CSR Reporting in the EU under Directive 2014/95/EU: A Case Study of Danish Influence on EU CSR Policy
I

ABSTRACT
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Abstract

With the passage and transposition into law of Directive 2014/95/EU, the topic of corporate social responsibility (CSR) and non-financial disclosure (NFD) has taken on new significance, particularly within the field of international environmental law (IEL). CSR has been evolving rapidly over recent decades. The thesis project is roughly divided into three sections in an attempt to follow CSR policy from the EU down to the Member State, and into an individual company. The first part of this paper explores the evolution of CSR and NFD, and what it means in a European context. For many large transnational corporations, it is no longer a voluntary act, but one that is both expected from stakeholders, and demanded by customers. In some regards, CSR is a social construct, wherein private and public governance both being pushed to action by a more environmentally-minded group of stakeholders and consumers.

The second section looks into the legal obligation of Directive 2014/95/EU. The latest EU policy is a codification of this reality, pushing companies to make this transition from optional to obligatory. The Directive should keep the EU on the forefront of CSR activities and reporting, as well as drive greater harmonization between Member States. The law requires public-interest entities over 500 employees to report on their CSR activities, though detractors of the law argue that it does not go far enough—either in quantity of companies, or quality of reporting. Moreover, the law allows for omission of reports based on several nebulous justifications.

Finally, the third section is a case study of a Denmark and a Danish company, KK Wind Solutions, as the Member State and company keep up with the latest EU policy. If the EU is on the leading edge of CSR and NFD policies, then Denmark is one of the Member States leading the EU, which made it particularly interesting to explore. From there, we investigate ways that CSR and NFD policies can be improved upon, and what the future of EU CSR policy might hold.

Key words: Corporate Social Responsibility, Non-financial Disclosure, Directive 2014/95/EU, European Union, Denmark
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ABBREVIATIONS
COP: Communication on Progress
CSR: Corporate Social Responsibly
DBA: Danish Business Authority
DFSA: Danish Financial Statements Act
EU: European Union
GHG: Greenhouse Gas
GRI: Global Reporting Initiative
HR: Human Resources
IEL: International Environmental Law
ISO: International Organization for Standardization
KPI: Key Performance Indicator
NFD: Non-Financial Disclosure
OECD: Organization for Economic Cooperation and Development
QHSE: Quality, Health, Safety, and Environment
TEU: Treaty on European Union
TFEU: Treaty on the Functioning of the European Union
UN: United Nations
UNGC: United Nations Global Compact
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1 INTRODUCTION: CSR and Climate Change

Now more than ever, with new global average temperature records sent nearly every year,¹ we need to find sustainable solutions in addressing the problems associated with climate change. A vital cog in the machinery is the role of corporations; as a key driver of climate change, corporations can either be part of the problem, or part of the solution. Individual governments, or governments working together (i.e. the Paris Agreement) might try to mitigate their share of greenhouse gas (GHG) emissions, but without the cooperation of corporations within and beyond their borders, these efforts will likely be hampered.

In light of the failure of the Kyoto Protocol, and the ascension of the Paris Agreement to replace it as the main international instrument to combat climate change,² those of us studying climate change law and policy must recognize the ascension of bottom-up policy proposals as the dominant force in international environmental law (IEL).³ The European Union (EU) does not operate in a vacuum and therefore is not immune to this shift in policy and legal thinking, and its actions concerning the environment should be considered in this regard.

One of the ways the EU has attempted to bring corporations into the discussion of climate change is with Directive 2014/95/EU on the disclosure of non-financial information, essentially, a directive on corporate social responsibility (CSR) reporting.⁴ The new legislation, already transposed by 19 EU Member States,⁵ will increase the number of companies legally mandated to report non-financial information, including information related to environmental performance.⁶ However, this Directive is not a brand-new development, but rather only the next step in the continually evolving process in understanding corporations and their roles in society. The EU, and its predecessor the European Economic Community, has a long history of mandating greater financial disclosure of corporate entities, in the Accounting Directives, amended several times over the decades, starting in 1978 with Directive 78/660/EEC.⁷ This has

¹ Nuccitelli 2017.
² UNFCCC
³ Upton 2016, p. 2.
⁴ Directive 2014/95/EU.
⁵ European Commission 2017, section on Transposition Status.
⁶ Directive 2014/95/EU.
⁷ Directive 78/660/EEC.
since evolved into demanding more non-financial disclosure (NFD) from large corporations, culminating in the latest Directive, the main topic of this thesis project. More and more, CSR is seen less as a mere concept that companies can either choose to buy into or not, but as an obligation.  

1.1: Problem Statement

Climate change is at once pervasive as it is elusive. On one hand, there are no shortage of stories about the latest extreme whether event, record annual temperatures, or endangered animals or biospheres. On the other, actual solutions to the problem are hard to come by, and if it is discussed, it is often as a secondary concern after a related issue, e.g. sustainability. Indeed, just talking about climate change can be a problem in and of itself, as Garrett et al. writes, “Much climate change imagery is disempowering and suggests that many people fear climate change in the same way they fear death, as an inevitable disaster they would rather not think about.” Frustratingly, the issue of climate change with regards to CSR is rarely addressed. It is this discussion—about climate change, interrelated environmental, and social issues—that the new CSR reporting Directive 2014/95/EU hopes to engender among Europe’s largest corporations.

Not only is discussion of climate change disempowering, but the solutions to it are often seen as anti-free market. Indeed, this perception is so strong that “free market ideology is a clear hindrance to implementing corporate regulatory policy.” This perception does not seem terribly misguided, despite the fact that a carbon market failure is largely responsible for climate change in the first place. Free-market solutions are not going to be fully effective until the externality presented by the un-paid for damage caused by fossil fuel consumption are internalized into the global marketplace. If strong government action through command and control regulation is seen as an attack on free-market principles, and action still needs to be taken in order to curb GHG emissions, there needs to be other solutions that allow for flexible, solutions, allowing corporations to use their resources in order to address their carbon footprint in an efficient, even financially beneficial way. The hope is that increased NFD brought about

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8 Idowu—Schmidpeter—Fifka (eds) 2015, p. 504-505.
9 Garnett et al. 2015, p. 305.
10 Ibid, p. 305.
12 Stern 2006, p. 4.
by the Directive 2014/95/EU will promote transparency and accountability for the EU’s largest corporations, thereby working in tandem with other environmental initiatives to further incentivize continued reductions in carbon emissions.\(^{13}\)

There can be no real solution to the problem of climate change without getting corporate interests on board. Corporations, drivers of wealth and globalization, have also been the main driver of GHG emissions. So much so, that a mere 90 companies account for nearly two-thirds of GHG emissions.\(^{14}\) In short, corporations can be the drivers of innovation to help get us out of this mess, or they can further exacerbate it. However, international law as a whole, and IEL in particular—has largely neglected to deal with corporations, even big ones, instead choosing to focus on states as the main focus.\(^ {15}\) In this regard, the EU is unique insofar as it is in a better position to pass binding Regulations and Directives concerning environmental matters on corporations to work on a regional, if not global, level.

Of course, it is not just enough to get corporations to talk about climate change, but to act on it. Like everything else related to CSR and CSR reporting, this issue is not so cut and dry. In fact, “empirical evidence regarding this relationship is mixed.” In other words, for some companies, reporting leads to better performance, and in others, it does not.\(^ {16}\) And this brings us the crux of the issue: will the new Directive be able to promote increased CSR activities with regards to climate change? Or, is this just another way for corporations to engage in “greenwashing,” i.e. creating a brand of environmentally friendly activities, without the proof to back it up?

### 1.2: Research Objective

My main focus in this paper will be the legal obligations of EU Directive 2014/95/EU. In order to do so, I must first look into the background, nailing down exactly what CSR means in a modern context, to private entities, public stakeholders, and governments. I am approaching this question within the IEL perspective, particularly concerning climate change mitigation and adaptation. It is my view that regulating non-financial reporting is only important if it can help promote better real-world outcomes concerning climate change. I am hoping to achieve a

\(^{13}\) SWD(2013) 127 final, p. 6.

\(^{14}\) Goldenberg 2013.

\(^{15}\) Morgera 2009, p. 25.

\(^{16}\) Hummel—Schlick 2016, p. 455.
thorough understanding of what is necessary for corporations to comply under the Directive. To do so, I must first answer the background question: what is CSR and what is its role in climate change mitigation and adaptation? I hope to define what exactly CSR and CSR reporting are. Moreover, I will look into the development of CSR as a concept, what it means in the European context, and how it plays a role in addressing GHG emissions and combating climate change.

Then, I will get into the specifics of the Directive: its development and goals, its scope, how the law affects companies in practice, and its role in achieving the Europe 2020 goals. I will briefly describe the development of the Directive, and its intended purpose. An important aspect of the Directive is its encouragement to use on pre-existing voluntary frameworks (e.g. United Nations Global Compact (UNGC)) as a guide for participating corporations. As such, I will also need to discuss the differences and similarities between voluntary frameworks, and what is necessary for companies to comply with these instruments.

Finally, I will conduct a case study of one company, a wind turbine component company out of Denmark, KK Wind Solutions, to get an insider’s view of the process of developing a CSR report. To do so, I must first look at how the law was transposed into Danish national law, and how this law compared or contrasted to existing Danish national CSR policy. Although it is a small sample size, I believe it will be instructive to hear what they have to say about CSR as a concept, and its larger importance for the company, both in internal and external benefits.

It is my hope to draw a through line, from the EU, down through Member State implementation, and local (corporate) action, in better understanding the past, present, and future of CSR reporting. Additionally, I hope to show that the whole notion of CSR and its associated reporting is evolving from mere voluntary “nice to have” corporate action, to more of an obligatory responsibility being imposed on large corporations from both state and non-state actors.

1.3: Methodology

To successfully answer my questions, I have engaged in a mixed methodology approach, including explanatory and doctrinal research, as well as semi-structured qualitative interviews. My first question: “What is CSR and what is its role in climate change mitigation?” is a

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17 Directive 2014/95/EU
background question, requiring an explanatory approach. I will delve into academic sources, and look at this history of CSR as it pertains to IEL, particularly in an EU context and with regards to climate change. Additionally, I will look at how the EU’s definition of CSR has changed, and how that is driving progress forward in a legal sense. I will give a rough overview of the landscape of voluntary CSR reporting and discuss why the EU felt additional legal action was necessary. This should give me a good foundation from which to build upon going forward.

For my second question: “What are the relevant legal obligations on large corporations under CSR Reporting Directive (Directive 2014/95/EU)?” is a legal question and therefore requires a doctrinal approach. I will look at the Directive itself, including its development, as well as the internal communications from the Commission to the European Parliament and The Council, as well as internal Commission staff working documents, and external research that was consulted to better explain the thought process behind the development of the Directive. I will also research academic sources to see what scholars are saying about this and other similar laws concerning CSR and corporate accountability. Additionally, I was able to email and receive answers from a representative from the Commission about questions concerning transposition and implementation of the Directive.

My third main question: “What does CSR reporting look like in practice?” will be a case study of a Danish corporation who has been producing CSR reports since 2010, KK Wind Solutions. I will do a doctrinal review of Danish national law concerning CSR policy, and the transposition of Directive 2014/95/EU, as well as many soft-law documents provided by the Danish Business Authority (DBA, Erhvervsstyrelsen in Danish). As above, I will supplement this legal research with academic sources. Additionally, I will conduct a semi-structured qualitative interview with Christina Skagen, a special advisor for the DBA. As for KK Wind Solutions, I will conduct semi-structured interviews with Anne Eliasson from Human Resources, Carina Britorn Verstergaard from Communications, and Kim Pedersen from Quality Assurance to get a better view of their CSR activities and reporting. These representatives are directly responsible for producing the yearly Communication on Progress (COP) report for the UN Global Compact for KK Wind Solutions, which I hope will produce some interesting findings in terms of how CSR reporting laws effect the company, and why they chose one reporting framework over others.

18 KK Wind Solutions.
Additionally, it will be interesting to hear their thoughts on the process overall, potential improvements, and what they believe can be gained for both their company and its stakeholders.

For my interviews, I will adhere to proper methodology practices, to ensure all parties involved consented to being recorded and published in this thesis. A full transcript of the interviews are available upon request.

1.4: Scope

The scope of this thesis is fairly narrow, cutting a slice from EU level, down through Denmark (Member State level), to KK Wind Solutions (local/corporate level). Although it may be difficult if not impossible to perfectly extrapolate what is going on in Denmark, and with one company, no less, to the rest of CSR within a European context, I hope I will show sufficient evidence that my findings extend beyond the borders of Denmark. That said, Denmark has been ahead of the curve when it comes to both environmental and CSR policy. In fact, the “Danish Model” was one of the inspirations for Directive 2014/95/EU.19 As such, I believe that by studying the current state of national CSR policy and implementation in Denmark, we could gain a great deal of insight into the future direction for EU policy within this field.

Moreover, I will only focus on the CSR reporting aspects of this Directive, aimed at improving inadequate transparency, and not the aspects dealing with diversity.20 Although diversity is an important issue, I wish to remain focused on the issue of transparency, especially with regards to the issue of climate change.

It is worth mentioning that formalized annual reports are only a fraction of corporate CSR reporting. Although this project will focus primarily on these NFD reports that are often released by large corporations, this is only a component of the larger overall picture. There are many ways for companies to implement and communicate CSR strategy beyond the annual, official CSR report. Companies may choose, for instance, to layout their environmental vision within their official mission statements,21 or to use a combination of social media, their own official website, and even advertisements if they are sufficiently proud of their record.22 (Or if the

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20 Directive 2014/95/EU.
company in question has sufficient reason to obfuscate their record, but more on that later much later).

1.5: Outline

This thesis on CSR reporting consists of eight chapters, in three sections. The first section, consisting of this, the introduction, and Chapter 2: What is Corporate Social Responsibility?, will focus on the background question, exploring the concept of CSR as it has evolved over time, as well as how and why companies choose to report, even in the absence of regulation.

Section two, consisting of chapters 3 and 4, will focus on the hard and soft legal issues surrounding CSR reporting within the EU. Chapter 3: EU CSR Reporting Directive will focus on Directive 2014/95/EU, describing its development before going into more substantive legal issues concerning its implementation and relevant legal obligations. I will also briefly examine the Directive in the context of the EU’s goals concerning climate change. In Chapter 4: The CSR Reporting Directive and Voluntary Initiatives will focus on some of the most popular voluntary frameworks and guidelines organizations can use to better engage in NFD, and examine some of the pros and cons of each.

Section 3 consists of chapters 5 through 7, and attempts to take what we have learned so far about the development of CSR reporting laws, and tries to put them into a real-world context. Chapter 5: Case Study: CSR in Denmark explores the interplay between EU and Member State policy, and digs into Danish corporate culture surrounding CSR. Chapter 6: KK Wind Solutions goes one step further, and takes a look at how one company deals with the current regulatory framework, as well as any potential benefits or shortcomings that may arise therein. Chapter 7: Improving CSR Reporting, I will attempt to use my knowledge of the subject to propose ways in which CSR and CSR reporting can be improved in the future, given everything I have uncovered so far. Finally, Chapter 8: Conclusion, will be a summation of this thesis project.
2 WHAT IS CORPORATE SOCIAL RESPONSIBILITY?

The question that is the namesake of this chapter—and therefore the background question on which the rest of this thesis is built—is an exceedingly difficult one to answer. Simply, CSR means different things, to different stakeholders, across different countries and industries, at different times. I could go mad (and nearly did) trying to nail down a working definition. In the end, I decided on a more inclusive approach, realizing that CSR is more of a social construct than anything else, and therefore those individual definitions are important when looking at how corporations interact with the local and global economy, and stakeholders in a socially responsible way (or not). In my view, the EU definition of CSR as “the responsibility of enterprises for their impacts on society,” while broad, serves the needs of this thesis project well. Therefore, the EU definition shall be my own.

Despite aforementioned differences, we can try to connect common themes and trends within CSR. As stated in both the Preface and Chapter 1, CSR is evolving from a mere voluntary concept to an obligatory responsibility. It is this theme of an evolving social construct that I hope to capture in this chapter and beyond.

While CSR is the most common term being tossed around these days, there are many other similar terms for more or less the same thing, including but not limited to: corporate social performance, corporate social disclosure, corporate social reporting, and many other iterations along these lines. These terms might be used to indicate slightly different aspects within CSR, or even interchangeably with each other, but for this paper I will simply use CSR as an umbrella term for ease of understanding. Moreover, as alluded to in Chapter 1.4, there are numerous ways beyond the official annual CSR report that corporations can disclose non-financial information. As Garnett et al. argue the importance of mission statements in the following passage:

Given the centrality of mission statements to organizational communication, and following Epstein, we posited that the extent to which they incorporate aspirations for poverty alleviation, biodiversity conservation, responding to climate change, gender equity, and sustainable practice,

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which we use here as a term to cover actions undertaken consistent with the Brundtland definition of sustainable development, such as renewable energy, pollution minimization, recycling, and environmental restoration, is possibly more a fundamental measure of organizational sustainability than CSR reporting.  

