments in place to fight bribery” (see table below).

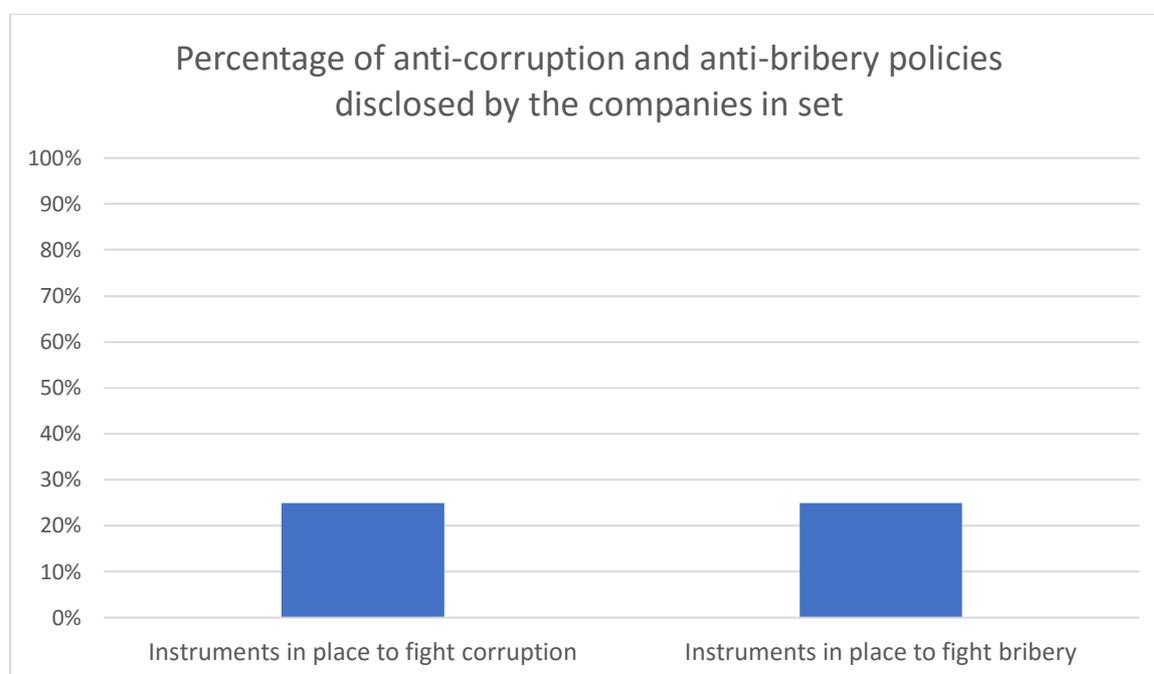


Table VV - This table shows Polish companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

Before listing all the considerations obtained through the graphical analysis, it must be considered that the set of companies was drastically reduced, due to the lack of NFI disclosure by the majority of the companies presented in the random sample. For this reason, as it will be discussed later, the positivity of the results obtained, during the examination of the percentage of the companies that disclose those specific CSR topics, could be bias.

From the graphical analysis, it emerges two main conclusions.

First, three out of four companies analysed used to report their NFI in a separate ad hoc report, called sustainability report. This signal can be interpreted as an additional action of the companies to differentiate themselves from all the others non-disclosing companies. As a matter of fact, disclosing an ad hoc report shows how much relevance, those companies address to NFI disclosure with respect to their fellow companies. In addition, a separated report implies bigger usage of money, time and resources compared to management reports, which must anyhow be disclosed every year.

Second, once established that companies, which disclosed NFI in Poland prior to 2017, were actively involved in the promotion and support of a sustainable corporate governance. It is not surprising to observe that there are a high percentage of NFI communication in almost all the subclasses of the three CSR main areas. The only exception to those high rates regards the topic named “**Air pollution**”, which was not communicated by any company.

In conclusion, it can be affirmed that Polish business environment, one year prior to the entrance into effect of mandatory NFI disclosure regulations, was divided into two groups.

The first group was composed by the majority of the companies, which were accumulated by not be ready to align itself to new regulations, as their level of NFI disclosure was zero.

The second group, which had a consolidate sustainability experience, was considered almost prepared to embrace the upcoming legislative change.

The new Polish regulatory environment will thus bring for the first group huge expenses, time and resources consumption, to align themselves to Directive 2014/94/EU requirements, while, for the second group, it will result in an easier and less expensive task. This extreme situation could therefore hypothetically result in both a new profitable opportunity or a reason to lag behind, depending on the companies’ ability to adapt and react to the new CSR national regulations.

5.9 Sweden

In this section, a detailed analysis will be performed of both the theoretical part, with the Swedish legislation evolution in terms of NFI disclosure policies, and the practical part with the analysis of the randomly selected Swedish companies NFI disclosure – data from 2016.

In addition, it is important to understand and analyse the different positions and opinions scholars have of the Swedish environment prior to the entrance into the Annual Accounts Act (Lag (2016:947) of the Swedish legislation and its consequences on Swedish companies.

The academic opinions, of the Swedish business environment prior to Directive 2014/95/EU implementation, agreed on the need of super partes entities, like the government, that will regulate and oversee Swedish NFI disclosure. Till this new governmental responsibility, there will be only chaos and a lack of coordination between companies' voluntary disclosure on sustainability matters. As proved by the fact that voluntary disclosure of NFI is considered by Swedish businesses as a possibility to gain customers' trust and interest, thus businesses have adopted selective strategy to disclose only the information that will result for them in an increase of company's reputation. This consideration is academically supported by several authors. One of these authors is S. Arvidsson, who, citing (Lock Lee and Guthrie, 2010¹⁸⁴; Lin and Edvinsson, 2008¹⁸⁵; Vandemaele et al, 2005¹⁸⁶ and Arvidsson, 2003¹⁸⁷), stated that:

“A review of earlier studies confirms that non-financial disclosure related is not favoured by management teams when they structure their disclosure. However, there are some exceptions. Nordic companies in general and Swedish companies specifically are found to be precursors when voluntary disclosure on intangible assets is concerned. The Nordic companies in general and Swedish companies in specific are regarded as precursors when it comes to compensate the lack of information on intangible asset in financial statements by voluntarily disclose this type of non-financial information.”¹⁸⁸

¹⁸⁴ L. Lock and J. Guthrie, “Visualising and measuring intellectual capital in capital markets: a research method”, Journal of Intellectual Capital, Vol. 11 No. 1, (2010), pp. 4-22.

¹⁸⁵ C. Y. Y. Lin and L. Edvinsson, “National intellectual capital: comparison of the Nordic countries”, Journal of Intellectual Capital, Vol. 9 No. 4, (2008), pp. 525-45.

¹⁸⁶ S. N. Vandemaele., P. G. M. C. Vergauwen, and A. J. Smits, “Intellectual capital disclosure in The Netherlands, Sweden and the UK – a longitudinal and comparative study”, Journal of Intellectual Capital, Vol. 6 No. 3, (2005), pp. 417-26.

¹⁸⁷ S. Arvidsson, “Demand and supply of information on intangibles: the case of knowledge-intense companies”, PhD dissertation, Department of Business Administration, Lund University, Lund, (2003).

¹⁸⁸ S. Arvidsson, “Disclosure of non-financial information in the annual report – A management-team perspective”, Journal of Intellectual Capital Vol. 12 No. 2, (2011), pp. 278-280.

Other authors are P. Habek and R. Wolniak, who agreed with the previously mentioned statement of S. Arvidson. As a matter of fact, all these authors have chosen Sweden as an example of best practices, due to its considerable experience in the promotion of sustainability businesses and its reputation of being a front-runner, who actively support CSR policies.

A supplementary confirmation came by the same authors (P. Habek and R. Wolniak), who affirmed that the Sweden business environment has earned the title of “sustainable business environment” due to its government’s effective involvement in the design and implementation of proper policies and its willingness to align with the European strategy.

It could be cited the Authors (P. Habek and R. Wolniak) text extract:

“Another main reason for the success of CSR in Sweden is that big Swedish companies are taking responsibility voluntarily. Many Swedish companies have sustainability reports and the companies listed on the stock exchange provide sustainability reports on a voluntary basis. The stock exchange in Sweden does not require CSR reporting nonetheless about 75% of Swedish companies do reporting as part of corporate transparency”¹⁸⁹

¹⁸⁹ P. Habek and R. Wolniak, “European Union regulatory requirements relating to Sustainability Reporting. The case of Sweden”, *Scientific Journals* 34(106), (2013), p. 45.

Instruments with mandatory implications for sustainability reporting in Sweden	
Name	Requirements
Annual Accounts Act (ÅRL, Chapter 6)	The amendment to the Annual Accounts Act, 1999, states that certain companies have an obligation to include a brief disclosure of environmental and social information in the Board of Directors' Report section of the annual report. The Annual Accounts Act (Årsredovisningslagen) was updated in 2005 to include that certain companies have to include even more non-financial information in the Board of Directors' Report section of the annual report. This update is a result of the implementation of the Accounting Modernisation Directive (2003/51/EC) in Swedish legislation [12].
Guidelines for external reporting by state-owned companies	The guidelines for external reporting of the state-owned companies include the annual report, interim reports, the corporate government report, the statement on internal control and the sustainability report. All state owned entities in Sweden are from the 1 January 2008 required to present an annual sustainability report based on the Global Reporting Initiative Guidelines. The sustainability report is to be subject to independent assurance [32].
The Swedish Environmental Code	Act of 1998 on the Swedish Environment Code, entered in force in 1999, introduces the requirement to disclose information in an annual environmental report on the environmental consequences of their activities for companies in the construction sector and those having activities emitting toxic waste for the environment [33]. The Environmental Code is the first integrated body of environmental legislation enacted in Sweden. The purpose of this Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. The Environmental Code is applicable to all citizens and economic operators who undertake operations or measures that conflict with the objectives of the Code [34].
Instruments with voluntary implications for sustainability reporting in Sweden	
Name	Requirements
Guidelines on environmental information in the Directors' Report section of the Annual Report	The Swedish Accounting Standards Board (Bokföringsnämnden) provides guidelines on environmental information in the Directors' report section of the annual report [12].
FAR SRS standard RevR6 "Independent assurance of voluntary separate sustainability reports"	This standard was issued by The Swedish Institute for the Accountancy Profession (FAR) and is used by accounting firms providing sustainability assurance for Swedish companies. It was the first national standard in the world when it was issued in 2004. The standard was updated in 2006 to comply with International Standard on Assurance Engagements (ISAE 3000) [35].

Figure 9 - Instruments with mandatory and voluntary implications for sustainability reporting in Sweden

Figure nine summarizes all the Swedish mandatory and voluntary requirements, prior to 2013, that have made this European Union Member States a positive example of CSR governance.

