

**Non-Financial Reports Requirements as a tool for promoting
Corporate Social Responsibility in Ukraine**

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Abstract

This thesis critically analyzes the European Union Non-Financial Reporting Directive (2014/95/EU) and the possibility of its implementation in Ukraine as an instrument to foster Corporate Social Responsibility development. The analysis is based on the comprehensive examination of the Non-Financial Reporting Directive provisions in regard to its mandatory requirements on disclosure of the non-financial information statements in annual management reports by the large companies of the European Union. The positive and negative impacts of its implementation into Member States national law will be provided. In addition, the above-mentioned analysis will present the regulatory discrepancies, deficiencies, and gaps, on the basis of which the subsequent appraisal of the possible implementation of the Non-Financial Reporting Directive into Ukrainian legislation will be made. This thesis shows, firstly, that the existing Non-Financial Reporting Directive still requires additional legislative work over its provisions to be done and, secondly, that Ukraine could implement the Non-Financial Reporting Directive rules into national provisions and in such way foster Corporate Social Responsibility development through the Non-Financial Reporting.

List of Abbreviations

AA 1000 – Accountability Principles Standard 2008

CNDCEC – National Council of Doctors of Commerce and Auditors

CSES – Centre for Strategy and Evaluation Services

CSR – Corporate Social Responsibility

DG – Director General

ESG – environmental, social and governance factors

GRI – Global Reporting Initiative

ILO – International Labour Office

IMS – Internal Market and Services

IR – Integrity Reports

ISO – International Organization for Standardization's

ISO 14000 – Environmental management Standards

ISO 26000 – Guidance Standard on Social Responsibility

KPIs – key performance indicators

MS – Members States

NFR – Non-Financial Reports

OECD – Organization for Economic Cooperation and Development

PIE – Public-Interest Entities

PRI – Principles for Responsible Investments

SA 8000 – Social Accountability International Standard

SMEs – Small and Medium-sized Enterprises

UN – United Nations

UNGC – United Nations Global Compact

UNCTAD – United Nations Conference on Trade and Development

The Accounting Directive – The Accounting Directive (2013/32/EU)

The Commission – The European Commission

The Guideline – The Guidelines on non-financial reporting (2017/C215/01)

The NFR Directive – The Non-Financial Reporting Directive (2014/95/EU)

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Introduction

The Corporate Social Responsibility (CSR) has risen in its importance's from a small amount of companies to a mainstream practice of international business in the last two decades.¹ For large companies around the world it is common to have their own CSR practice. Moreover, global companies have started to demand from their suppliers the compliance with companies' codes of conduct which covers social and environmental practices.² In addition, this tendency has also extended to the small and medium sized enterprises in developing countries, particularly in the European Union (EU).

The CSR concept is based on the notion of sustainable development which suggests that enterprises, being an integral part of society, should monitor and take into account possible social effects from their business decisions.³ Therefore, provided information of the company should consist of both financial and non-financial information statements in regard to their business activities. Nonetheless, the above mentioned CSR obligation to disclose non-financial information was based more on the voluntary basis due to the fact that the CSR reports were not a mandatory obligation, but a voluntary approach of the company.

Having seen in the non-financial reporting (NFR) significant positive aspects for both business environment and society, the EU has become a pioneer in bringing the NFR on the official supranational level by adoption of the Non-Financial Reporting Directive 2014/95/EU (NFR Directive). Foregoing NFR Directive has provided an effective tool for establishing a dialogue and understanding between the enterprise and the outside community, as well as a tool for self-improvement in management systems. Moreover, the introduction of mandatory obligation on the disclosure of the non-financial information through management reports has created stronger

¹ United Nations, 'Corporate Social Responsibility in Global Value chains. Evaluation and monitoring challenges for small and medium sized suppliers in developing countries' (2012), UNCTAD/DIAE/ED/2012/3, Geneva, 43, at 4.

² *Id* at 4.

³ Svetlana Korol, 'Non-Financial Reporting of an Enterprise' (2011), Visnyk of Kiev National University of Trade and Economics, № 6, 102-113, at 102-104.

connection between companies and its stakeholders regarding their business activities. In other words, the NFR Directive is seemed to be an instrument of transparency and accountability that will positively impact on the company both inside and outside of its borders.

Nowadays Ukraine needs significant changes in the legislation on its way to the EU integration and promotion of European standards in order to be eligible for accession in the EU. At this point of time, Ukrainians are facing a low level of business interest in promotion of the CSR policy due to high level of corruption⁴ and a lack of positive governmental impact.⁵ Therefore, implementation of the NFR Directive and its requirements is a crucial step for businesses and state to show the company's strategy and government interest in protection of fair business and ensuring long-term development in this sphere. Consequently, it could force Ukrainian companies to be more responsible to the demands of current and potential customers and investors as well as establish companies' good name and build trustful relationships with them over time.

The purpose of the master thesis is, firstly, to critically analyze provisions of the NFR Directive, particularly its mandatory requirements on disclosure of the non-financial information statements in annual management reports by the obliged companies and to determine existing practices of its implementation into MS national law. Secondly, the foregoing analysis will reveal the regulatory discrepancies, deficiencies and gaps, on the basis of which the subsequent examination of possible implementation of the NFR Directive into Ukrainian legislation could be made.

⁴ Ukraine is on the 131st position from 176 countries. See Transparency International, 'Corruption Perceptions Index 2016' (2016), countries, <https://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 25 March 2018.

⁵ From the asked 158 experts, representatives of academic science and higher education in the field of the CSR, more than half of them have noted that Ukraine has low degree of influence on the level of social responsibility of virtually all state institutions: central authorities (62.0%), the Verkhovna Rada of Ukraine (61.4%), local authorities (60.1%), the President of Ukraine (58.9%), the judicial system (57.0%), local self-government bodies (56.3%), law enforcement bodies (55.7%). See Marina Deich, 'Formation and development of the multilevel system of social responsibility: management aspect' (2014), National Academy of Sciences of Ukraine Institute of Economics of Industry, Monography, UDC 316.422:338.24, 352, at 83-85.

Regarding the methodology to be used in this master thesis, the main focus will be drawn at the functional method that covers an identification of the NFR requirements by revealing specific peculiarities of the both positive and negative impacts of the NFR Directive implementation into MS national provisions as well as determination and evaluation of most practical way of its implementation into Ukrainian legislation. Moreover, the analytical approach will be used in critical appraisal of different legal sources within both EU and Ukrainian laws and scholars' articles as a basis for the further comprehensive analysis of possible implementation of the NFR Directive into Ukrainian legislation. In addition, the historical method will be applied to the examination of the way of the CSR development in the EU and Ukraine.

Concerning the structural composition, the master thesis will generally provide a comprehensive overview of the NFR development in the EU through the detailed analysis of the NFR Directive and the existing Ukrainian experience in this field as a tool for promotion of the most suitable and sustainable CSR practices in Ukraine.

First chapter will be devoted to the short explanation of the CSR notion and its dimensions through the EU legislator experience and international organizations guidelines and standards. Furthermore, this chapter will present existing scholars' approaches in the NFR notion understanding. In the end, explicit connection between the CSR and the NFR as an instrument for introduction of reasonable ways of the CSR development will be provided. Second chapter of the thesis provides an open analysis of the EU NFR Directive through disclosure of its historical appearance, critical examination of its specific reporting requirements and their existing problems in the practice of some MS, as well as further directions of the NFR Directive development. Finally, the third chapter is related to elucidation of the existing approaches in understanding of the CSR in Ukraine and explanation of the feasibility of NFR Directive implementation into national law in order to solve the CSR development problems. Moreover, this chapter will explain possible

ways of future CSR concept evolution in Ukraine in both ways: with and without the NFR Directive implementation into national law.

Concerning the legal sources and literature that will be used in this thesis, the main attention will be drawn at the both EU and Ukrainian legislation as well as scholars' articles in this field. The great focus will be made on the NFR Directive and its specific reporting requirements to the obliged EU companies.

Chapter I. Non-Financial Reporting as a tool for promoting of Corporate Social Responsibility

This chapter will deal with explanation of general understanding of the CSR concept through the EU and international organizations' knowledge in this field. Moreover, the NFR concept will be examined via existing approaches in understanding of its notion and scope. In addition, close link between the NFR as a tool for foster of the CSR development will be justified.

In regard to the structure of this chapter, the first subchapter (1.1) will refer to elucidation of the CSR notion and its dimensions on both supranational (EU) and international level (international organizations). The second subchapter (1.2) will be related to the highlighting and explanation of the existing approaches in the understanding of the NFR notion and its scope. Finally, the clarification will be provided on the influence of the NFR requirement as an instrument of the future development of the CSR concept in third subchapter (1.3).

1.1. What is Corporate Social Responsibility?

One of the most frequently asked questions for different types of individuals and organizations dealing with corporate social responsibility and its issues is – What does 'Corporate

Social Responsibility' mean? Is it a management concept which companies use in operations with their stakeholders or it is a possibility for the government to establish new form of control over huge and powerful multinational corporations?

