



# Assurance of Corporate Social Responsibility in the European Union. Problems and Legal Gaps

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## ABSTRACT

*Disclosure of nonfinancial information is a key element in corporate social responsibility. The new sustainability canons demonstrate its importance in business development. However, nonfinancial information must be verified by an independent expert. Any disclosed nonfinancial information must be reliable, which is why the existence of a verifier that accredits the synchrony between what is disclosed and the company's reality is necessary. For this reason, the present paper addresses the verifier's regulatory situation and future proposals to create a regulatory body that provides legal certainty.*

**KEYWORDS:** CSR, nonfinancial reporting, verifier, auditor, assurance, accreditation

## INTRODUCTION

Since the beginning of the 20th century to the present day, corporate social responsibility (CSR) has been studied by authors (FLEISHER, 2015), companies, organizations, numerous groups and legislators. There have been different phases, but today we can say that we are in the CSR regulation era (CAPUTO et al. 2020). As we will see, this statement may have its details, but the incipient regulation allows us to affirm the existence of a normative body (BATALLER GRAU, 2018). It is also a fact that many companies have established CSR values and principles as a methodology of behavior in the business world (BICE, 2017).

When approaching the CSR study, there is a basic premise that no single code or standard exists. Every company is different, with distinct needs and its own business culture, all of which affect the third parties around the company in a particular way (FREEMAN, 1984). Thus CSR has become one of the areas in which difficulty lies in the fact that there is no single guide, but hundreds of guides that attempt to respond to each business sector's needs and priorities (GREEN, 2021). In fact even companies in the same sector, but located in different world regions, may have different needs. This means that their guidelines for action within the CSR framework can differ (LEIPZIGER, 2010).

This situation leads us to consider whether corporate social responsibility focused through principles, guidelines, codes, etc., in any way generates a positive impact not only on the company that implements them (SMITH, 2002), but also on the stakeholders who experience the application of such

principles. An effective code of conduct or standard can help to: raise companies' own awareness of the importance of CSR; assist the company in setting strategies and objectives; help in implementation and monitoring; avoid or limit scandals for the company; encourage dialogue and collaboration with key stakeholders; enhance unity and identity among divergent companies (LEIPZIGER, 2010). Briefly in the short term, a code can help an internal company's crisis about its management, a code can prevent a crisis in the mid term and allows the principles whose aim is to improve the condition of stakeholders, including shareholders, to be implemented in the long term (AGLIETTA & REBÉRIOUX, 2005) to promote confidence in the company's own business sector by improving its performance, etc. (HERTEL, 2003).

However, to also have a positive impact, codes or standards must have certain connatural characteristics to be effective. Thus their application is not merely a formal exercise (BARAUSKAITE & STREIMIKIENE, 2021). Hence the importance of analyzing how to control or accredit that the company which integrates CSR into its organization truly complies with it. This is no minor issue because it confers the whole system meaning. Furthermore, the assurance issue provides credibility and transparency. Therefore, it is necessary to develop professionals, institutions or bodies with the capacity to carry out this assurance from not only a formal point of view, but also from a material point of view given the fact that matters subject to control are multidisciplinary (GARCÍA-SÁNCHEZ, 2020). This element is fundamental for stakeholders, who may come to believe in CSR as a method to improve the sustainability of companies



if the system works; i.e. the assumption of standards, codes, principles, etc., and the assurance of their correct application.

Synchronicity between the company's CSR practices and the outcome of assurance must exist. This is why companies have implemented a self-check or internal due diligence to be prepared for such reviews (HORRIGAN, 2010). The importance of the outcome is vital because the effect of assurance can result in reputational damage or benefit (FRESE & COLSMAN, 2018). Symmetry in the information offered to the general public, and the quality of the product or service offered particularly to clients, allow respect for a principle of honesty according to which the consistency of a company's behavior with its assumed standard or code is verified (ANDREOZZI, 2011). The effect of all this is more company profits from not only an economic point of view, but also in terms of the social environment in which it operates (ARAS & CROWTER, 2010; ERTUNA & ERTUNA, 2010).