Regardless, I will only mention these alternative examples of NFD here, to note that they exist and may be part of a larger CSR strategy, but not the primary focus of this paper. There is a larger social and cultural context which I will get into below, but suffice it to say that there are many ways—official and otherwise—to report CSR activities.

There is no generally agreed upon definition of CSR, or for that matter, purpose. Even if the definition and purpose are agreed upon, the interpretation of it varies significantly. It would be easy to point to the gap between public and private interests as the main conflict in nailing down a definition and purpose, however it is not so simple. These differences exist between countries, and between companies. These differences can include whether CSR should be mandatory or voluntary, whether private and public governance is even compatible, and what kinds of activities should fall under the CSR umbrella.

Indeed, I have seen CSR alternatively defined as a “notion,” a “concept” (be it managerial or entrepreneurial), a “tool,” a “strategy,” and a “responsibility” all within the space of a few pages in a single book. If authors, working together toward the study of CSR cannot come up with a meaningful definition, what chance to companies, governments, NGOs, and shareholders from different countries have to agree on a singular, all-encompassing meaning? In the aforementioned book, Corporate Social Responsibility in Europe, the authors found it just as useful to define what CSR is not, “CSR is not mere philanthropy, altruism or ethical action. Nor is it a top-down approach. It is a broad notion that can be adapted to serve an array of corporate and national conditions. While an understanding of the term is necessary, the concept incorporates many areas of corporate governance and should not be restricted by a strict definition or mantra.”

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25 Garnett et al. 2015, p. 299.  
is and what it means within corporate governance, but perhaps these differences are not as severe as they appear on the surface.

Just because the various definitions bare cosmetic differences, it does not mean that these differences are all that meaningful in the end. According to Alexander Dahlsrud’s analysis of various corporate CSR definitions, “the existing definitions are to a large degree congruent.” Dahlsrud essentially argues that the variation between seemingly divergent CSR definitions do not in fact represent a major difference in meaning. Moreover, businesses should strive to understand CSR less for its individual applications, but rather how it should be interpreted locally and within the larger context of the specific industry in question, “The challenge for business is not so much to define CSR, as it is to understand how CSR is socially constructed in a specific context and how to take this into account when business strategies are developed.”

In other words, CSR is an extension of our larger social morality, and thereby helps explain the differences we see, especially between countries. We might live in a world that is more globalized than ever before, but there is still a wide-range of socially acceptable versions of capitalism, ranging from a more laissez-faire approach—wherein the main moral concern of a corporation is toward its stockholders—to a more socialist approach—wherein the main moral concern is the society, or even the global environment.

Dahlsrud, in his analysis, recognizes five key dimensions common in CSR definitions: the stakeholder dimension, the social dimension, the economic dimension, the environmental dimension, and the voluntariness dimension. The last component—voluntariness—is perhaps the one that creates the most friction between public and private sectors. Many private entities wish to keep CSR strictly in the voluntary, and hence unregulated, realm. By their understanding, any CSR action above and beyond the minimum level of regulation is voluntary, therefore it cannot be regulated. Indeed, according to many detractors who are opposed to CSR regulation, any regulation at all would destroy the very concept of CSR. This line of reasoning is not particularly persuasive in my view, whereby, if taken to a natural conclusion, any action that could be considered even marginally beneficial to society (e.g. hiring a single employee)

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33 Ibid, p. 4.
34 Kinderman 2016, p. 33.
could then be considered CSR, and therefore beyond the purview of regulation. Much to the chagrin of many private entities, no doubt, this is not the way the world operates. Additionally, by raising standards, governments can encourage a realignment of social expectations and norms, thereby creating a new base level by which corporations must compete. We will return to this idea of CSR as a social construct in the next section.

Instead of focusing too much on what CSR is and how it manifests in company reports, we should think of it more in a historical and evolutionary context. For decades CSR strategy has been moving from purely voluntary to more and more obligatory. From something that is nice to have, to something that is necessary—both legally, and competitively. Instead of defining CSR by a standard that I arbitrarily set, I will try to understand it within this larger, more nebulous construct, one which best encapsulates this trend in CSR activities and reporting, and try to determine what it means within the present context, and ways in which it can be improved in the future. Again, I feel the EU definition, as broad as it is, encompasses all of these components well, and it provides a sound foundation from which to proceed.

In addition to the wide-variety of definitions surrounding CSR, there is the additional problem of defining sustainability and sustainable development, a constant source of conflict among scholars and corporations since its inception 30 years ago in the Brundtland Report. The idea of the various conceptions of sustainability, particularly from a business perspective, is too far afield for this academic endeavor. Regardless, much like broader conceptions of sustainability, the question of what exactly that means from a business sense is still hotly debated. I only bring it up to highlight the various problems associated with any discussion of CSR and how it should be measured, and how a problem such as different definitional parameters can slow down progress.

In 2011 the Commission explicitly changed their definition of CSR:

The Commission puts forward a new definition of CSR as ‘the responsibility of enterprises for their impacts on society.’ Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social

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36 Lankoski 2016, p. 847.
responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of maximizing the creation of shared value for their owners/shareholders and for their other stakeholders and society at large; identifying, preventing and mitigating their possible adverse impacts.38

By the commission stating explicitly that CSR is a responsibility of the enterprise, it almost explicitly goes against the idea that CSR is a wholly voluntary process. This shift from “concept” to “responsibility” is a good place to begin as we continue unpacking what CSR means in the current atmosphere.

2.1: Development of CSR as a Concept (or Responsibility)

2.1.1: From Concept to Responsibility

An important—perhaps the most important—recent development in our understanding of CSR, particularly in the European context, came when the European Commission changed the definition of CSR from a “concept” to a “responsibility.” The previous definition from 2001 read, “A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”39 The current version, as put forth by the Commission in the 2011-2014 Renewed Strategy for CSR Report, reads, “The responsibility of enterprises for their impacts on society.”40

In one sense, the new definition is far broader than the previous one, insofar as it does not specifically enumerate environmental and social concerns, leaving the door open for other non-social and non-environmental impacts to be included in future CSR. It is difficult to say whether this failure to explicitly mention social and environmental issues attempts to widen the purview of CSR, or whether the focus on social and environmental concerns is considered such a given, that it need not be mentioned in the official definition. As a whole, the EU certainly does not downplay the importance of social and environmental issues, especially the matter of diversity, which is listed as one of the three main objectives for Directive 2014/95/EU.41

41 SWD(2013) 127 final, p. 23.
Another important distinction is the elimination of the “voluntary” component. The voluntariness aspect of CSR is one that seems to be hotly debated in the field. As mentioned above, businesses and pro-industry lobbying groups like to argue that CSR can only be voluntary, but this new definition seems to contradict that notion, both implicitly (by removing “voluntary”) and explicitly (by inserting the word “responsibility”).

2.1.2: CSR as a Social Construct

Although I will get into the legal obligations of CSR reporting under the Directive in the next chapter, it is important to see CSR beyond what is strictly required from a legal perspective. Whether or not a company is strictly required to disclose non-financial information, it is now seen as more or less of a requirement for large transnational corporations; by 2010, all Fortune 500 companies reported CSR activities. Within the EU, even prior to Directive 2014/95/EU going into effect, the number of companies producing CSR reports were increasing on average 8-9% per year. Given these developments, there is an expectation, if not necessarily a legal mandate, for companies to comply with a certain set of rules and norms both internationally and within the EU.

However, not all CSR reporting is created equally, nor does it happen in a vacuum. As mentioned in Chapter 1, climate change remains a topic that many would prefer to avoid, if at all possible. CSR reporting might be a way to increase transparency and accountability, sure, but it can also act as a marketing tool, and no company wants to be associated with the unfolding crisis that is global man-made climate change (regardless of how much they may or may not be responsible). In this regard, CSR could be seen to operate within an institutional theory framework, whereby the company is, “part of the larger social system in which it operates.” Of course, corporations are products of the society around them, managed and staffed by locals, and subject to economic forces. Additionally, there is such a thing as corporate culture, which in part is influenced by society around it. There is a cyclical component to nailing down any definition of CSR, wherein corporations, individuals, and society are inextricably linked.

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42 Kinderman 2016, p. 35.
43 Garnett et al. 2015, p. 298.
44 Kinderman 2016, p. 35.
45 Garnett et al. 2015, p. 305.
46 Montecchia—Giordano—Grieco 2016, p. 44.
“because CSR is a social contract there is a need to understand not only what corporations and academics believe CSR to be, but also what society believes CSR to be and thus how it is operationalized in practice.”48 And the corporate culture is slowly becoming more aware of the importance of acting social responsible:

It helps that responsible leaders in the corporate world are increasingly recognizing the risks associated with climate change and are taking self-directed actions to mitigate their contributions and adapt their operations. It helps that voluntary corporate sustainability reporting has become more mainstream in the last 10 years and is becoming more standardized. The trends point to more and more corporations adopting climate-friendly policies and activities which can be a positive force for the demand and implementation of climate policy.49

Ostensibly, this makes sense. As society evolves, so too must corporations, if for no other reason than the profit motive. This is in keeping with the currently ascendant bottom-up model in IEL, particularly concerning climate change, “In democratic governments, there is the need for grass-roots support in order to develop and implement effective policy. Rather than distractions, individual and corporate efforts are generally necessary prerequisites for implementation of and receptiveness to government action.”50 It is not just that this action is altruistic or beneficial, but a necessary part of the process that modern societies must go through in order to affect change.

If corporate culture is truly a microcosm of the larger society as a whole, we would expect to see a great deal of diversity in thinking within an organization, just as we see outside an organization. In this regard, so too can the conception of CSR vary within an organization, especially at larger corporations with a variety of specialized departments.51 Essentially, just as social constructs of what CSR is differs between countries and industries, it can differ between units and colleagues within the same organization. As such, CSR reporting is even more important for setting a clear statement of intent for everyone within the company, and creating a culture that is friendly to the further development of CSR activities. “Over time [these] different perspectives can be refined and shared. The process can lead to a common view of

48 Ibid.
49 Marland—Kowalczyk—Cherry 2015, p. 935.
50 Ibid, p. 934.
51 Montecchia—Giordano—Grieco 2016, p. 43, 49.
what sustainability is for the organization, becoming culture and identity.”52 In other words, it is not just an important document for addressing concerns of external stakeholders, but also for engendering a mindset within the particular corporate culture.

2.2: CSR and Climate Change in IEL

One of the most stinging criticisms of international law, environmental or otherwise, is its enforceability.53 This is doubly true for transnational corporations. States are the actors in international law, not corporations. Therefore, it is up to the states to enforce any IEL agreements within their borders, leading to an inevitable disparity between how corporations are treated between countries. For transnational corporations the issue is even more complicated: which country is ultimately responsible for enforcing environmental regulations on a company?54

This problem is not a trivial one (although admittedly it is one far outside the purview of this thesis topic). The problem is even more pressing in our current environment, with climate change creating tangible problems including inter alia increased flooding from extreme weather events and higher sea levels, droughts, and resource shortages. When the global community came together in December 2015 to produce the Paris Agreement, it was a major accomplishment, but one which may or may not prove to be effective in keeping global temperatures to the stated goal of below 2º C.55 But again, this was an agreement concluded between states not corporations. When it does mention private entities, as it does in Article 6, paragraph 4(b), it is still only incumbent on the states (Parties to the convention) to ensure their participation, “To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party.”56

Despite the fact that private entities do cause a great deal of transboundary pollution and GHG emissions, the international community is still unwilling or unable to deal with them directly. As a supranational institution overseeing the activities of some of the wealthiest nations (and

52 Ibid, p. 49.
53 Morgera 2009, p.34.
54 Ibid.
55 UNFCCC.
56 Ibid.
some of the largest GHG emitters) the EU is in a unique position to make a significant impact in terms of global GHG emissions.

2.3: Why Report?

Undertaking CSR—be it obligatory or voluntary—is one thing, reporting it is another. Although more companies may fall under the legal obligation posed by Directive 2014/95/EU, there is still a great deal of leeway as to what must be reported under the law depending on the country and how the law is transposed. However, even before the passage of the newest legislation guiding non-financial disclosure, there was a steady uptick in the number of companies releasing CSR reports.⁵⁷

These non-financial disclosure reports are often important for both the private entity and the public at large. Some of the benefits for a corporation include *inter alia*: a direct line of communication with stakeholders including customers, boosting brand image, and analyzing and monitoring socially beneficial actions taken so far.⁵⁸ The public, in turn, gains insight into the scale and stated goals of an enterprise’s operations, thereby increasing transparency.⁵⁹

There are legitimate complaints that the new Directive does not go far enough to increase the number of reporting companies, and therefore, transparency,⁶⁰ but certainly many corporations are seeing the benefit of releasing CSR reports, either as an integrated yearly report, or separately.⁶¹

2.3.1: “Only What Gets Measured Gets Managed”

In SWD(2013) 127 final, the Commission used this common expression to highlight the importance of transparency financial disclosure, thereby logically extending this expression to NFD, “Extending such reasoning to non-financial information, evidence suggests that the lack of transparency has a direct impact on non-financial performance: if non-financial aspects are not measured, they cannot be properly managed.”⁶² In this regard, non-financial disclosure is

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⁵⁷ Kinderman 2016, p. 35.
⁵⁸ Krištofík—Lament—Musa 2016, p. 158.
⁶⁰ Kinderman 2016, p. 34-35.
⁶² SWD(2013) 127 final, p. 16.
not just important for us stakeholders out in the public, but for the corporation itself, in order to better manage and examine their own policies. NFD is often spoken about with the public in mind, ie. for the benefit of society at large, but it can also benefit the company, if the CSR report is used in an honest and introspective manner. Regardless of whether or not the company in question is only engaging in CSR reporting in order to greenwash their record, the point remains that they can only improve their non-financial performance—whether under current management, or future—by first examining their non-financial performance. I will delve further into this topic below.

2.3.2: Voluntary Disclosure vs. Legitimacy Theory

The answer to the question of “Why would corporation disclose non-financial information voluntarily?” is often discussed in terms of voluntary disclosure theory versus legitimacy theory. Voluntary disclosure theory can be described as, “Superior sustainability performers choose high-quality sustainability disclosure to signal their superior performance to the market.” Whereas legitimacy theory is defined as, “Poor sustainability performers prefer low-quality sustainability disclosure to disguise their true performance and to simultaneously protect their legitimacy.”

There is a great deal of evidence to support both theories, so much so that Hummel and Schlick argues voluntary disclosure theory and legitimacy theory are not mutually exclusive. Instead, they are “two sides of the same coin.” Companies with better track records are more willing to disclose their information, whereas companies with worse records try to hide it through greenwashing. Essentially, they argue, both theories are true. On a purely common sense level, this would make sense, and there are real-world examples supporting both cases.

In support of legitimacy theory, we see strong evidence that mining and resource extractors—companies with generally the worst environmental profile, and therefore the most to gain from the perception of transparency and a positive sustainability profile—are more willing to engage in CSR reporting, not less:

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63 Hummel—Schlick 2016, p. 455.
64 Ibid.
The reasoning of legitimacy theory is thus supported, suggesting that poor sustainability performers disclose low-quality rather than high-quality sustainability information to manipulate public perceptions regarding their sustainability performance. Because low-quality information typically lacks reliability and comparability, it is particularly useful for disguising a firm’s poor sustainability performance while still contributing to a sustainable company image.65

There is a cost associated with disclosing information, even if that cost is not readily apparent. For the companies with the worst sustainability profiles, it is more important to at least have the appearance of compliance. This perception, too, is difficult for even well-meaning resource extractors to overcome; many actively seek to boost credibility through CSR activities and reporting.66 However, to most in the viewing public, CSR reports can be intentionally obscure and hard to read, full of codes that will only make sense within a particular industry.67 Additionally, some companies will release far more information than they need, thus effectively burying any potentially damaging news under a mountain of mundane news. In this sense, the companies operating under legitimacy theory can have their cake and eat it too: they have the appearance of being forthcoming and transparent, but by releasing so much information, and doing so in a hard-to-read format, they successfully obfuscate their environmental records.68

An example of legitimacy theory is BP, which, prior to the Deepwater Horizons oil disaster had what was widely considered an exemplary CSR reporting record. According to Larry Catá Backer:

Before the spill, BP enjoyed an international reputation as a model of transparency, winning over “many of the industry’s toughest skeptics, including environmental groups and social investing mutual funds. It routinely was rated as among the most transparent companies in assessments of governance and transparency. BP’s annual reports contained substantial reporting on social and environmental issues. Its Communications on Progress (COPs) for the years 2009 and 2010 conformed to the UN Global Compact (UNGC) requirements. The reports were not technical and detailed. Instead the sustainability reports reflect an attempt to simultaneously allay concerns

65 Ibid, p. 469.
68 Backer 2012, p. 130-133.
regarding the company’s environmental practices, entice potential investors, and demonstrate the company’s commitment to fulfilling the requirements of the GRI and UNGC reporting schemes.\(^69\)

Now, as we will see from the case study in Chapter 6, fulfilling the requirements of the UNGC is not particularly difficult. Regardless, BP clearly felt it had a great deal to gain by at least appearing environmentally friendly, even if engaging in unsafe, and ultimately destructive ways. The problem of greenwashing, which will be discussed at greater length in Chapter 7, remains a problem, and certainly muddies the waters when discussing the benefits of NFD. As alluded to above, BP inadvertently highlighted that greenwashing is particularly a problem for resource extractors, which understandably want to be seen in a more positive light.