To begin with, the CSR has become a highly discussed topic in business environment due to changing environment in the context of globalization, because of companies' awareness that the CSR could become of direct economic value.⁶ This type of responsibility refers to continuous voluntary behavior of business, which is aimed on the companies' social, economic and environmental development that will actively improve the quality of life of the workforce, their families, local community and society in general.⁷

Most definitions of the CSR have been describing this concept as “[a] process of the companies integration of social and environmental concerns in their business operations and as their interaction with stakeholders on a voluntary basis”.⁸ In other words, the European Commission (the Commission) has explained that the CSR could be referred to the companies' voluntary actions that are going beyond what the law requires in order to achieve social and environmental objectives during the course of their daily activities.⁹ Therefore, CSR appears as a managing element that starts at the company level with its performance in a socially responsible manner, which creates balance between sustainable market profit of the company in trading and different needs of the stakeholders.¹⁰ From the above mentioned it could be stated that CSR requires from companies to be responsible for the social, environmental and economic impacts of

⁶ The Commission of the European Communities, 'Green Paper: Promoting a European framework for Corporate Social Responsibility' (18 July 2001), COM (2001) 366 final, Brussels, at 4.

⁷ Alpana Buntolia, 'CSR standards and guidelines: An analytical review' (2014), IOSR-JEF, Volume 3, Issue 4, 52-60, at 52.

⁸ The Commission of the European Communities, 'Green Paper: Promoting a European framework for Corporate Social Responsibility' (18 July 2001), COM (2001) 366 final, Brussels, at 6.

⁹ The European Commission, 'Corporate Social Responsibility (CSR) in the EU - Employment, Social Affairs & Inclusion' <<http://ec.europa.eu/social/main.jsp?catId=331&langId=en>> accessed 31 March 2018.

¹⁰ The Commission of the European Communities, 'Green Paper: Promoting a European framework for Corporate Social Responsibility' (18 July 2001), COM (2001) 366 final, Brussels, at 5-8

their business operations and to be liable in regard to the needs and expectations of their investors, shareholders, employees, customers and local communities, where they are located.

In addition, the Commission states that the CSR concept consists of two dimensions (the areas and the scope): internal and external.¹¹ The internal dimension of the CSR is connected with socially responsible practice within the company, which primarily involves employees and relates to human capital, health, safety and managing change issues.¹² Environmental responsible practice also included in internal dimension but it relates mainly to the process of management and use of natural resources in the production by the company.¹³ The external dimension of the CSR extends its effect on the local community and involves a wide range of stakeholders, such as: business partners, company suppliers, its customers and public authorities.¹⁴ Therefore, the areas and scope of the CSR concept could be classified as multi-dimensional due to its objectives which involves both internal and external interest of different type of stakeholders.

All the above mentioned dimensions have been described in high detail by the international organizations in their Guidelines and Standards. For instance, the Guiding Principles on Business and Human Rights of the United Nations (the UN) highlights state duty to protect human rights and the corporate responsibility to respect human rights.¹⁵

The Guidance Standard on Social Responsibility (ISO - 26000) of the International Organization for Standardization (ISO) has been developed as a multi-stakeholder approach in the form of the guidance which provides companies with the main principles of social responsibility, the core subject and issues pertaining to social responsibility.¹⁶

¹¹ *Id* at 8-15

¹² *Id* at 8.

¹³ *Id* at 8.

¹⁴ *Id* at 11.

¹⁵ United Nations, 'Guiding Principles on Business and Human Rights' (2011), HR/PUB/11, New York and Geneva, 42, at 3-26.

¹⁶ International Organization for Standardization, 'Guidance Standard on Social Responsibility' (2009), ISO/DIS 26000, Geneva, 109, at v-ix.

The Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) has been created as a recommendation addressed by governments to multinational enterprises in order to provide them with voluntary principles and standards for responsible business conduct consistent with applicable to both national and international law.¹⁷

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Office (ILO) that has been provided as a social policy guideline to the multinational enterprises, governments, and other organizations in a sensitive and highly complex areas of their activities basing on the international labor Conventions and Recommendations.¹⁸

To sum up, there is no universally agreed definition of the CSR at a global level, however CSR concept has been recognized as a long-term business strategy which has balanced corporate rights with company obligations towards its stakeholders. Moreover, the CSR agenda involves economic, social and environmental responsibilities, because of the companies' impact on these areas. Therefore, the majority of the international guidelines and standards focus on labor, human rights, environment and consumer protection issues as the core contents of the CSR. In addition to the above mentioned, the Commission states that in countries, where the CSR concept does not exist or on its beginning stage of development, all efforts should be focused on putting the proper legislative or regulative frameworks in order to define a 'level playing field', on the basis of which socially responsible practice can be developed.¹⁹

¹⁷ Organization for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises' (2008), France, 65, at 9-14.

¹⁸ International Labour Office, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (2017), Fifth edition, Geneva, 33, at v.

¹⁹ The Commission of the European Communities, 'Green Paper: Promoting a European framework for Corporate Social Responsibility' (18 July 2001), COM (2001) 366 final, Brussels, at 7.

1.2. What is Non-Financial Reporting?

In general, Non-Financial Reporting is defined as a tool for disclosure of the CSR information, particularly company's social, environmental and human rights information.²⁰ In the marketplace this notion is used more broadly and it involves issues related to: sustainability; corporate responsibility; environmental, social and governance (ESG); human capital; health and safety.²¹ Ioannis Ioannou and George Serafeim define the Sustainable Report as a general NFR that has been developed by the company in order to inform investors and other stakeholders (workers, clients, and non-profit organization) and society as a whole on the companies' environmental, social and corporate governance matters.²²

In addition to the above mentioned, non-financial information has been used in very different contexts to describe different forms of disclosures or measures provided by the companies in their reports and to describe types or forms of financial performance of the company.²³ In regard to these differences, two main academic approaches to non-financial information has been summed up in the Michael Erkens, Kuc Paugam and Herve Stolowy (authors) research.²⁴

Under the first approach, non-financial information focuses on an alternative definition of company performance that is not connected with financial performance measures.²⁵ In other words, non-financial corporate disclosure is intended to reflect companies' performance to CSR, corporate governance, strategy, management quality, efficient operating and intellectual capital.²⁶ However, in order to provide non-financial information companies could rely on information about their financial performance measures, such as qualitative indicators, job satisfactions, customer

²⁰ Access Info Europe, 'What is non-financial reporting and why it is important for corporate transparency?' <<https://www.access-info.org/uncategorized/12195>> accessed 31 March 2018.

²¹ EY, 'The road to reliable nonfinancial reporting' (2016), EYG no. 00456-163GBL, 28, at 4.

²² Ioannis Ioannou and George Serafeim, 'The Consequences of Mandatory Corporate Sustainability Reporting' (2011), Harvard Business School Research Working Paper № 11-100, 49, at 3-4.

²³ Michael Erkens, Luc Paugam and Hervé Stolowy, 'Non-financial information: State of the art and research perspectives based on a bibliometric study' (2015) Comptabilite-Controle-Audit, Tome 21, Volume 3, 15-92, at 23.

²⁴ *Id* at 24.

²⁵ *Id* at 24.

²⁶ *Id* at 24.

satisfaction and etc.²⁷ Therefore, some authors have mistakenly tried to connect non-financial and financial performances measures, making different types of information provided by the companies indissociable.²⁸

Under the second approach, non-financial information is used to describe a disclosure process related to the financial performance, which goes outside the annual reports.²⁹ Therefore, this approach describes the way in which information should be provided, particularly on websites, in press releases, through direct contact with market participant, or in another suitable for company way.³⁰

In regard to the above mentioned, in the first approach, non-financial information is used as a generic term due to its reference to very variable content.³¹ However, in second approach non-financial information is in close connection with financial information, because of that it is hard to differentiate them from each other.³²

In addition to provided approaches, authors have classified two main definitions of the non-financial information in the literature from 1973 to 2013.³³ First notion located in the special report of the Financial Accounting Standards Board on business and financial reporting which defines non-financial information as “[n]on-financial disclosures and metrics [that] include index scores, ratios, counts and other information not presented in the basic financial statements”.³⁴ Second notion refers to a compilation of different non-financial information notions that have been defined as “[n]on-accounting information drawn from outside the financial statements”.³⁵

²⁷ *Id* at 24.

²⁸ *Id* at 24.

²⁹ *Id* at 24.

³⁰ *Id* at 24.

³¹ *Id* at 24.

³² *Id* at 24-25.

³³ *Id* at 25.

³⁴ *Id* at 25.

³⁵ *Id* at 25.

Consequently, authors have defined non-financial information as “[d]isclosure provided to outside of the organization on dimensions of performance other than the traditional assessment of financial performance from the shareholders and debt-holders’ viewpoint”.³⁶ Moreover, they have stated that all information disclosed by the companies in their annual reports on human or organizational capital should be considered as non-financial information.³⁷

In conclusion, during the period from 1973 to 1990 academic articles provided no common understanding to the notion of non-financial information due to its generic usage. The reason for that lies in the use of foregoing notion as underlying concept to social, environmental or CSR reporting. However, due to the active market development from 1990 to 2000 this concept has become an issue of great importance and two specified notions of non-financial information have appeared in academic articles. In addition, the period from 2000 to 2013 has shown that non-financial information concept has been disclosed through its close connection to the CSR reporting. In the result of the above mentioned, it could be stated that NFR appears to be a tool for disclosure of CSR information of the company.

1.3. Do Non-Financial Reporting Requirement help foster Corporate Social Responsibility?

Not so long ago the CSR concept in the EU political circles was a voluntary in nature possibility rather than mandatory legal driver for development.³⁸ Nonetheless, changing market demands has created necessity for the EU enterprises to exhibit socially responsible and sustainable behavior through specific reports such as sustainability reports or CSR reports.³⁹

³⁶ *Id* at 25.

³⁷ *Id* at 25.

³⁸ Ahern Deirdre, ‘Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive’ (2017), ECFR 4/2016, 599-630, at 599-600.