5.9.1 Legislation¹⁹⁰

The fundamental steps toward the adaptation of the Swedish Legislation to the European Directive 2014/95/EU was done on December 1st, 2016, but it became effective only from the financial year, starting on December 31th, 2016.

These steps are:

1. The adoption of a law amending the Annual Accounts Act (Lag (2016:947) om ändring i årsredovisningslagen (1995:1554))¹⁹¹.
2. The amendment to the Act on Annual Reports for Insurance Enterprises (Lag (1995:1560) om årsredovisning i försäkringsföretag)¹⁹².
3. The amendment to the Act (1995:1559) on Annual Accounts in Credit Institutions and Securities Companies (Lag (1995:1559) om årsredovisning i kreditinstitut och värdepappersbolag)¹⁹³.
4. The amendment to the Companies Act (Aktiebolagslag (2005:551)¹⁹⁴.

All these amendments were performed to be the Swedish equivalents of the European Union principles and guidelines for NFI disclosure. From that previous list, there is one amendment in particular that has the most resemblance and importance with Directive 2014/95/EU. It is the first on the list and it ratifies the Swedish Annual Accounting Law. For this reason, it will be studied more in detail, firstly with the transcription of its text and, secondly, through a direct comparison between its restrictions and the ones imposed by the European Directives 2014/95/EU.

“Sustainability report

10 §

The report of the directors of a corporation shall include a sustainability report if the company meets more than one of the following conditions:

¹⁹⁰ References from:

1. <http://newcontext.se/wp-content/uploads/sites/7458/2016/05/Swedish-Parliament-on-Sustainability-Reporting-Report-9-2016.pdf>
2. http://law.au.dk/fileadmin/www.asb.dk/omasb/institutter/erhvervsjuridiskinstitut-skjultforgoogle/EMCA/NationalCompaniesActsMemberStates/Sweden/THE_SWEDISH_COMPANIES_ACT.pdf
3. http://www.corporategovernanceboard.se/UserFiles/Archive/499/Instruction_3-2016.pdf
4. http://www.government.se/49930b/contentassets/cdd5ff45a8e04b72813999fb6aa19dd8/faktablad_hallbart_foretagande_160520_eng_webb.pdf

¹⁹¹ <https://www.isdc.ch/media/1378/e-2017-12-16-173-richtlinie-2014-95-gz.pdf>

¹⁹² <https://www.isdc.ch/media/1378/e-2017-12-16-173-richtlinie-2014-95-gz.pdf>

¹⁹³ <https://www.isdc.ch/media/1378/e-2017-12-16-173-richtlinie-2014-95-gz.pdf>

¹⁹⁴ <https://www.isdc.ch/media/1378/e-2017-12-16-173-richtlinie-2014-95-gz.pdf>

- 1. the average number of employees in the company has in each of the two recent financial years amounted to more than 250,*
- 2. the company reported total assets have for each of the two recent financial years amounted to more than 175 million,*
- 3. the company's reported net sales have for each of the two recent financial years amounted to more than 350 million.*

The first subparagraph shall not apply to an undertaking which is a subsidiary of it and its all subsidiaries are subject to a sustainability report for the group.

The one referred to in the second subparagraph not to establish any sustainability report should disclose this in a note to the financial statements and provide information if the name, organizational or personal number and registered office of the parent company up-righting the sustainability report for the group.

11 §

instead to establish the sustainability report as part of the management report According to section 10 of the company may decide to draw up the report which a document that is separate from the annual report. It shall be forwarded to the before the company's auditor in the same time as the annual report. If your company has chosen to establish a sustainability report under this paragraph, should be stated in the annual report.

12§

The sustainability report should contain the sustainability information necessary for the understanding of the company's development, financial position and results of operations and the consequences of any operation, including information on matters relating to the environment, social conditions, personnel, respect for human rights and fight of corruption. The report shall specify:

- 1. the company's business model,*
- 2. the policy the company follows in the questions, including the auditing procedures been carried out,*
- 3. the result of this policy,*
- 4. the material risks relating to the issues and are linked to the company's business operations including, whenever relevant, the company's business, products or services which are likely to negatively affects,*
- 5. how the company manages its risks, and*
- 6. key performance indicators relevant to its activities.*

The report shall also include, where appropriate, include references to and additional explanations of the amounts reported in the annual report. If a difference of separate guidelines have been applied in preparing the report shall indicate what those guidelines are.

If the company does not apply any policy in one or more of the questions in the first paragraph, the reasons for This clearly stated.

13§

Information on impending development or on issues under negotiation need not be in the sustainability report if it is considered that publication would damage the company's market position seriously and out-provision does not hinder the understanding of the development of the company, position or results or consequences of their activities.

14 §

Of the annual report contains such an indication referred to in section 11, second paragraph, shall the company's auditor in a written, signed statement say whether such a report as referred to There has been established or not. The auditor's opinion shall be submitted to the management of the company within the same time as the audit report and then be annexed to the sustainability report.

[...]

31a §

Of the parent company in a group is a company referred to in Chapter 6. section 10, shall management report for the Group include a sustainability report for the group. The same applies to if the parent company is a company whose securities are admitted to trading on a regulated market or an equivalent market outside the European economic area and the Group meets more than one of the following conditions:

- 1. the average number of employees in the Group during each of the last two financial years amounted to more than 250,*
- 2. consolidated companies ' reported total assets have for each of the last two financial years amounted to more than 175 million,*
- 3. Group companies, reported net sales have for each of the last two financial years amounted to more than 350 million.*

The first subparagraph shall not apply to the parent undertaking which is a subsidiary of it and all its subsidiaries subject to a sustainability report for the group which has been established by a parent the parent company.

The one referred to in the second subparagraph not to establish any sustainability report should indicate this in a note to the annual report and communicate the name, organizational or personal number and registered office of the parent undertaking that draws up the sustainability report for the group.

31b §

Instead to establish the sustainability report as part of the management report according to paragraph 31, the parent may choose to establish the report as a document that is separate from the consolidated financial statements. In such a case applies, Chapter 6. 11.

31 c §

Sustainability report shall be drawn up in accordance with Chapter 6. 12 and 13 sections. If the management report for the group contains such indication referred to in Chapter 6. section 11, second paragraph, shall apply also to Chapter 6. section 14.

It is said in Chapter 6. 11-14 sections of the annual report should instead refer to the Group consolidated financial statements and the company should instead refer to the group. ”¹⁹⁵

This amended Act shows the obligation for large entities or consolidated entities of large groups to disclose NFI in their management or non-reports. It is important to point out that, in this

¹⁹⁵Amendments to the Annual Accounts Act (Lag (2016:947)), 3rd November 2016.

regulation, for the first time among the selected member States legislations of this dissertation, the maximum threshold to not be obliged to disclose NFI is 250 employees, instead of 500 like in the other national legislations.

The characteristic of being a public entity (part of a consolidated group or not), presented in the national stock exchange, has remained unchanged.

In the table WW, it is projected the resemblances between the Swedish amendment and the European Directive 2014/95/EU. The text of the Swedish Act, presented before, was divided into eight parts, five representing specific Articles and three, part of a single Article, corresponding to a precise section/sections of Directive 2014/95/EU.

Amendments to the Annual Accounts Act (Lag (2016:947)), November 3rd, 2016	Directive 2014/95/EU
Art. 10	Art. 19a part 1
Art. 11	Art. 19a part 3
Art. 12	Art. 19a part 1
Art. 13	Art. 19a part 1
Art. 14	Art. 19a part 5
Art. 31a	Art. 29a part 1
Art. 31b	Art. 29a part 3
Art. 31c	Art. 29a part 1, 3 and 5

Table WW – Comparison between Amendments to the Annual Accounts Act (Lag (2016:947)), November 3th, 2016 and Directive 2014/95/EU non-binding guidelines.

From table WW and the previously inserted text extract of the Swedish Act, it could be verified that the transposition of the European Directive 2014/95/EU into the Swedish Civil Code has all the principal elements necessary to carefully constrain the disclosure of NFI in the European Union Member State, Sweden.

It can be easily observed that the part of the Swedish Act reported in this section of the dissertation can be divided into two thematic areas. The first one regards Article 10-11-12-13-14 of the Swedish Annual Accounts Act and is addressed to single entity. It describes:

1. The typology of the companies involved (public and with more than 250 employees) (WHO),
2. Disclosure subjects (WHAT),
3. Disclosure requirements (TOOLS),
4. When it is possible to avoid disclosure (EXCEPTIONS),
5. The possibility to make a reference to the financial part (POSSIBLE LINKS).

The second area, composed by Article 31a-31b-31c of the Swedish Annual Accounts Act, regards companies part of a consolidated group. This part is really short in length, compared with the previous one, and it indicates, inside chapter 6 of the Act, which Articles are valid for the consolidated groups too.

5.9.2 2016 Non-Financial Information disclosure analysis

While the previous part was meant to look for the resemblances of the Swedish legislation with the principles of Directive 2014/95/EU, this part will empirically analyse the situation of all Swedish companies and how they position themselves a year before entering into the amendment Bill of the Annual Accounts Act (Lag (2016:947) om ändring i årsredovisningslagen (1995:1554)).

The total number of Swedish companies analysed were twenty-six, coming from eight different industrial sectors and being either part of a consolidated group of entities or not. More precisely the companies were:

1. Volvo A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
2. Electrolux A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
3. Atlas Copco A.B. part of the “Machinery, equipment, furniture and recycling” sector and part of a consolidated group.
4. Assa Abloy A.B. part of the “Metals and metal products” sector and single entity.
5. Saab A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.

6. Ahlsell AB (Publ) part of the “Machinery, equipment, furniture and recycling” sector and single entity.
7. Swedish Match A.B. part of the “Food, beverages and tobacco” sector and single entity.
8. Capio A.B. (Publ) part of the “Other services” sector and part of a consolidated group.
9. Lindab International A.B. part of the “Metals and metal products” sector and single entity.
10. Axis A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
11. Munters Group A.B. part of the “Wholesale and retail trade” sector and single entity.
12. Scandi Standard A.B. part of the “Primary sector” and part of a consolidated group.
13. Thule Group A.B. part of the “Wholesale and retail trade” sector and part of a consolidated group.
14. Resurs Holding A.B. (Publ) part of the “Other services” sector and single entity.
15. Semcon A.B. part of the “Other services” sector and single entity
16. Swedol A.B. part of the “Wholesale and retail trade” sector and single entity.
17. Mycronic A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
18. Addnode Group A.B. part of the “Other services” sector and part of a consolidated group.
19. Bong A.B. part of the “Wood, Cork and paper” sector and part of a consolidated group.
20. Kabe A.B. part of the “Machinery, equipment, furniture and recycling” sector and N.A.
21. Midway Holding A.B. part of the “Machinery, equipment, furniture and recycling” sector and N.A.
22. BTS Group A.B. part of the “Other services” sector and part of a consolidated group.
23. GHP Specialty Care A.B. part of the “Education and health” sector and single entity.
24. HMS Networks A.B. part of the “Machinery, equipment, furniture and recycling” sector and single entity.
25. Studsvik A.B. part of the “Other services” sector and single entity.
26. Prevas A.B. part of the “Other services” sector and single entity.

