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Background

In the past few years a number of important initiatives have been launched to try to ensure that companies provide accurate information about their impacts on the environment and society. In 2022 the EU legislators approved the Corporate Sustainability Reporting Directive (CSRD), which provides a legal basis mandating sustainability reporting by large EU companies.¹ At the international level, the International Sustainability Standards Board (ISSB), a private initiative launched in 2021, has started work on voluntary reporting standards. And in the United States, the Securities and Exchange Commission (SEC) has asked for input on corporate reporting requirements on environmental, social and governance issues.

These initiatives are in response to the growing societal expectation that corporate reporting should go beyond financial issues. As the dimensions and consequences of climate change become clearer, pressure on corporations to disclose not only their impacts on the environment but also their plans for reducing their negative impacts is increasing. Furthermore, growing awareness of child and forced labour in supply chains and in-work poverty has increased expectations that companies should report on human rights and working conditions.

Although all of these initiatives are aimed at reducing ‘greenwashing’ and satisfying stakeholders’ needs for credible information on companies’ impacts on people and planet, there are significant differences between them regarding the role of workers’ representatives.² These initiatives highlight three fundamental questions that are currently being debated. First, for whom is sustainability reporting intended? Is it primarily for investors or for other ‘users’, including trade unions and NGOs? Second, which stakeholders should be involved in the development of rules for sustainability reporting: auditors, investors and companies, or a broader set of stakeholders? And third, which stakeholders should be involved in sustainability reporting at the company level? How these questions are answered will be crucial for defining workers’ representatives’ role in sustainability reporting and in the relevance of sustainability reports for workers.

This report focuses on the two initiatives most relevant to EU companies: the mandatory system regulated by the CSRD, and the private initiative centred on the ISSB. It starts with the ISSB, which is intended primarily for investors and defines no explicit role for trade unions and works councils. It contrasts this with the CSRD, which includes the right for workers’ representatives to

- 1 The definition of ‘large’ companies is based on three criteria specified in the EU Accounting Directive, one of which is having 250 or more employees.
- 2 In this report the term ‘workers’ representatives’ refers to both trade union and works council representatives, see ILO Workers’ Representatives Convention of 1971 (No. 135).

be involved in sustainability reporting. Whether these rights will be realised in practice will depend on efforts to train workers' representatives in the technicalities of sustainability reporting and exchange 'good practice' about how to engage with companies on these issues.

ISSB: a private sector investor-oriented initiative

Traditional corporate reporting is limited to financial issues and has been considered the domain of a few privileged actors: auditors, investors and the organisations developing reporting rules (so-called standard-setters). Over the past four decades a small group of auditing firms (currently dominated by the 'Big Four'), working together with investors and listed companies have established a system of standard setting through private organisations, which has become dominant internationally.³ The International Financial Reporting Standards (IFRS) Foundation, through the International Accounting Standards Board (IASB), now oversees a set of International Financial Reporting Standards (IFRS) that are now applied in over 160 countries. Remarkably, although these accounting standards are developed by a private organisation, they are binding explicitly or in effect for most listed companies around the world.⁴

In response to investors' growing need for climate-related and social information, an additional organisation was created under the umbrella of the IFRS Foundation, the International Sustainability Standards Board (ISSB). As a symbolic touch, the creation of this body was announced at the 26th UN Climate Change Conference of the Parties (COP26). In its own words it is aimed at satisfying investors' need for sustainability information; notably, other types of stakeholders are not specifically mentioned in its statement of objectives:

The intention is for the ISSB to deliver a comprehensive global baseline of sustainability-related disclosure standards that *provide investors and other capital market participants* with information about companies' sustainability-related risks and opportunities to help them make informed decisions.⁵ (author's emphasis)

Not surprisingly, people from the investment community make up the largest group on the ISSB board: six of the 14 members have a financial investment background. Non-financial companies make up the second largest group, with four of the 14 members. Three academics (professors of accounting) are also included, as well as one person from a sustainability ratings firm.