³⁹ *Id* at 600.

Reports on the CSR matters could provide companies with better transparency practices for their stakeholders in such way assisting them to adopt socially responsible business behavior in employment, environment impact and human rights areas.⁴⁰ Moreover, sustainable reporting could provide essential information due to their long standing perspective.⁴¹ However, even with rising of sustainability and CSR reports' popularity around business environment, the absence of their regulation has led to appearance of a 'laissez-faire' approach in regard to the existence and the content of such reports presented by the companies in the EU.⁴² The above mentioned problem has appeared due to the nature of the business policies, which were always focused on augmenting profits. In other words, if company earns nothing from such positive reporting it will not spend its resources on non-profitable activities. Additionally, even in case of reporting, companies will be naturally more prone to disclose only auspicious information about their activities and policies, leaving all negative factors aside.

In the result, the EU has initially shied away from creation of a mandatory regulation in relation to the CSR.⁴³ Nevertheless, the Commission has developed mandatory reporting on the CSR through creation of the NFR Directive, exactly at the time when non-financial reporting has grown up in importance in the world.⁴⁴ Furthermore, the CSR debate has served as a 'catalyst' for use of 'triple bottom-line' reporting, which consists of economic, environmental and social performance of the company, creating in such way a clear picture of non-financial topics.⁴⁵ It was also considered that a creation of mandatory reporting in order to disclose non-financial information of the company would create momentum for its further development and increase of the CSR importance on the EU level and outside its borders.⁴⁶ It is evident from the data that such

⁴⁰ *Id* at 600.

⁴¹ *Id* at 600.

⁴² *Id* at 600.

⁴³ *Id* at 600.

⁴⁴ H-Y Chiu, 'The Paradigm of Mandatory Non-Financial Disclosure: A Conceptual Analysis Part 1 and 2' (2006) *Company Lawyer* 259, 291, at 97.

⁴⁵ Ahern Deirdre, 'Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive' (2017), *ECFR* 4/2016, 599-630, at 600.

⁴⁶ *Id* at 600-603.

reporting could solve problem of information separation between ownership and control in the company's reports.⁴⁷

In addition to the above mentioned, the Commission has developed very flexible and relatively non-intrusive regime for the obliged entities.⁴⁸ Moreover, such open-ended approach of the NFR Directive in the reporting methodology and standards implementation could create additional problems. However, such approach has been used in order to avoid 'top-down stand-alone' legislative model under which national laws and the individual needs of the companies would be ignored by the EU legislator.⁴⁹

In conclusion, the NFR Directive has provided companies with the general mechanics of a reporting framework instead of highly perspective sustainability reporting regime.⁵⁰ Such step has been done in order to start practical development of companies' NFRs on the CSR matters with possibility of further changes in regard to the needs of both businesses and society. The above mentioned could be seen in the flexible regime of compliance which would create fragmented reporting landscape by means of which stakeholders would be actively included in further development of market norms in relation to the CSR reporting. That's why, it could be concluded that the NFR Directive may positively effect on the further development of the CSR in the EU and outside its borders, particularly in Ukraine.

Chapter II. The European Union Non-Financial Reporting Directive.

This chapter will deal with the explanation of adopted in October 2014 the EU NFR Directive that has created new mandatory rules on the disclosure of non-financial information, also known as CSR information. The new NFR requirements have brought CSR development in the

⁴⁷ *Id* at 601.

⁴⁸ *Id* at 602.

⁴⁹ *Id* at 602.

⁵⁰ *Id* at 602.

EU on the new level, basically even in the line with the current best international practice. Moreover, the new law has made a big step forward in comparison to the existing rules on the disclosure of the non-financial information.⁵¹

In regard to the structure of this chapter, the first subchapter (2.1) will refer to elucidation of the historical road and appearance of the NFR Directive in the way as we see it today. The second subchapter (2.2) will relate to the highlighting and explanation of the specific reporting requirements under which the large companies are required to disclose non-financial information statements in their reports. After that, the explanation of the existing and possible problems of the NFR Directive will be discussed in the third subchapter (2.3). Finally, the clarification will be provided on the further development and the future of NFR Directive on the basis of the critical analysis of scholars' opinions in fourth subchapter (2.4).

2.1. History of the Non-Financial Directive.

Since the early 1990s, the Commission has started its activities in development of the CSR around EU.⁵² First attempt was done, by the President of the Commission, Jacques Delors, who has launched Single Market system and has started calling MS for more active participation of business community 'in stance against social exclusion'.⁵³

In March 2000, the European Council in Lisbon made a specific appeal to companies' sense of social responsibility regarding their best practices in sustainable development.⁵⁴ Moreover, such development would bring social responsibility and new voluntary actions on another (qualitatively

⁵¹ Dániel Szabó and Karsten Sørensen, 'New EU Directive on the Disclosure of Non-Financial Information (CSR)' (2015), ECFR, 307-340, at 307.

⁵² International Institute for Sustainable Development, 'The European Union green paper on CSR' <https://www.iisd.org/business/issues/eu_green_paper.aspx> accessed 16 March 2018.

⁵³ *Id*

⁵⁴ The Commission of the European Communities, 'Green Paper: Promoting a European framework for Corporate Social Responsibility' (18 July 2001), COM (2001) 366 final, Brussels, at 3.

new) level that would go beyond common regulations and conventional requirements. The main goal of Green Paper of 2001 was to create encouragement for the development of innovative practices in the CSR and bring higher transparency in business environment at both European and International level.⁵⁵ In addition, the Commission proposed the concept of partnership, in which all actors would play actively in order to foster the CSR development.⁵⁶

In July 2002, the Commission received more than 250 responses to their Green Paper of 2001 and about half of those responses had come from different business associations, individual enterprises and employers' organizations based both inside the EU and outside its borders.⁵⁷ Moreover, almost all participants have supported Commission's approach in the CSR field. However, even with community support, there were significant differences between expressed positions. Firstly, enterprises were stressed with the voluntary nature of the proposed CSR and its integration in the sustainable development context at global level.⁵⁸ Their main argument lied in the following – "one-size-fits-all" solution⁵⁹ was not possible, due to the legislative differences at both national and international levels. Secondly, the need to improve disclosure and transparency of companies' practices could result in company's extra costs that would be disproportionate to the benefits that they would be earned from such actions, due to companies' size.⁶⁰ In other words, even with some negative aspect of the Commission Green Paper proposal for the CSR development, both the EU and international participant accepted such suggestion as a promotion of business responsibility in cooperation with other active participants. However, scope of the Commission's proposal should be narrowed or more specified and nature of the CSR should be changed from voluntary initiative to mandatory ruling in the legislation.

⁵⁵ *Id* at 3.

⁵⁶ *Id* at 3.

⁵⁷ The Commission of the European Communities, 'Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development' (2nd July 2002), COM (2002) 347 final, Brussels, at 3-4.

⁵⁸ *Id* at 4.

⁵⁹ *Id* at 4.

⁶⁰ *Id* at 4-5.

From 2010 till 2013 several important discussions and documents published on international and regional (EU) level that have fostered the CSR development and increased speed in creation of the NFR Directive.

First discussion was connected with ‘Investment and Enterprise Responsibility Review’ launched on the United Nations Conference on Trade and Development (UNCTAD) in 2011. In its overall conclusion, they have explained that “[e]nterprise and investor policies is strongly connected to broader issues of corporate disclosure and that NFR will be required to evolve from merely mentioning ESG issues to measuring actual impact”.⁶¹ Moreover, the UN have tried to answer on ‘crucial monitoring questions regarding “what”, “who” and “how” that have been unresolved in most cases’⁶² after the World Investment Report of 1990 (WIP99) appearance. In the UNCTAD review, ESG issues were categorized in very broad way that has opened new possibilities for deeper research in this field. In addition, such broad explanation has been done in order to solve ‘what, who and how problems’ or at least, to give more ways for each country to solve these issues as much as it will be required.

Second discussion has touched the question of the Commission Green Paper of 2011, in which the Commission explained that most suitable tool for companies in corporate governance considered to be ‘comply or explain’.⁶³ Under foregoing approach, companies can depart from bringing their own rules in compliance with a corporate governance code recommendation, but at the same time, they should specify reason for doing that in high details. Stating differently, the flexibility of this approach has brought bigger flexibility to the corporate governance practice in accordance to their situation, basing on companies’ size, structure of shareholders and specific

⁶¹ The United Nations Conference on Trade and Development, ‘Investment and Enterprise Responsibility Review’ (2011), Analysis of investor and enterprise policies on corporate social responsibility, New York and Geneva, 96, at xviii.

⁶² *Id* at xiv-xviii.

⁶³ The European Commission, ‘Green Paper: The EU corporate governance framework’ (5th April 2011), COM (2011) 164 final, Brussels, at 19.

activities of the company, in such way solving problems of the First Green Paper.⁶⁴ However, ‘comply or explain’ approach created more problems in the EU than it was expected. Basically, this principle was developed to harmonize corporate governance practice in order to create one workable system for all MS, but such flexibility could slow standardization process of generally applicable corporate governance practice.⁶⁵

Third one was connected with Public consultation on disclosure of non-financial information by companies targeting on all interested stakeholders that has been initiated by the Commission with the Director General (DG) for the Internal Market and Services (IMS) from 22 of November 2010 till 24 of January 2011. In the Executive Summary of the Commission on the existing EU Regime on non-financial information disclosure, half of respondents described existing non-financial policy in their countries as poor or very poor. Another part of respondents stated that existing EU legislative framework had problems with transparency, because regimes varied from MS to MS.⁶⁶ Most participants proposed in their responses to improve the non-financial disclosure regime using international standards and principles and also to use integrated reporting on the EU level to foster this process. Otherwise speaking, stakeholders have proposed to update existing non-financial disclosure regime and create one mechanism for all MS, using both international organization and MS practice in this field.