From a first study, it could be observed that, even if there were presented some exceptions, the majority of the Swedish companies listed in the random sample, disclose in a clear, complete and appropriate manner their CSR matters. The exceptions were: companies number twenty, twenty-one and twenty-six (Kabe A.B., Midway Holding A.B. and Prevas A.B.), which were not able to provide any data to its stakeholders, and companies number: sixteen, eighteen and twenty-three (Swedol A.B., Addnode Group A.B. and GHP Specialty Care A.B.), which did disclose their

management reports, but did not mention the compulsory NFI matters pointed out by Directive 2014/95/EU. For this reason, the following part (all the graphical results) will take into consideration a total set of twenty companies instead of the initial twenty-six companies¹⁹⁶.

With the support of the database created for the study of the conformity between the Swedish disclosure tendency prior to Directive 2014/95/EU and the Directive guidelines, following milestones and results could be observed:

1. **DISCLOSURE FRAMEWORKS:** The 85% of the Polish companies analysed¹⁹⁷ in the set used International frameworks, while 35% used National frameworks and the other 20% used Union-based frameworks. It must be highlight that summing all the three percentage together gives us a sum of higher than 100% due to the fact that some companies use multiple frameworks (see table below).

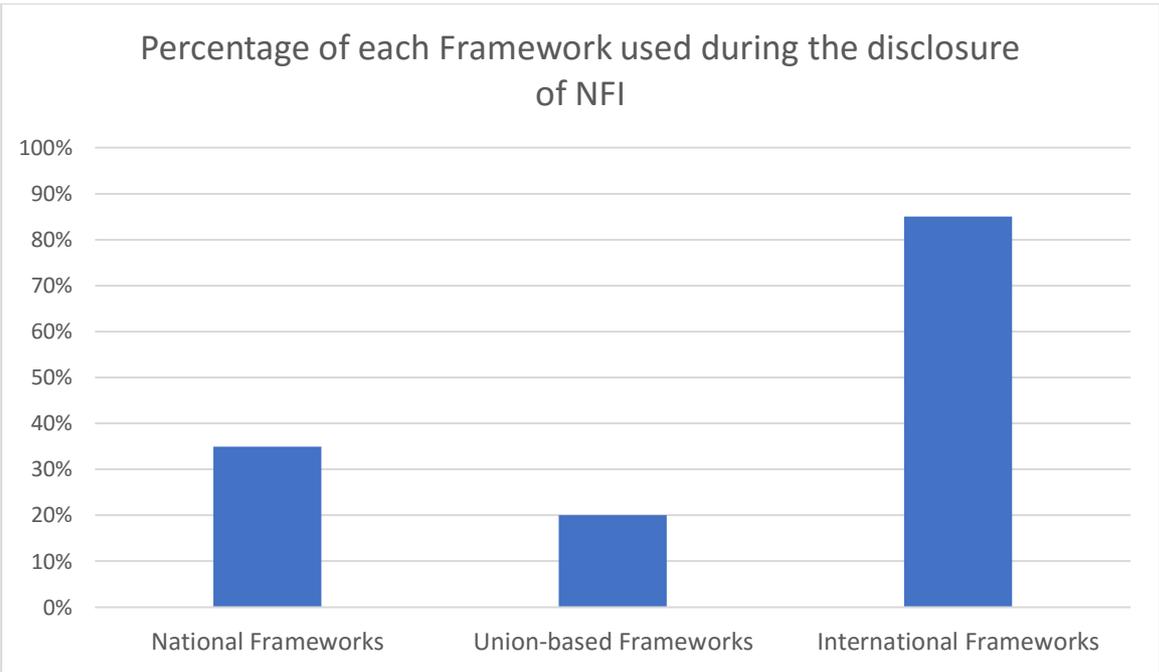


Table XX – This table shows Swedish companies and their disclosure frameworks choice

¹⁹⁶ In the initial list of Swedish companies, extrapolated from the random sample set, there were present twenty-six companies. From that number (twenty-six), it was taken out six companies due to either their non-availability of data or presence of non-coherent information with the research purpose. This subtraction resulted in a subset of twenty companies that will be used through all this part analysis.

¹⁹⁷ For this part, the total of Swedish companies amount to twenty entities.

2. **DISCLOSURE TOOLS:** The 80% of the Swedish companies analysed in the set disclosed their NFI in their yearly management report, while 20% created an ad hoc sustainability report (see table below).

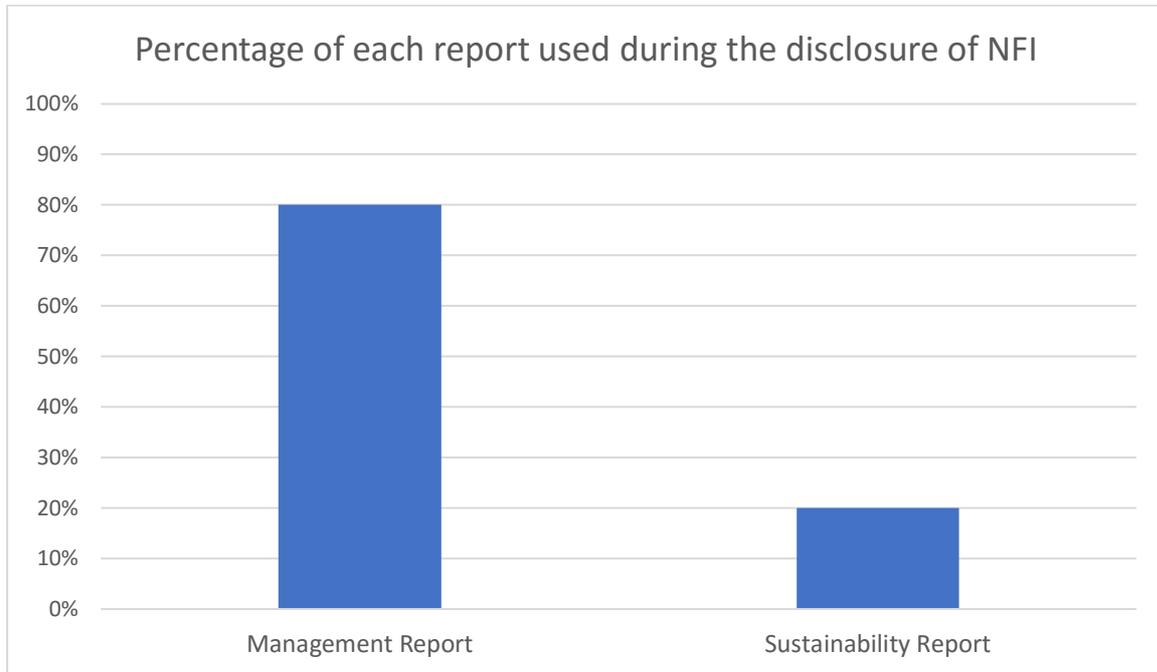


Table YY - This table shows Swedish companies and their disclosure tools choice

3. ENVIRONMENTAL MATTERS: The 75% of the Swedish companies analysed in the set include “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety” among their disclosed topics, 85% included the “Use of renewable and/or non-renewable energy” matters, 85% “Greenhouse gas emissions reduction strategy” matters, 60% “Water use” matters and 60% “Air pollution” matters (see table below).

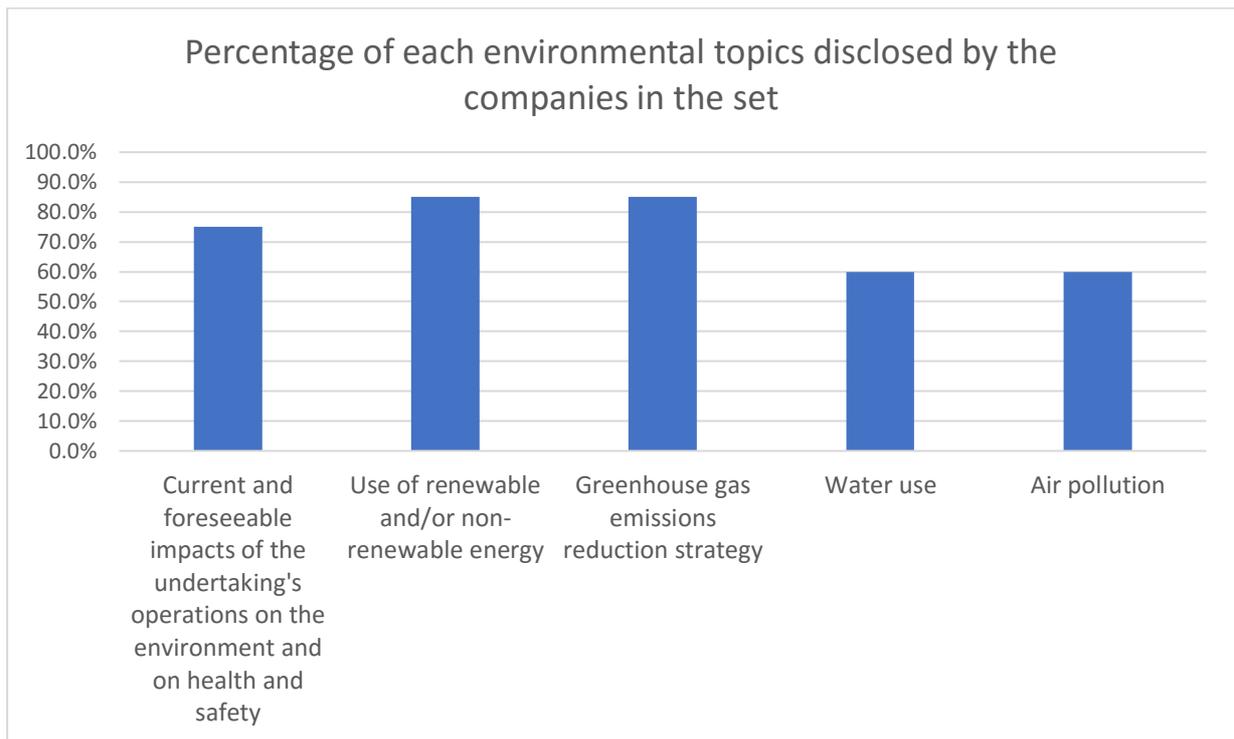


Table ZZ - This table shows Swedish companies and their disclosure inclinations toward environmental matters

4. **SOCIAL AND EMPLOYEE-RELATED MATTERS:** The 95% of the Swedish companies analysed in the set include “Actions taken to ensure gender equality” among their disclosed topics, 55% included the “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue” matters, 40% “Respect for the right of workers to be informed and consulted” matters, 65% “Respect for trade union rights” matters, 80% “Health and safety at work” matters, 60% “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” matters and 80% “Prevention of human rights abuses” matters (see table below).