For this to be the case, assurance must be carried out by people who are truly knowledgeable of the code or standard adopted by the company. It is, therefore, a new methodology of social accounting and reporting, and one that aims to extend and complete traditional financial information in a new business culture in such a way that integrates stakeholders' needs (CLARKSON, 1995; MITCHELL et al. 1997). The aim is to, thus, create a much more advanced qualitative and quantitative methodology all along the lines of the interests of third parties outside the company (TENCATI, 2010). So a social audit concept is proposed, which is capable of evaluating all the activities performed by a company (BONAL, 1982).

### **Nonfinancial Information and its Assurance**

The compilation of nonfinancial information by a company allows a report to be prepared whose immaterial value is of vital importance because, as mentioned above, it affects the company's reputation (SÁNCHEZ-TORNÉ et al. 2020). However, it is a sui generis document because of its multidisciplinary nature as the information that it contains is extensive (VERMIGLIO, 1984).

The authors (RUSCONI, 1988; VERMIGLIO, 2005) consider it to be a kind of social accounting, which makes this document a key element in the CSR concept. This document should be inspired by uniform postulates, models, characteristics and styles of writing to ensure continuity in the way that information is transmitted. However given its multidisciplinary nature, it is recommended to draw up a thesaurus that includes the lexicon of all branches of law, its definition and the relational structure that links different terms (CURTIT, 2016). As in the auditing case, the aim is to create clear uniform documentation to guide assurance providers to take a systematic approach to both procedure and content.

Thus preparing and reporting nonfinancial information can

be considered a parallel system to the reporting of financial information. Although they differ in content and basis terms, it is possible to replicate the financial reporting scheme to create a nonfinancial reporting structure that complies with CSR codes or standards. However, the authors have expressed concern about the quality of the information contained in such social accounting given that practice shows the vagueness of reports and the partiality of their information (RÜHMKORF, 2015). It is believed to be relatively easy to reach agreements to establish standards of conduct, but having ended this agreement phase, reality shows the use of CSR as a publicity tool for commercial companies (LEIPZIGER, 2010).

Hence the need for a professional to intervene who, characterized by his/her independence, is a guarantee for stakeholders that the balance sheet drawn up by the company falls in line with the reality of its management (MALECKI, 2018). Thus the review must be based on certain basic principles: first, the review must be carried out in accordance with codes or standards to verify that these rules have been correctly applied; second, the verifier must be qualified to carry out the assessment through assurance; finally, an independent authority must recognize this professional qualification and authorize the verifier to carry out this task (HINNA, 2005).

In recent years, an assurance market has emerged that focuses on offering its services to those companies that assume socially responsible standards. This assurance has the effect of legitimizing the company in general society, which poses an interest for companies in this market for providing them with the image that they look for in their stakeholders' eyes. Thus even in listed companies, reports from rating agencies are no longer sufficient, and more information is required on the stock market to, thus, assume the importance of nonfinancial information (MALECKI, 2009; DEVALLE et al. 2017).

Given the importance of nonfinancial information and its assurance, it is also important to know what legislators' regulatory response has been, at least in the European Union (EU). The regulatory response to this issue can be key to assurance. Studies show the quality of assurance according to a number of variables, and the regulations in force in each country are a crucial element (SEGUÍ-MAS et al. 2015).

### **LEGISLATIVE SITUATION**

In order to understand a regulation, we must look back, albeit graphically, to the beginnings when CSR principles were established in the EU.

It was in 1993 when the EU began to debate whether it should develop a strategy to promote CSR, but it was not until June 2001 when it published a Green Paper (DOC/01/9), which called on business companies to incorporate a sense of social responsibility to improve practices in certain areas: lifelong learning, work organization, equal opportunities, social inclusion and sustainable development. Despite the initial

reluctance of some sectors of the economy, in October 2002 the European Commission held a forum about what were considered to be the four key elements of CSR. This forum focused on: disseminating best practice; CSR development and trade; promoting CSR in small- and medium-sized enterprises (SMEs); the convergence and transparency of CSR reporting and assurance (MURRAY, 2003).