First meeting was held on 11th of July 2011, in which the Commission has ordered from the Centre for Strategy and Evaluation Services (CSES) a specific study aimed at providing a qualitative analysis of existing reporting practice in the EU and also to show cost/benefit in case of

⁶⁴ The Commission of the European Communities, ‘Green Paper: Promoting a European framework for Corporate Social Responsibility’ (18 July 2001), COM (2001) 366 final, Brussels

⁶⁵ The European Commission, ‘Feedback Statement: Summary of responses to the Commission Green Paper on the EU corporate governance framework’ (15th November 2011), Directorate General Internal Market and Services, D(2011), Brussels, at 5-6.

⁶⁶ The European Commission, ‘Summary Report of the Responses received to the Public Consultation on Disclosure of Non-Financial Information by Companies’ (April 2011), Directorate General Internal Market and Services, at 2-9.

the NFR usage by the companies.⁶⁷ Moreover, this meeting has raised highly important question connected with: norms, principles and guidelines that will help to create more detailed reporting requirements; evaluation of costs that companies will spend on reports and benefit from reporting in short and long time perspectives; better integration of the ESG issues into business operation and strategy development; type of information that should be disclosed as non-financial that will increase trust level in business. To simplify, under proper collaboration of the CSES and other participants, the Commission has probed the ground for future legislation changes with most optional variants that will satisfy every MS.

Fourth discussion touched by the Commission in ‘Twelve levers to boost growth and strengthen confidence “Working together to create new growth”’ topic, in which the Commission has proposed to start reforms in Single Market of the EU that would create new opportunities for sustainable, smart and inclusive growth.⁶⁸ According to the above-mentioned document, the EU should take modernization and renovation actions in legislation of the EU and each MS concentrating on the twelve key topics and using the Commission key actions proposals. Moreover, there were four main conditions to follow for successful changes: civil society should be involved in all possible discussions that would touch the Single Market; all Single Market participants should create better connection with each other; more efficient and easier access to information for all businesses and citizens; stronger ‘global rules’⁶⁹ of the EU Single Market.⁷⁰

Fifth discussion appeared on 25th October 2011, at which the Commission had proposed ‘A renewed EU strategy for CSR’. This document appeared due to the above mentioned

⁶⁷ The European Commission, ‘Expert Group on Disclosure of Non-Financial information by EU Companies’ (11 July 2011), Directorate General Internal Market and Services, First Meeting, Brussels, at 1.

⁶⁸ The European Commission, ‘Single Market Act - Twelve levers to boost growth and strengthen confidence - “Working together to create new growth”’ (13th April 2011), Communication from the Commission to the European Parliament, The Council, The Economic and Social Committee and The Committee of the Regions, COM(2011) 206 final, Brussels, at 3-6.

⁶⁹ *Id* at 21.

⁷⁰ *Id* at 20-22.

discussions and required changes for better future of the EU in its 2020 strategy.⁷¹ At that time, the Commission had showed ‘pioneering role’ in development and promotion of CSR in the EU by the results that they achieved from 2006-2011: the amount of companies that started to use ten CSR principles of the United Nations Global Compact (UNGC) has significantly increased from 600 to 1900; the number of sustainability reports with use of the GRI guidelines has grown from 270 to over 850.⁷² Moreover, without creation of a business-lead initiative named as the European Alliance on CSR⁷³ in 2006, such results would not be possible. However, that was not still enough, because only 2 500 from 42 000 large EU companies⁷⁴ had taken action in this field and only 15 out of 27 (2011) EU MS had national CSR policy.⁷⁵ Due to all these facts, the Commission had proposed ‘an Agenda for action 2011-2014’⁷⁶, main targets of which were: explaining and helping enterprises in the CSR field; increasing the level of trust between citizens and business; developing better self and co-regulation processes; creating some market benefits or system of rewards for businesses in the CSR field with the long term perspectives; improving company disclosure of non-financial information, providing them with best practice and disclosure requirements at both national and regional (EU) levels; deeper integration of the CSR in education, specific trainings and high quality researches in this field; providing public policy measures to support the CSR on different levels; and promote the EU CSR policy on international level.⁷⁷

Final discussion was raised by the Commission in their Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and

⁷¹ The European Commission, ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ (25th October 2011), Communication from the Commission to the European Parliament, The Council, The Economic and Social Committee and The Committee of the Regions, COM(2011) 681 final, Brussels, at 3-5.

⁷² *Id* at 4-5.

⁷³ Business Europe, ‘European Alliance for CSR’ <<https://www.buinesseurope.eu/european-alliance-csr>> accessed 17 March 2018.

⁷⁴ The European Commission, ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ (25th October 2011), Communication from the Commission to the European Parliament, The Council, The Economic and Social Committee and The Committee of the Regions, COM(2011) 681 final, Brussels, at 11.

⁷⁵ *Id* at 5.

⁷⁶ *Id* at 8.

⁷⁷ *Id* at 8-15.

83/349/EEC with regard to the disclosure of nonfinancial and diversity information by certain large companies and groups (Proposal) and Impact Assessment as an accompanying document on 16th April 2013. In impact assessment to the Proposal, the Commission has identified two main issues: failure to adequately meet stakeholders' demand of the non-financial information transparency and insufficient market incentives for companies.⁷⁸ Due to the above mentioned issues the Commission had proposed the text of the NFR Directive in form of an amendment to Article 46 of the Fourth Directive⁷⁹ and to the Article 36 of the Seventh Directive⁸⁰ dealing with disclosure of non-financial and diversity information.⁸¹

As a result of all aforementioned, on 22nd October 2014 the European Parliament and the Council of the EU published the NFR Directive, but as amending document to the Accounting Directive of 2013⁸² with some modifications, due to the legislation changes and additional studies in this field. Moreover, in June 2017 the Commission published non-mandatory Guidelines⁸³ to the NFR Directive.

In conclusion, by virtue of the close cooperation of government, business and society it was possible to start the real changes in the CSR development and raise the question of the creation of a responsible approach to business, fostering in such way an economic growth in the Europe. Moreover, the EU legislator has spotted that the social business initiative would help this emerging

⁷⁸ The European Commission, 'Impact Assessment to Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups' (16th April 2013), Accompanying document to COM(2013) 207 final, SWD(2013) 127 final, Brussels, at 7-17.

⁷⁹ The Fourth Council Directive 78/660/EC based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [25 July 1978] OJ L 222/11.

⁸⁰ The Seventh Council Directive 83/349/EEC based on the Article 54(3)(g) of the Treaty on consolidated accounts [13 June 1983] OJ L 193/1.

⁸¹ The European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups' (16th April 2013), COM(2013) 207, Brussels, at 1-7.

⁸² The European Parliament and the Council of European Union Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [26 June 2013] OJ L 182/19.

⁸³ European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01.

sector to fulfil its ‘unexpected potential’.⁸⁴ Therefore, the Commission in cooperation with international organization and both the EU businesses environment and society has started to create different legislative initiatives, building step by step the sustainable future for the EU. In addition the Commission has done incredible work during 25 years by creating the NFR Directive, as the first work in the world that consists from such an amount of summarized information, which the EU in cooperation with interested persons have collected and reproduced as a mandatory law, aimed at fostering development of the CSR in Europe and probably outside of its borders as a best existing practice in this field. However, there are a lot of work that could be done regarding the further promotion of the CSR in both the EU and outside of its borders and encouragement of enterprises to adhere to the NFR Directive and the existing international guidelines as well as international principles as a base of their perspective future.

2.2. Specific requirements of the Non-Financial Directive to business

The main idea of the NFR Directive is to create a duty for large undertakings to report by means of their non-financial information statements on the business model, policy and its management, outcomes of previously mentioned topics, principal risks and KPIs in respect to the CSR matters, such as: environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters. This information should be disclosed with the usage of the material concept in the non-financial information statements through management report of the obliged undertakings. In the Commission’s Proposal new requirements for disclosure of non-

⁸⁴ The European Commission, ‘More responsible business can foster more growth in Europe’, press release, <http://europa.eu/rapid/press-release_IP-11-1238_en.htm?locale=en> accessed 29 March 2018.

financial information should cover around 18 000 companies in the EU⁸⁵, but the total amount of companies has been lowered to 6000, due to the rebalanced scope of the NFR Directive.⁸⁶

According to Article 1 (Article 19a(1)) of the NFR Directive, large public-interest entities (PIE) that have in average 500 or more employees during the financial year, should disclose a non-financial statement.⁸⁷ In the Accounting Directive Article 2(1)(a, b, c, d) defines PIEs as “[u]ndertakings which are governed by the law of a Member State ... whose transferable securities are admitted to trading on a regulated market of any Member State; ... credit institutions; ... insurance undertakings; ... and/or designated by Member States as public-interest entities ... due of the nature of their business, their size or the number of their employees”.⁸⁸

In addition, Article 1 (Article 29a(1)) of the NFR Directive explains that PIEs, which are parent undertakings and have in average 500 or more employees during the financial year, should disclose a consolidated non-financial statement.⁸⁹ A parent undertaking under Article 2(9) of the Accounting Directive means “[a]n undertaking which controls one or more subsidiary undertakings”.⁹⁰ Moreover, only parent undertakings are obliged to be a PIE, their subsidiaries could be of any type and may be located at any MS and outside of the EU.⁹¹ Also, when parent

⁸⁵ The European Commission, ‘Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups’ (16th April 2013), COM(2013) 207, Brussels, at 7.