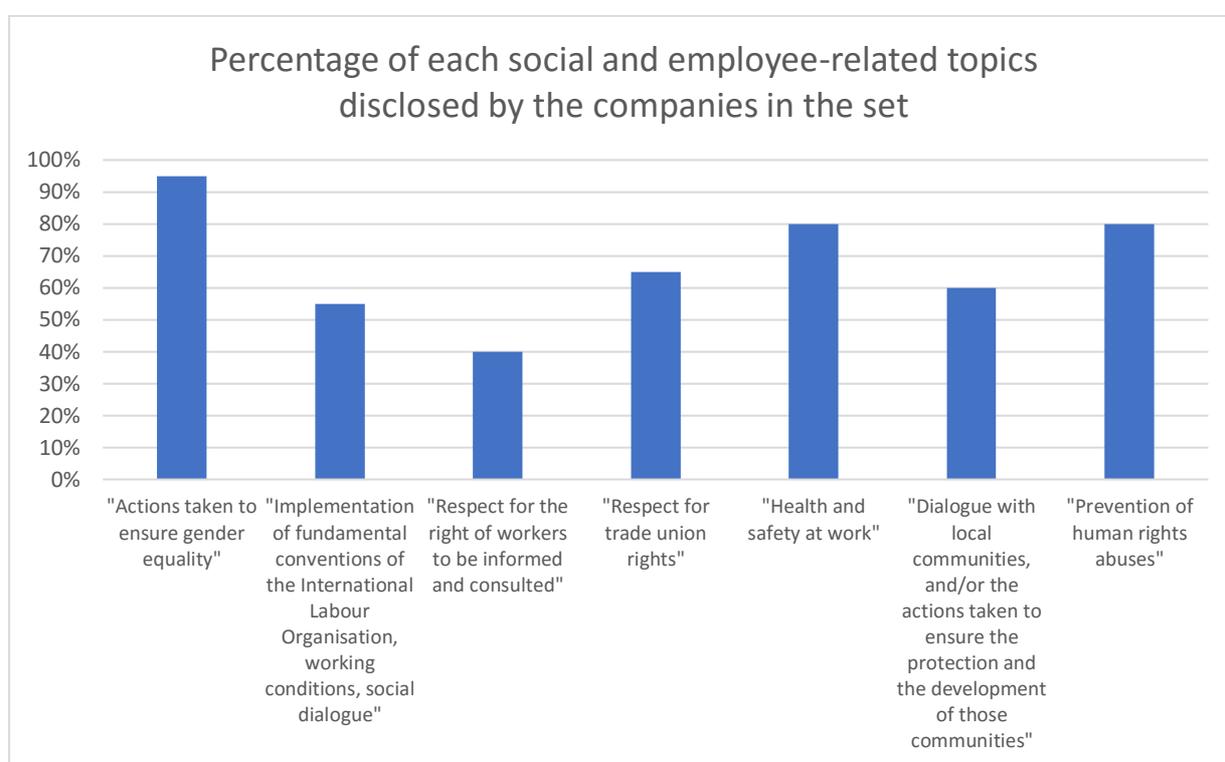


Table AAA - This table shows Swedish companies and their disclosure inclinations toward social and employee-related matters

5. **ANTI-CORRUPTION AND ANTI-BRIBERY POLICIES:** The 85% of the Swedish companies analysed in the set disclosed policies regarding “Instruments in place to fight corruption”, while only 40% of them disclosed “Instruments in place to fight bribery” (see table below).

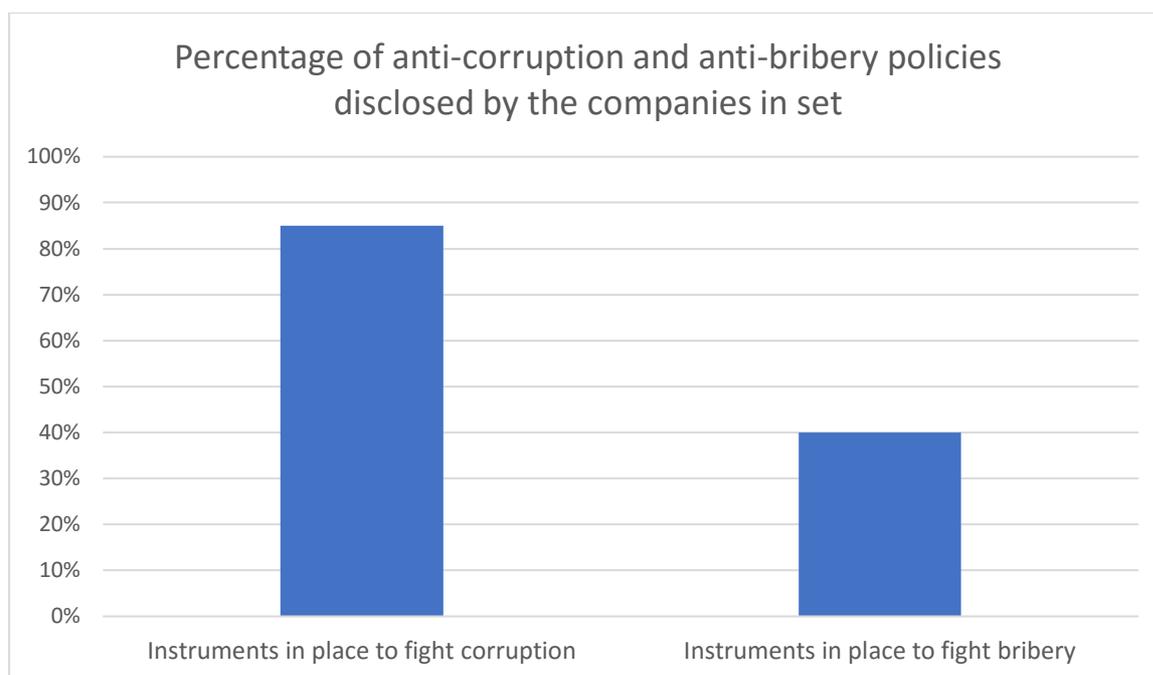


Table BBB - This table shows Swedish companies and their disclosure inclinations toward anti-corruption and anti-bribery policies

In summary, all above listed tables show three important considerations.

First, together with Italian, Irish and Dutch companies, the Swedish companies, presented in the sample, used to disclose their NFI with the support of more frameworks at the same time, as graphically proved by table KK.

Second, Swedish companies' disclosure their NFI mostly through management reports.

Third, even if the communication, as pointed out before, was done mostly through the management reports, companies were still able to disclose the majority of non-financial topics required by Directive 2014/95/EU.

Finally, it is important to take into consideration that the management reports analysed were not affected by the amendments to the Annual Accounts Act (Lag (2016:947)), November 3rd, 2016, since the Act came into effect on December 31th, 2016 while the reports referred to the data from 2016. Nonetheless, it can be forecasted that, depending on the previous conclusions, Swedish public companies will possibly be the major companies, with respect to the ones analysed, to be ready to align their disclosure methodologies and contents to the new legislation in a timely, economic and more effective manner

Conclusion

This dissertation was conducted with the purpose of studying the European NFI disclosure practices, prior to 2017. To achieve this, a database was created and then inspected. This database was composed by hundred PIEs, coming from nine European Member States. 2016 was selected as sample year, because of Article 4 of the European Directive 2014/95/EU where it is stated that all European Member States should homologate their legislation “starting with January 1st, 2017 or during the calendar year 2017”¹⁹⁸.

“Article 4: Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 December 2016. They shall immediately inform the Commission thereof. Member States shall provide that the provisions referred to in the first subparagraph are to apply to all undertakings within the scope of Article 1 for the financial year starting on 1 January 2017 or during the calendar year 2017. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.”¹⁹⁹

To better understand this paper, it could be affirmed that it is mainly divided in two part.

First, a deep study of Directive 2014/95/EU contents and restrictions coupled with an excursus of the European scenario before Directive publication on the EU Official Journal. This part is meant to be the theoretical one.

Second, the study of the 2016 NFI disclosure situation from the hundred companies selected. These companies came from nine randomly-selected European Member States and were part of an ad hoc database, constructed for this dissertation. In addition, analytical tools were selected, that would give readers the possibility to compare the 2016 companies’ data of a single nation with the data of the other nations.

The fifth chapter was separated into nine subsections each of which belonging to a different nation and each of which tripartite divided.

This tripartite structure allowed to picture for every Member State, first, their national environment, before Directive 2014/95/EU implementation, second, how their national legislation has been aligned to Directive 2014/95/EU and, third, a summary of their 2016 NFI disclosure situation provided by the companies presented in the database. For all these components, the second part will be referred as the analytical part.

¹⁹⁸ Article 4 Directive 2014/95/EU.

¹⁹⁹ Article 4 Directive 2014/95/EU.

Finally, all the national findings listed in Chapter five, could be summarised in the graphs below. In these graphs, single Member States are compared between each other to analyse their companies’ disclosure results on the three main CSR areas, stressed by Directive 2014/95/EU. These three areas were: environment matters, social and employee-related matters and anti-corruption matters and anti-bribery matters.

1. Environmental matters:

It is important to remember that this area includes five subclasses²⁰⁰: “Current and foreseeable impacts of the undertaking's operations on the environment and on health and safety”, “Use of renewable and/or non-renewable energy”, “Greenhouse gas emissions reduction strategy”, “Water use” and “Air pollution”. For this particular analysis, all the subclasses were considered variables of equal weight.

To create the graph below, the number of variables appeared in the analysed NFI disclosure were counted and then divided by the total number of variables (in this case five) that have previously been multiplied by the number of companies of the nation. This simple mathematical operation created the ratio represented below.