The economic crisis of 2008 accelerated the ideals of CSR in the EU insofar as the Commission issued a communication on CSR to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in 2011. This communication was an informal event whose aim was to announce and explain what the EU's CSR strategy would be. Although it had no legal effect, it did have a soft law effect, which addressed economic operators and also EU Member States. Thus it was established as a kind of method of action to provide Member States with general principles to bring about a regulatory rapprochement between the different legislations of each Member State (BERROD & BOUVERESSE, 2016). Furthermore in 2013, this communication was joined by two Parliament Resolutions (2012/2098(INI) and 2012/2097(INI)), which recognized the importance of companies disclosing sustainability information.

As a result, *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of nonfinancial and diversity information by certain large undertakings and groups* was born. The primary effect of this rule was to establish a framework for large companies and corporate groups to annually prepare a nonfinancial statement containing information about, at least, environmental and social issues, as well as personnel, respect for human rights and the fight against corruption and bribery. Such a statement had to include not only a description of the policies, performance and risks related to these issues, but also the management report of the company concerned. Nonfinancial statement should also include information on the due diligence procedures applied by the company in relation to its supply chains and subcontracting, and had to be relevant and proportionate, to detect, prevent and mitigate existing and potential adverse effects (GARCÍA MANDALONIZ, 2018).

This directive's lack of ambition was criticized for not including SMEs because it certainly did not bring about a full transformation of the commercial companies operating in the EU (BATALLER GRAU, 2018). The directive was concerned about creating a particular concept of public-interest companies (MERCIER, 2016).

According to its content, no material criteria that would truly determine the nonfinancial information in a true sustainability report were sought, rather a nonfinancial report that intended to easily fit the financial information disclosed by the company was prepared (BAUMÜLLER & SCHAFFHAUSER-LINZATTI, 2018), and all this without

denying that the integration of both non financial and financial information provided insight into the company's future (DE LUCA, 2020).

## **B.- Effects of the reform on some of the EU's legal systems**

### **a.- Spain**

The directive was implemented into the Spanish legal system through *Real Decreto-ley 18/2017, de 24 de noviembre, por el que se modifican el Código de Comercio, el texto refundido de la Ley de Sociedades de Capital aprobado por el Real Decreto Legislativo 1/2010, de 2 de julio, y la Ley 22/2015, de 20 de julio, de Auditoría de Cuentas, en materia de información no financiera y diversidad* and *Ley 11/2018, de 28 de diciembre, por la que se modifica el Código de Comercio, el texto refundido de la Ley de Sociedades de Capital aprobado por el Real Decreto Legislativo 1/2010, de 2 de julio, y la Ley 22/2015, de 20 de julio, de Auditoría de Cuentas, en materia de información no financiera y diversidad*, which mainly reformed the Código de Comercio, Ley de Sociedades de Capital y Ley de Auditoría de Cuentas. The promotion of CSR, as set out in Article 39 of *Law 2/2011, of 4 March, on Sustainable Economy*, was relegated only to SMEs and individual companies.

In order to confer certainty, the lawmaker introduced into Art. 49(6) of the Código de Comercio the need for nonfinancial information to be subject to assurance by an independent assurance service provider. Recital 16 of the Directive stresses that statutory auditors and audit firms should only verify that nonfinancial statement or the separate report was provided so that this group of professionals would be excluded from the possibility of verifying the content of the company's nonfinancial report. However, what the Directive does not solve is who can carry out assurance. Hence it is stated that the regulatory framework created by the European standard is incomplete and needs to be reformed accordingly (CUZACQ, 2015).

This is set out in Article 5.1.f).1 of *Law 22/2015, of 20 July, on Accounts Auditing*. This article sets out that the auditor shall only verify that the aforementioned statement of nonfinancial information is included in the management report or, whenever appropriate, that the reference corresponding to the separate report has been included in it in the manner provided for in the articles mentioned in the previous paragraph. If this were not the case, it should be indicated in the audit report.