⁸⁶ The European Commission, ‘Statement. Disclosure of non-financial information: Europe’s largest companies to be more transparent on social and environmental issues’ (29th September 2014), Brussels, Statement/14/291.

⁸⁷ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4.

⁸⁸ The European Parliament and the Council of European Union Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [26 June 2013] OJ L 182/19, at 8-9.

⁸⁹ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 6.

⁹⁰ The European Parliament and the Council of European Union Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [26 June 2013] OJ L 182/19, at 9.

⁹¹ Dániel Szabó and Karsten Sørensen, ‘New EU Directive on the Disclosure of Non-Financial Information (CSR)’ (2015), ECFR, at 318-319.

company will start counting total amount of workers, all employees that are working in their subsidiaries, should be taken into account.⁹²

The consolidated non-financial statement has almost identical requirements as the non-financial statement but with some minor differences. Whereas Article 19a refers to the individual company's statements, Article 29a focuses on the statements of the whole group of companies. Due to aforementioned, it appears that the reporting requirements according to Article 19a for both of them could be disclosed by using *mutatis mutandis* principle.

Under Article 1 of the NFR Directive (Article 19a and Article 29a of the Accounting Directive), companies should report on their activities “[r]elating to as minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”.⁹³ The above mentioned provisions do not limit companies if they would like to increase amount of reporting matters. This flexibility has been done with one purpose to create workable balance for different concerns after discussion of the Commission Proposal on the NFR Directive.⁹⁴ From the one perspective, flexible reporting regime will create freedom to report on most relevant issues of the company.⁹⁵ From the other perspective, EU legislator has left business with opportunity to find the best solution for sustainable reporting.⁹⁶ However, reports' flexibility should not go beyond the NFR Directive scope. Moreover, in the preamble to the NFR Directive there is some additional information about reporting matters scope.

In the Recital 7 of the NFR Directive, the reporting on environmental matters should include details on non-financial information of the current and foreseeable impacts of the

⁹² *Id* at 319.

⁹³ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4 and 9.

⁹⁴ The European Commission, ‘Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of nonfinancial and diversity information by certain large companies and groups’ (16th April 2013), COM(2013) 207 final, Brussels, at 1-7.

⁹⁵ Dániel Szabó and Karsten Sørensen, ‘New EU Directive on the Disclosure of Non-Financial Information (CSR)’ (2015), ECFR, at 321.

⁹⁶ *Id* at 321-322.

undertaking operations on the environment and, as appropriate, on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution.⁹⁷ It is evident from the data that the position of Dániel Szabó and Karsten Sørensen that environmental matters have been reasonably described in a broad way, because they can also cover climate-related issues.⁹⁸ Moreover, under the above mentioned recital, social and employee-related matters could cover “[t]he actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organization, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities”.⁹⁹ In light of the evidence, the position of Dániel Szabó and Karsten Sørensen that this type of matters would be described in very broad way and double disclosure of gender equality matters in both non-financial and corporate governance statements could bring different information, because its statements would touch employees of all levels.¹⁰⁰ In addition, in the last sentence of the 7th Recital of the NFR Directive, the EU legislator mentioned that human rights, anti-corruption and bribery matters “could” include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery.¹⁰¹ However, at the same time, Article 1 of the NFR Directive set foregoing matters as a minimal requirement, mandatory to be disclosed by companies, thus being contrary to the 7th

⁹⁷ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 2.

⁹⁸ Dániel Szabó and Karsten Sørensen, ‘New EU Directive on the Disclosure of Non-Financial Information (CSR)’ (2015), ECFR, at 323.

⁹⁹ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 2.

¹⁰⁰ Dániel Szabó and Karsten Sørensen, ‘New EU Directive on the Disclosure of Non-Financial Information (CSR)’ (2015), ECFR, at 323.

¹⁰¹ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 2.

Recital. Furthermore, the Guideline, serving as an interpretative tool to the NFR Directive, is silent on aforesaid contraversion.

According to Article 1 (Article 19a(1)(a-e) and Article 29a(1)(a-e)) of the NFR Directive companies should report on their business models in relation to all the above mentioned matters, the policies adopted on the basis of those matters, the outcome of these policies, the principal risks and non-financial KPIs, which are relevant to them.¹⁰² Moreover, the Guideline to the NFR Directive has provided undertakings with short explanation on the key information that should be disclosed in these topics. Therefore, it is clear that the EU legislator has proposed to disclose non-financial information in such structure to create a workable system that would help to promote CSR on new level and strengthen communication among companies, its investors and stakeholders. On the basis of the text of the NFR Directive, the Guideline, as its interpretative tool, and some additional materials, five foregoing topics will be briefly explained.

First, business model. It refers to the issue of how company earns and preserves value through its market products and/or services; shows structure and entities' operational elements (inputs and outputs) through its business activities.¹⁰³ To simplify, disclosure of business model information will answer "what", "how" and "why" questions of company's business actions. This requirement has been designed to forge closer links between business and the social environment, in which it operates, with possible development of future innovations in this field.¹⁰⁴

Second, policies and due diligence topic. The non-financial statement policies should disclose material information that provides a fair view on the company's approaches to the key non-financial aspects, main objectives and future planning, taking into account their specific

¹⁰² *Id* at 4-6.

¹⁰³ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 10.

¹⁰⁴ The European Parliament resolution of 6 February 2013 on corporate social responsibility: accountable, transparent and responsible business behavior and sustainable growth (2012/2098(INI)) [22 January 2016] OJ C 024/06, at 2-3.

circumstances.¹⁰⁵ For instance, they may provide information about structure of governance aimed at setting, implementation and monitoring of a specific policy on climate-related or employment conditions in their place of location.¹⁰⁶ The due diligence statements should be related to companies policies, risk management and their outcomes, helping in such way to identify, prevent and mitigate existing and potential unfavorable impacts.¹⁰⁷ For example, company may disclose information about their safe and qualitative use of chemical or toxic materials in accordance to the legal requirements or that their supply chains are free from human trafficking.¹⁰⁸ Moreover, under Article 1 of the NFR Directive in the case 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.¹⁰⁹ In other words, when company has no policies on certain matters they should provide “clear and reasoned explanation”, but the issue lies in possibility of identification of reasonability and clarity in companies’ explanations. Unfortunately, neither the NFR Directive nor the Guideline can effectively address aforesaid issue.

Third, the outcome of those policies. The non-financial information disclosed by the undertakings should help investors, stakeholders and other interested persons to monitor company’s performance.¹¹⁰ Furthermore, this information can show strong and vulnerable sides of companies’ activities and represent real results of their operations and management actions in this field¹¹¹.

Fourth, the principal risks and their management. Companies should disclose information about any possible principle risks in their specific field and the way of their regulation, resolution

¹⁰⁵ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 10.

¹⁰⁶ *Id* at 10-11.

¹⁰⁷ *Id* at 11.

¹⁰⁸ *Id* at 11.

¹⁰⁹ *Id* at 11.

¹¹⁰ *Id* at 12.

¹¹¹ *Id* at 12.

and avoidance.¹¹² Those risks could be connected with entity operations, products or services provided by companies, their supply chains, business relations and etc.¹¹³ Moreover, companies should clearly describe, how principle risks may affect their business model, operation and financial performance; as well as possible impacts of their other activities, their supply and subcontracting chains.¹¹⁴ Additionally, undertakings should highlight and give explanation to companies' principal risks or the way they manage them in reporting year.¹¹⁵ Taking aforementioned into account, reporting on principle risks should include both the nature of the risk and the way of its managing but is also predictable that consistent reporting on these aspects would not be always possible or expected.¹¹⁶

Fifth, KPIs statement should be relevant to the particular business and disclose metrics that would be actually used by the company in its internal management and risk assessment processes.¹¹⁷ On top of that, KPIs should be presented annually in order to provide reliable information on existing companies' progress and trends.¹¹⁸ Moreover, technical or business evolution of such reports would be appreciated, but additional information to foregoing changes should be added.¹¹⁹ As a result, disclosing high quality, broadly recognized KPIs could improve compatibility of companies in the same economic sector that would improve their general transparency.¹²⁰ KPIs could be presented in the context of targets, past performance, comparison to another company in the same sector or any other relevant form.¹²¹

¹¹² *Id* at 12-13.

¹¹³ *Id* at 13.

¹¹⁴ *Id* at 13.

¹¹⁵ *Id* at 13.

¹¹⁶ Dániel Szabó and Karsten Sørensen, 'New EU Directive on the Disclosure of Non-Financial Information (CSR)' (2015), ECFR, 307-340, at 325.

¹¹⁷ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 13.

¹¹⁸ *Id* at 14.

¹¹⁹ *Id* at 14.

¹²⁰ *Id* at 13-14.

¹²¹ *Id* at 14.