On the voluntary disclosure side of things, a good example from my research was the LEGO group. The world’s top toy manufacturer made headlines the world over by opening up a Sustainable Materials Center, with the stated goal of using sustainable materials for its products by 2030. Impressive for what is essentially a plastics company. Moreover, LEGO recently committed to being carbon neutral by 2020, with the help of recently opened offshore wind farms to offset their carbon footprint.\(^70\) Needless to say, when a company commits $150 million to sustainability projects,\(^71\) it will want use said CSR action to its benefit.

The vast majority of companies fall on a spectrum between the extremes represented by these two companies, and therefore the two models of voluntary disclosure theory and legitimacy theory.\(^72\) Forgetting, for a moment, taking each company as a whole on this spectrum, it is easy to imagine companies putting into action successful CSR policies in one area and not another (e.g. good on the issue of gender equality, but not the environment). Therefore a company could want to market their more positive behavior in the rubric of voluntary disclosure, while legitimizing their less positive actions with qualitative reporting.

2.3.3: Internal vs. External Benefits

The next dichotomy to look at is the benefits for the company and for stakeholders outside of it. The Commission sums up many of the advantages in both categories with the following passage,

\(^{69}\) Ibid, p. 130.

\(^{70}\) Mainwaring 2016.

\(^{71}\) Brascia 2015.

\(^{72}\) Hummel—Schlick 2016, 455.
“Overall, the preferred option is expected to bring benefits both at internal (i.e. better employee relations, improved management systems and internal processes, etc.) and external level (i.e. enhanced reputation, better perception by and dialogue with stakeholders, easier access to capital).”\(^{73}\) This is a non-exhaustive list, but it is important to note the wide range of benefits that NFD can pose. These benefits are not always so easily categorized. For instance, better employee relations can help with enhanced reputation, and easier access to capital can easily help the company continue to improve their own performances.

Internal benefits are very often overlooked when discussing CSR reporting. They shouldn’t be. However, the problem is that many of the financial benefits to better non-financial performance are not readily apparent in the short term. In a world where quarterly reports are king, it can be difficult to promote this kind of medium and long-term thinking. Regardless, there is a growing understanding, particularly within the academic community, but also in general. The Commission acknowledges, “A growing body of academic research indicates a positive correlation between better non-financial and financial performance, indicating that front-running companies on sustainability issues tend to outperform their competitors in financial terms, particularly over the medium (3-5 years) to long term (5-10 years).”\(^{74}\) The issues of sustainability and climate change are obviously long term problems, and require long term solutions. Companies may out of habit resist certain regulatory constraints (including mandatory CSR reporting), but the benefits posed by such regulation is two-fold: (1) as mentioned above, the medium and long term financial gain is well documented, and (2) companies will not be put at a competitive disadvantage in the short term (regardless of where their competitors are headquartered within the EU).

2.4: CSR and the “Smart Mix”

The phrase “smart mix” can be a bit of a buzzword around private-public governance, but the idea is sound: to provide more flexibility for private organizations to act in the public interest, essentially using the power of the free market to achieve goals through reducing inefficiency. In short, and as we will get into in far greater detail in the coming chapters, EU CSR policy is based on this idea of “smart-mix” governance. The Commission refers to the policy enshrined

\(^{73}\) SWD(2013) 127 final, p. 37.
\(^{74}\) Ibid, p. 19.
in Directive 2014/95/EU as both a “smart-mix” and a “smart lever,” and it is the view of the Commission that EU CSR policy should try to incorporate both the benefits of government regulation and voluntary private action. That’s the idea, anyhow. Daniel Kinderman explains “smart mix” policies below:

Unlike highly prescriptive ‘command and control’ regulation which specifies in detail what companies/managers must do and how they must do it, a smart mix leaves ample scope for entrepreneurial and managerial discretion and voluntary action. In this respect, a smart mix has much in common with “responsive law,” which is characterized by “openness” and “perceives social pressures as sources of knowledge and opportunities for self-correction.” One current example of the smart mix is the EU’s new non-financial reporting Directive, discussed in detail below, which states that companies must report on their social and sustainability activities and performance but does not specify in detail what sustainability programs must be in place or how reports must be written.

In returning for a moment to the dichotomy between voluntary disclosure and legitimacy theories, Kinderman utilizes some far more brutal terminologies, “cooperative member of civil society” vs. “unruly predator.” Although he was discussing corporations within the context of their support for so-called “smart mix” policies, I think it also fits well within the context of these reporting theories. In this regard, he clearly feels most corporations fall into the “unruly predator” (legitimacy theory) approach, due to their continuous attempts to reduce obligatory reporting. “In this alternative view, capitalists are unruly, restless, and subversive. Even if they are unable to prevent public authorities from implementing regulations, they will strive to weaken them as much as possible.”

Kinderman uses the evidence of corporate lobbying to weaken or kill CSR reporting measures within the EU and beyond, including Directive 2014/95/EU, to support his claims that corporations can act as a serious impediment to even low-levels of regulation. Indeed, corporations utilizing legitimacy theory to obfuscate their non-financial record would be

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77 Ibid, p. 32.
incentivized to keep reporting as voluntary and varied as possible, to better help promote the idea that they are a company which is behaving in the public interest.

Although skepticism is justifiable in this department, I believe Kinderman goes a little too far in his attempts to vilify all corporations and business-friendly lobbying groups. It is important to continue returning to the idea of CSR as a social construct, one which has a great deal of interlinking and sometimes conflicting components, and which is still evolving.

Pure command and control regulation can be burdensome on private companies, and perhaps even harmful on a long term basis by preventing new, more flexible, more efficient and cost-effective policy instruments to be adopted. On the flipside, purely voluntary measures leave too much to the discretion of private entities, and therefore, they might not act in the public interest, even in this case where it is in their long term interest to do so. It is this tightrope that smart-mix policies hope to walk.

2.5: Conclusions

The above chapter tried to outline some of the important discussions surrounding CSR and NFD. While settling on a specific definition of what CSR is can be challenging, I hope I framed it in a way that is easy to understand, even if it is a bit nebulous around the edges. The definition may continue to evolve, but the overall trend has been from a voluntary concept to an obligatory responsibility put upon large corporations by governments, stakeholders, and in many cases management. This evolution is highlighted by the fact that even without strong (or any!) regulations, the world’s largest companies are still choosing to engage in CSR activities and reporting of their own volition.78

Another important aspect to keep in mind going forward is the idea of CSR as a social construct.79 One of the reasons CSR has so many definitions is precisely because it means different things, to different people, in different industries, in different countries, with different stakes in different organizations. Further, the creation of voluntary CSR policy within an organization is a necessary step in the acknowledgement of its importance in society.80 Thereby

78 Kinderman 2016, p. 35.
80 Marland—Kowalczyk—Cherry 2015, p. 934.
a feedback loop can be created, where voluntary “good” behavior by companies are not just admired, but expected.

In an attempt to visualize the basic questions of what is CSR and how does its development fueled within its social construct, I’ve developed the following diagram to show a broad overview of this process. In short, I wanted to capture the cyclical nature of the public, government, and corporate interactions. Under the right conditions, this can create a positive feedback loop wherein more transparency and CSR action creates the added expectation of even more transparency and CSR action, both in a legal and practical sense.

![Figure 1. Visualization of CSR strategy and reporting as a social construct.](image)

However, when studying the phenomenon of NFD, we should be duly skeptical of companies’ self-reporting practices, as we have seen examples of both voluntary disclosure theory and legitimacy theory. This dichotomy would seem to indicate a need for stronger regulatory policy instruments. I am not alone in this assessment, as we will see by the EU’s response to this problem with Directive 2014/95/EU in the following chapter. This Directive is the result of a
smart-mix line of thinking, and an attempt to further push the notion of CSR from a concept to a responsibility.\textsuperscript{81}

\textsuperscript{81} SWD(2013) 127 final, p. 30.
3 EU CSR REPORTING DIRECTIVE

3.1: Developing the Directive

Effective governance is of course a process. The EU has long been derided as slow-moving and overly bureaucratic, accusations which could justifiably be leveled at any large organization, governmental or otherwise. So it can be expected that any piece of legislation takes time to develop, but even with this knowledge, I was surprised just how long this Directive was in the works. Directive 2014/95/EU first started the legislative process in the context of the Single Market Act and in the hopes of “…building on the ‘EU 2020 Agenda’” as part of “The Responsible Business Package” which includes amending both the Accounting Directives and the Transparency Directive.  

Between September 2009 and March 2010 the Commission hosted multi-stakeholder roundtables on the topic of CSR and NFD practices, and public consultation by companies to the Commission occurred between November 2010 and January 2011. The Center for Strategy and Evaluation Services also conducted a cost/benefit analysis of 71 large EU companies from 8 Member States (Denmark, Germany, Spain, France, Italy, Netherlands, Poland, and the UK).

The Commission recognized the need for a minimum level of harmonization of CSR policy within Member States, identifying two main problems. According to the impact assessment within Legislative Proposal 2013/0110(COD), the purpose of the amended directive was two-fold: (1) to improve transparency of non-financial information, “the analysis has identified both a market and a regulatory failure as underlying causes of the problem. Following the assessment of policy options, the preferred option would be strengthening the existing obligation, by requiring a nonfinancial statement within the Annual Report,” and (2) to address the lack of diversity on boards of directors. The first point is the primary concern of this project, as it directly relates to promoting environmental goals within the EU. The intended purpose was to

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82 SWD(2013) 127 final, p. 4.
83 Ibid. p. 3.
84 Ibid. p. 4.
85 Legislative Proposal 2013/0110.
“increase the relevance, consistency, and comparability of non-financial information published by undertakings across the Union.”\textsuperscript{86}

Despite the overall sense within the EU that transparency and accountability need to be increased, particularly for NFD, Europe as a whole has been better at promoting CSR activities and reporting than any other region around the world. Not only is Europe ahead of the world in terms of CSR and NFD policy, but because of the forces of globalization, EU and Member State legislation have the ability to influence companies beyond the internal market.\textsuperscript{87} Michael Hopkins shows this trend in the graph below:

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figures/CSR_in_Europe_Compared_to_Elsewhere.png}
\caption{CSR in Europe Compared to Elsewhere.\textsuperscript{88}}
\end{figure}

Regardless, this is an area where the Commission felt they could further strengthen. And as will be discussed at greater lengths below, countries that went beyond the minimum level of harmonization were creating inefficiencies within the EU internal market, which therefore prompted the EU to act.\textsuperscript{89} Within the problem definition put forth by the Commission, they identified a lack in both quantity and quality of CSR reporting, despite noting the positive trend

\textsuperscript{86} Ibid.
\textsuperscript{87} Yeung—Huang—Liu 2015, p. 1.
\textsuperscript{88} Idowu—Schmidpeter—Fifka (eds) 2015, p.vii.
\textsuperscript{89} SWD(2013) 127 final, p. 8.
in both categories. The Commission cites both market failure and regulatory failures as a primary reasons for the lack of transparency:

Market incentives appear insufficient or uneven. Although companies are increasingly under pressure to become more transparent, the benefits related to non-financial disclosure are often perceived as long-term and uncertain, while short-term costs are relatively high and easily measurable. As a consequence, externalities of potential relevance remain external to businesses’ reporting.

…The majority of stakeholders consulted considered that the obligation set by the [Accounting Directives] lacks clarity, with prejudice for legal certainty. Some MS’ legislation [including the UK, Sweden, Spain, Denmark, and France] already go beyond such obligation, however, national requirements appear significantly diverse, leading to difficulties to benchmark companies across the Internal Market.90

One of the primary roles of the EU as an institution is setting the rules for the functioning of the internal market.91 If standards concerning CSR are substantially different, certain industries within certain countries could gain an unfair advantage, which in turn, gives the EU justifiable grounds to step in with a proposal aimed at creating minimum harmonization of EU CSR policy. As discussed above, there is a social construct component to CSR strategy, so the Commission’s conclusion of “insufficient or uneven” market incentives rings true: in some countries the medium and long term benefits are readily apparent and already well-established as a part of broader corporate culture, whereas in others, they are not.

Accounting Directive 2013/34/EU, passed June 23, 2013, amended Directive 2006/43/EC whilst repealing Directives 78/660/EEC, 83/349/EEC. Before Directive 2013/34/EU even passed, the Commission proposed to amend Accounting Directive 2013/34/EU on April 16, 2013 in an attempt to create better uniformity between CSR reports issued among the various Member States. A whole year passed, almost to the day, before the Parliament made a decision. The legislation passed with 599 votes for, 55 votes against, and 21 abstentions. The act was adopted by the Council on September 29, 2014, and finally signed into law October 22, 2014.92

91 TFEU Art. 114.
92 Legislative Observatory. Procedure file 2013/0110(COD).
The Legislative Proposal stated that previous rules governing non-financial reporting in the Accounting Directives had “not produced the desired results,” because of the limited number (i.e. quantity) of participating corporations, and because of the wide variation in quality and information contained within the reports that were being produced. At the time of the Proposal, roughly 2,500 corporations out of over 42,000 large undertakings were required to produce regular CSR reports. Or to put it another way, roughly 94% of all large companies within the EU were not required to report non-financial information. Not only was there an issue with the low number of total EU large corporations reporting, but more than half of the 2,500 came from just 4 countries (the UK, Germany, Spain, and France).\(^93\) This is indicative of a substantial variation within the EU internal market, thus pointing to the need for a minimum level of harmonization in order to create better market efficiency therein. Additionally, several Member States had already acted above and beyond the minimum level of harmonization in terms of their CSR requirements, thus creating added burden for their domestic companies. Some of these Member States—including Denmark, which will be discussed in greater detail in Chapter 6—ended up lobbying the Commission for greater minimum harmonization on this issue.\(^94\) In fact, the Commission drew direct inspiration from two of these Member States—Denmark and Spain—in crafting Directive 2014/95/EU.\(^95\)

Furthermore, and to bring all of these statistics back to environmental concerns, from looking at the number of companies reporting on just climate change, sustainability, or other environmental concerns, it stands to reason that even fewer companies release NFD on their environmental performance. In fact, of his five dimensions addressed in Chapter 2, the environmental dimension was far behind the other 4, appearing in only 59% of CSR definitions. All four other categories of dimensions were in over 80% of definitions.\(^96\) While there are a couple of caveats to consider from Dahlsrud’s number, (1) this report is from 2006, and (2) these percentages are based on definitions, not reporting, it is not a stretch to conclude that environmental, and climate change reporting in particular, are not always included in CSR

\(^{93}\) SWD(2013) 127 final, p. 10.
\(^{94}\) Interview. Danish Business Authority. 16.03.2017.
\(^{95}\) Luque-Vilchez—Larrinaga 2016, p. 58.
\(^{96}\) Dahlsrud 2006, p. 5.
reports. In acting, the EU hoped to increase the number of companies for which non-financial reporting was obligatory.

The Directive, through the various versions as transposed by the Member States, will more than double the number of companies required to produce CSR reports to over 6,000 by the end of 2017. However, critics of the new directive point to the 42,000 large undertakings that could have been included if the scope of the Directive were not significantly weakened during the legislative process. Indeed, an early version of the Directive would have required roughly 18,000 companies to begin reporting non-financial information. This version was successfully lobbied to the less stringent version that eventually passed.\(^97\) Certainly the measure—which more than doubles the number of companies where NFD is mandatory as compared to 2014 levels—certainly helps the “quantity” side of the problem, but how about quality?

According to the Commission, their findings in terms of NFD quality are as follows:

- Companies tend to focus only on their positive performances; reports are often inconsistent over time, or information is not disclosed on a yearly basis; performance-related information is not reported; material negative externalities are often not disclosed.
- Disclosures do not cover aspects of significant relevance for both internal and external stakeholders, particularly as regards risk-management aspects, human rights, and corruption matters.
- The use of Key Performance Indicators is considered “poor by most users.
- Reports are often not subject to independent verification, with prejudice for the reliability of the information.\(^98\)

The Commission cites a 2010 UN Conference on Trade and Development report among others to back up these claims.\(^99\) My research has shown that the worry of sub-optimal reporting is a legitimate one. According to Hąbek and Wolniak, the differences between Member States is just one of many problems leading to reports of varying—and often poor—quality:

Despite the increase in the number of such reports their quality is different. CSR reports do not always provide complete data that readers desire, which in turn intensifies the problem with the

\(^97\) Kinderman 2016, 31-35.
\(^98\) SWD(2013) 127 final, p. 11.
\(^99\) Ibid.
evaluation and comparison of the organization’s results achieved in this scope. Differences also occur between reporting models used in different EU countries caused by, inter alia, differently applied EU legislation on the disclosure of non-financial information in different Member States.¹⁰⁰

They go on to explain that the general quality of reports throughout the EU is generally poor, but, “the study also indicates that the legal obligation of CSR date disclosure has a positive effect on the quality of CSR reports.”¹⁰¹ Ergo, at least theoretically, a move toward greater mandatory NFD should also see a corresponding rise in quality of said reporting.