Therefore, it would not appear that the auditor is responsible for carrying out the task of assurance of nonfinancial information, but only for reporting the existence of the document containing the aforementioned information. However, this does not seem to be the view of the *Instituto de Contabilidad y Auditoría de Cuentas* because, in response to an enquiry, it points out that: presently there are no regulations governing the conditions to be met by those who carry out the assurance of the nonfinancial information statement referred



to in Article 49.6 of the Código de Comercio. Therefore, not until the specific regulation of the different aspects of this assurance is approved can it be carried out by the auditor or other persons with suitable characteristics or knowledge to perform this function, nor with any impediment within the scope of the regulations governing the auditing of accounts for this assurance to be carried out by the auditor of the annual accounts of the entity in question (CONSULTA AUDITORÍA 1- BOICAC 117/MARZO 2019).

The *mens legis* of the Directive does not suggest that the statutory auditor can verify the content of the nonfinancial report. On the contrary, the need for a professional with the technical capacity to do so arises.

### **b.- France**

The implementation of the European Directive through various regulations has led to the reform of the *Code de commerce*. French authors (MERCIER, 2016) highlight how the Code begins with the possibility of the auditor also being the verifier insofar as Art. L. 225-102-1 implements the Directive and incorporates the obligation for an external third party to carry out the assurance task in accordance with the criteria approved by the Council of State (*Décret no. 2017-1265 du 9 août 2017*). Thus Article R. 225-105-2 of the Code's regulations establishes that the assurance officer should be appointed by the Director General or the Chairman of the Board of Directors for a period not exceeding 6 years from among the organizations accredited for this purpose by the *Comité français d'accréditation* (COFRAC) or by any other accreditation organism signatory to the multilateral recognition agreement reached by the European Coordination of Accreditation Organizations.

The Committee accredits any independent third-party organization (ITO) to carry out assurance work on the nonfinancial information issued by companies. However, the purpose of these organizations is to certify different nonfinancial reporting aspects so that, depending on the subject matter, some organizations specialize in environmental issues and can, for example, therefore only carry out assurance work in this area.

The system set up through the Accreditation Committee reinforces the alternative system to that of a statutory audit. This Committee subjects its accreditors to renewal every 4 years, which allows the constant updating of independent third parties (GILLET-MONJARRET, 2014). It is also able to issue accreditations in many areas, for example: vocational training, tourism, leisure, commerce, agriculture and food, risk prevention, energy efficiency and transition, health, public actions, transport and logistics, nature and biodiversity, cybersecurity, etc. This creates a double obligation: the verifier's obligation to review the nonfinancial report in accordance with the assumed CSR standard and current regulations applicable to the company; the company's obligation to respect the assumed CSR standard and to comply with applicable regulations (LAJMI et al. 2020).

### **c.- Italy**

Since the mid-twentieth century, both Italian authors (GRUPPO DI STUDIO, 2013) and business people have advocated the implementation of CSR policies in Italy (AURELI et al. 2021; RUSCONI, 2021). However, it was Directive 2014/95/EU that triggered a reform of Italian regulations, whose effect was to establish the distinction between financial and nonfinancial information. *Decreto Legislativo 30 dicembre 2016, no. 254*, implemented the EU Directive and defined the limits by which certain commercial companies were considered to be of public interest. So they had to issue a nonfinancial report.

From the assurance point of view, the *Associazione Italiana delle Società di Revisione Legale* has stated that the statutory auditor should not go in detail into the substance of the nonfinancial report issued by the company, but only its formal aspects (ASSIREVI, 2019). However according to ISAE 3000, the *Commissione Nazionale per le Società e la Borsa* (Resolution 20267) considers the opportunity of carrying out mixed audit, including both financial and nonfinancial information. This allows a learning process by the statutory auditor that leads to a hybrid audit system. Thus a distinction can be made between reasonable assurance, focused on the control of the assertions expressed by the company in its report, and limited assurance, which aims to verify the data provided in the report (CASTELLANI, 2015).