Furthermore, Article 1 of the NFR Directive has two more requirements: ‘necessary for an understanding’¹²² and ‘impact of its activities’¹²³ that should be used with regard to “[a] minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”¹²⁴ including the five above mentioned topics. First requirement, on the one hand, provides companies with understanding of types of the non-financial information to be disclosed, but, on the other hand, such broad requirement could bring a wide range of potential issues to report on.¹²⁵ In addition, second requirement shows that information should be exclusively connected with both positive and negative impacts needed to be described in clear and balanced way.¹²⁶

Last, but not the least, format reporting rules does not include any strict requirements. However, the EU legislator has indicated where and how non-financial information should be disclosed. Article 1 of the NFR Directive has required from undertakings to include their non-financial statements in the management report or create a separate report on the basis of national, regional (EU) or international framework.¹²⁷ Reporting by means of other frameworks creates additional burdens, such as compliance with both MS national law and the NFR Directive provisions.¹²⁸ However, separate reports have still to be published with the management statement or on the website of company in a reasonable time.¹²⁹ According to the NFR Directive and the Guideline, reports should respond on five topics disclosing in each minimum six main matters in a fair, balanced and comprehensive manner.¹³⁰

¹²² The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4.

¹²³ *Id* at 4.

¹²⁴ *Id* at 4.

¹²⁵ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 5-6.

¹²⁶ *Id* at 5.

¹²⁷ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4-5.

¹²⁸ *Id* at 2 (recital 9, 10).

¹²⁹ *Id* at 4-9 (article 1).

¹³⁰ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 9.

In conclusion, the NFR Directive provides undertakings with more structured and more specified requirements than previously existing rules on both national and the EU level. Furthermore, the NFR Directive and the Guideline will have high effect on the quantity and the quality of information disclosed by companies and may influence on further modification of the existing law after the disclosure of first reports. However, such approach with minimum harmonization and without properly prepared rules and standards on the collection and verification of disclosed information authenticity would lead to low likelihood of achievement of highly-expected results.

2.3. Possible problems of Non-Financial Directive

Generally, problems appeared where the NFR Directive had not been clear enough about its intentions and the Guideline has left gaps in explanation. Particularly, the filters that the EU NFR Directive and the Guideline have in the current wording, in regard to disclosed information ‘where appropriate’,¹³¹ “[t]o the extent necessary for an understanding of the undertakings development, performance, position and impact of its activity...”¹³² failed to provide clear legal obligations for companies. Moreover, some MS have implemented legislation that is going beyond the NFR Directive obligation. However, the NFR Directive requirements vary in term of content and scope from MS to MS depending on their national interpretation of its provisions.

In Claire Jeffrey, Jade Tenwick and Gineva Biccio (authors) research paper,¹³³ some main problems of the NFR Directive have been highlighted through comparison of its implementation in United Kingdom (UK), Germany, France and Italy. The authors have

¹³¹ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 5.

¹³² *Id* at 4.

¹³³ Claire Jeffrey, Jade Tenwick and Gineva Biccio, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, 52.

concentrated on such issues as: scope and format of the NFR Directive; materiality test understanding; information that should be provided on each ESG factor described in Article 1 of the NFR Directive; verification of the non-financial information; basis of reporting; and consequence of non-compliance.¹³⁴

To begin with, only large companies with average amount of 500 or more employees, which are meeting certain financial criteria's, would be targeted under the scope of the NFR Directive. The main problem in this situation would touch countries, which have majority of businesses as small and medium-sized enterprises (SMEs).¹³⁵ For instance, under FSB research¹³⁶ in the UK at the beginning of 2017 around 99.9% of private sector businesses were SMEs and total private sector employment in SMEs has been approximately 60%. By contrast, Denmark and Sweden have changed or were planning to change reporting scope from large companies to all companies and from average of 500 employees to 250 or more to produce better non-financial information.¹³⁷ The above mentioned changes would have been possible to adopt for all MS, which have similar to the UK situation with business, but only in case of further introduction of changes to the NFR Directive. However, in contrast, Denmark and Sweden approaches would not be affordable for the SMEs, because of the additional direct costs for non-financial information disclosure of approximate €5 000 per year.¹³⁸ It is evident from the data that the scope of the NFR Directive should be changed from broad into more detailed variant in particular by changing minimum requirements, basing not only on the size of workers, but also on the business model of a MS.

¹³⁴ *Id* at 3-4.

¹³⁵ *Id* at 3.

¹³⁶ FSB Experts in Business, 'UK small business statistics' <<https://www.fsb.org.uk/media-centre/small-business-statistics>> accessed 21 March 2018.

¹³⁷ Claire Jeffery, Jade Tenwick and Gineva Bicciole, 'Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy' (2017), Editor: Flip Gregor, Frank Bank, at 3.

¹³⁸ The European Commission, 'Memo. Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions' (15th April 2014), Brussels, MEMO/14/301.

As for requirement of the format of the non-financial information disclosure, the NFR Directive has left freedom for MS to choose from proposed variants, most suitable for their particular situation. For instance, the UK and France have gone beyond the NFR Directive through requiring from companies to disclose the non-financial information statement only in the annual management report, without giving them freedom to choose.¹³⁹ Nevertheless, such step would give gravity and prominence to the NFR statement, which would be represented to shareholders on yearly bases ahead of the general meetings.¹⁴⁰ Moreover, strict legislation requirements could improve the integration of financial and non-financial reporting.¹⁴¹ Conversely to the above mentioned, in Germany the non-financial information statement will not be included if it has been published up to fourth month afterwards publicizing it on company website.¹⁴² Due to such time frame in reporting, the attention to the quality and quantity of the non-financial information statement would be lowered.¹⁴³ Moreover, it was not clear what level of quality and on which website of the company the non-financial statement would be disclosed¹⁴⁴. It appears that developed format of reporting in the NFR Directive could not satisfy all MS due to the differences of their legislation and business environment. On the one hand, MS could not limit minimum freedom of companies to choose the format of the NFR but, on the other hand, they are obliged to create workable reporting system in their countries. In other words, the EU legislator should develop stricter format of reporting that could be used as a proper standard for reporting and would not limit companies' freedom due to the national legislator's interpretation of the NFR Directive provisions.

¹³⁹ Claire Jeffery, Jade Tenwick and Gineva Biccio, 'Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy' (2017), Editor: Flip Gregor, Frank Bank, at 3.

¹⁴⁰ *Id* at 3.

¹⁴¹ *Id* at 3.

¹⁴² *Id* at 3.

¹⁴³ *Id* at 3.

¹⁴⁴ *Id* at 3.

Next, the materiality test, provided to clarify the extent of information that should be disclosed on each of the ESG factors¹⁴⁵ described in Recital 7 and Article 1 of the NFR Directive. On the one hand, the NFR Directive describes that information should be provided “[t]o the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity”.¹⁴⁶ On the other hand, after implementation of such wording in the MS legislation, very little information has been provided in each state as to how determine ‘extent necessary’.¹⁴⁷ Under Article 2 of the Accounting Directive ‘extent necessary’ could be explained through material notion as “[t]he information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking”.¹⁴⁸ For instance, the National Council of Doctors of Commerce and Auditors (CNDCEC) in Italy has used the above mentioned Article’s definitions through ‘relevance’ and ‘materiality’ notions, which refer to the information that ‘influences the economic decisions of readers by helping them evaluate past, present or future events or confirming, or correcting, their past evaluations’.¹⁴⁹ It is evident from the data that under the Italian approach it was not clear, who ‘users’ or ‘readers’ could be. In opposite, in the UK Financial Reporting Council Guidance ‘users’ has been described as “members of the company (shareholders)”.¹⁵⁰ Therefore, reporting on the ESG factors should take into account interests and priorities of all stakeholders.¹⁵¹ However, the NFR Directive has one more, additional materiality test that should be done through disclosure of

¹⁴⁵ See indent 5-6 of Subchapter 2.2.

¹⁴⁶ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4.

¹⁴⁷ Claire Jeffery, Jade Tenwick and Gineva Bicciolo, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, at 4.

¹⁴⁸ The European Parliament and the Council of European Union Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [26 June 2013] OJ L 182/19, at 10

¹⁴⁹ Claire Jeffery, Jade Tenwick and Gineva Bicciolo, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, at 4.

¹⁵⁰ Financial Reporting Council, ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting’ (September 2014), Corporate Governance Guidance, London, at 28.

¹⁵¹ Claire Jeffery, Jade Tenwick and Gineva Bicciolo, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, at 4.

the principal risks under each ESG factors.¹⁵² In the result, low level of clarity from the NFR Directive and the Guideline on the materiality test definition would create different approaches to the extent of the information provided by the companies.¹⁵³

In regard to the above mentioned issues authors explained that the NFR Directive has not provided adequate clarity on how companies should provide non-financial statement in relation to each ESG factors.¹⁵⁴ On the one hand, it becomes obvious from the data that the NFR Directive has very broad requirements on disclosure of the information connected with companies' business model, policies, outcomes, principle risks and KPIs described in the NFR Directive. However, on the other hand, in case of misunderstanding of the NFR Directive statement or requirement, MS government should look first on the existing international frameworks, which are mentioned in the NFR Directive and its Guideline and not only concentrate on national approach. In such way, MS could adopt more internationally-orientated standards that would be more suitable for both national and international companies located on their territory.

Though, there are still some important problems that have not been solved both by the NFR Directive and the Guideline yet. For instance, some surveyed MS have been confused with the extent to which the non-financial information statement should show links to a company's financial information.¹⁵⁵ Moreover, Germany and France have argued that non-financial information should include additional explanations about the amounts of company's accounts only were it would be reasonably required.¹⁵⁶

¹⁵² The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 2.

¹⁵³ *Id* at 4.

¹⁵⁴ *Id* at 4-6.

¹⁵⁵ *Id* at 5.

¹⁵⁶ *Id* at 5.