In 2022 the ISSB published two draft proposals for public consultation ('exposure drafts'): one on General Sustainability-related Disclosures and one on Climate-related Disclosure Requirements. Neither proposal specifically mentions trade unions or workers' representatives.

Given the ISSB's ability to leverage its connection with the IFRS, ISSB sustainability standards have the potential to become the world-dominant standards for reporting on sustainability issues. However, the ISSB's clear orientation to investors' needs, the lack of trade union representation on the ISSB board, and the lack of reference to workers' representatives or trade unions in the ISSB draft standards raise the question of what relevance the ISSB standards will have for workers and their representatives.

³ See the work of Sebastian Botzem and Yuri Biondi on this development.

⁴ An important exception, however, is the United States, where Generally Accepted Accounting Principles (GAAP) still prevail.

⁵ See: <https://www.ifrs.org/groups/international-sustainability-standards-board/> (accessed 30 November 2022).

Corporate Sustainability Reporting Directive: an EU multi-stakeholder approach

Although sustainability reporting is not completely new, it lacks the long history, institutions and widespread practice of financial reporting. With the exception of some individual countries, such as France (whose ‘social reporting’ dates back to 1977), sustainability reporting has happened mainly on a voluntary basis and has been adopted by a limited number of companies. The leading comprehensive framework for reporting on environmental, social and governance issues with a multi-stakeholder approach is the Global Reporting Initiative (GRI), which was founded in 1997 by the Coalition for Environmentally Responsible Economies (Ceres) and the Tellus Institute, with the support of the United Nations Environment Programme (UNEP). It claims that over 10,000 organisations have used its standards.

In the past decade, however, EU legislators have decided that stronger reporting requirements are needed for companies. The first attempt was the EU Non-financial Reporting Directive (NFRD), which was passed in 2014. Although the NFRD was an important first step in sustainability reporting, it has received widespread criticism for its limited scope (only about 11,700 companies were covered), its failure to mandate a single set of standards which all companies must use, and its ‘comply or explain’ approach.

Not surprisingly, given these weaknesses, the NFRD was evaluated very negatively by a wide variety of stakeholders in a Commission public consultation in 2020. Not only trade unions, NGOs and sustainability rating agencies, but also a majority of investors, and even a substantial proportion of companies gave low marks to this directive. Some 71 per cent of respondents stated that there was a problem with the comparability of the information reported, 60 per cent said that the information provided lacked reliability, and 57 per cent saw problems with the relevance of the information. These percentages were much higher when companies were excluded from the pool of respondents. Companies also were dissatisfied with the NFRD, for example because the lack of standardised reporting rules resulted in them receiving multiple requests from ratings agencies, as each ratings agency had developed its own methodology.

Responding to this perceived need, the European Commission proposed the Corporate Sustainability Reporting Directive (CSRD) in April 2021. After a lengthy period of debate in the European Parliament and in the Council, there was political agreement in trilogue on the CSRD in mid-2022 and final approval in November 2022. The CSRD included a number of principles designed to remedy the weaknesses of the NFRD:

- To improve comparability: one set of European Sustainability Reporting Standards (ESRS) are mandatory for all companies falling under the scope of the CSRD.
- To improve relevance for a broader range of stakeholders: the CSRD contains the principle of ‘double materiality’, that is, the principle that sustainability reports contain not only information oriented towards investors on the impact on their investments (‘financial materiality’) but also on how stakeholders are affected (‘impact materiality’).
- To improve reliability: sustainability information is to be part of the company’s annual management report (which has a higher legal status than a separate sustainability report) and the information is to be audited by an external auditor.
- To improve orientation to international agreements and EU legislation: it is explicitly stated that the ESRS are to be oriented to the Paris Agreement, and the six environmental goals in the EU Taxonomy for sustainable activities⁶; in the social area, international human rights

6 The EU Taxonomy for sustainable activities, also known as the ‘green taxonomy’, defines which company activities promote sustainability along six environmental dimensions: climate change mitigation, climate change adaptation, the circular economy, pollution, effect on water, and biodiversity.

instruments (the UN International Bill of Human Rights, ILO core conventions, and the Charter of Fundamental Rights of the European Union) and the European Pillar of Social Rights are listed as references for the ESRS.