However, as highlighted by the *Osservatorio Nazionale sulla Rendicontazione non Finanziaria* in its 2019 Report, the audits carried out on nonfinancial information are very limited as they focus on formal aspects that fall in line with the Directive's approaches; i.e. there is no real assurance on this type of information reported by the commercial company. In line with this situation, for practical purposes, no real assurance of nonfinancial information is contemplated (FASAN & BIANCHI, 2017), particularly because there may be a large discrepancy between the financial report and the nonfinancial report because materiality issues go beyond purely economic issues (ASSIREVI, 2019).

### **d.- United Kingdom**

Although the United Kingdom is not currently an EU member, it is interesting to look at its legislation because when the EU Directive on nonfinancial reporting was implemented, it was still a Member State.

In order to implement Directive 2014/95/EU, the Department of Business, Innovation and Skills launched a public consultation on 16 February 2016 about how to implement the Directive in the UK. From the assurance point of view, the Department explained that, according to the the Directive, there were two alternatives: assurance would be carried out by either the internal mechanisms of the reporting company or an independent third party, which would lead to increased costs, lost time while the reporting company operates and no value for investors (PRESTON & O'BANNON, 1997; ADEGBITE et al. 2019; CHIJOKE-MGBAME, 2021).

Following the consultation, in November of the same year the Department published the survey results and the government's assessment of those results<sup>1</sup>. From the assurance point of view, the government stressed that most respondents to the survey considered that third party assurance would undoubtedly entail an increase in cost. Hence such an assurance methodology should be a voluntary option for the company. In response to this, the government's report stressed that, in the legislative reform to implement the Directive, it would not impose independent assurance of nonfinancial information but, as in the past, companies could voluntarily request independent assurance of nonfinancial information if they so wished.

In December of the same year, the *Department for Business, Energy and Industrial Strategy* published *Statutory Instruments 2016 No. 1245, The Companies, Partnerships and Groups (Accounts and Non Financial Reporting) Regulations 2016*. These regulations were a reform of the *Companies Act 2006*, particularly of the chapter entitled Chapter 4A Strategic Report. Yet in compliance with the government's request, nothing was regulated on the assurance of the nonfinancial report. This was severely criticized as it gave companies a great deal of flexibility to control the nonfinancial information that they provided stakeholders with (MITTELBACH-HÖRMANSEDER et al. 2020).

#### e.- Germany

In line with German regulations, the Federal Government's draft law that transposed Directive 2014/95/EU emphasizes the importance of nonfinancial reporting, and from the point of view of not only compliance with the standards assumed by the company, but also of the company's external image as a member of the German business sector, and all this without underestimating a company's assets, financial situation and results, plus its development in terms of opportunities and risks. The German government, therefore, considered it appropriate to reform part of the commercial law, particularly the *Handelsgesetzbuch* (HGB), but the explanatory memorandum to the draft law does not contain any provisions on the assurance of nonfinancial information (STINGL, 2020).

In the Committee on Legal Affairs and Consumer Protection's report (Ausschusses für Recht und Verbraucherschutz)<sup>2</sup>, the Commission did not support making the assurance of nonfinancial information an entirely voluntary matter for companies. In fact both the assurance and publication of such a report should be an obligation. However, the Commission considered that the staggered entry of the new rules coming into force was reasonable to give companies, and particularly

Boards of Directors, the necessary time to prepare new tasks and to gain experience with the new reporting requirements. For this reason, the decision made on whether to disclose the results of voluntarily commissioned external assurance of non financial information should be left to the company's discretion for a transitional period. This should encourage companies to seek extensive external advice whenever necessary, and to also increase their own expertise in the assurance of nonfinancial information.

The Commission stressed that it would be advisable for the government to publish a report by 31 December 2021 in order to, *inter alia*, know how the assurance of nonfinancial information has developed and how German companies have performed in this respect.

However, the reform of the *Handelsgesetzbuch* (HGB) did not include an assurance obligation for nonfinancial information. In addition, companies can avoid information if it affects the development of future business or issues being negotiated at the time. This implies that if it can negatively impact the nonfinancial report, it does not need to be included in the report, which has been harshly criticized (UWER & SCHRAMM, 2018).