I’ve included the Commission’s visualization of the drivers, problems, and consequences of EU CSR policy from SWD(2013) 127 final below:

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¹⁰⁰ Hąbek—Wolniak 2015, p. 399.
¹⁰¹ Ibid.
As discussed in the previous chapter, the Directive could be seen as an attempt at a “smart mix” regulation, by balancing the goals of the EU with that of private corporations. We will see this balancing act unfold in the next sub-section, looking at the policy options the Commission considered, and why they ultimately decided on their current course of action.

3.1.1: Goldilocks and the Three(ish) Policy Choices
In setting out policy options, the Commission utilized the principle of proportionality “with regard to its effectiveness and cost-efficiency.” That is one way to put it. Another would be to say they seemed to take a “Goldilocks” approach, by offering three options (plus the option of no change at all), two of which are seemingly unpalatable upon first reading, especially from a smart mix perspective. The choices were as follows:

0. No policy change
1. Require a non-financial statement in the Annual Report: this option would strengthen the existing provision by introducing minimum requirements on the content of the disclosure.
2. Detailed reporting: this option would require companies to provide information in the form of a stand-alone report in accordance with International Frameworks. Given the potential administrative burden, different requirements have been considered: [see below].
3. Set up a mandatory EU Reporting Standard

Although sometimes necessary, words such as “require” and “mandatory” are immediately off-putting to the business community, and would therefore be far more likely to elicit a larger backlash against the burgeoning proposal. Additionally, for option 1, the Commission suggested strengthening the current reporting provisions, thereby creating a minimum reporting standard for non-financial disclosure. To my eyes, it seemed like the Commission was never seriously considering either the first or third options, leaving option number 2.

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103 Ibid, p. 22.
Yet again, with number 2, “Detailed Reporting” the Commission gave three options—two of which were either too strong, or too weak to be seriously considered. They suggested that the new requirements be:

A. Mandatory
B. Report or explain
C. Voluntary. This option would exempt companies choosing to provide a detailed report from other disclosure obligations, provided that such report complies with specific conditions.  

Despite the Commission’s stated preferred policy option being “a smart mix of mandatory (statement) and voluntary (detailed reporting) disclosure requirements (option 1 and option 2c),” the final Directive fell in line far closer with option 2b: report or explain (later referred to “comply or explain” in from the Danish Business Authority). As we can see below, the Directive has not one, but two omission clauses in Article 1, paragraph 1, sub-paragraphs 1 and 3, allowing for a corporate entity to explain, rather than report, on activities given a “clear and reasoned explanation for not doing so” or in “exceptional cases where…the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking.”

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.

…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.

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105 Ibid.
107 Directive 2014/95/EU.
108 Ibid.
109 Ibid.
Interestingly enough, even the definition of a “large undertaking” could be seen as fitting into the Goldilocks paradigm. The Commission used preexisting national CSR policies from Denmark and Spain as inspiration for Directive 2014/95/EU. Denmark classified—and continues to classify—large companies as ones over 250 employees, whereas Spain set the bar at over 1000 employees.\(^{110}\) Obviously when discussing countries of such differing sizes, 5.7 million and 46.5 million people for Denmark and Spain, respectively, what constitutes as “large” is relative.\(^{111}\) Ultimately, the EU more or less split the difference, settling on 500 employees during a financial year.\(^{112}\)

### 3.1.2: Foregoing an EU-Wide Framework

We will go into far greater depth about the voluntary frameworks and guidelines that exist, but it is important right now to discuss the Commission’s decision to not require strict EU-wide standardization for reporting. In Article 1, paragraph 1, sub-paragraph 4, the Directive states:

> In requiring the disclosure of the information referred to in the first subparagraph, Member States shall provide that undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon.\(^{113}\)

In my research, I could not determine whether such a standardization was seriously considered by the Commission or not. However, from careful reading of the associated internal communications, it seems that such an action would not be keeping in line with the overarching smart mix approach, and it might have been seen as not in keeping with the proportionality principle because of the far greater administrative costs, as discussed in further detail below. Additionally, considering many of the largest organizations already adhere to these frameworks, thus making compliance easier in the short term.

Despite this, the Directive explicitly places a burden on the Commission to prepare non-binding reporting guidelines in Article 2:

> The Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view

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\(^{110}\) Luque-Vilchez—Larrinaga 2016, p. 58.  
\(^{111}\) European Union. Living in the EU.  
\(^{112}\) Directive 2014/95/EU.  
\(^{113}\) Ibid.
to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings. In doing so, the Commission shall consult relevant stakeholders.\textsuperscript{114}

The guidelines were supposed to be published in December 2016, but were pushed back, or as a Commission representative explained in an email, “The Commission is also working on developing non-binding guidelines, which should be finished in June…We are taking some extra time in order to take into account recent developments, in particular, including the work of the Task Force on climate-related financial disclosures organized by the Financial Stability Board, which published last December draft recommendations for public consultation.”\textsuperscript{115} This project will be completed before the release of these guidelines, but it will be interesting to see which elements of pre-existing guidelines the Commission finds most useful for compliance with this Directive.

\textbf{3.1.3: Legislative Changes}

No democratic institution is immune from minor (or major) power struggles between branches, which in turn can lead to some tinkering in legislation along the way. Such was the case with Directive 2014/95/EU, which was altered along the way. In the Draft Report in the Committee for Legal Affairs of the European Parliament several superficial changes were made, as well as some more substantial ones. The first thing to immediately stand out is the substitution of “companies” for “undertakings” (the latter being used in the final Directive) in all cases.\textsuperscript{116} Additionally, the Commission’s original proposal suggested replacing Directives 78/660/EEC and 83/349/EEC, but as those Directives had already been consolidated into Directive 2013/34/EU (and subsequently repealed), the Parliament acted to update Directive to fit this development.\textsuperscript{117}

The Parliament took opinions from a variety of committees, starting with the Committee on Development on November 11, 2013, and ending with the Committee on Economic and Monetary Affairs on December 11, 2013. In between, reports followed from the following committees in chronological order: the Committee on Foreign Affairs, the Committee on Women’s Rights and Gender Equality, the Committee on Internal Market and Consumer  

\textsuperscript{114} Ibid.
\textsuperscript{115} Interview. Commission Representative. 17.03.2017
\textsuperscript{116} European Parliament Draft Report.
\textsuperscript{117} European Parliament First Reading Report.
Protection, the Committee on Industry, Research and Energy, and the Committee on Employment and Social Affairs. However, in the preamble to the final Directive, all of those committees were ignored, instead citing, “Having regard to the opinion of the European Economic and Social Committee.”

3.2: Scope and Purpose of the Directive

In keeping with the subsidiarity principle, the Commission felt that the EU had a right to act insofar as it could produce better results than at the Member State level. Again, while Member States have acted independently to exceed previous EU CSR policy on the national level, the EU could improve performance of NFD in the internal market. The differences in Member State CSR policies drove the need for harmonization. Or as the Commission put it:

The disclosure of non-financial information is already regulated at EU level by the Accounting Directives. Nevertheless, investors and other users demand a greater level of harmonization in this field. Moreover, the diverging approaches taken at Member State level could determine even greater differences within the EU Internal Market, as they may lead to further differences in terms of scope, detail, or content of the requirements. Different reporting requirements at Member State level could also potentially undermine the level playing-field across the Internal Market. Sustainability-related information also appears, but its own nature, as a cross-national matter.

If the Commission seriously considered going with an instrument other than the Directive to address the problem of NFD, I did not find evidence of such a strong consideration. Instead, they seem quite dismissive of the idea of imposing a new Regulation on the matter on the basis of the principle of proportionality. The Commission also points out that a Regulation would be out of line with the existing legal framework, “Moreover, a Regulation would not seem an appropriate instrument in light of the existing NFD practice, which is based on principles and objectives rather than detailed standards.”

Directive 2014/95/EU applies only to large public interest entities, as defined as being over 500 employees during the financial year. The “public interest” was not part of the original

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118 Ibid.
119 Directive 2014/95/EU.
120 SWD(2013) 127 final, p. 22.
121 Ibid, p. 23.
122 Ibid, p. 35.
proposal—quite the opposite, in fact—SWD(2013) 127 stated, “large companies and groups, whether listed or not, should fall within the scope of application of the new rules.” The change in language effectively slashed the scope by one-third, reducing the number of companies that would have been required to report from around 18,000 to around 6,000. Small and medium enterprises, meanwhile, were not included in the Directive in an attempt to avoid placing undue and disproportionate burden on smaller companies.

However, the additional administrative burden for large undertakings because of this policy is not predicted to be terribly excessive. The Commission estimates a total cost of between €600 and €4,300 per company, largely due to drafting, publication, and specific staff training. Or to put it another way, the Centre for Strategy and Evaluation Services puts the reporting cost at €3 to €13 per employee for large public interest entities, but substantially higher costs for small and medium enterprises, roughly €68 to €212 per employee. This administrative burden is particularly light compared to more stringent reporting requirements (options 2a or 3 above), estimated to be between €33,000 to €604,000 for full compliance.

3.3: Relevant legal obligations

3.3.1: Minimum Legal Standards

As an EU Directive, the law will have some natural variation as it is applied to different Member States, with different institutions and so on. As an example, and as touched upon above, Denmark continues to define large corporations differently than does the EU (more on this distinction in Chapter 6). CSR policy could be considered under various shared competencies as enumerated in TFEU Article 4, including the internal market, social policy, and the environment. As such, Member States are within their justification to go beyond the minimum harmonization requirements. Regardless of these slight differences, large public-interest companies over 500 employees must now report annually on the following:

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123 Ibid.
124 Kinderman 2016, p. 35.
125 SWD(2013) 127 final, p. 35.
127 Disclosure of Non-Financial Information by Companies. p. 32.
128 Ibid.
129 Implementation in Denmark of EU Directive 2014/95/EU.
130 TFEU Art. 4.
…include in the management report a non-financial statement continuing 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;
d. the principle 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.\(^{131}\)

Although the Directive would at first glance appear to mandate an integrated financial and non-financial report as in the aforementioned policy option 1, Article 1, paragraph 4 allows Member States an exemption:

Where an undertaking prepares a separate report corresponding to the same financial year whether or not relying on national, Union-based or international frameworks and covering the information required for the non-financial statement as provided for in paragraph 1, Member States may exempt that undertaking from the obligation to prepare the non-financial statement laid down in paragraph 1, provided that such a report:

a. is published together with the management report in accordance with Article 30; or
b. is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertakings website, and is referred to in the management report.

So while it would appear the EU would prefer integrated reporting, which in turn would create more harmonization between Member States, they still allowed for derogation on this particular issue. Proponents of integrated reporting argue that by combining NFD with the annual financial statement, stakeholders and auditors can gain a more comprehensive idea of company strategy

\(^{131}\) Directive 2014/95/EU
and where CSR activities fit into the larger operations.\textsuperscript{132} Although this Directive will not mandate integrated reporting, this is potentially an area where this law could be expanded further as CSR policy at the EU level continues to evolve.

The Directive allows for subsidiaries of large corporations, which may be over 500 employees themselves, to be included in a consolidated non-financial statement by their parent company, so long as the consolidated statement adheres to the same guidelines set out above.

Finally, the Directive mandates that Member States shall ensure that large public interest entities are releasing reports—either integrated, or separate, as allowed in the individual Member State—as confirmed by an auditor or audit firm. However, Member States are not necessarily required to require an independent assurance services provider.\textsuperscript{133}

### 3.4: EU CSR and Climate Change Goals

One last note before I move on to the next chapter, and that concerns how this Directive fits into the larger picture of EU strategy, particularly concerning climate change. There are two main reasons why I sought to study CSR in the EU in particular: (1) the aforementioned superior record of CSR,\textsuperscript{134} and (2) the overall commitment to action on the issue of climate change.\textsuperscript{135} Climate change may seem at the periphery of this topic, but CSR a potentially important tool in the EU shed when addressing this important issue. As a supranational institution, the EU has a great deal more authority in mandating certain minimum harmonization standards in comparison with other actors in IEL, up to and including the UN. Hopefully, as the thinking goes, if the EU successfully implements meaningful CSR reporting strategy, which in turn helps it reach its EU 2020 targets (and beyond), it can act as a guidepost for other nations to follow suit.

As mentioned in the previous chapter, the Responsible Business Package, including Directive 2014/95/EU, is intended to build on the Europe 2020 Agenda in order to bring down regional GHG emissions in an attempt to combat climate change.\textsuperscript{136} Combating climate change, under the umbrella of sustainability is a key factor in pursuing an EU-wide CSR policy, “The Treaty on the Functioning of the European Union (art. 11) has also reinforced the role of sustainable

\begin{footnotesize}
\textsuperscript{132} Sierra-García—Zorio-Grima—García-Benau 2015, p. 287.
\textsuperscript{133} Directive 2014/95/EU.
\textsuperscript{134} Idowu—Schmidpeter—Fifka (eds) 2015, p. viii.
\textsuperscript{135} Europe 2020.
\textsuperscript{136} SWD(2013) 127 final, p. 4.
\end{footnotesize}
development as one of the main objectives for the EU, based in particular on a high level of protection and improvement of the quality of the environment. Sustainable development is also affirmed as one of the fundamental objectives of the Union in its relations with third countries.”\(^{137}\)

The stated climate change goals of Europe 2020 is to bring down GHG emissions by 20% as compared to 1990 levels, to create 20% of energy from renewables, and to increase energy efficiency by 20%.\(^{138}\) In order to achieve these targets, corporations will have to be actively involved, and this smart mix CSR policy is just one of the ways the Commission hopes to do that.

3.5: Conclusions

Considering the lag between the consultations (starting in September 2009),\(^{139}\) drafting and passing legislation (October 2014), the several-year transposition process (ending December 2016),\(^{140}\) and the continual background evolution of CSR within the European and international business communities, it seems like this Directive was destined to fall short of what was necessary to provide a significant increase in minimum harmonization and mandatory reporting requirements. Additionally, the insertion of the “public-interest” requirement greatly reduced the number of firms that otherwise would be required to release NFD.\(^ {141}\)

The smart mix policy approach also seemed to hamper efforts to make the language a little more concrete. Although the Commission proposed a mix of integrated reporting and voluntary disclosure, the final Directive appears to be far more in line with “comply or explain.” For every requirement laid forth, there is an equal opportunity for Member States or organizations therein to exempt themselves from said requirements. And while the Commission is promising to release non-binding guidelines, the fact that they have not yet done so only adds to the air of confusion over what this Directive means going forward. In coming chapters, we will discuss at greater length potential and actual confusion that arises from this “grey zone” of legal uncertainty, especially from a corporate perspective.

\(^{137}\) Ibid, p. 23.
\(^{138}\) Europe 2020.
\(^{139}\) SWD(2013) 127 final, p. 3.
\(^{140}\) European Commission 2017, section on Transposition Status.
\(^{141}\) Kinderman 2016, p. 35.
Regardless of the apparent faults in this Directive, it does successfully move the ball forward in ensuring Member State harmonization, even if only marginally. While 6,000 companies is far fewer than 18,000 as originally proposed (and far short of the 42,000 total large entities), it is still far more than the 2,500 companies that were legally mandated to report under previous EU law.\textsuperscript{142} Additionally, it creates another regulatory avenue to promote more action on climate change, as part of the larger Europe 2020 strategy.

In the next chapter, we will address how the voluntary reporting frameworks and their importance for creating certain expectations for corporate disclosure and accountability.

\textsuperscript{142} SWD(2013) 127 final, p. 10.
4 CSR REPORTING DIRECTIVE AND VOLUNTARY INITIATIVES

So far, a great deal of the discussion has necessarily centered on EU CSR policy. As much as corporations might like to only self-regulate, that is rarely the reality. That said, corporate entities are the ones who are producing these reports, and therefore it would be a good idea to take a closer look at how these CSR reports are prepared, and why some methods are preferred over others.

Much like companies compete for market share, there too is a competitive aspect to non-financial disclosure, “Companies do not operate in isolation; they adapt, refine and develop their strategies and competitive advantages in an interplay with their institutional environments. An action classified as voluntary CSR initiative in one country may be classified as regulatory compliance in another. The same applies to CSR reporting practices.” As discussed at great length in Chapter 3, Directive 2014/95/EU was expressly written to diminish this divide between voluntary and mandatory, especially across the various Member States. Moreover, in the following chapters we will see a clear example of one company, KK Wind Solutions, where success with in their industry is so dependent on CSR reporting, that it can be considered a de facto obligatory responsibility.