Speaking of unsolved problems, authors have described their uncertainty over what ‘impact’ companies should describe information in relation to the principle risks information disclosure.¹⁵⁷ The Guideline has mentioned that “[c]ompanies are expected to disclose material information on principal risks, regardless of whether they stem from its own decisions or actions, or from external factors, and to explain the processes used to identify and assess such risks”.¹⁵⁸ In other words, it is evident from the data that this ‘impact’ should be reported on both positive and negative issues.¹⁵⁹ Furthermore, there is one more problem connected with usage of materiality test in order to disclose principle risks management. In Recital 8 of the NFR Directive companies are required “[t]o provide adequate information in relation to matters that stand out as being most likely to bring about the materialization of principal risks of severe impacts”.¹⁶⁰ Due to the above mentioned, It could be argued that under the NFR Directive materiality test would be used basing on the scale and gravity of the materialization of the risk, rather than whether knowledge of a principal risk would influence readers’ economic decisions.¹⁶¹

Besides above-mentioned problems, the NFR Directive and adopted MS legislation still lack in ‘suggestions or prescriptions’ of what relevant KPIs could be and how they should be measured.¹⁶² If different KPIs would have been used by companies, it would be unclear how to compare their reports.¹⁶³ Moreover, if companies produce more identical or similar reports, the easier it will be to create sufficient comparability between businesses non-financial KPIs that will foster development of the CSR across the EU.¹⁶⁴

¹⁵⁷ *Id* at 5.

¹⁵⁸ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 12.

¹⁵⁹ Claire Jeffery, Jade Tenwick and Gineva Biccio, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, at 5.

¹⁶⁰ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 2.

¹⁶¹ Claire Jeffery, Jade Tenwick and Gineva Biccio, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, Frank Bank, at 5.

¹⁶² *Id* at 6.

¹⁶³ *Id* at 6.

¹⁶⁴ *Id* at 6.

The last but not the least, block of issues provided in authors' research paper touches: verification of non-financial statement, which differs between MS; basis of reporting under 'comply or explain' approach in relation to policy aspects of non-financial information; and companies responsibility under both MS and the EU legislation in case of publication of the information not in accordance to the reporting requirements.

In regard to the first above mentioned issue, in Article 1(5) of the NFR Directive "[M]S shall ensure that the statutory auditor or audit firm checks the non-financial statements".¹⁶⁵ For instance, the approach taken to verify the non-financial information in Italy requires both external and internal audit to be carried.¹⁶⁶ Moreover, information from the internal audit should be reported to the companies' shareholders and non-financial statements from it were required to be in consistent to the financial information in the annual management reports.¹⁶⁷ In contrast, the UK requires the non-financial information statements be audited for material misstatements.¹⁶⁸ In France, the auditor should give 'reasoned opinion' on all ESG factors that were disclosed in five NFR Directive topics of Article 1.¹⁶⁹ For instance, under German approach, auditors are obliged just to check that the non-financial information statement has been submitted by the company in accordance to the law. On the one hand, the NFR Directive and the Guideline have left for MS freedom to choose possible ways to regulate verification of non-financial information statements in the most suitable way in regard to their legislation. However, on the other hand, such freedom could create problems for companies that are located in different MS, requiring from them to report same information differently depending from legislation of MS, thus creating a conflict of jurisdictional approaches.

¹⁶⁵ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 5.

¹⁶⁶ Claire Jeffery, Jade Tenwick and Gineva Biccio, 'Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy' (2017), Editor: Flip Gregor, Frank Bank, at 6.

¹⁶⁷ *Id* at 6.

¹⁶⁸ *Id* at 6.

¹⁶⁹ *Id* at 6.

As for second issue, all jurisdictions have adopted ‘comply or explain’ approach in relation to the policy aspects of the non-financial information statements.¹⁷⁰ As for other aspects of reporting, only ‘comply’ approach would be used.¹⁷¹ This means that companies are obliged to state their policy in relation to a specific ESG factor and in case of absence of any policy, company should provide reasonable and clear explanation. Nonetheless, the biggest concern in ‘apply or explain’ approach was connected with possibility on behalf of companies to give perfunctory explanations on their policies to a specific ESG factor that could be simply named as ‘check the box’ exercise just to comply to the legal reporting requirements.¹⁷² However, such soft law approach has been taken by the EU legislator in order to give individual autonomy and proper reason for companies in creating of an appropriate compliant response as well as to provide evolutionally new market norm rather than impose strict standards.

Final issue has touched different level of responsibility in case of non-compliance with prepare and publishing requirements due to the non-financial information statements.¹⁷³ Thus, crime will be committed only if no policy has been referred to the non-financial information statement and no reasonable explanation has been given to such actions.¹⁷⁴ For instance, in Italy in case of non-compliance, company will be required to pay monetary penalties.¹⁷⁵ In contrast, in Germany person responsible for reporting can be imprisoned in case of non-compliance.¹⁷⁶ Furthermore, under Italian law the consequences of non-compliance has been extended and now auditor companies are responsible for illegal verification of non-financial information statements.¹⁷⁷ However, in France any interested party in case of non-compliance can send a

¹⁷⁰ *Id* at 6.

¹⁷¹ *Id* at 6.

¹⁷² Virginia Harper, ‘Comply or Explain’ and the future of Nonfinancial Reporting’ (2017), 21 *Lewis & Clark Law Review*, 318-355, at 331-332.

¹⁷³ Claire Jeffery, Jade Tenwick and Gineva Biccio, ‘Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy’ (2017), Editor: Flip Gregor, *Frank Bank*, at 6.

¹⁷⁴ *Id* at 6.

¹⁷⁵ *Id* at 6.

¹⁷⁶ *Id* at 6.

¹⁷⁷ *Id* at 6.

request to the presiding judge of summary proceedings and require from company to provide valid and clear information.¹⁷⁸ On behalf of the above mentioned, the implementation of ensure compliance in MS has been successfully finished, but the amount of responsibility putted on the same company in Germany and Italy is unequal, thus creating for them additional burden to follow legal requirements of each MS where they are located.

In conclusion, all the above mentioned problems should be solved by the EU legislator in next modification of the NFR Directive and the Guideline by providing more narrowed requirement or at least specify them in accordance to the existing gaps. Moreover, the solution of such problems would have been possible to accomplish after submission of the first NFR by obliged companies and after gathering of information from legislation of each MS. However, after first appearance of the NFR in 2018, the EU legislator will obtain another two problems connected with quality and quantity of disclosed non-financial information that will take a lot of time to be solved. In other words, the EU legislator should involve first practical reports and MS recommendation from their legal approaches in order to create more specified reporting requirements in the NFR Directive and provide companies with more detailed recommendation of disclosure of non-financial information statements in the Guideline.

2.4. Further development and the future of Non-Financial Directive

In the matter of the fact, the NFR has been in existence for a decade and there is no one who has been able to create globally acceptable and applicable standards.¹⁷⁹ Moreover, all existing standards on disclosure of the non-financial information in regard to the ESG factors have voluntary form that slows down fast development of this type of reports. However, the EU

¹⁷⁸ *Id* at 6.

¹⁷⁹ Ahern Deirdre, 'Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive' (2017), ECFR 4/2016, 599-630, at 615.

legislator was first one in creation of mandatory law and in the requirement to disclose material non-financial information in the form of NFR for large companies.

In regard to further development, Ahern Deidre has stated that the EU legislator has chosen not to specify reporting framework in the NFR Directive due to lack of methodological consensus on reporting standards between MS.¹⁸⁰ Therefore, the NFR Directive approach has allowed companies to choose any suitable for them reporting framework¹⁸¹. However, it is doubtful that the above mentioned author statement was fully correct, because Article 1 (Article 19a (1)) of the NFR Directive has stated that “[i]n 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”.¹⁸² In other words, MS are not obliged to follow single reporting framework, but they are obliged to describe which of frameworks they have used in order to disclose non-financial information. In addition, Recital 8 of the NFR Directive states that “[u]ndertakings which are subject to this Directive may rely on national frameworks, Union-based frameworks ... or international frameworks ... or other recognized international frameworks”.¹⁸³ Moreover, The Guideline has proposed some modification for better understanding of the above mentioned Article by adding that companies may rely on ‘high quality’ and ‘broadly recognized’ frameworks¹⁸⁴. That’s why, both the NFR Directive and the Guideline limits frameworks due to their quality and global recognition in the CSR reporting. All before mentioned means that there are still a lot of work to be done with possible frameworks and their usage limitation under which non-financial information will be most qualitatively and fully disclosed by the companies.

¹⁸⁰ *Id* at 616.

¹⁸¹ *Id* at 615-616.

¹⁸² The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 5.

¹⁸³ *Id* at 2.

¹⁸⁴ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 19.

More importantly, the NFR Directive represents an advance look on existing disclosure regime, requiring from obliged companies to disclose more global information than just employee's and environmental matters in their management reports.¹⁸⁵ The non-financial information statement should include description of undertaking's business model, companies' policies and due diligence process implementation, the outcome of policies, principle risks and their management, and KPIs.¹⁸⁶ The practical reports with usage of the NFR Directive requirements and the Guideline recommendation on disclosure of the above mentioned topics will vary between MS and the obliged companies. On the one hand, big variety of provided reports will create new perspectives for future development of both MS and the EU laws in in this field. However, on the other hand, the obliged companies will need to focus on a broad range of issues to disclose, rather than simply concentrate on one matter.¹⁸⁷ Moreover, during the disclosure of such an amount of broad information, companies should also take into account legal requirements of MS national law. To simplify, additional work should be done by both MS and the EU legislators in order to provide companies with more narrowed and additional information on how to disclose information qualitatively by not giving companies possibilities to go outside of the NFR Directive scope and how to provide quantitatively readable reports, but not a handbook with average of 200 or more pages of information, half of which could be out of real relevance.