#### NUDGING AND CSR

As we can see, after Directive 2014/95/EU was implemented, we can consider that there is no real regulatory awareness of assurance. The company is responsible for one of the fundamental pillars of CSR: the assurance of published non financial information.

The authors have highlighted that those who commission genuine external assurance tend to be companies subject to high compliance standards or bear a high level of environmental risks given their activity (SIMNET et al. 2009). In fact the most empirical studies show that the companies undergoing external assurance tend to have a strong CSR culture in place (VENTURELLI et al. 2018). Practice also shows that some companies submit their nonfinancial information for assurance by an external expert because they know that their stakeholder expects this, i.e. they know who is waiting for the assurance report and this stakeholder's characteristics (BEDDEWELA & FAIRBRASS. 2016). However, it has also been revealed that assurance done for providing as much information as possible can also lead to over information and under information effects by the companies that do not carry out external assurance, but merely internal assurance by their audit teams (TARQUINIO, 2018; GAL & AKISIK, 2020).

In assurance terms, the EU has sought to establish a strategy to influence companies' behavior and decision making to establish a self-required transparency system as a tactic to take the regulations of the commercial companies operating in the EU as close as possible to one another, but without requiring it from a regulatory point of view (SCHÖN, 2016).

1 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575530/beis-16-41-non-financial-reporting-directive-implementation-consultation-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575530/beis-16-41-non-financial-reporting-directive-implementation-consultation-government-response.pdf)

2 <https://dserver.bundestag.de/btd/18/114/1811450.pdf>

This phenomenon is known as *nudging* (TOR, 2016), which means that companies set long-term sustainability objectives without any detailed regulation, and this methodology has been criticized (HOMMELHOFF, 2015).

This is an example of what lawmakers have been attempting to achieve for more than a decade: that of management teams from commercial companies adopting sustainability (BLACK, 1990) criteria to undertake their business with a direct effect on both the surrounding civil society and the environment (ARMOUR et al. 2017). This old strategy is being used in developing CSR regulation, particularly the information to be provided to the stakeholder (EMESEH et al. 2010).

It is often stated that business decisions should always be based on sustainability criteria. However, this expression is empty and does not provide any clear contents of what is intended. It has been considered that, to define a clear standard that is not a lawmaker's strategy, a number of issues needs to be clarified: defining the regulatory objective; adjusting the regulatory approach; adapting the standard's scope; finding the right mixture of instruments. As long as CSR is not clearly legislated, what we are really causing is regulatory duplication from companies' point of view as nonfinancial reporting has already been regulated (MÖSLEIN & SØRENSEN, 2018).

In any case, the regulatory strategy of nudging follows a behavioral approach, which implies that its effectiveness depends on human behavior, which is influenced by the complete variety of the institutional framework within which human decisions are made. Nudging is not compulsory, but maintains individual autonomy and freedom, including the choice to behave differently. This is the EU's approach to assurance. As a result, all the studied countries have either regulated or ignored the assurance regulation, which has brought about in chaos in controlling companies' nonfinancial information (LOBEL & AMIR, 2008; SUNSTEIN, 2015).

It seems that there is still a long way to go before the assurance of nonfinancial information is controlled by an independent third party in the same way as financial information is, a circumstance that has been condemned for years (MANETTI et al. 2012). In order to create a serious and effective assurance system, we can take the model of auditing as a model because the characteristics on which it is based can be adapted to assurance. The principles of independence, competence, ethics, compliance, skepticism, professional judgment, accountability, etc., can be extrapolated to an assurance system. To this end, it is appropriate to make a legislative proposal that identifies essential issues to overcome current problems.

## A STATUTE FOR THE ASSURANCE PROVIDER?

Replicating the statutory auditor's regulatory scheme can have certain advantages. Taking this regulation as a sample can help us to create a particular institution, along with its

corresponding rights and obligations, and its operating mechanisms. However, it is not a matter of perfect replication, but one of establishing a body of rules that recognizes CSR principles and the relationship between the assurance provider and the company, and also with the statutory auditor.