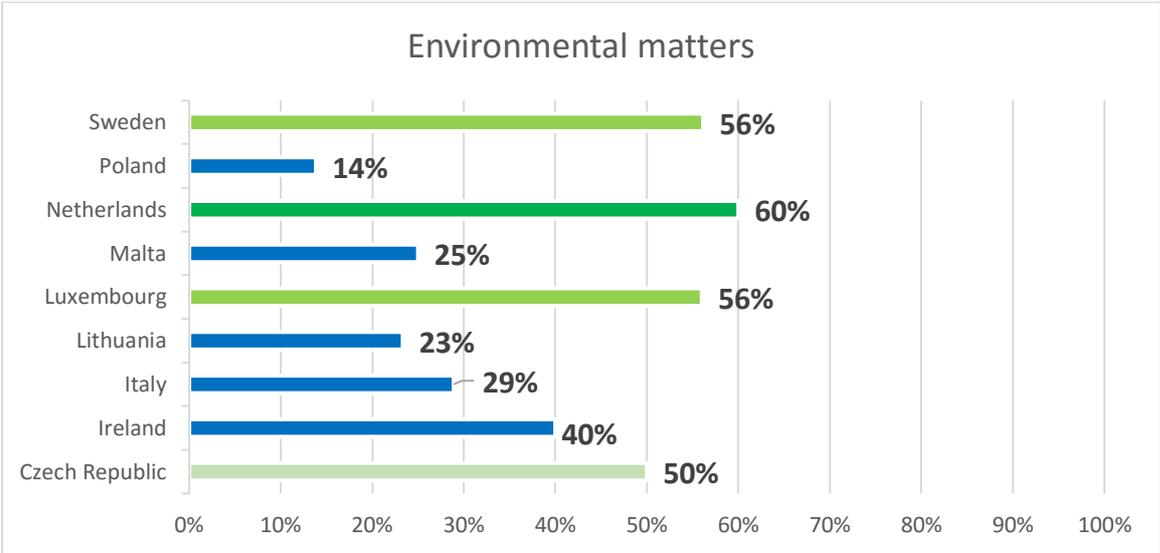


Figure 10 – Total disclosure of Environmental matters by each nation

²⁰⁰ Recital 7 Directive 2014/95/EU.

From this sectorial investigation, it was observed that Netherlands was the state which disclosed more about the environmental matters followed by Luxembourg and Sweden. The communication rate of Czech Republic was acceptable, while Poland, Lithuania and Malta were countries, which would need the highest effort to align themselves with the Directive 2014/95/EU requirements on environmental matters.

2. Social and employee-related matters:

It is important to remember that this area includes seven subclasses²⁰¹: “Actions taken to ensure gender equality”, “Implementation of fundamental conventions of the International Labour Organisation, working conditions and social dialogue”, “Respect for the right of workers to be informed and consulted”, “Respect for trade union rights”, “Health and safety at work”, “Dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities” and “Prevention of human rights abuses”. For this particular analysis, all subclasses were considered variables of equal weight.

To create the graph below, the number of variables appeared in the analysed NFI disclosure were counted and then divided by the total number of the variables (in this case seven) that were previously been multiplied by the number of companies of a precise nation. This simple mathematical operation created the ratio represented below.

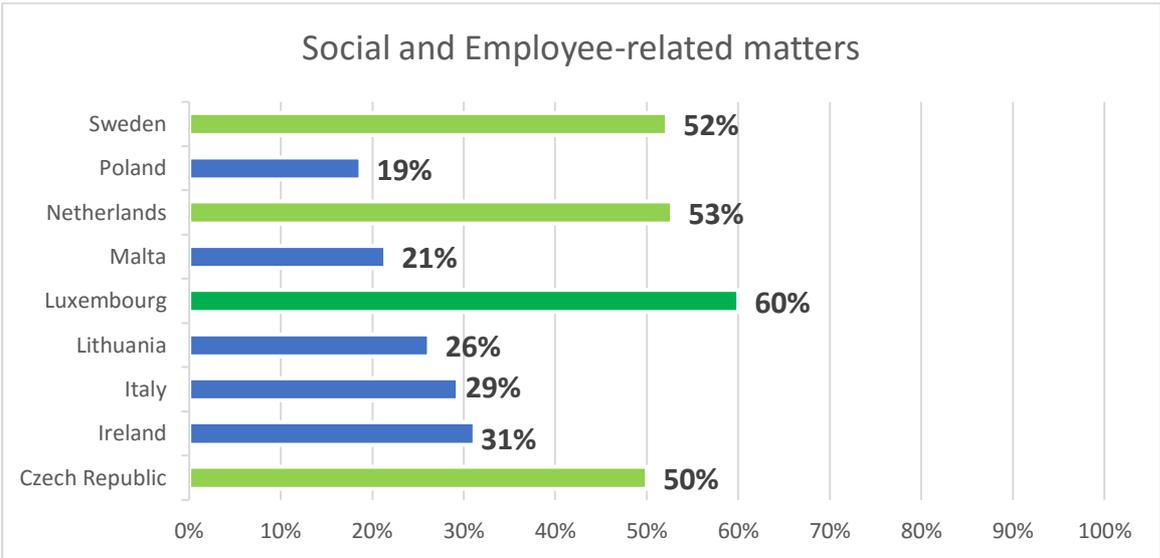


Figure 11 - Total disclosure of Social and Employee-related matters by each nation

²⁰¹ Recital 7 Directive 2014/95/EU.

From this sectorial investigation, Luxembourg was the state which disclosed more about environmental matters followed by Netherlands, Sweden and Czech Republic. On the other part of the ranking, the bottom, Poland and Malta were the “worst” states, meaning that they would need the highest effort to align themselves with Directive 2014/95/EU requirements on Social and employee-related matters.

3. Anti-corruption and Anti-bribery matters:

To obtain more significant data from the analysis of these originally separated areas, it was decided to consider them as two subclasses, which would form one comprehensive area. Subsections are displayed in two independent and separate graphs.

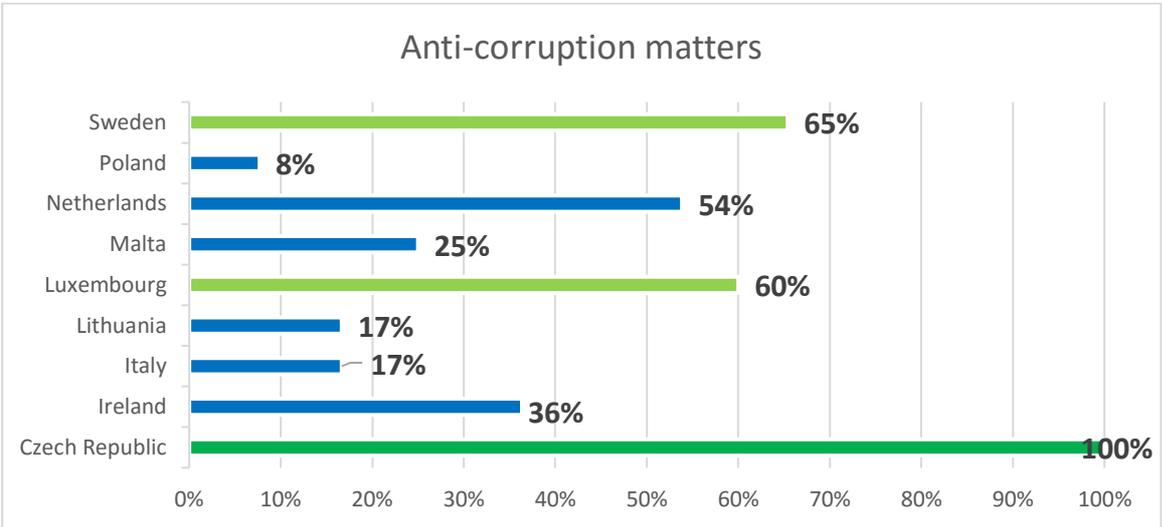


Figure 12 – Total disclosure of Anti-corruption matters by each nation

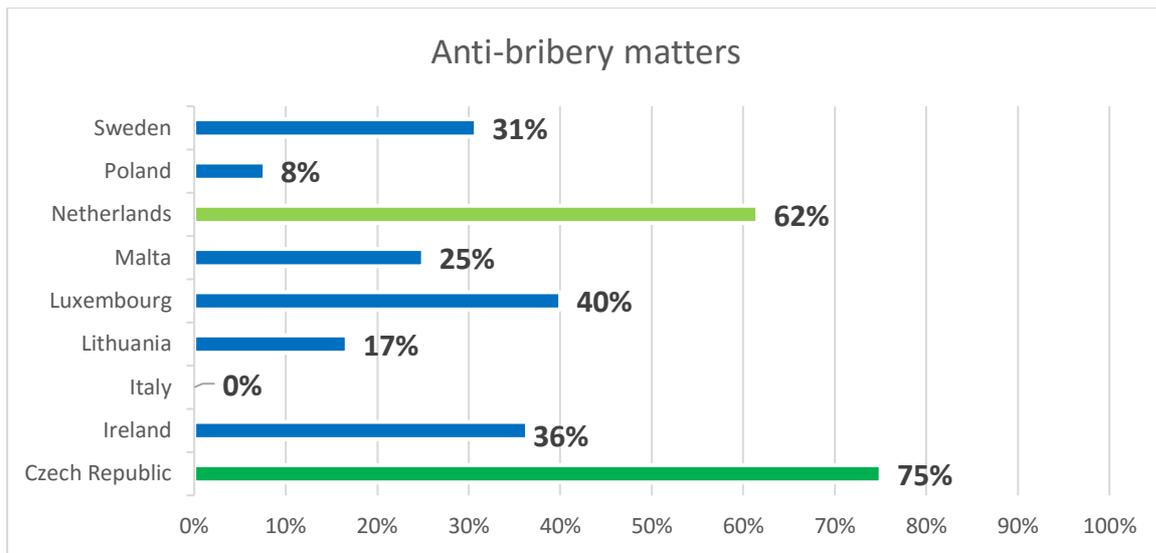


Figure 13 – Total disclosure of Anti-bribery matters by each nation

From the above graphs some similarities could be noticed:

- The highest rate of disclosure was achieved by Czech Republic followed by Sweden and Luxembourg, regarding anti-corruption policies, and by the Netherlands, regarding anti-bribery policies
- The lowest rate of disclosure was shown by Poland, Lithuania and Italy in the first graph as in the second, with different percentage rates.

In conclusion, it can be said that these four graphs, summarised all the previous results pointed out by Chapter five.

These results appointed countries like: Sweden, Netherlands, Luxembourg and Czech Republic as countries with the greatest 2016 NFI disclosure, while they condemned Malta and Poland.

To fully understand these results, it is important to remember that:

1. The data disclosed were still a result of companies' voluntary NFI disclosure actions, as Directive 2014/95/EU mandatory regulations will start the following year (fiscal year 2017).
2. It is not possible to assure that the 2016 results will be able to influence 2017 results or even that they will be a reliable forecast.
3. To be compliant with Directive 2014/95/EU, all the European Member States companies, publicly traded and with more than 500 employees, will have to disclose all the

subsections of all the areas mentioned by the Directive. Meaning that the only percentage allow in the past four graphs would be 100%, lawful exceptions excluded²⁰².

For all three reasons, it is suggested to carry on a future analysis of the 2017 NFI disclosure of the same PIEs to understand weather the forecasted results were right and, most important, to understand weather all companies were able to align themselves to Directive 2014/95/EU requirements. If not, the reasons for their impediments. In addition, it will be interesting to study, in the case of non-disclosure or bad disclosure, the legal and reputational consequences these companies will have to face. Therefore, this dissertation will be concluded with the wish of carrying this research at a minimum for the fiscal year 2017 to give stakeholders an understanding of ex-ante and ex-post consequences of Directive 2014/95/EU implementation.