Unfortunately, it seems, this competitive nature does not appear to be producing a higher quality of report. The proliferation of frameworks has led to the proliferation of choices, which in turn has led to confusion over which framework is the best for an individual company, within individual industry, and which will allow the company to best comply with local requirements. Whereas individual companies and reports within a country may improve over time, studies have shown that CSR reports are generally of low-quality. Further, there are several voluntary reporting frameworks from which to choose, which makes comparing reports between companies—even from within the same country and industry—a potentially difficult and tedious process. And as discussed in Chapter 2 on the topic of legitimacy theory, these

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143 Hąbek—Wolniak 2015, p. 401.
144 SWD(2013) 127 final, p. 23.
145 Interview. KK Wind Solutions. 13.03.2017.
146 Corporate Social Responsibility and Reporting in Demark, p. 3, 7-10.
147 Hąbek—Wolniak 2015, p. 399.
differences can make it easier for companies to obfuscate their record, rather than to increase transparency.\textsuperscript{148} To make matters worse, it appears that instead of moving toward a singular preferred voluntary reporting framework, we’re moving away from it. From 2010 to 2014, there was a fairly substantial drop in the proportion of companies using the GRI standard, from 93.5\% or organizations using the standard down to 77.1\% four years later. Although it still remains the most utilized framework, other standards have since gained market share.\textsuperscript{149}

As discussed in Chapter 3, Directive 2014/95/EU does not require Member States to direct local companies to adhere to one of the many internationally or Union recognized CSR reporting frameworks.\textsuperscript{150} However, the Directive specifically mentions several international frameworks, including the UNGC, the OECD Guidelines for Multinational Enterprises, ISO 26000, and the GRI, which will be further addressed below. And while the Directive does not explicitly state that companies need to follow one of these frameworks, it does seem to indicate a preference for companies to follow a specific framework when reporting:

\begin{quote}
In requiring the disclosure of the information referred to in the first subparagraph, Member States shall provide that undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon.\textsuperscript{151}
\end{quote}

As written in the Directive, it is required of Member States to at least mention—thereby implicitly promoting—standardized and recognized preexisting frameworks. And by specifically naming several frameworks, the Directive implicitly suggests that said frameworks are up to a requisite quality for responsible NFD. Some Member States, including Denmark as we will see in the following chapters, actively promote several international standards that best conform with their idea of acceptable CSR reporting standards. Going forward, it will be interesting to see how the upcoming release of non-binding EU guidelines affect existing standards (if at all) and how businesses and stakeholders within Member States respond.

\textsuperscript{148} Hummel—Schlick 2016, p. 455.
\textsuperscript{149} Kr\v{s}tofi\v{k}—Lament—Musa 2016, p. 165.
\textsuperscript{150} Directive 2014/95/EU.
\textsuperscript{151} Ibid.
4.1: Key Aspects of Voluntary Reporting Frameworks

At the moment and to parallel the problem of CSR definition, there is not a clear consensus around what should or should not be expected within voluntary reporting frameworks. From even the most cursory of glances at CSR reports from various major European corporations, it is easy to see differences in size, complexity, scope, and accessibility. As such, it will be interesting to see what the Commission comes up with when they release their reporting guidelines in June.\textsuperscript{152} The Commission could, theoretically, provide a codified and common gravitational center for these various guidelines to use as a basis going forward. Even if the Commission merely chooses to enumerate existing standards and expectations, that alone will be helpful in understanding the current state of CSR reporting in Europe.

Despite the different standards, there are some common themes between the major initiatives. Transparency is at the heart of all CSR voluntary frameworks, and therefore one common theme is an annual report—whether produced individually, or integrated into an annual management report—that is readily available to the public. In this vein, the act of reporting is intended not just to help increase public trust and accountability for an organization, but also for their own internal auditing purposes. Therefore, most guidelines encourage analysis on policies, actions, and results, in an attempt to put CSR strategy on a timeline, wherein past, current, and future action is accounted for. While certain frameworks might take certain industry-specific concerns into account, the five main areas generally addressed are: environment and climate, human rights, labor rights, anti-corruption, and social conditions.\textsuperscript{153} The environment and climate are obviously of the utmost concern to this project, but the other factors also fall under the umbrella of CSR. As mentioned previously, one of the primary problems that Directive 2014/95/EU hopes to address is over diversity in the work place, which obviously gets more into the other categories.\textsuperscript{154}

4.2: Problems with Voluntary Reporting Frameworks

Voluntary reporting is all well and good in a perfect world where businesses are only interested in long-term self and social interests, and not in short-term quarterly earnings reports. Obviously

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\textsuperscript{152} Interview. Commission Representative. 17.03.2017.
\textsuperscript{153} Corporate Social Responsibility and Reporting in Demark, p. 9.
\textsuperscript{154} SWD(2013) 127 final, p. 12.
we do not live in that world. Even if an individual company operates in good faith, going above and beyond minimum requirements, and approaches NFD with openness and honesty, the public perception of its actions and its reporting might still be negative. Generally, CSR reports in Europe score low on credibility, for, among other reasons, a lack of standardization.\textsuperscript{155} This is all to say that there are striking problems with a strictly voluntary approach to reporting, and ones that will need to be addressed in order to affect real change in making corporations more environmentally responsible.

One of the major problems is the proliferation of standards.\textsuperscript{156} If anything, this problem has only seemed to worsen over time, not improved.\textsuperscript{157} Indeed, since the 1980’s, “there have been over 300 CSR codes, principles, performance standards, management standards developed by governments, business associations, or academia, not mentioning a huge number of individual companies’ codes of conduct or reporting initiatives.”\textsuperscript{158} The knock-on effects of this proliferation pose significant problems to even the most eager and willing participants in voluntary non-financial disclosure. As we will see below in the case study, these different standards can lead to confusion over which standards are acceptable under different legal systems—something that is particularly problematic for transnational corporations. Although I have specifically decided to avoid in-depth discussion of non-EU CSR, companies based within the EU still struggle with these questions of compliance when expanding operations or even just conducting business abroad. Even if a transnational corporation is compliant within a specific country, differing standards within their country of origin means that they may still be vulnerable to harsh scrutiny—up to and including the dreaded “media circus”—from stakeholders and media outlets across the world.\textsuperscript{159}

In a related topic, different frameworks often have different codes and standards. This is problematic from both the corporate and public perspectives. For corporate entities, the different standards makes it less likely to adhere to multiple reporting frameworks—especially for smaller companies that either do not want, or are not able, to commit additional resources to the

\textsuperscript{155} Lock—Seele 2016, p. 194.
\textsuperscript{156} González—Martinez 2004, p. 277.
\textsuperscript{157} Krištofik—Lament—Musa 2016, p. 165.
\textsuperscript{158} Mazurkiewicz 2010, p. 6.
\textsuperscript{159} Interview. Danish Business Authority. 16.03.2017.
creation of multiple reports. This, in turn, would seem to promote a “race to the bottom,” wherein frameworks with less-stringent reporting policies would be favored, given the choices available. If the ultimate goal is to create greater transparency, and therefore greater environmental accountability, this seems like a particularly sticky problem to overcome. From the public perspective, differing codes and standards are likely to make it more difficult to compare reports between companies and between industries, thereby reducing transparency. These differing codes can also help facilitate the creation of intentionally confusing reports, which again, gets back to the issue transparency. And finally, the differences in these standards may not actually correspond to industry-specific demands.160

Due to the proliferation of standards, not to mention companies who benefit from obfuscation operating under the legitimacy theory of disclosure, this is not a problem that appears to be going away any time soon. Indeed, the problem of proliferation seems to be getting worse.161 This is something to be mindful of when reading CSR reports, and is hopefully something the Commission takes into account when releasing its reporting guidelines.

4.3: Existing frameworks: Similarities and Differences

The following is a non-extensive list of some of the most widely used reporting frameworks in existence. When choosing a framework, the choices are not necessarily mutually exclusive, and in my research, many of the larger companies choose to comply with more than one. In fact, the various frameworks are just different enough from one another, and offer just different enough benefits that corporations may consciously choose to adhere to multiple frameworks. For example, a company might choose to adhere to the UN Global Compact because of the relative ease of compliance, and also decide to comply with the International Organization for Standardization (ISO) requirements in order to receive official certification (although ISO does not grant certification directly, external organizations may grant certifications based on specific ISO requirements).162 The frameworks are all intended to take into consideration emerging

161 Ibid.
162 A comparison of 4 international guidelines for CSR 2013, p. 5.
international standards for CSR, and provide a standardized way implementation procedure for corporations.\footnote{Ibid, p. 7.}

\textbf{4.3.1: Global Reporting Initiative (GRI)}

The GRI is the most widely used reporting framework, and also the most detailed. It is currently being used in over 90 countries.\footnote{Global Reporting Initiative.} It provides detailed guidance to help companies with the best practices for disclosure. The Initiative consists of three parts: Sustainability Reporting Guidelines (including voluntary performance indicators and management disclosures), Sector Supplements (tailored sector-specific sustainability guidelines), and Technical Protocols (guidance on defining sustainability report content).\footnote{SWD(2013) 127 final, p. 55.}

\textbf{4.3.2: Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises}

Out of the guidelines listed here, the OCED ones are unique because they require “the establishment of a concrete complaints handling mechanism.”\footnote{A comparison of 4 international guidelines for CSR 2013, p. 5.} These are non-binding internationally acknowledged guidelines applicable for operating within the largest economies in the world.\footnote{Organization for Economic Cooperation and Development.} As for CSR issues, these guidelines discuss disclosure, human rights, employment and industrial relations, environment, bribery, consumer interests, science and technology, competition, and taxation.\footnote{A comparison of 4 international guidelines for CSR 2013, p. 5.}

\textbf{4.3.3: ISO 26000}

This is the ISO standard associated with effective CSR practices, including a focus on external reporting.\footnote{Backer 2012, p. 120-123.} ISO 26000 focuses on seven core subjects: organizational governance, human rights, labor practices, the environment, fair operating practices, consumer issues, and community involvement and development.\footnote{International Organization for Standardization.} Although an organization cannot become ISO 26000 certified, often local standards can offer certification based on this standard, as is the case with the DS 49001 standard available in Denmark.\footnote{A comparison of 4 international guidelines for CSR 2013, p. 5.}
4.3.4: *UN Global Compact (UNGC)*

The UNGC is a voluntary initiative wherein the organization agrees to uphold ten basic principles within four primary areas as part of their business dealings. Additionally, participating organizations must release an annual Communication on Progress (COP) report. The four main areas are: human rights, labor, the environment, and anti-corruption.\(^\text{172}\) This also happens to be the guideline used by the case study in Chapter 7, *KK Wind Solutions*.\(^\text{173}\)

4.3.5: *UN Guiding Principles on Business and Human Rights*

This set of principles by the UN list 31 principles divided into three main areas: (1) the governments’ human rights obligations, (2) the responsibility of business enterprises to respect human rights, and (3) access to remedy. While important, these principles are not applicable to environmental issues.\(^\text{174}\)

Table 1. Overview of the Contents of Guidelines with regard to Environmental Matters\(^\text{175}\)

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<thead>
<tr>
<th>OECD</th>
<th>ISO 26000</th>
<th>UNGC</th>
<th>UNGP</th>
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<tbody>
<tr>
<td>✓ Precautionary approach</td>
<td>✓ Precautionary approach</td>
<td>✓ Precautionary approach</td>
<td>Not Applicable</td>
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<td>✓ Contingency plans</td>
<td>✓ Contingency plans</td>
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<tr>
<td>✓ Education and training of employees</td>
<td>✓ Prevention of pollution</td>
<td>✓ Prevention of pollution</td>
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<td>✓ Contingency plans</td>
<td>✓ Sustainable resource use</td>
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<td>✓ Climate change mitigation and adaptation</td>
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<td>✓ Protection and restoration of natural habitats</td>
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\(^{172}\) *UN Global Compact.*

\(^{173}\) *KK Wind Solutions.*

\(^{174}\) A comparison of 4 international guidelines for CSR 2013, p. 6.

\(^{175}\) Ibid, p. 13.
4.4: Complementary or Conflicting?

The proliferation of standards is a problem that threatens to decrease transparency—precisely the opposite of their stated objectives. Therefore, calls for more rigorous international standards have been frequent, even if they have thus far fallen on deaf ears. Krištofík, Lament, and Musa make a strong legal case for creating such a framework, “Legal systems laying down guidelines for CSR reporting vary considerably, however, which impedes comparability across enterprises and prevents assessments of their actions and the CSR principles adopted. It would therefore be desirable to develop international rules of CSR reporting, including the format and scope of reporting, which would provide for a transparent message of CSR-related activities.”176 While I agree with this statement, the international uncertainty surrounding the current state of IEL makes this proposition appear infeasible at this juncture. To create and implement such an international standard would require a top-down solution, a contrast to the current bottom-up thinking. By codifying a set of standards, the EU could possibly further their lead in the development of CSR policy, but what those standards will be and how much of an effect they will have is yet to be seen.

However, government action will only go so far. According to Lock and Seele regulating CSR standards does not have a positive correlation on credibility of CSR reports. On the other hand, voluntary standardization does. Although it might seem counterintuitive, industry self-regulation seems to boost the credibility of reporting on a more consistent basis than does government-backed mandatory regulation. However, the authors recognize the need for government backed minimum harmonization at the EU level, “comprehensive regulation at a transnational level as proposed by the EU could be a useful move to level the playing field in the market and raise the credibility of reporting.” 177

4.5: Conclusions

Although the Directive does not specifically direct companies to adhere to a preexisting internationally recognized reporting framework, it at least implies that this behavior is preferable. And again, while no single specific framework is given preferential treatment,

176 Krištofík—Lament—Musa 2016, p. 162.
177 Lock—Seele 2016, p. 194.
several—including those listed above—are mentioned within the Directive as examples. This, along with references to these frameworks in SWD(2013) 127 final seem to indicate that these frameworks are held in high regard by the EU. Whether the Commission chooses to elaborate further on these international frameworks will be worth watching for when they release their guidelines in June.

Throughout this chapter, I have repeatedly alluded to the wide variety (and increasing number) of choices available to corporations seeking to engage in NFD through voluntary or legally obligated means. The excess of choices can be intimidating to a company beginning the process of NFD. While the above is far from an exhaustive list, I believe they represent a good sample of the most widely used frameworks seen in the business community today.

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178 Directive 2014/95/EU
5 Case Study: CSR in Denmark

From the beginning of this thesis project, I sought to discuss CSR policy and reporting with a company to help understand their perspective. In my estimation, it would be far too easy to look at CSR from a purely academic point of view. Yes, I can go through and list all the reasons why companies should engage in CSR activities and report them, as I have done extensively in the previous chapters, but there is often a disconnect between the academic/theoretical arguments, and the practical ones. Thankfully, and after a great deal of effort and a fair few rejections, I was able to have several face to face interviews with KK Wind Solutions, a transnational corporation headquartered in Denmark. Additionally, I was able to interview the Danish Business Authority (Erhvervsstyrelsen), the government agency responsible for overseeing national CSR policy. In this chapter, I will focus primarily on CSR and CSR reporting from a Danish legal and cultural perspective in an attempt to better contextualize my company-specific case study in the following chapter.

Denmark proved to be a particularly interesting Member State to study within the context of EU CSR policy. Just as the EU is “ahead of the curve” in terms of their CSR development, so too are certain Member States within the EU. Not all Member States were created equal, as it were. Prior to the passage and implementation of Directive 2014/95/EU, Denmark was one of those first Member States to create a national mandatory NFD policy, and were quick to transpose the new Directive into Danish law. Indeed, the Danish Financial Statement Act (DFSA), approved in December of 2008, was one of two NFD acts by EU Member States specifically cited by the EU Commission which helped inspire the EU-wide Directive.

Prior to transposing Directive 2014/95/EU, Denmark already required roughly 1,100 companies to report under the DFSA. Keep in mind the total number of large entities within the EU required to report was roughly 2,500. (At first blush there appears to be a discrepancy in the numbers here, but this is due to the difference between the EU and Danish definition of “large”)

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179 Danish Business Authority.
company, the former being 500 employees, and the latter 250). During the implementation phase, Denmark decided to require the 50 largest companies to adhere to the new requirements by January 1, 2016, with the 1,050 other large entities coming on line two years later, January 1, 2018.\textsuperscript{183} Those numbers have since been revised up to 200 and 1,200, respectively, because approximately 300 more Danish companies now fall under the Class C requirements than they did just a few years ago.\textsuperscript{184} As of March 2013, all companies falling under company Classes C and D under Danish national law were required to submit a CSR report. Class D companies are public limited and state-owned public limited companies, whereas Class C companies fulfill at least two of the following three requirements: (1) A balance sheet total of €19.2 million, (2) Net revenue of €38.3 million, and (3) An average of 250 full-time employees.\textsuperscript{185}

If studying CSR reporting in the EU can give us an idea of how other nations might adopt similar strategies going forward, it is worth looking into Denmark, one of the countries that seems to be leading the way within the EU (and by extension, globally). To refer back to Figure 1 in Chapter 3, if Danish CSR policy were charted, it would likely be slightly above Europe’s on the curve. CSR in Denmark is also unique due to the elevated importance given to environmental issues. The Copenhagen Business School did a qualitative study over a 3-year period on the same 150 Danish companies on their CSR activities and reporting. The report had some interesting findings, mostly showing overall improvements in both activities and reporting practices over the three years. Unlike other countries, where environmental matters are often the least-reported dimension among CSR reports,\textsuperscript{186} Danish companies almost universally report on environmental matters, as shown in the chart below:

\textsuperscript{183} Implementation in Denmark of EU Directive 2014/95/EU, p. 1.
\textsuperscript{184} Interview, DBA. 16.03.2017.
\textsuperscript{185} Corporate Social Responsibility and Reporting in Denmark 2013, p. 29.
\textsuperscript{186} Dahlsrud. p. 5.
Figure 4. Key Reporting Topics in Denmark.\textsuperscript{187}

Figure 5. Percentage of Danish companies stating that they work with CSR.\textsuperscript{188}

\textsuperscript{187} Corporate Social Responsibility and Reporting in Denmark 2013, p. 9.
\textsuperscript{188} Ibid, p. 7.
These numbers, and others within the report, tend to show a general upward trajectory in CSR and its associated reporting practices in Denmark during and after the implementation period of the DFSA. As the report sums up, “Now, three years after CSR reporting was made compulsory, there are positive signs of progress in most areas: more companies report on policies, implementation, and results, and several take inspiration from international CSR principles.”