- To expand scope: a much larger number of companies are included under the CSRD in comparison with the NFRD. An estimated 50,000 to 60,000 companies will be covered: all large companies under the Accounting Directive, including not only listed but also non-listed companies. At the initiative of the European Parliament, non-EU companies with substantial business (>€150m revenue) and at least one branch or subsidiary in the EU will be covered.

In contrast with the ISSB's orientation to financial investors, the CSRD follows a multi-stakeholder approach which explicitly includes workers' representatives in a number of ways. First, the directive specifies that sustainability reporting include a number of items which are central to workers' interests: in addition to freedom of association and collective bargaining, companies are required to report on works councils, information, consultation and participation rights, and a wide variety of working conditions matters including adequate wages, social protection, health and safety, training and diversity policies.

Second, the CSRD delegates the development of the reporting standards to the European Financial Reporting Group (EFRAG), which is expected to implement a governance reform to ensure '[...] a balanced representation of relevant stakeholders, including undertakings, investors, civil society organisations and trade unions'. The European Trade Union Confederation, through its confederal secretary Isabelle Schömann, is represented on the newly created Sustainability Reporting Board, alongside two NGO representatives, a consumer organisation representative and an academic representative. Although these five seats allocated to 'civil society' are a minority of the 22 total seats on the board, nevertheless the explicit inclusion of trade unions, NGOs and consumers stands in strong contrast to the exclusion of these groups from the ISSB board.

Third, the CSRD contains explicit information and consultation rights for workers' representatives in sustainability reporting at the company level, which was a key ETUC demand. The original Commission proposal did not in fact include any such rights. However, during the deliberation process on the CSRD, the ETUC was able to work closely with the progressive parties in the European Parliament to get an amendment included which specifies information and consultation rights for workers' representatives in the design of companies' sustainability reporting systems. This amendment survived the trilogue process largely unscathed, and in the final version reads:

'The management of the undertaking shall inform the workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information. The workers' representatives' opinion shall be communicated, where applicable, to the relevant administrative, management or supervisory bodies.'

Thus a key result of the approval of the CSRD is that workers' representatives now have a formal right to be informed about and discuss with management the design and gathering of data for the sustainability reporting system. However, as sustainability reporting is quite technical, training for trade unions and workers' representatives will be needed to enable them to effectively exercise their 'voice'.

Conclusion

The CSRD represents a milestone in corporate transparency which should not be understated. Without accurate and extensive transparency on the social and environmental impact of firms it is

not possible to judge the ‘responsibility’ of their behaviour nor their progress towards mitigating negative impacts. In sharp contrast with the ISSB, the CSRD explicitly creates a role for workers’ representatives 1) by specifying a number of issues that must be reported on of central importance to trade unions and works councils, 2) by including trade union representation in the governance structure of EFRAG, the organisation responsible for developing the sustainability reporting standards, and 3) by creating information and consultation rights for workers’ representatives in sustainability reporting at the company level.

Nevertheless, as legislation alone cannot guarantee that actual practice will be in accordance with workers’ needs, three challenges remain. The first is that the reporting standards proposed by EFRAG are not ‘watered down’ once they are submitted to the Commission. The Commission has the power to amend these proposals before their publication as a Delegated Act, which opens up the danger that certain interests will successfully lobby for a significant weakening of these proposals. The second challenge is to further reform EFRAG to allow a stronger representation of trade unions and NGOs in the governing bodies; also, EFRAG must be properly funded from the EU budget, as trade unions and NGOs do not have the financial resources that audit firms and non-financial companies have. The third challenge is educating and empowering workers’ representatives to become active participants. This will involve capacity building both in terms of training workers’ representatives and exchange of good practices.

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