²⁰² Directive 2014/95/EU, explanation of the allow exceptions: - “Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.”.

Annex

I. The strategy behind Orbis²⁰³ selection

The most important choice, during the initial part of this dissertation, was the selection of the software from which to gather the list of undertakings that were going to form, first, the database, then the population set and successively its sample.

It is essential to remind that the empirical part was led by the analysis of a random sample of undertakings, belonging to nine European countries for a total of a hundred entities.

This sample set is derived from a population set of 1,762 entities and from a software capacity of over 13 millions of undertakings. The software mentioned here is called Orbis, which at the beginning appeared to be the second choice right after Bloomberg for the scope of this dissertation, but, after a first and short insecurity, it was finally selected without a perplexity.

Scholars confidence on Orbis derived from its brilliant results that perfectly matched with the requirements of this dissertation. As a matter of fact, the software was able to overcome Bloomberg thanks to its reputation of storing information regarding circa 250 millions of undertakings worldwide. In addition, it was clear, almost immediately, that Bloomberg was designed to support more general data-oriented researches due to its attitude to be a business, which centres itself as a global information and technology company with the aims of connecting, for professional decisional purpose, data, people and ideas²⁰⁴. Thus, this Bloomberg's characteristic was a clear signal of its unconformity with the academic purpose of this dissertation. Instead, the selected software, Orbis, is known, in the business environment, as a software that stores mainly companies' information to help users to compare them at an international level.

It is important to point out that the word "information" throughout this dissertation is not used randomly even if academically words like data and information are used interchangeably.

In this case, as defined by K. E. Person and C. S. Saunders in their book "Managing & Using Information Systems - A strategic approach" "*information is data endowed with relevance and*

²⁰³ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²⁰⁴ https://www.bloomberg.com/company/?utm_source=bloomberg-menu&utm_medium=bcom

purpose, while data is only a set of specific, objective facts or observations that standing alone have no intrinsic meaning”²⁰⁵.

Therefore, Orbis provides a wide variety of information that scholars elaborate and normalise to make them result worthier and easier to query.

It is important to highlight, to support Orbis credibility and completeness, that this software gathered the data, which are then transform into information, from 160 external providers and hundreds of own internal sources. In addition, to further strength the thesis of the perfect match between this dissertation’s needs and Orbis choice, here is the list of most suitable usages for this software services:

1. *“Research individual companies”*²⁰⁶
2. *“Search for companies that fulfil your criteria”*²⁰⁷
3. *“Identify and analyse peer groups”*²⁰⁸
4. *“Data visualisation”*²⁰⁹
5. *“Get as clever with data as you like”*²¹⁰
6. *“Blend your own data”*²¹¹

It cannot be denied that the above list suits perfectly with the scope and nature of the population set for this dissertation investigation, making this softer the selected one.

In conclusion, the popularity, reliability, efficiency and effectiveness of Orbis is showed by the fact that this software is not only used by companies, but also governments and public sector teams, academics, financial institutions and professional service firms across the globe.

²⁰⁵ K. E. Person and C. S. Saunders, *“Managing & Using Information Systems-A strategic approach”*, Pearson, 5th edition, (2013), pp. 379 and 381.

²⁰⁶ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²⁰⁷ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²⁰⁸ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²⁰⁹ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²¹⁰ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

²¹¹ <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>

II. Notice of explanatory Statement for the Dutch Decree dated March 24th, 2017

“NOTICE OF EXPLANATORY STATEMENT

1. General

This Decision is in accordance with Directive 2014/95 / EU as regards the disclosure of non-financial information and information on diversity by certain large enterprises and groups (hereinafter "the Directive") as regards the obligation for major public interest entities to include a non-financial statement in the board's report. The directive was to be transposed into national legislation on 6 December 2016. For further implementation aspects, refer to the transposition table at the end of this note of explanation.

Large legal entities are already required under Article 2: 391 paragraph 1 of the Civil Code (BW) to involve non-financial performance indicators, including environmental and personnel affairs, in the analysis they incorporate in the Directors' Report on the balance sheet date, development during the financial year and the results of the legal person. This obligation is based on the Fourth Directive on Financial Statements, which was replaced by the Financial Statements in 2013. 3The directive changes the annual accounts directive by oblige certain companies to include a non-financial statement in the directors' report. These are public interest entities as referred to in the annual accounts directive. These are - briefly - brokerage companies, banks and insurers. The obligation applies only to large organizations of public interest with more than 500 employees. The statement explains how these organizations deal with at least environmental, social and human affairs, respect for human rights and the fight against corruption and bribery.

In 2011, the European Commission signed in two communications the need to promote the transparency of social and environmental information. In 2013, the European Parliament acknowledged in two resolutions that it is important for businesses to spread information about sustainability, such as social and environmental factors, to identify sustainability risks and to increase investor and consumer confidence. The European Commission adopted a proposal for a directive in April 2013presented on the announcement of non-financial information adopted on 22 October 2014. The aim of the Directive is to improve the consistency and comparability of non-financial information in the European Union. This is in the interests of companies, shareholders and other stakeholders (see recital 4 of the Directive).

The topics to be reported relate to Corporate Social Responsibility (CSR). Many companies are already familiar with the involvement of CSR in business operations and reporting on CSR. As stated above, the BW writes that large companies in the board report pay attention to non-financial performance indicators if this is necessary for a good understanding of the company's development, position or results. Furthermore, the Dutch corporate governance code stipulates that the Board and the Supervisory Board will involve the relevant social aspects of the company in the performance of their duties. 7Stockbrokers are legally required to report on compliance with the Dutch corporate governance code.

Companies can also draw up CSR on their own initiative. The government encourages this, among other things, with the Transparency Benchmark. The emphasis is on reporting on the company's relevant or material themes. These may be the topics listed in the directive: environmental, social and human affairs, respect for human

rights and anti-corruption and bribery. For some companies, other (sub) themes may also be material, such as biodiversity and animal welfare.

Various CSRs have been developed for CSR reporting. For example, the Social Reporting Handbook for the Annual Report can be mentioned. The Handbook provides a framework for a separate social report for medium and large companies. In addition, there are many international framework regulations. The OECD Guidelines for Multinational Enterprises provide business handles for dealing with issues such as chain responsibility, human rights, child labour, the environment and corruption. The OECD has also developed several guidelines for responsible management of the supply chain, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the Guidance for Responsible Agricultural Supply Chains. The United Nations "Protect, Respect and Remedy" framework (Ruggie Report) deals with human rights in relation to business. This is based on the corporate social responsibility of respecting human rights. The ISO 26000 guidelines provide practical advice on CSR for companies, governments, civil society organizations and unions. Companies can scan to see if their organization works according to ISO guidelines. The Global Reporting Initiative (GRI) is an international organization that establishes sustainability reporting guidelines. The mission of GRI is to make sustainability reporting for all organizations - regardless of size, sector or location - as routine and comparable as financial reporting. The International Integrated Reporting Council (IIRC) is a coalition of inter alia regulators, investors, companies and accountants. The IIRC has drawn up a framework for integrated reporting, which presents financial and non-financial performance in cohesion. The Natural Capital Coalition (NCC) is an international coalition of companies, accountants, civil society organizations and international organizations. The NCC has drawn up a Natural Capital Protocol which enables companies to appreciate their non-financial performance in respect of natural capital, one of the capital of the IIRC framework, on a standardized basis.

A preliminary draft of this decision has been consulted. The consultation will be discussed below. The law is also being amended to comply with the directive. The basis for the adoption of further provisions regarding the content of the board report in article 2: 391 paragraph 5 of the Dutch Civil Code has been extended so that further rules can be laid down on the non-financial statement by the Board of Directors. The bill was adopted by the Lower House on July 5, 2016. On September 13, 2016, the First Chamber released a final report.

2. The way in which the directive is transposed

The directive, in addition to an obligation to disclose non-financial information, is a requirement for disclosure of the diversity policy by major listed companies. This obligation has been implemented in the Decree Disclosure Diversity Policy. It has been chosen to implement the Directive in two separate decisions because the disclosure of non-financial information is a new statement in the board report that needs to be given by major public interest organizations and the disclosure of diversity policy complements the statement on corporate governance that stockbroker companies should already draft. Article 1, second paragraph, of the Directive, which included the obligation to announce the diversity policy, the decision on disclosure has addressed diversity policy. Furthermore, Article 1, paragraph 6, of the Directive complements the evaluation provision of Article 48 of the Financial Statements Directive, which is completely independent of the disclosure of diversity policy and non-financial information. This is the assessment by the European Commission of Chapter 10 of the Financial Statements

Guidelines, which relates to a report on payments to governments (see below, the Resolution Reporting of Payments to Governments in the decision on disclosure of diversity policy has been discussed. Furthermore, Article 1, paragraph 6, of the Directive complements the evaluation provision of Article 48 of the Financial Statements Directive, which is completely independent of the disclosure of diversity policy and non-financial information. This is the assessment by the European Commission of Chapter 10 of the Financial Statements Guidelines, which relates to a report on payments to governments (see below, the Resolution Reporting of Payments to Governments in the decision on disclosure of diversity policy has been discussed. Furthermore, Article 1, paragraph 6, of the Directive complements the evaluation provision of Article 48 of the Financial Statements Directive, which is completely independent of the disclosure of diversity policy and non-financial information. This is the assessment by the European Commission of Chapter 10 of the Financial Statements Guidelines, which relates to a report on payments to governments (see below, the Resolution Reporting of Payments to Governments in of the Directive complements the evaluation provision of Article 48 of the Annual Accounts, which is completely separate from the disclosure of diversity policy and non-financial information. This is the assessment by the European Commission of Chapter 10 of the Financial Statements Guidelines, which relates to a report on payments to governments (see below, the Resolution Reporting of Payments to Governments in of the Directive complements the evaluation provision of Article 48 of the Annual Accounts, which is completely separate from the disclosure of diversity policy and non-financial information. This is the assessment by the European Commission of Chapter 10 of the Financial Statements Guidelines, which relates to a report on payments to governments (see below, the Resolution Reporting of Payments to Governments in [Stb. 2015, 439](#)). As this provision is not relevant to this Decision and does not need to be dealt with by the Member States, this article is further excluded.