However, there are several caveats to consider. First of all, three years is a very brief timespan to look at these numbers, and overall improvement in numbers is only marginal in many cases (when there is any improvement at all). Another thing to consider is the fact that these companies knew they were being studied and asked to report on their progress. This alone could skew the results. The DBA followed up this report in 2013 using 170 different organizations from the original 150 first studied by the Copenhagen Business School (see: Figure 6, below). This follow up report showed answers that were not necessarily as encouraging as those listed above.

At first blush, the numbers are not terribly different, but equally, they are not necessarily better. Significantly, whether a company reports having a CSR policy, and whether it actually has one

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190 Ibid, p. 3.
are two different questions, and should not be confused. Christina Skagen from the DBA addressed this exact point during our interview:

You can interpret the results in surveys when you see there’s a group of companies that are persistently not trying to doing anything actively. One thing of complying with the law is saying whether you have CSR policy, and another is actually having CSR policies. So you can comply with the law without actually having any policies, and then I guess there’s an element of ‘naming and shaming’ in the law. Because companies will be reluctant to say ‘we don’t have CSR policy’ they will start working on it and you know improve it year after year.\(^1\)

![Figure 7. 2013 Survey of Danish companies’ CSR policies.\(^2\)](image-url)

Although we could be heartened by the fact that 77\% of companies both report that they have a CSR policy and actually do, it equally means that roughly 20\% of companies report having one when they do not. In recalling the distinction between voluntary disclosure and legitimacy

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\(^1\) Interview. Danish Business Authority. 16.03.2017.

\(^2\) Executive Summary, p. 2-3.
theories as highlighted in Chapter 2, when looking at the data, it seems a fair few Danish companies only want to appear socially responsible, not necessarily be socially responsible.

If nothing else, these numbers help bring into focus the problem of generalizing about CSR and NFD in any particular country. Denmark has certainly been progressive in developing a national CSR reporting policy, and corporations behaving socially responsible very well might be part of the national ethos, but as it is with CSR globally, there is still a great deal of variation within the country.

5.1: Background

5.1.1: CSR from a Danish Cultural Perspective

I have thus far spent a great deal of time discussing CSR from a cultural perspective, highlighting the positive feedback loop caused by increased public awareness and acceptance of the issue of transparency in the corporate sphere. Denmark, of course is no different.

From both KK Wind Solutions and the DBA, I heard about how CSR strategies was “part of corporate DNA” in Denmark and to be expected from a culture and social point of view. Christina Skagen of the DBA described the corporate environment leading up the DFSA in the following manner:

Denmark has been one of the front-runners on this. As you know, back in 2008 we got our first national action plan on CSR which is the first step of really integrating CSR to the whole political system, to have an official policy on CSR. Back in those days we focused a lot on CSR from a competitive perspective, that it would be an advantage for Danish companies on the global market to focus on CSR and to be able to divide themselves from their competitors on this issue. As you know we have a lot of smaller businesses in Denmark, so they would often be supplying to larger international corporations and they would often be asking, ‘Are you on top of your human rights issues?’ and so on. And also we did a lot of surveys on small Danish companies, and that they were already doing this as part of their DNA. It was something natural to be inclusive in terms of the labor market, to focus on environmental issues and so on. So maybe they were already doing a lot of things, but it wasn’t really done in a systematic way, and they didn’t really report on it. So our argument for introducing CSR reporting in 2009 was basically to support a trend that was
already being done, but putting it into a more systematic context and making sure that the companies got the credit for what they were already doing.\textsuperscript{193}

Using the term DNA in this manner was also used during one of the interviews with KK Wind Solutions.\textsuperscript{194} The implication is that behaving in a socially responsible manner is as second nature to a Danish corporation as say running fast is to a cheetah. Whether or not an individual Danish company actually behaves in what would be generally considered socially responsible is another question altogether, but at the very least the cultural expectation appears to be there.

This is an observation that is repeated in academic literature as well, for not just Denmark, but other Scandinavian countries as well. As Lynes and Andrachuk write, “The stability of the Scandinavian countries along with a solid education system and strong healthcare and social security systems means that people can concentrate on other issues, such as the environmental responsibility of firms.” It is ability to focus on more abstract ideas, along an emphasis on related topics such as work conditions, social equality (and a high level of bureaucracy) that allows countries like Denmark and Sweden to successfully implement a national CSR policy that is generally accepted by the business community.\textsuperscript{195} The Commission acknowledges this by specifically listing Denmark and Sweden as two of the five countries to act independently on instituting a national CSR policy.\textsuperscript{196}

\textit{5.1.2: Directive 2014/95/EU as Transposed by Denmark}

Prior to sitting down for my interview with the DBA, I read through the relevant sections of the DFSA, particularly the revised sections after the transposition of Directive 2014/95/EU, as well as the available reports and documentation on the DBA website. From my initial reading, it seemed like Danish national CSR policy was already in line with the new Directive, and in some cases went beyond the minimum requirements put for the by it. My interview with Skagen from the DBA confirmed as much:

\begin{quote}
I think it has only been an advantage because they do not have that extra burden because they have CSR reporting, now it’s equivalent for all the companies in the EU. And in that way since they are already ahead and they have extra practice doing this since 2009, then it’s definitely an advantage
\end{quote}

\begin{footnotes}
\textsuperscript{193} Interview. Danish Business Authority. 16.03.2017.
\textsuperscript{194} Interview. KK Wind Solutions. 14.03.2017.
\textsuperscript{195} Lynes—Andrachuk 2008, p. 382.
\textsuperscript{196} SWD(2013) 127 final, p. 5.
\end{footnotes}
for Danish companies and for Denmark. From the Danish side, we’ve been lobbying a lot basically since we introduced our own reporting requirement that it should be implemented at the EU level. So, we’ve been promoting what we have termed ‘The Danish Model’ that is basically volunteer if you want to, do CSR or not, just state ‘We do not have a CSR policy.’ From that perspective, there has not been a major problem in transposing the directives into national law because we already had a good point of departure, and that it’s not that different.

The EU Directive is not that different from what we had before. Before we did not have comply and explain, we just had a statement…It was just enough to say you don’t. Where now the EU Directive is more of a genuine comply and explain model so if you do not have CSR policies on all of these areas: human rights, environmental issues, corruption, etc, and then you have all these specific you have to say if you have due diligence policies, if you have KPIs, if you have business model, risks, so on. And you need to explain if you don’t have a policy on that, and that’s the major difference. That now it’s genuine.197

The two biggest differences between Danish national CSR policy and EU are the company size requirements—250 for Denmark, and 500 for EU—and the comply and explain approach. The latter—comply and explain—also did not seem to be a sticking point for Denmark, although their take on why companies should not be forced to give a poor explanation for not reporting was humorous, “You could just say you didn’t have any CSR policies. Our argument was that we didn’t want any bad explanations for why you didn’t focus on it!”198 As discussed in Chapter 3, one of the drawbacks of this Directive is the somewhat lax compliance mechanism. Although Member States are required to provide an auditor to check if qualifying organizations are releasing CSR reports, those reports do not necessarily need to be checked on their content.199 Nor, does it seem that there are serious penalties for refusing to disclose information, even with the flimsiest of explanations.

In keeping with Directive 2014/95/EU, Danish companies falling under Classes C and D must report their CSR policies, including standards, guidelines, and principles held by the company. It must report the procedures or systems used in putting said policy into action. And it must assess past actions as well as lay out future expectations for on-going CSR initiatives. They may publish the report as integrate management review, on the company’s website, as a supplement.

197 Interview. Danish Business Authority. 16.03.2017.
198 Ibid.
199 Directive 2014/95/EU.
to the annual review, or as a part of the UNGC COP report or a UN Principles for Responsible Investment report on progress. And if a company does not have a CSR policy, this too must be explained.  

When viewing CSR as a social construct, there is more than just the legal aspect of this law. And as a smart mix policy, this is taken into account. The thinking is that naming and shaming is an important punishment in and of itself—that consumers and other potential business partners will give preferential treatment to the companies that best comply with NFD. As we will see in the case study below, this can be a powerful motivator for compliance.

5.2: Feedback from Local Businesses

It is one thing to see results on a graph, or talk broadly about how CSR has infiltrated the DNA of Danish corporate consciousness. It is another to hear first-hand how companies feel about the more stringent reporting requirements. During my interview with Skagen, I was interested if she could sum up the general feedback she has received from local businesses over the DFSA. To start the interview, she gave me a preview into one of the most consistent gripes about CSR reporting she received, “The critique we often hear is that nobody actually reads these CSR reports accept actually students working on their thesis!” I can sympathize. Later, she would elaborate, “There has been some negativity around the use of the CSR reporting, so not the CSR initiatives per se, but more the reporting about it, and that is also not very motivating if you can see that nobody actually reads what you write about.” Skagen admitted that she did not receive a great deal of negative feedback but prefaced that statement with the following caveat, “Companies are a little reluctant to speak very negatively about a law. Then they will just not say anything really. You can interpret the results in surveys when you see there’s a group of companies that are persistently not trying to doing anything actively.” Presumably this would include the aforementioned approximately one-fifth of Danish companies who report they have a CSR policy when in reality they do not. Still, this insight is valuable as another example of the importance that CSR policy plays in Danish corporate culture, and the expectation for companies to participate in good faith.  

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200 Corporate Social Responsibility and Reporting in Denmark 2013, p. 22.
201 Interview. Danish Business Authority. 16.03.2017.
On the positive side of the ledger, Skagen two of the major benefits of CSR reporting were in internal auditing, and investor relations\(^{202}\) (the latter playing a key role in the decision to report for KK Wind Solutions, as we will see next chapter\(^{203}\)):

A lot of companies actually see it as a positive process, that in doing the CSR report, they become aware of a lot of things they weren’t aware of before, that can be both an advantage internally in the company, but also in terms of their stakeholders, that they become aware of a lot of issues where they are already working and doing very well and then they are able to tell it to their stakeholders because they have this internal process of writing it down and making it public. Also, for a lot of companies they start focusing on these issues because they’re met with requirements from their business partners and investors and so on. And I think you hear that more and more, that investors become aware of not just CSR policies in general, but also the specific new international standards like the sustainable development goals, and they start asking companies specifically, ‘are you on top of this? Are you complying with that?’ So, it’s a responsive thing from the company perspective that they just need to start working actively on it because they’re met with a requirement. So that’s sort of the positive view, because it makes sense for the company, because they’re interested in getting that big order from the company or getting into the investment portfolio of an investor and so on.\(^{204}\)

Another positive, according to the DBA, is as *de facto* insurance policy against bad publicity arising as a consequence of doing business in other parts of the world, especially those with lower labor standards than are common in Denmark or within the EU:

For several years there has been one company after another that has been dragged through the whole media circus, a paper has been visiting their supplier in India, or wherever, where you’re not complying with international standards for [a variety of reasons]. So for the whole business, if one company is dragged through that whole media circus then everyone else is like ‘oh…we have to focus on this’ and then it’s not our turn next time.

I think if you would ask a company that has been subjected to the whole media circus…they would probably wish that they had something to show, that ‘no, maybe there has been an unfortunate incident but we’ve done this and this and this and this,’ and I guess that’s also our message to companies: that everything doesn’t have to be perfect, and it’s OK to write about your risks and

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\(^{202}\) Interview. Danish Business Authority. 16.03.2017.

\(^{203}\) Interview. KK Wind Solutions. 13.03.2017.

\(^{204}\) Interview. Danish Business Authority. 16.03.2017.
about what has gone wrong as long as you can show that you’re doing something, and doing it in a systematic way, and you’re in a dialogue with the subsidiaries and stakeholders to improve.\textsuperscript{205}

As we will see from the next chapter, the fear of the dreaded media circus is high on the list of things KK Wind Solutions wishes to avoid, particularly as they expand into (coincidentally) India.\textsuperscript{206}

5.3 Conclusions

The transposition and implementation of Directive 2014/95/EU was not overly burdensome on the Danish state. Rather, it could be argued that it was Denmark leading the EU, not the other way around on this particular matter, especially considering that the DFSA was one of the primary inspirations for the Directive, along with Spain’s CSR act.\textsuperscript{207} This process was facilitated by the larger cultural and social expectations prevalent not just in Denmark, but Scandinavian countries generally.\textsuperscript{208}

Since implementation of the DFSA, studies have shown CSR activities and reporting have generally improved both quantitatively and qualitatively,\textsuperscript{209} but again, those numbers should be taken with a grain of salt.\textsuperscript{210} The business community seems to have largely accepted these new regulations, and have been largely positive about financial benefits of their non-financial disclosure, including attracting potential investors, and avoiding the media circus. As for the equally crucial and complicated question of whether increased reporting leads to better overall performance, Skagen admitted, “That’s the million dollar question! Does it pay to do CSR?” She elaborated that it is difficult to answer this question by looking at the overall picture, but individual companies, enacting industry-specific CSR policies, can help their bottom line.\textsuperscript{211}

On that note, in the next chapter, we will look into a Danish company whose CSR policy does seem to be bolstering the bottom line. We will also dig even further into Danish corporate culture with one Class C company, KK Wind Solutions. We will see many of the same themes espoused

\textsuperscript{205} Ibid.
\textsuperscript{206} Interview. KK Wind Solutions. 13.03.2017.
\textsuperscript{207} Luque-Vilchez—Larrinaga 2016, p. 58.
\textsuperscript{208} Lynes—Andrachuk 2008, p. 382.
\textsuperscript{209} Corporate Social Responsibility and Reporting in Denmark 2013, p. 3, 7-10.
\textsuperscript{210} Executive Summary, p. 2-3.
\textsuperscript{211} Interview. Danish Business Authority. 16.03.2017.
by the DBA repeated at the local level, as CSR and NFD become more and more obligatory for all large companies, and for KK Wind Solutions in particular.212

212 Interview. KK Wind Solutions. 13.03.2017.
6 Case Study: KK Wind Solutions

In many respects KK Wind Solutions embodies the on-going shift in thinking from CSR as voluntary and nice to have, to more of an obligatory responsibility for all corporations. In addition to being an active member of the UNGC, they also adhere to ISO 9001 and 14001, as well as OHSAS 18001. Additionally, they were one of the founding members of APQP4WIND, a quality assurance group for wind turbine manufacturers. Since joining the UNGC in 2010, KK Wind Solutions have treated CSR reporting as an obligation, even in years when they were not yet legally required to do so. In particular, the industry forces within the wind turbine industry more or less forced their hand on this issue. The fact that many of their partners—including Danish wind turbine giants Vestas and Siemens—demanded an adherence to the UNGC, including the release of an annual Communication on Progress (COP), only further highlights the complex interactions between cultural expectations, corporate governance, and government regulation in creating the particular CSR social construct within a given country or industry.

KK Wind Solutions was founded in Herning, Denmark in 1981 (the headquarters was subsequently moved to nearby Ikast, Denmark in 2008), and gained prominence by becoming one of the first producers of electrical control systems for wind turbines in the world. The company grew steadily along with other Denmark-based wind turbine companies, in particular Siemens Wind Power based in nearby Brande (approximately a 20 minute drive away), and now has over 900 employees worldwide, operating in six countries (Denmark, Germany, Poland, South Korea, USA, China), and will soon open up a factory in their seventh (India). Although the company first expanded abroad by opening a production facility in the city of Szczencin, Poland in 2003, most of their international expansion as occurred in a relatively short time frame, post-2010. A regional sales office was established in Seoul, Korea in 2011, followed by another sales office in Beijing, China in 2012. KK Wind Solutions continued their expansion

213 KK Wind Solutions.
214 APQP4WIND.
215 Interview. KK Wind Solutions. 03.13.2017.
216 KK Wind Solutions.
with another sales office in Hamburg, Germany the following year, and a distribution center in Lenexa, Kansas, USA in 2014.\textsuperscript{218} It is currently classified as a Class C company under Danish national law,\textsuperscript{219} but not one of the top 200 companies in Denmark. As such, they will be included under the revised Danish Financial Statement Act, along with all 1400 companies that will be required to report on CSR activities.\textsuperscript{220}

The question of whether KK Wind Solutions was legally required to report was not nearly as cut-and-dry as I would have liked. In fact, this question managed to temporarily stump my contacts when I brought up the question over email, but it was later confirmed that they were required under the 2008 version of the DFSA, and will be required to comply with the revised version starting at the beginning of next year. Through questions to both KK Wind Solutions and the DBA, I found that this 250 person threshold within Denmark (and 500 person for the rest of the EU) did not include employees working in other nations, even other EU Member States.\textsuperscript{221} Although KK Wind Solutions cleared that lower, 250 person limit required of Danish companies, they have an additional 450 employees working in their factory in Poland.\textsuperscript{222} Hypothetically, and in accordance with the way the Directive is transposed, KK Wind Solutions would not have to report if they fell below that lower-limit employee threshold in Denmark. Now, it seems unlike that KK Wind Solutions would stop reporting, for reasons discussed at greater lengths below, but this could be a potential loophole for companies looking to avoid mandatory reporting.