### A.- Verifier's accreditation agency

In view of the verifier's functions, a body is needed to accredit the verifier's competence to review nonfinancial information. As we see it, there is one essential problem, which is the diverse subject matter of CSR. Hence the body accrediting the verifier's competence must have a panel of experts who examine the verifier (LOCONTO & BUSCH, 2010). Empirical studies reveal distortion and mistrust between auditors and consultancy firms as both deny each other's sufficient professionalism to carry out a reliable assurance process (BOIRAL et al. 2020).

*Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, and repealing Regulation (EEC) No. 339/93*, allows the establishment of national accreditation bodies according to European cooperation for an accreditation scheme. The European Cooperation website<sup>3</sup> shows that all EU countries have an accreditation agency or body, which may not be geared to recognize and accredit CSR verifiers. However, only French legislation, through the *Comité français d'accréditation* (COFRAC), has established a system that accredits the assurance of nonfinancial information with EU standards. This regulation allows the creation of a professional, other than the auditor, to verify companies' nonfinancial information.

According to Recital 9 of Directive 2014/95/EU, nonfinancial information can be based on different provisions, such as "*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*".

Given the existence of a European accreditation system that allows the creation of national agencies to validate and approve the verifier's technical capacity, and which can be based on different standards according to the Directive, the problem lies in the fact that the regulatory integration between the content of the nonfinancial information

<sup>3</sup> <https://european-accreditation.org>



disclosed by companies and the accreditation that the verifier must hold through national accreditation agencies is lacking. Such a mechanism would address the legal gap on which the assurance of nonfinancial information can be performed and which can accredit their capacity and competence.

### **B.- Verifier training.**

Studying the verifier's training or technical capacity involves analyzing one of the thorniest elements of the assurance of nonfinancial information. Indeed it is not a matter of analyzing the company's financial equilibrium, but compliance with the standards assumed by a socially responsible company. Nor is it an eminently legal analysis because many nonfinancial information aspects require an analysis and measurement. The ideal context would be for a regulation to exist which, together with Directive 2014/95/EU, would integrate in the same way nonfinancial information content and who has sufficient technical knowledge for its assurance. However, there is no information on the horizon that this issue is to be regulated by the EU.

This situation is currently causing some practical distortions. We ought not to forget that many company reports are currently undergoing assurance. Although both auditors and consulting firms are carrying out this assurance work (BOIRAL et al. 2020), we understand that the training of auditors and that of consulting firms is not the same.

By way of example, this lack of definition also occurs in other sectors where sustainability is a guiding principle. In light of the nonfinancial disclosure obligation and the disclosure of sustainability information in the financial services sector, rating agencies other than traditional credit rating agencies have emerged (D'APICE et al. 2021). Rating agencies assess sustainability ratings, but are not subject to any specific regulation or control (AGUADO CORREA & DE LA VEGA JIMÉNEZ, 2021). In order to avoid this situation, the European Securities and Markets Authority (ESMA) sent a letter on 28 January 2021 (ESMA30-379-423) to the European Commission to establish a regulation applicable to ESG sustainability rating agencies. One of the issues assessed in the letter was these rating agencies' lack of transparency because it is not even known what these agencies' training involves to determine a security's or a company's rating.

Given variety of university and non-university training programs, the European accreditation system is not predisposed to the existence of a specific qualification in a particular subject. During the accreditation process, the applicant aspiring to become a verifier must demonstrate his/her competences and skills. Moreover, these competences and skills may be reviewed; constant readjustment may be imposed according to the verifier's competences, and the verifier may be updated according to the state of science and the subject matter that (s)he is able to verify.

### **C.- Designation of the assurance provider.**

Having established the mechanisms by which the assurance provider can be accredited as a professional, it is appropriate

to examine who has the competence to select and appoint the assurance provider in a company. This is no trivial issue because it is important to remember that it is the management body that prepares nonfinancial information. In view of the corporate governance system, there are only two possibilities as a general rule: the assurance provider can be appointed by shareholders or by management.