Article 1, paragraph 1, of the Directive adds Article 19a on the non-financial statement to the annual accounts directive. Based on the first paragraph of Article 19a, the obligation to prepare a non-financial statement for large enterprises which are public-interest entities and, on their balance sheet date, exceed the threshold of an average of 500 employees over the financial year. This is elaborated in Article 1, paragraph 1 of the decision. These organizations are further referred to as legal persons or legal persons in this explanation. The aforementioned part of Article 19a also provides for the non-financial statement to be included in the Board of Directors' Report. This is done in Article 2 of the decision. Legal entities must provide information on at least environmental, social and human affairs, respect for human rights and the fight against corruption and bribery pursuant to paragraph 1, first and third subparagraphs of Article 19a. This has been elaborated in Article 3, paragraphs 1 to 3. The fourth paragraph of Article 19a, paragraph 1, refers to a Member State Option to exempt legal persons from the obligation to provide information on upcoming developments or issues negotiated if the reporting of that information would seriously damage the commercial position of the company. This Article option has been used in Article 3, paragraph 4 of the Decision. The wording in the directive of the information to be provided is well-intentioned. The exemption allows legal persons to disclose information when disclosure of this information would seriously damage the company's commercial position. The omission of the information should not prevent a good understanding of the development, results, position of the legal person and the effects of his activities. Exemption may only be used in exceptional cases. Whether such a case is required must be assessed by members of the administrative, management and supervisory bodies acting within the limits of their powers conferred under national law. The directive does not contain any rules that exclude other EU regulations. This means, inter alia, that Regulation (EU) No 596/2014 of

the European Parliament and of the Council of the European Union of 16 April 2014 on Market Abuse (PbEU 2014, L 173), based on which a stock exchange is held, is subject to price sensitive information without delay to be available, applies in full.

The last paragraph of the first paragraph of Article 19a states that Member States should allow legal entities to base their reporting on non-financial information on national, EU or international frameworks. The directive does not prescribe a single framework. The possibility of using (international) guidelines is laid down in Article 4 of the decision.

As described generally in this explanation, there is already an obligation on large legal entities to engage in non-financial performance indicators in the analysis of their state-of-the-art statement in the Directors' Report on the basis of Article 19 of the Directive. The second paragraph of Article 19a states that legal persons have fulfilled this obligation if they make public a non-financial statement in accordance with the Directive. This is done in Article 6 of the decision.

The third paragraph of Article 19bis contains an exemption from the obligation to draw up a non-financial statement when the legal entity is a subsidiary of a parent undertaking that discloses a non-financial statement in accordance with the Directive. This may also be a foreign parent company based on the directive. This exemption is included in Article 1, paragraph 2 of the decision.

Paragraph 4 of Article 19a introduces a scheme in case the legal person provides non-financial information to be provided on the basis of the directive in a report other than the management report. Member States may then exempt from the obligation to provide this information in a non-financial statement in the management report. Also for this report, the legal person may rely on national or international framework arrangements. The preamble to this decision made use of this possibility. In consultation and during parliamentary consideration of the bill implementing the directive, questions have been raised regarding the use of this Member State option. As a result, it has been decided not to use this option. Therefore, there are no provisions on the separate report in the decision. The reason for this is that the inclusion of the non-financial information in the board's report may be helpful in formulating a judgment on the various aspects of enterprise that are important for the company's long-term objective. It also ensures the clarity for the users of the information. In this way, it is also linked to the already existing BW requirement for large legal entities to report non-financial performance indicators as described above in the Board of Directors' Report. Also in various consultation reactions, it is preferable to include the non-financial information in the board's report. Failure to use the Member State Option does not affect that companies can also publish a (more comprehensive) separate report (Also in various consultation reactions, it is preferable to include the non-financial information in the board's report. Failure to use the Member State Option does not affect that companies can also publish a (more comprehensive) separate report (Also in various consultation reactions, it is preferable to include the non-financial information in the board's report. Failure to use the Member State Option does not affect that companies can also publish a (more comprehensive) separate report (Chamber pieces II 2015/16, [34 383, No. 5](#)).

Article 1, fifth of the Directive, Article 34 of the Financial Statements Directive does not apply to the (consolidated) non-financial statement. Article 34 regulates the audit of the annual accounts and the examination of the management report. A separate arrangement for examining the non-financial statement in the fifth and sixth paragraphs of Articles 19b and 29bis of the Directive has been replaced. The fifth member states that the auditor will check whether the non-financial information is present in the (consolidated) non-financial statement. In addition, in the sixth paragraph, an option is introduced that allows Member States to prescribe that the (consolidated) non-financial statement is audited by an independent provider of insurance services. This may include an accountant, but also a consultant or someone else with relevant expertise. The use of the term «control» indicates in the context of the annual accounts directive an in-depth investigation comparable to the audit of the financial statements.

The draft decision which was consulted and which is attached to the Second and First Chamber, was mentioned in the fifth paragraph and the Member State Option in the sixth member was not used. In response to the response of the Lower House during the suspension procedure and also to comments on this point in the consultation, Article 5 of this decision now provides that the accountant must submit the non-financial statement to the same investigation as the management report of which the statement belongs. This means that the accountant checks whether the statement is prepared in accordance with this decision and is compatible with the financial statements. In addition, in line with the examination of the rest of the board's report, he will also have to examine whether, in the light of the knowledge and understanding acquired during the audit regarding the company and its environment, there are material inaccuracies in the board report, specifying the nature of these inaccuracies (cf. article 2: 393 paragraph 3 of the Dutch Civil Code). The connection to the report to the board of directors makes the accountant's work more clear and transparent, and makes the board's report and the accompanying audit statement more comprehensible to the user, without incurring much additional costs for the company. And importantly, in response to concerns from the Lower House, this research provides more assurance about the reliability of the information. With this provision, a midway between the check on the presence and the in-depth check is taken.

There has been no use of the option to allow another provider of assurance services to check the statement of non-financial information. Should it be left to the company to enable another service provider, it is more difficult to estimate the value of the service provider's statement and to compare that statement with statements made by other companies that may have enabled another type of service provider. In addition, the work of the auditor with the necessary safeguards is surrounded by the regulation of that professional group of government, International Standards on Auditing of the International Auditing and Assurance Standards Board (IAASB)). It is also doubtful whether the entry of another provider of insurance services will lead to lower costs. The auditor may, on the basis of the research that he does to the company in the context of the annual accounts and other parts of the management report and on the basis of the knowledge gained from it, give an opinion on the non-financial information. Another provider of assurance services will usually need to deepen in the company, at the same level of knowledge as the accountant, financial information. That will bring extra costs.

There is also no choice for a full check of the non-financial information statement at the same level as the audit of the financial statements as referred to in the sixth paragraph of Articles 19b and 29a of the Directive. This would

lead to high administrative burdens. The accountant (or another provider of assurance services) can not base the audit on the information that he obtains in connection with his examination of the financial statements, but will then have to carry out detailed audit work separately. The cost of such control depends largely on the complexity of the company (foreign activities, group size, type of business process) and how the company has organized its reporting process, for example, to what extent it is already surrounded by internal controls. The accountant costs will increase by a minimum of a few percent by full control of non-financial information, which can certainly be up to a few tons for large and complex listed companies. These charges do not weigh against the degree of assurance that is obtained. which can certainly amount to a few tons for large and complex listed companies. These charges do not weigh against the degree of assurance that is obtained. which can certainly amount to a few tons for large and complex listed companies. These charges do not weigh against the degree of assurance that is obtained.

On the one hand, the chosen midway of the auditor's survey addresses the wishes of the Chamber and the consultation to give more certainty about the statement of non-financial information and, on the other hand, prevent companies from being forced to incur high control costs. Even in the board report, the company has to pay attention to non-financial performance indicators, including environmental and personnel issues, which should now be included in the non-financial statement. The auditing of the audit is already existing practice.

When the auditor strikes the accounts on the basis of his audit report and his research into the board's report that is not in line with what is stated in the statement, non-financial information, he ultimately does not have an ear (as supervisory board and supervisory board) have for his findings) to mention in his statement of loyalty as referred to in article 2: 393 paragraph 5 of the Civil Code. The general meeting of shareholders will then take note of it and may appeal to the board on that incorrectness.

Article 1, third paragraph, of the Directive concerns the consolidated non-financial statement (the new Article 29a of the Financial Statements Directive). When the legal entity is a parent company of a large group with more than 500 employees, it must include a consolidated non-financial statement in the consolidated management report that belongs to the consolidated financial statements. This declaration must include non-financial information as described above, but with regard to the entire group. The Dutch system does not have a separate consolidated management report. The parent company's management report also looks at the group companies whose financial statements are included in their financial statements. Article 2 (3) stipulates that the parent company also provides the required information in the non-financial statement as regards the entire group. Article 1, paragraph 4 of the Directive, amends Article 33 of the Financial Statements Directive. This article governs the responsibilities of the Board of Directors and the Supervisory Board for the preparation and disclosure of the (consolidated) annual accounts and the management report, acting within their powers under national law. The (consolidated) non-financial statement has been added to this provision. This part need no effect. By this decision, the legal entity is required to provide non-financial information as part of the management report. Article 2: 394 of the Dutch Civil Code has already stipulated that the legal person is obliged to have the management report containing the non-financial statement, to make public. In terms of section 2: 101 y. Article 2:10 BW is the implementation of this obligation under the responsibility of the executive board as the executive body of the legal entity.

Article 2 of the Directive need no effect. This article contains a mandate for the European Commission to draft non-binding guidelines for the way in which non-financial information can be reported. The guidelines aim at facilitating and improving reporting of relevant and comparable non-financial information for companies. The Commission should publish the guidelines by 6 December 2016.

Another assignment to the European Commission is given in Article 3 of the Directive. It stipulates that the Commission will report on the implementation of the Directive by 6 December 2018. In doing so, the Commission must inter alia address the scope, in particular as regards large unlisted companies and the effectiveness of the Directive. The Commission can decide on the basis of that report to draft a new proposal for a directive.

Article 4 of the Directive defines when the directive has to be transposed and in which financial years the new obligations apply. Reference is made to the article explanatory note to Article 8.

3. Charges for business

The obligation to publish non-financial information applies to large organizations of public interest with more than 500 employees. This is estimated to be 115. In the impact assessment carried out by the European Commission in preparation for the proposed directive, the cost of disclosure of non-financial information is estimated at € 600 to € 4,300 per annum per company. These costs depend on collecting and compiling the information, publishing and training of staff for this specific reporting. For companies already voluntarily preparing a CSR report, the costs will be lower. 21The additional costs of the audit report on the non-financial information statement are limited as indicated in paragraph 2, because the assessment of that statement largely relies on research already carried out in the annual accounts and the management report, and because a Part of that information has already been included in the board's report and is being investigated. The auditing of the auditors must only be extended with a limited number of hours. The average cost of the audit report of the board report is estimated to be no more than a few thousand euros for a listed company.

Based on the estimate of the European Commission, the total compliance costs per year for the jointly-owned companies amount to at least € 120,000 (115 x € 600) and up to € 860,000 (115 x € 4,300) plus the cost of the audit (115 x a few thousand euros).