The company has benefitted from an increased interest in renewables both domestically and internationally. Denmark has the stated goal of using 100% renewable energy by 2050, and 50% by 2030.\textsuperscript{223} Both of these goals are ahead of the Europe 2020 agenda.\textsuperscript{224} KK Wind Solutions control systems can now be found in more than 65% of the world’s offshore wind farms by total capacity. In fact, their system was installed in the world’s very first offshore wind farm, located near Vindeby, Denmark.\textsuperscript{225} As a company whose fortunes will rise and fall along with the

\begin{footnotesize}
\begin{itemize}
  \item[218] KK Wind Solutions.
  \item[219] Interview. KK Wind Solutions. 13.03.2017.
  \item[220] Interview. Danish Business Authority. 16.03.2017.
  \item[221] Ibid.
  \item[222] KK Wind Solutions.
  \item[223] Danish Wind Industry Association.
  \item[224] Europe 2020.
  \item[225] KK Wind Solutions.
\end{itemize}
\end{footnotesize}
demand for renewable energy, they obviously have a vested interest in promoting the lower cost of renewable energy and action on climate change. Because of this, the decision to both be active with their CSR activities and report said activities, became a *de facto* obligation, as we will see below.

### 6.1: Compiling the Report

KK Wind Solutions decided to join the UNGC in 2010. In doing so, they are required to produce an annual COP, along with paying a fixed annual fee determined by their annual turnover. This COP effectively doubles as their CSR report, to remain complaint under Danish national law. Since 2010, KK Wind Solutions reports that the process of compiling and writing the report has become easier as the process is now firmly established in their on-going quarterly and annual schedules. Roughly three years ago the company decided to combine the UNGC’s “10 Principles” into three easier-to-manage, and industry-appropriate categories: Human Rights, Employees, and Environment.

The organization has decided to spread the administrative burden of compiling the report between the Human Resources (HR), Communications, and Quality, Health, Safety, and Environment (QHSE) departments. I was fortunate to be able to sit down and interview those directly responsible for CSR policy and reporting within the organization, Anne Eliasson from HR, Carina Britorn Vestergaard from Communications, and Kim Scmidt Pedersen from QHSE. As an organization, KK Wind Solutions has two separate processes for addressing their CSR concerns: (1) compiling information, assessing previous targets, and writing the COP, starting about 3 months prior to the annual due date at the end of February, and, (2) an on-going quarterly quality and management review. Although the latter process is not directly linked to the CSR report, the two processes are interlinked.

Eliasson explained the link between the two processes:

> It’s not like the first time we visited them [during the writing of the report], because some of the goals are incorporated in for instance the quality part, regarding waste and things like that are already part of their annual review. So basically, it’s a lot of KPIs are drawn in and on-going, but

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226 A comparison of 4 international guidelines for CSR 2013, p. 16.
227 Interview. KK Wind Solutions. 13.03.2017.
228 *KK Wind Solutions 2016 COP*. 
we start approximately 3-4 months before the deadline and start reviewing and talking topics and talking what else do we want to convey in the COP. For instance, we have a theme every year...

Then we start the writing process. Approximately 14 days before!\(^{229}\)

Naturally, Communications was involved in the process. While it is logical to have any public correspondence handled by Communications, it can lead to accusations of greenwashing. That said, even companies that are acting with the best intentions will want to frame their CSR accomplishments in the best possible light. Beyond just this case study, this is an example we have seen from Chapter 2: companies essentially bragging about their good work under the rubric of voluntary disclosure theory.\(^{230}\) This is all to say that marketing, or “positive marketing,” Vestergaard called it, was part of the process. She continued, “Due to the industry we’re in, this is why we [address these topics]. We are here to lower the cost of energy.”\(^{231}\) It is this marketing component of CSR reporting that makes the phenomenon especially difficult to study. Responsible and compliant companies want to gain credit for their actions, but so do non-compliant companies.

Another noteworthy observation to come out of this qualitative study is the support for the quantitative evidence from the DBA reports from Chapter 6 that reporting becomes easier for companies over time. Vestergaard explained, “We met strategic sourcing, HR, and quality, and they just gave all their input and you know what to report on so it’s quite simple. What was the target last year? What is it now? Have we fulfilled these targets, yes or no? What do we want to do next year? So it was straightforward.”\(^ {232}\)

### 6.2: Why UN Global Compact?

In Chapter 5, we briefly discussed the some of the most popular reporting guidelines and frameworks. When an organization decides to pursue a CSR reporting strategy, they are encouraged to join one of these frameworks, if not by a government entity (e.g. the DBA), then by an emerging general understanding in the business community that these frameworks are
trusted, and provide basic instructions on how to begin the process of compiling and releasing annual reports.

But before releasing a report, or even deciding on a framework, KK Wind Solutions needed to decide whether or not to conduct CSR reporting at all. Although the company is currently legally required to report, that was not always the case. Rather than facing a legal requirement, they were faced with an economic requirement. Simply, their customers demanded it. As Elisson explained:

We use the UNGC because a lot of the companies we also work with they also require that you comply with the ten principles of the UNGC so that’s one of the reasons we joined…We are in the wind industry, so many of the bigger [wind turbine companies] are very focused on the climate and so on, and that’s why many of them are part of the UNGC and why we are also, naturally, looking into complying with the ten principles.

I think mainly the [desire to be in] UNGC is not driven by Danish law, but by what we saw in the market and what we saw others doing.233

This was one of the most surprising aspects to arise during the interviews. A great deal of the academic literature largely focused on other factors as to why companies would want to report. Perhaps this is especially prevalent in this example because of the implicitly environmentally-minded nature of the wind turbine industry. Regardless, the social expectations that existed, particularly in this industry, and particularly in Denmark, essentially created the obligation to report for KK Wind Solutions, even if they were not yet legally required to do so.

In part because of the aforementioned industry pressure, KK Wind Solutions joined the UNGC in 2010 and have released an annual CSR report each year since.234 When I asked Eliasson about the specific decision to join the UNGC above other frameworks, she responded, “When we joined the UNGC, it was the most known way to go, and because so many were asking ‘are you complying with the basic human rights?’ and things like that, it was the most obvious to do.” Essentially, KK Wind Solutions turned to the UNGC in the same way a first-time consumer would turn to a trusted brand on the basis of name-recognition. The general recognition of the UNGC as a quality framework allowed the organization to gain credibility on important CSR

233 Interview. KK Wind Solutions. 13.03.2017.
234 KK Wind Solutions.
issues just by joining and complying. And much in same way consumers tend to show brand
delay over time, so too has KK Wind Solutions in deciding to stick with the UNGC, “We
haven’t done research into other models” Eliasson added.\footnote{Interview. KK Wind Solutions. 13.03.2017.}

In addition to sticking with the “brand” they know, there is also a very practical matter to
address: the time it would take to learn how to comply with a new guideline. From looking into
CSR reports from a number of larger corporations (ones certainly larger than KK Wind
Solutions), they will often choose to comply with multiple CSR frameworks. To do so
effectively almost certainly requires a larger organizational structure in order to successfully
adhere to all of the guidelines. This process, while likely getting easier over time, would also
present a struggle for smaller organizations. In bringing this point back to KK Wind Solutions
in particular, by meeting with the small number of people involved with the compiling and
writing of the report, and looking at the annual timetable—as highlighted in section 7.1—for
engaging in this process, complying with multiple CSR reporting frameworks would likely
represent an undue burden on the organization.

\section*{6.3: Costs and Benefits for KK Wind Solutions}

\subsection*{6.3.1: Administrative Burden}

Whether in the public or private arena, there is a general expectation of bureaucracy in
Denmark.\footnote{Lynes—Andrachuk 2008, p. 382.} While the annual COP is not audited for content (just completion), KK Wind
Solutions is audited to show that they maintain their standards for ISO and OHSAS
requirements. This led Eliasson to exclaim during the interview, “We’re not flying under any
radar!” In light of these other yearly audits, the representatives of KK Wind Solutions seemed
rather nonplused by the added administrative burden. “I think Danish companies do a lot of
reporting on statistics and so many things,” Eliasson explained. In an environment where
companies are already expected to be transparent and accountable in certain areas, it seems to
make additional regulations concerning NFD easier to stomach, although Vestergaard added,
“It’s time consuming.”\footnote{Interview. KK Wind Solutions. 13.03.2017.}
When I asked about whether the added administrative burden of conducting CSR activities and reporting was a net disadvantage, Eliasson said that she did not see it in such terms. Rather, it was more about the general principle, and being seen as compliant, especially within the industry, “With the green tech, you need to be seen as doing something with the climate and so on.”

When discussing this Directive in particular, the DBA saw this added burden from more of an EU-wide perspective, “It’s an advantage, now it’s not just something for Danish companies,” Christina Skagen explained. “It’s the same burden for all companies within Europe. And we have quite a few years of experience of recording. We also have a good history of already doing a lot of things because in some areas our own legislation is a little bit stricter.” From a Danish perspective, it might have been an added burden at first, but the years of prior NFD should give them an advantage compared to some companies implementing CSR reporting policies for the first time in other EU Member States.

6.3.2: Internal vs. External Benefits Revisited

Besides the major factor of industry pressure, the representatives of KK Wind Solutions appeared to have an overall positive attitude toward CSR and NFD. They also largely confirmed many of the previously discussed benefits from Chapter 2. During the interview, I asked Eliasson about the internal and external benefits of CSR reporting for KK Wind Solutions:

Internally, it gives us a focus to be compliant. When we enter areas of the world where we haven’t been used to operating in and for sure we are challenged every time we are operating in a new country because new legislation and new areas to comply with. So from that point of view it is good for us to revisit this a few times during the year to say ‘Are we compliant? Are we still having the right focus as we write the COP?’ And so on. In that way for the internal part, it’s very good. And other things are also driven out of the quality department.

Although the internal benefits appeared fairly obvious to Eliasson, she seemed less confident about the external benefits. “Shareholders have an interest that we are compliant, but I don’t know if they see it as something that will put us ahead in the field,” she explained.

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238 Ibid.
239 Interview. Danish Business Authority. 16.03.2017.
240 Interview. KK Wind Solutions. 13.03.2017.
On the other hand, Pedersen’s primary concern was the external benefits, which he saw primarily as an insurance against bad press, “It is a prerequisite, and it is an insurance. We’ve seen companies around the world get in bad standing because they didn’t or because they weren’t in control and it came as a surprise (or at least they appeared surprised) for them that they had something. And we don’t want to be there. We don’t want to be caught in a situation like that…better safe than sorry, you know?”

These benefits seem to answer Skagen’s “million dollar question” from the previous chapter, at least from the perspective of KK Wind Solutions. The incentives to both act good and report on those good activities are clear. By failing to act and report, KK Wind Solutions would simply be left behind by the industry, unwilling to partner with an organization that is seen as non-compliant.

6.4: Taking the Next Steps

6.4.1: Expanding Operations Beyond the EU

Coming from a European, and especially a Nordic perspective, it is easy to forget just how different the standards and expectations are beyond the borders of the EU internal market. Denmark (along with its Nordic neighbors) annually ranks among the best nations in terms of environmental protection, equality, GDP per capita, and standard of living. This allows the nation to create a culture where needs above and beyond everyday concerns can be addressed. This is not necessarily the case in the countries where issues that are considered basic human rights and “common sense” expectations in Denmark, are not nearly so common sense. Such is the case in India, where KK Wind Solutions will soon be expanding into. VP of Quality Assurance Kim Pedersen explained:

You can say that CSR quality is of course should be management connected and approved. We have our COP and our CEO is representative of that, and signing. And he also said he signed up the UNGC letter and things like this. It’s part of our strategy. This is part of our DNA, this is what we want. Also, now the challenging part is how we transfer this set up in India. We actually just had a management meeting where it was repeatedly said about how to set this up. We are in the

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242 Interview. Danish Business Authority. 16.03.2017.
244 Organization for Economic Cooperation and Development Data.
really early phases, we are just about to establish the company, just about to hire the first set of people. Just last week had people in the warehouse we bought and things like this. Just stating ‘we have the same set of standards, we have clean toilets, clean canteen, we do not compromise safety.’ We had people washing the floor, we stopped them because they’re not wearing shoes. So you know, all of this said, we have windows that are cracking: fix this. Fix this. There’s a hole in the road to the factory? Fix it. It’s all of these small things. It’s about setting a standard.245

On one hand, you have a Danish company whose primary concern, both from a CSR and a strategic point of view is the lowering of the cost of energy. They wish hold themselves to certain standards and expectations both at home and abroad, but then they must try to communicate these concerns to employees coming from vastly different cultural backgrounds. This presents a litany of challenges, up to and including CSR strategy. And this is not the first time KK Wind Solutions bumped into this challenge from a NFD perspective. Pedersen explained that they had similar issues when first expanding into China:

So from a quality point of view reflecting back to the products, everything else is nice and tidy, if it’s shiny, then it will reflect our attitude and our care for our process, our methods, and also our products. I’m not naïve, so it’s about finding that balance. When we were in China, we had a local Chinese COP, and I think we’ll have to do the same in India, that’s my recommendation. Because then you isolate a checklist, an action list toward that facility.246

6.5: Conclusions

In conducting these interviews and doing research into the company, it is hard to say that CSR reporting has been anything but a beneficial experience for the company. Since joining the UNGC in 2010, the company has expanded rapidly from operating in two countries—both within the EU—to soon-to-be seven countries on three continents.247 I am not arguing that CSR has directly led to the rapid expansion, but equally it does not seem to be a major hurdle to growth.

My overall impression of KK Wind Solutions and their representatives was a positive one. They seemed genuinely interested in learning more about CSR and reporting, and how to better

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246 Ibid.
247 KK Wind Solutions.
comply with their current requirements, as well as how to comply in the future as they continue their expansion, particularly into India.

Importantly, they showed the growing sense among transnational corporations that CSR is not just about creating a better public image, but is more or less obligatory, especially in the green tech sector. Because of the demands of their customers, the link between financial and non-financial performance is clear to a company like KK Wind Solutions.

In Chapter 7, we will take a look back at the first six chapters, and try to put everything into context to suggest how CSR and NFD can be improved in the future.
7 IMPROVING CSR

Throughout this thesis project, we have mostly looked at how things are, rather than how they should be. We looked at CSR from a conceptual and social construct perspective, before delving into CSR policy at the EU level under Directive 2014/95/EU. We saw what implementation of CSR policy at the Member State looks like, both in terms of how the Directive affected Danish policy, and how Danish policy affected EU policy. And finally we looked at how one company in Denmark integrates CSR strategies into their larger business strategy. Before concluding, I would like to take a moment to reflect on what we have learned, what the current trends are in CSR and CSR reporting, and ways that CSR activities and reporting can be improved from both a private and public perspective. We have seen up to this point that CSR has evolved from strictly voluntary to more or less obligatory, especially for larger corporations, and especially for those within the green tech sector. Whether large corporations are acting under the voluntary disclosure theory or the legitimacy theory, the result is the same: greater public disclosure of non-financial information.248

7.1: Evolution of CSR Reporting and current trends

If there is one thing I have tried to elucidate to the reader so far, it is this: whether through legal or de facto obligation (be it customer, industry, or stakeholder demands), companies are becoming more and more apt to voluntarily disclose their non-financial CSR actions though annual reports.249 Voluntary reporting has increased, but so have government mandates, both at the Member State and EU level. To return to Figure 1 from Chapter 2, stakeholder expectation, government action, and corporate action have all fueled the continued development and evolution of CSR and CSR reporting as a social construct.

The proliferation of standards, guidelines, frameworks, etc, has led to a great deal of confusion over not just best practices, but also over compliance. This problem does not appear to be going away any time soon. Theoretically, some collaboration between initiatives could improve across the board expectation and performances, “a closer collaboration of initiatives, addressing

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249 Ibid.
specific aspects of the implementation of CSR agenda: what has to be done (codes, standards, governance principles), how to be done (management and assurance standards), and how to measure progress (reporting) on a global scale could lead to emergence of the global commonly accepted CSR framework. This seems to be inevitable if the CSR agenda is going to succeed.250

Along a similar vein, it is argued that such collaboration among organizations and initiatives is necessary for transnational corporations to regain moral authority, particularly in light of the relative ineffectiveness of international law.251 Unfortunately the trend appears to be going in the wrong direction. Even when companies within an industry work together to address a particular CSR concern, as KK Wind Solutions did in helping to form the quality assurance organization APQP4WIND,252 this can lead to more uncertainty and less credibility as a whole. The proliferation of frameworks and standards might need to be addressed in future legislation in order to create more universal standards, applicable to companies across industries and borders.