If we draw a parallel with the auditor and the company's financial information, the assurance provider should be appointed by shareholders to ensure that the person who prepares nonfinancial information is not, in turn, the one who appoints the assurance provider. However, this does not seem to be the perspective of the herein reviewed regulations because either silence is maintained so that the competence to appoint a verifier is not reserved to shareholders, or, directly, the power of appointment is attributed to management, as in French regulations.

The revised regulations do not reserve the power of appointment to partners. In this respect, steps should be taken to avoid the person who prepares nonfinancial information to appoint the verifier who examines it. To avoid this situation, it does not seem appropriate that the assurance of nonfinancial information should be provided by the auditor who is appointed by shareholders. Hence a legislative reform is needed to ensure the verifier's independence.

This situation has been constantly reported by international authors (BALL et al. 2000; KOUAKOU et al. 2013; ÖBERG & BRINGSSELIUS, 2015) as the main purpose of the assurance provider being appointed by management is to increase its legitimacy both vis-à-vis the shareholder and the stakeholder (HUMMEL et al. 2019).

This means that assurance work is merely superficial (SMITH et al. 2011; MANETTI & TOCCAFONDI, 2012; BOIRAL, 2013) and does not examine in depth whether the standards or guidelines assumed by the company have actually been complied with or how well they have been complied with. This subjugation situation could perhaps be diluted if the assurance provider were appointed by shareholders and, thus, management would be subject to the agreement reached by shareholders.

### **D.- Public monitoring.**

In order to ensure that the verifier's role is a professional one, in addition to the accreditation that justifies his or her capabilities, a system is needed that constantly monitors his/her activity. Thus whether it is the national accreditation agency or another organization created *ad hoc*, the following should be supervised: authorization and registration in a public register; adopting ethical standards; internal quality control standards in the activity and technical standards; the supervision of their adequate compliance, continuous training, inspection and investigation system; disciplinary regime, etc.

The creation of a system in parallel to the auditing of accounts that reviews a company's nonfinancial information at least requires the above-indicated elements. A European system of collaboration between agencies with the capacity to accredit is also necessary, as is a transversal system of collaboration between financial market supervisory agencies. This would also make it easier to know the evolution of nonfinancial information in the EU. All this aims to comply with the EU's inspiring principles that promote the creation of a regulatory framework for CSR.

## CONCLUSIONS

The analysis of the regulations allowed us to learn that CSR is a key element in companies' future development. Incipient regulations, and the existence of standards and codes that seek to improve the situation of the different affected groups, led us to consider that we are in a preliminary phase of what will be the disclosure of companies' nonfinancial information. This information will, therefore, allow a company's details beyond its solvency to be known so that future sustainability will be assessed as a kind of concept that integrates all a company's aspects.

The institutionalization of CSR enables the disclosure of nonfinancial information to be standardized and channeled. The regulatory structure created through the implementation rules, facilitates each different standard or code to be classified in such a way that allows stakeholders' better understanding. However, one key element is the reliability of such information as it would be to the serious detriment of the market if the disclosed non financial information did not correspond to the company's reality. However, nonfinancial information content leads to consider the need for an expert to cover this content's multidisciplinary nature.

Neither EU nor Member State regulations have addressed this issue and, as we see it, the reluctance to regulate assurance leads to an imperfect system due to the possible lack of synchrony between what is disclosed and the company's reality. We understand that this would imply the creation of a regulatory body in parallel to the auditing of accounts so that a new actor would enter to analyze the company's behavior according to the standards that it assumes. However, this should not be an obstacle for its development, especially as herein mentioned, there are particular organizations with the capacity to verify that comprise different experts depending on the discipline.

The EU accreditation regime allows each Member State to have its own agency with the capacity to accredit competence across a broad spectrum. It is this endorsement capacity that would allow verifiers to demonstrate their technical capacity to examine nonfinancial information. According to this basis, a regime of rights and obligations would need to be developed, as would a mechanism for the auditor-verifier relationship with the company and with one another.

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