4. Consultation

A public consultation of a preliminary draft of this decision took place from 11 November 2015 until 18 January 2016 via www.internetconsultatie.nl. consultation reactions have been received from among other stakeholder organizations and accountants offices, available at https://www.internetconsultatie.nl/bekendmaking_niet_financiele_informatie/reacties. Responses have been received from the Authority for Financial Markets (AFM), the Council for Annual Reporting (RJ), the Royal Netherlands Professional Accountancy (NBA), Eumedion, the Association of Securities Holders (VEB), the Association of Securities Issuers (VEUO) , the Animal Coalition, Environmental Democracy, CSR Platform, Probation Free, the Multi National Enterprise Councils (MNO) Foundation, the Multinational Enterprises Foundation, SBI Format, a number of accountant offices (KPMG, PWC and Grant Thornton) and a citizen.

In the consultation reactions, broad support has been expressed for the extension of the information provided by the decision in the board report. Various responses have been proposed to further extend the obligations arising from the directive to national regulations. A number of respondents expressed the wish to extend the audit by the auditor to the same test as applies to the directors' report (it is prepared in accordance with statutory requirements, compatible with the annual accounts and contains no material errors) or the non-financial to declare a full audit or audit by other experts (Article 19a, sixth member of the Directive). As explained above in paragraph 2, it has been requested by the Lower House, for example, to prescribe a similar examination by the auditor as for the rest of the board's report.

It has also been proposed to extend the category of legal entities who are obliged to draw up a non-financial statement as regards the scope of application covered by the directive. It has also been proposed to extend reporting requirements with different subjects, such as fraud and continuity or animal welfare as a specific part of environmental and social issues. It has been suggested that the legal entity should be obliged to apply OECD guidelines when conducting due diligence. It has also been suggested that the legal person's motives to rely on the exemption to provide information on upcoming developments or issues being negotiated should be reported by the accountant and the auditors if necessary. Furthermore, it has been suggested that the decision to the Works Council gives advisory rights in respect of the subjects to be disclosed in the non-financial statement. Finally, it has been proposed to provide the Authority for Financial Markets (AFM) with a supervisory role or to transform the Transparency Benchmark into enforcement. Since the decision extends exclusively to the implementation of the Directive, it is not desirable to take additional national measures. This does not affect the legal person's ability to report on its policy on topics not specifically mentioned in the directive. He may do so if he deems it necessary for a good understanding of the development, results, position of the legal person and the effects of his activities or if he considers it desirable to inform stakeholders about other CSR aspects and so forth carry that company that matters. On the basis of the Works Councils Act (WOR), the Works Council has a right of assent with regard to, among other things, pension insurance schemes, working conditions and consultation. These are subjects for which the national legislature requires involvement of the works council. The AFM already oversees accountants and the application by listed companies of the reporting rules to their annual accounts and management report.

Respondents have proposed to expand the information contained in the board in the board report with information about strategy, continuity and other risks. The Royal Dutch Professional Accountants' Organization is studying this topic. After completion, it will be considered in consultation with the Minister of Finance whether there is any reason for adapting legislation.

The consultation has been suggested to tighten closer to the text of the directive in respect of certain parts. This has led to adjustments in the formulation of article sections, for example regarding the parent company's announcement regarding the group in article 2 paragraph 3. It is also noted that the preliminary draft is based on the "Communication on Non-Financial Performance Indicators" (Article 3, paragraph 1, item d), where the Directive speaks of «non-financial essentials Performance Indicators». It has been chosen not to be literally in line with the directive because the term «non-financial performance indicators» is also used in the existing obligation in Article 2: 391 BW for large legal entities to involve these indicators in the analysis which they include in the Board of Directors report on the balance sheet date, the development during the financial year and the results of the legal person. Also, there was chosen not to be literally linked to the European term (compare Article 19, paragraph 1 of the Financial Statements Directive). This is also not necessary because both Article 2: 391 BW when deciding that

the non-financial performance indicators should only be mentioned if this is necessary for a good understanding of the development, results, position of the legal entity and the effects of its activities. It has already been decided that non-financial performance indicators need to be mentioned only when they are important. See also in this regard the exemption in Article 6 of the decision of the obligation in article 2: 391 of the Dutch Civil Code regarding the indication of non-financial performance indicators when the legal person has drawn up a non-financial statement. It has already been decided that non-financial performance indicators need to be mentioned only when they are important. See also in this regard the exemption in Article 6 of the decision of the obligation in article 2: 391 of the Dutch Civil Code regarding the indication of non-financial performance indicators when the legal person has drawn up a non-financial statement. It has already been decided that non-financial performance indicators need to be mentioned only when they are important. See also in this regard the exemption in Article 6 of the decision of the obligation in article 2: 391 of the Dutch Civil Code regarding the indication of non-financial performance indicators when the legal person has drawn up a non-financial statement.

Further to the consultation, the explanatory statement on various parts has been clarified, such as the relationship between the Directive on European Market Abuse Regulation.

The preliminary draft has also been discussed with the Committee on Company Law. The Commission could agree with the principles of the preliminary draft."²¹²

²¹² <https://zoek.officielebekendmakingen.nl/stb-2017-100.html>

Abbreviations and tables

5.10 Abbreviations

1. BAS = Business Accounting Standards
2. CSR = Corporate Social Responsibility
3. Financial year, also called fiscal year, stands for a twelve-month timeframe that it is identified as the undertaking's country accounting period and it does not have to correspond to the conventional calendar year (from January to December).
4. NFI = Non-Financial Information
5. PIE = Public Interest Entity
6. SME = Small Medium Enterprise

5.11 Tables

5.11.1 Tables A

List export		
Product name	Orbis	
Update number	16005	
Software version	160	
Data update	23/06/2017 (n° 16005)	
Username	armando/Univenezia-20477	
Export date	28/06/2017 2:42:01 PM	
Search Strategy		
Status	Active companies	11,405,577
All companies		13,290,891
Status	Active companies	11,405,577
World region/Country/Region in country	Western Europe, Eastern Europe	5,058,694
Standardised legal form	Public limited companies	1,314,947
Entity type	Bank, Financial company, Insurance company, Company	13,077,921
Major Sector	1 - Primary sector, 2 - Food, beverages, tobacco, 3 - Textiles, wearing apparel, leather, 4 - Wood, cork, paper, 5 - Publishing, printing, ...	9,743,692
Listed/Unlisted companies	Publicly listed companies	66,778
Boolean search	1 and 2 and 3 and 4 and 5 and 6 and 7 and 8	
TOTAL		9,394
Search options		
Financial searches	Exclude companies with no recent financial data	
	Exclude public authorities/states/governments	
Fiscal year end	31/03	
Definition of the Ultimate Owner		
The minimum percentage of control in the path from a subject company to its Ultimate Owner must be: 50		
A company is considered to be an Ultimate Owner(UO) if it has no identified shareholders or if it's shareholder's percentages are not known.		
Definition of the Beneficial Owner		
Path of min 10.00% at first level, minimum 50.01% at further levels, incl. top level individuals with unknown percentage or with min 10.00% (50.01% at each level)		

Table A – Orbis Selection process (Excel format)

5.11.2 Table B

SWEDEN
AB VOLVO
AB ELECTROLUX
ATLAS COPCO AB
ASSA ABLOY AB
SAAB AB
AHLSSELL AB (PUBL)
SWEDISH MATCH AB
CAPIO AB (PUBL)
LINDAB INTERNATIONAL AB
AXIS AB
MUNTERS GROUP AB
SCANDI STANDARD AB
THULE GROUP AB
RESURS HOLDING AB (PUBL)
SEMCON AB
SWEDOL AB
MYCRONIC AB
ADDNODE GROUP AB
BONG AB
KABE AB
MIDWAY HOLDING AB
BTS GROUP AB
GHP SPECIALTY CARE AB
HMS NETWORKS AB
STUDSVIK AB
PREVAS AB
NETHERLANDS
KONINKLIJKE AHOLD DELHAIZE N.V.
HEINEKEN NV
CHICAGO BRIDGE & IRON COMPANY N.V.
NXP SEMICONDUCTORS N.V.
ASML HOLDING N.V.
AALBERTS INDUSTRIES NV
FUGRO NV
BRUNEL INTERNATIONAL NV
AMSTERDAM COMMODITIES N.V.
TELEGRAAF MEDIA GROEP N.V.
ORDINA NV
NEDERLANDSCHE APPARATENFABRIEK 'NEDAP' N.V.
JUBII EUROPE N.V.

Table B – Random Sample part I

ITALY
PARMALAT S.P.A.
CIR S.P.A. - COMPAGNIE INDUSTRIALI RIUNITE
DANIELI & C. OFFICINE MECCANICHE SPA
DAVIDE CAMPARI - MILANO S.P.A.
SOGEFI S.P.A.
SAFILO GROUP S.P.A.
AMPLIFON S.P.A.
GEOX S.P.A.
RENO DE MEDICI S.P.A.
OPENJOBMETIS S.P.A.B57:M57
ELICA S.P.A.
BRUNELLO CUCINELLI S.P.A.
PRIMA INDUSTRIE SPA
RAI WAY SPA
BIANCAMANO S.P.A.
RATTI S.P.A.
CAD IT SPA
EUKEDOS S.P.A.
CZECH REPUBLIC
O2 CZECH REPUBLIC A.S.
KOMERCNI BANKA
MONETA MONEY BANK, A.S.MONETA MONEY BANK, A.S
KOFOLA CESKOSLOVENSKO A.S.
IRELAND
ACCENTURE PLC
EATON CORPORATION PLC
SEAGATE TECHNOLOGY PUBLIC LIMITED COMPANY
WILLIS TOWERS WATSON PUBLIC LIMITED COMPANY
KINGSPAN GROUP PUBLIC LIMITED COMPANY
GREENCORE GROUP PUBLIC LIMITED COMPANY
ORIGIN ENTERPRISES PLC
APPLEGREEN PLC
CPL RESOURCES PUBLIC LIMITED COMPANY
KENMARE RESOURCES PUBLIC LIMITED COMPANY
IFG GROUP PUBLIC LIMITED COMPANY
LITHUANIA
LINAS AGRO GROUP AB
ROKISKIO SURIS AB
AB ZEMAITIJOS PIENAS
SIAULIU BANKAS
AB VILNIAUS BALDAI
AUGA GROUP, AB

Table B – Random Sample part II

LUXEMBOURG
ADECOAGRO S.A.
PACIFIC DRILLING S.A.
EDREAMS ODIGEO SA
IVS GROUP S.A.
GLOBANT S.A.
MALTA
BANK of VALLETTA PLC
SIMONDS FARSONS CISK PLC
LOMBARD BANK (MALTA) PLC
MALTAPOST P.L.C.
POLAND
ACTION S.A.
GRUPA ZYWIEC SA
GOBARTO S.A.
ZAKLADY MIESNE HENRYK KANIA S.A.
ELEMENTAL HOLDING S.A
KOPEX S.A.
ALCHEMIA S.A.
ZPUE SA
NEWAG S.A.
EUROCASH S.A..
J.W. CONSTRUCTION HOLDING S.A.
KGHM POLSKA MIEDZ SA
ASSECO BUSINESS SOLUTION SA

Table B – Random Sample part III

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