Although integrated reporting was ultimately not made mandatory under Directive 2014/95/EU, this continues to be a source of discussion in both academic and legal spheres, and it seems likely that this could be the next area to be addressed in EU CSR policy. Denmark already requires companies to produce integrated reports.253 If the EU continues following the Danish lead in national CSR policy as they have largely done already,254 this could be a logical next step in promoting NFD. Integrated reporting might be a fruitful area for the Commission to explore, “Even though integrated reporting is nowadays a voluntary practice in most of the world, the role of governments could be soon of the outmost importance.”255 This would be just one more way that CSR reporting is moving from voluntary to obligatory.

7.2: Immediate future under CSR Reporting Directive

The soon-to-be-released non-binding guidelines by the Commission should provide a better understanding of the current understanding of EU CSR policy. The guidelines were originally intended to be released in December but were pushed back to June, as a Commission

250 Mazurkiewicz 2010, p. 6.
252 APQP4WIND.
representative explained, “The original timeline for this was December 2016, but we are taking some extra time in order to take into account recent developments, in particular, including the work of the Task Force on climate-related financial disclosures organized by the Financial Stability Board, which published last December draft recommendations for public consultation.”

After that, the Commission will need to follow the Directive’s review clause in preparing a report by December 2018:

The Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive, including, among other aspects, its scope, particularly as regards large non-listed undertakings, its effectiveness and the level of guidance and methods provided. The report shall be published by 6 December 2018 and shall be accompanied, if appropriate, by legislative proposals.

The inclusion of the phrase “particularly as regards to large non-listed undertakings” could hint that these large non-listed undertakings, which were originally going to be included under the Directive, could be subject to future revisions of the Directive. If the Commission seeks to include large non-listed entities under future CSR reporting legislation, it would address one of the main criticisms of this Directive: namely that it does not apply to enough large corporations. As with the over-due guidelines, it will be interesting to see how the Commission perceives the initial impact (and possible expansion) of EU CSR policy.

### 7.3: The Problem of Greenwashing

No discussion of CSR reporting would be complete without a cursory mention of “greenwashing,” i.e. conflating or obscuring a company’s environmental performance to produce favorable environmental-friendly branding. The term is used to disparage companies—ones that could be said to be operating under the legitimacy theory of disclosure—which present themselves as having a better environmental than they really do. Greenwashing explicitly refers to a company’s environmental performance, but the term “bluewashing” also

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256 Interview, Commission Representative. 17.03.17.
257 *Kinderman* 2016, p. 34-35.
pops up in the literature from time to time, referring instead to similar behaviors among a wider range of CSR behaviors.\textsuperscript{259}

Greenwashing is a problem when discussing CSR reporting, but one that has the potential to cause a great deal of long term harm to a company if it is caught in a blatant deception, as was the case with BP with the Deepwater Horizon disaster in Chapter 2.\textsuperscript{260} Add in the general distrust of corporations, particularly prevalent among environmentalists, and greenwashing can have long term negative consequences not just for the company, but for the industry at large. In this regard, an honest and proactive CSR reporting strategy can, over time, help to negate this perception, “CSR reports can reestablish moral legitimacy by being credible tools that facilitate communication and thereby bridge the credibility gap. According to the political notion of CSR, this moral legitimacy is established and maintained through deliberative discourse, a form of communication that is based on reaching a consensus.”\textsuperscript{261} This notion ties in to the comments by DBA’s Christina Skagen from Chapter 5 on the importance of systematic disclosure for legitimacy.\textsuperscript{262} It is in this way that a company can go from acting on the legitimacy theory, to actually gaining it.

For companies and industries actually wishing to boost their credibility, this is a problem they would prefer to avoid, “the findings imply that avoiding jargon and overly positive reporting and being clear, concise, and objective are preconditions for credibility of CSR reports. Moreover, a focus on contents rather than format or contextual factors and following standardization guidelines lead to higher levels of reporting credibility.”\textsuperscript{263} Stakeholders have—justifiably in some cases—become skeptical of corporate greenwashing. While it remains a problem within CSR reporting, it is a risky proposition. To take a non-environmental example, recent media circus following the customer abuse by United Airlines\textsuperscript{264} highlighted just how quickly poor behavior by corporations can cause great damage to their branding. If companies have poor CSR policies, or are caught lying about good CSR policies, that is a risk that will need to be priced-in to their business model. From a public policy perspective, better regulation,

\textsuperscript{259} Backer 2012, p. 124.  
\textsuperscript{260} Ibid, p. 130-133.  
\textsuperscript{261} Lock—Seele 2016, p. 187.  
\textsuperscript{262} Interview. Danish Business Authority. 16.03.17.  
\textsuperscript{263} Lock—Seele 2016, p. 194.  
\textsuperscript{264} Koening 2017.
up to and including thorough auditing of CSR reports, could curb greenwashing, but also likely at great public cost.\textsuperscript{265}

**7.4: Should there be even greater regulation of CSR reporting?**

Throughout my research, and in my interviews with both KK Wind Solutions and the DBA, there appeared to be a general sense of ambiguity surrounding what is legally required from the largest companies under current CSR policy. However, Anne Eliasson of KK Wind Solutions did not think that more regulation was necessarily better, but rather would prefer to see more specific guidelines, and possibly feedback that her organization is on the right track:

> If it’s something that really needs to have some sort of empowerment in organizations, I think it’s something that needs to be specific about what they want. If it is too broad, for interpretation, I think you’ll get many variations and are you actually complying with what the legislation wants? I think some of the legal parts today are not so specific, so you can write a lot of things. Are you then compliant? Or not compliant? Is it just a big grey zone? I think if it really needs to have an impact then I think it needs to be…I’m not saying that it has to be how do you do auditing or anything, or accounting, or things like that, but more finite things, a framework or are you complying within this area? Then you are compliant. Because it can be a bit vague with some of the wording today, so, it can be hard to say if actually someone came out and said, ‘You’re not compliant’ it’s hard to say today because of the wording.\textsuperscript{266}

Another possible suggestion from Eliasson was to take a more targeted approach to CSR policy.\textsuperscript{267} This is an area where the DBA seems to be in agreement, at least in principle, if not yet in practice.\textsuperscript{268} While this paper largely focused on CSR reporting on environmental concerns, not every corporation (or their stakeholders) will target, for example lower carbon emissions, as their top CSR concern. For some, e.g. clothing retailers, labor rights and diversity in hiring might be reasonably considered a more urgent area to address and report on. I might be tempted to counter than any corporate entity of a certain size will likely have a significant carbon footprint, but that is perhaps pedantic. The biggest difficulty from my vantage point would be writing a law to fully take into account all of the variables that would make such specified reporting a

\textsuperscript{265} SWD(2013) 127 final, p. 39-40. 
\textsuperscript{266} Interview. KK Wind Solutions. 13.03.2017.  
\textsuperscript{267} Ibid. 
\textsuperscript{268} Interview. Danish Business Authority. 16.03.2017.
valuable pursuit. And as it stands now, the comply or explain model should in most cases help companies cover for the fact that they do not have a specific CSR policy in one issue or another. Regardless, if the comply or explain policy is not sufficiently clear, it could create confusion or additional administrative burden on companies, and is perhaps something to consider with future CSR policies going forward.

From these discussions, it is clear the government can play an active soft law role is by setting guidelines in CSR activities and reporting to make it clear what desirable outcomes are most beneficial to local economies and populations. Such a method can be especially useful in increasing credibility for resource extractors, “We recommend that government leads the production of climate compatible development to define desirable outcomes. Such guidance should serve to highlight interactions between sectors, and guide interactions. The mining sector would then benefit from increased transparency and legitimacy in its CSR activities on the ground.”269 Although I have argued up until this point that CSR activities should be viewed as a social construct, the government can codify the current understanding of that construct, thereby harmonizing a base level of social expectations of large companies and their CSR activities and reporting.

Of course, this Directive was written with a smart mix policy approach in mind,270 so in keeping with this philosophy the Commission should be mindful not to over-regulate, and leave room for corporations and industries to engage in CSR activities and reporting in a way that best benefits themselves, their customers, and their stakeholders. And even if the Commission seeks to strengthen this law going forward, it is also important to be mindful of the soft law implications that come from the setting the non-binding reporting guidelines.

7.5: Finding a Balance

The theme of balance arose repeatedly throughout this thesis project. Whether discussing “smart mix” policies, the incentives of companies, or the desires of stakeholders, successful CSR policy seemed to be resting on a knife’s edge insofar as even well-intentioned companies are still driven by the profit motive and the competitive marketplace, which have the potential to lower the importance of internal CSR strategy.

Kim Pedersen of KK Wind Solutions explained this balancing act well in our interview, “One of the problems with Danish work, environmental, and a little CSR…it’s good. We need to have it. But at the same time, I want it cheap. I want it now. This dilemma is built into it. Why are we going to India? There’s a market out there, yes,” he said, before adding in a whisper, “But it’s also cheaper.” Pedersen continued this line of rhetorical questions, “We are in Poland. Why are we in Poland?” And again, in a whisper, he answered, “That’s strictly because it’s cheaper down there. And also we can get resources and stuff like this.” Finally he concluded, “Still, it is a little bit of a fine balance.”

This is the inherent dilemma within CSR at the moment, and for the foreseeable future. Even companies within socially responsible countries, and within socially responsible industries still have the profit motive. It is why they are in business to begin with. In turn, this can create conflicts within the company, wherein factors such as sustainability may come in direct conflict with profit or company expansion. The inherent difficulty of this balancing act is likely to become even more pronounced within organizations and countries that are not so focused on CSR initiatives.

7.6: Conclusions

From what we have learned so far, there is a room for government action concerning CSR. It is not merely voluntary and left to the whims of corporations, as it is sometimes suggested, but rather many disparate parts playing a role in increasing expectations for how corporations should behave, and to what level they should be transparent about it. Moreover, we have seen from the beginning that increased government regulation, at Member State level, and now EU level, has the ability to positively affect these expectations. From the case study on Denmark, we know the state can have a role in helping companies report on CSR activities in a more systematic and easily to understand way.

From my vantage point, the forthcoming Commission non-binding NFD guidelines should play a pivotal role in better defining CSR and its role in European corporate culture. In this regard, it is regrettable that the Commission were not prepared to release these guidelines with (or even

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272 Interview. Danish Business Authority. 16.03.2017.
before) the transposition deadline in December 2016. Still, these guidelines should be important for Member States that are perhaps behind the curve in updating their national CSR policies to be more in line with some of the more advanced Member States.

As a smart mix policy solution, it is important to keep a balanced perspective: both private and public entities should have a say in dictating continuing and evolving CSR policies. Of course both sides will not always have congruent goals in terms of CSR and NFD, or if they do, perhaps they do not share similar levels of importance. It is in this regard that government institutions, whether through binding or soft law, act as a check on corporate will, ensuring that their policies continue to benefit society as best as possible. And when corporate action is insufficient, as the Commission deemed it to be, they have an obligation to stakeholders to pass more stringent measures, which is exactly why Directive 2014/95/EU came to be in the first place.274

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273 Directive 2014/95/EU.
8 CONCLUSIONS

CSR in Europe has continually evolved over the past several decades from a strictly voluntary concept of socially beneficial corporate actions to a responsibility and de facto obligation for large transnational corporations to adhere to. I hope that I did a sufficient job in guiding the reader down through EU, Member State, and corporate levels as we looked at what is currently happening with CSR reporting within the EU, with a narrow scope, today. As we saw in Chapter 2, this evolution in the understanding of CSR forced the Commission to redefine CSR from “A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”\textsuperscript{275} in 2001 to “The responsibility of enterprises for their impacts on society”\textsuperscript{276} in 2011. The legal concept of CSR was not the only thing to evolve, as large enterprises chose to engage in NFD in greater and greater numbers.\textsuperscript{277} I showed how it is useful to think of CSR as a social construct which creates expectations driven inter alia by pre-existing social mores, existing laws, and corporate culture.

I also briefly addressed by CSR policy is important with regards to climate change. A relatively small number of companies are responsible for a relatively large percentage of the GHG emissions,\textsuperscript{278} and international law is not designed to apply directly to transnational corporations.\textsuperscript{279} As a one-of-a-kind supranational entity, the EU is in a unique position to better govern transboundary effects caused by its corporate entities, and therefore sound CSR reporting policies can be one of the useful tools at its disposal.

From this broad perspective of CSR policy, we looked at the benefits of a bottom-up approach from a government perspective within the guise of a smart mix policy solution, and the external and internal benefits for company disclosure. These corporate benefits include positive branding, consumer outreach, internal auditing, and increased credibility.\textsuperscript{280} On the government

\begin{footnotesize}
\begin{enumerate}
\item COM(2011) 681 final, p. 6.
\item Sierra-García—Zorio-Grima—García-Benau 2015, p. 287.
\item Goldenberg 2013.
\item Morgera 2009, p. 25.
\item Krištofík—Lament—Musa 2016, p. 158.
\end{enumerate}
\end{footnotesize}
side of the equation, it is a cost-effective solution with low administrative costs and a high
degree of flexibility.  

A central point of discussion throughout the thesis was whether companies disclosed under the
voluntary disclosure theory, or the legitimacy theory. While the real-life examples are often
not so cut-and-dry, it is important to be mindful that not all companies are actually behaving in
socially responsible ways, but instead to boost the perception that they are. This, in turn, brings
up the prospect of greenwashing, which we further elaborated on in Chapter 7. On the other
hand, many companies do behave in a socially responsible manner, and are therefore willing to
disclose their record through their CSR report and other means.

In Chapter 3 we looked at the development of Directive 2014/95/EU from the initial multi-
stakeholder roundtables and public consultation, to planning, drafting, revising, and finally
passing the legislation. We saw how Member State CSR policy—especially in Denmark and
Spain—helped shape this Directive. We learned that in the legislative process, language was
inserted to narrow the requirements to listed “public interest” companies, thereby reducing the
total number of companies for which CSR reporting is mandatory from 18,000 of the 42,000 of
large European companies down to 6,000. However, this is one of the factors specifically
named for review by the Commission in December 2018. For now, publically listed companies
will be required to either comply—by producing a CSR report as either part of a larger annual
management report, or as a stand-alone—or explain why they did not or could not comply.

From there, we investigated how the Directive makes use of international reporting frameworks,
and explored some of the similarities, differences, benefits, and problems associated therein. I
established that while many of the frameworks promote similar kinds of NFD, there has been a
proliferation of frameworks in recent decades, which can lead to confusion over questions of
compliance. I compared and contrasted several of the most well-known and well-established
reporting frameworks currently used in Europe.

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282 Hummel—Schlick 2016, p. 455.
283 Luque-Vilchez—Larrinaga 2016, p. 58.
284 Kinderman 2016, p. 35.
285 Directive 2014/95/EU.
In chapters 5 and 6 I looked at the implementation of this Directive from a Member State and corporate level, respectively. The multiple interviews with the DBA and KK Wind Solutions helped elucidate not only the common concerns and problems with current EU CSR policy, but also the benefits and working aspects of it. Denmark was a special case study because of its advanced development of national CSR strategy.\textsuperscript{287} In response to this imbalance between its own national policy and others within the EU, the Danish state lobbied the Commission for minimum harmonization on CSR reporting policy across the EU in hopes of providing a more competitive playing field for Danish companies.\textsuperscript{288}

Through the case study on KK Wind solutions, we explored what CSR reporting looks like in practice. While the DBA spoke of harmonization across the EU in terms of competitiveness, this was not necessarily a pressing issue according to KK Wind Solutions, as we discovered in Chapter 6. Instead, the biggest factor pushing them toward CSR reporting was not national or EU law, but rather economic pressure from their customers to comply with the UNGC. KK Wind Solutions is now required by law to report, but the legal changes in Denmark were not the primary motivating factor in the initial decision to report starting in 2010. Through this case study, I highlighted many of the concerns facing large transnational corporations in Denmark and beyond, including the difficulties first getting started with CSR reports, confusion over which internationally recognized frameworks to use (or whether to comply with multiple frameworks), and how to remain compliant when expanding into new countries.\textsuperscript{289}

Finally, we drew upon what we learned throughout this exploration, and how the current CSR reporting policy in Europe could be improved following the next official steps from the Commission (including the release of their non-binding reporting guidelines, and official review at the end of 2018).\textsuperscript{290} Hopefully the EU reporting guidelines will help to create more concrete expectations surrounding CSR reporting, which in turn should help bolster credibility and accountability, and reduce dreaded “greenwashing.” All of this, I believe, will create the next step in making CSR reporting no longer just optional, but obligatory for large transnational corporations. Directive 2014/95/EU might not be as strong as some critics would hope for, but

\textsuperscript{287} Luque-Vilchez—Larrinaga 2016, p. 58.
\textsuperscript{288} Interview. Danish Business Authority. 16.03.17.
\textsuperscript{289} Interview. KK Wind Solutions. 13.03.17.
\textsuperscript{290} Interview. Commission Representative. 17.03.17.
it is an improvement and it sets the groundwork for more action on EU CSR reporting policy in the very near future.