As of future of the NFR Directive, a lot will depend from first reports that will be provided by the large companies in 2018. For instance, Ahern Deidre states that reporting standards could have been changed depending on companies' reporting priorities, particularly if company located not only in the EU, but also in other places around the world, most probably it will take in priority

¹⁸⁵ Ahern Deirdre, 'Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive' (2017), ECFR 4/2016, 599-630, at 609.

¹⁸⁶ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4-5.

¹⁸⁷ Ahern Deirdre, 'Turning Up the Heat? EU Sustainability Goals and the Role of Reporting under the Non-Financial Reporting Directive' (2017), ECFR 4/2016, 599-630, at 609.

international framework such as GRI's guidelines and standards of reporting.¹⁸⁸ In addition, Dániel Gergely Szabó and Karsten Engsig Sørensen state that the amount of companies that are covered by the NFR Directive have a relatively low number, approximately 6 000 large undertakings from which 1 100 are the Danish companies.¹⁸⁹ As a result, it is possible that more undertakings will be included in a future revision of the Accounting Directive through obtained experience from the NFR produced by the companies.¹⁹⁰

From examining the findings, both groups of the above mentioned authors have proposed realistic future changes of the NFR Directive. In support to their statements Claire Jeffrey, Jade Tenwick and Gineva Bicciole statistic evidence could be added about such possible changes in the nearest future. As they state, the requirement of 500 workers will probably decline to 250 or even less, because for example, the UK approximately 99.9% of all businesses are SMEs and none of them are required to report.¹⁹¹ In other words, some MS would not have been able even to properly participate in the CSR development through usage of the NFR Directive requirements, because of their countries business models.¹⁹² In addition, authors explain that the NFR Directive requirements were written in too broad form that would create huge diversity in companies' reports from state to state, even if it was the same company.¹⁹³

In conclusion, future of the NFR Directive will depend on the several influence factors. First, the Commission expects that the undertakings will disclose information in their reports in accordance with the NFR Directive requirements and most probably provide some additional ideas on possible ways of its further modification. For instance, after first reports in 2018 companies could provide the EU legislator with the list of problems they have faced during preparation of

¹⁸⁸ *Id* at 617-619.

¹⁸⁹ Dániel Szabó and Karsten Sørensen, 'New EU Directive on the Disclosure of Non-Financial Information (CSR)' (2015), ECFR, 307-340, at 320.

¹⁹⁰ *Id* at 320.

¹⁹¹ Claire Jeffery, Jade Tenwick and Gineva Bicciole, 'Comparing the implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy' (2017), Editor: Flip Gregor, Frank Bank, at 3.

¹⁹² *Id* at 4-6.

¹⁹³ *Id* at 3-6.

their management reports and possible ways of their solving. In addition, companies may provide their own recommendations on how the non-financial information should be disclosed, what companies should take into attention, how to prepare personal that will work on company management report and etc.

Second, the Europe 2020 Strategy for smart, sustainable and inclusive growth could bring for the business environment new tests in the field of their actions due to which their NFRs will be also changed or modified. For instance, companies will be obliged or recommended to disclose information about their participation in Europe 2020 Strategy and companies' impact on smart, sustainable and inclusive inside and outside growth. Additionally, by disclosing the non-financial statements, companies may take accent on their policies, which they have used in order to move in accordance to the Europe 2020 Strategy. Moreover, in case of unsuccessful first reports in 2018 some additional changes could be added in the Europe 2020 Strategy, thus assisting in further development of the NFR Directive.

Third, the MS national standards and the international organization standards on reporting could show new ways of non-financial information disclosure or increase the minimum requirements to the information that should be provided by the companies in their reports. For instance, the most comprehensive NFR requirements have been adopted by France and Denmark.¹⁹⁴ Both MS have created mandatory CSR reporting regime that has obliged the large companies to disclose non-financial information before the NFR Directive appearance.¹⁹⁵ However, the French approach on disclosure of the non-financial information was stricter due to its list of 68 items to be reported rather than flexible Danish approach, under which company should disclose information on the broad topics, giving in such way to companies more space to

¹⁹⁴ Dániel Szabó and Karsten Sørensen, 'New EU Directive on the Disclosure of Non-Financial Information (CSR)' (2015), ECFR, 307-340, at 313.

¹⁹⁵ *Id* at 313.

move.¹⁹⁶ In other words, MS could propose their best practices by developing of more practical ways to disclose non-financial information or develop bigger amount of topics on which company should report. In addition to the above mentioned, international organizations such as the Global Reporting Initiative (GRI), The International Integrated Reporting Council (IIRC), the United Nations Global Compact (UNCD) and the OECD could develop new reporting practices, which could be used by the companies in their NFR. Therefore, if any of them is capable to create new standards, they could be used by the EU legislator to modify existing law in this field.

Fourth, the scholars' researches in the CSR field may also have a huge impact on further NFR Directive development. For instance, they could reveal the deficiencies or the gaps by their critical analysis of existing legislation and highlight important problems as well as propose ways to solve emerging issues. Sometimes the ECHR and the CJEU use scholars' researches to support and simplify understanding of their decision or to disclose questions, on which there are not enough of practice. The same approach could be used by the EU legislator to the NFR Directive.

Chapter III. Corporate Social Responsibility in Ukraine: Would a Non-Financial Reporting Rule help?

This Chapter deals with the explanation of the actual relevance of research in the CSR field in Ukraine and the possibility of the implementation of the EU NFR Directive and its Guideline as an instrument for the promotion of the CSR in Ukraine. Due to fact that the domestic economic environment has not passed in its development all necessary stages, Ukraine is highly recommended to use the best practical experience of the CSR concept modification from the EU. Therefore, the NFR Directive adaptation in the Ukrainian legislation could open up new possibilities and potential of social resources in the process of social development as well as

¹⁹⁶ *Id* at 313.

provide business with the social cohesion, which creates new opportunities for better sustainable development.

In regard to the structure of this chapter, the first subchapter (3.1) will refer to the elucidation of the existing approaches in the CSR understanding through its historical formation analysis nowadays in Ukraine. The second subchapter (3.2) will relate to the highlighting and explanation of the feasibility of a NFR rule implementation into national law in order to solve existing gaps in the CSR development in Ukraine. After that, an analysis of the successful implementation of the NFR Directive into the Ukrainian legislation as well as its impact on solving of existing problems in the CSR development will be conducted in the third subchapter (3.3). Finally, the clarification will be provided on the further development and the future of the CSR concept on the basis of the critical analysis of existing gaps and possible ways of their solving (3.4).

3.1. Corporate Social Responsibility in Ukraine

Unlike the EU with a historically well-established market economy, a culture of entrepreneurship and long traditions of social partnership, Ukraine stays among those countries where the process of social and economic modernization are at catch-up stage, due to delay of development in this field for several decades.¹⁹⁷ In regard to the above mentioned, the formation of the CSR practices has begun much later, because of the certain specific features of the Ukrainian business realities.¹⁹⁸

Most Ukrainian scholars agree that the domestic version of social responsibility is a symbiosis of elements of the British voluntary initiation of business and continental European models that were basing on the desire of enterprises to obtain clear behavioral frameworks from

¹⁹⁷ Alexander Romanuha, 'Corporate Social Responsibility development in Ukraine' (2016), Herald of Khmelnytsky National University, №2, Volume 1, UDC 005.35, 198-204, at 199.

¹⁹⁸ *Id* at 199.

the state.¹⁹⁹ Moreover, the notion of CSR provided on the Forum of Socially Responsible Business of Ukraine organized by the Center of CSR development in Ukraine shows that it is “[a] responsible attitude of any company towards its product or service, consumers, employees, partners; the active social position of the company which consists of harmonious coexistence, interaction and constant dialogue with the society by participation in solving of the most acute social problems”.²⁰⁰

Ukrainian model of CSR is combination of new social trends in the business from the EU with preservation of Soviet or even pre-revolutionary traditions.²⁰¹ For instance, the role of personality is rather typical and in many new business structures undergoing the stage of primary accumulation of capital are creating horrible working conditions, through which workers are obliged to work overtime, because of their direct dependence from their employers.²⁰²

Historically the Ukrainian CSR has been developing in 3 different stages.²⁰³ To begin with, the first stage has launched formation of social responsibility principles under the initiative of the Ukrainian Association of Quality and the Ukrainian Union of Industrialists and Entrepreneurs from 1996 till 2005.²⁰⁴ In that period, they have started distribution and future fostering of the idea of social orientation and social activity on the whole territory of the Ukraine.²⁰⁵

Second stage has concentrated on the development of the functioning system of views of the social responsibility in Ukraine. To simplify, the foregoing stage has been separated on four substages. In the first substage, in 2005 Ukraine has been preparing for holding of the Forum on

¹⁹⁹ Andrey Himchenko, ‘Genesis and structuring of the concepts of "social responsibility" and "corporate social responsibility" in the current conditions of functioning of Ukraine’ (2013), *Economic Crimea*, №1, 155-161, at 156-158.

²⁰⁰ *Id* at 158.

²⁰¹ Alexander Romanuha, ‘Corporate Social Responsibility development in Ukraine’ (2016), *Herald of Khmelnytsky National University*, №2, Volume 1, UDC 005.35, 198-204, at 199.

²⁰² *Id* at 199.

²⁰³ Antonina Kolpovska, ‘Periodization of the development of social responsibility concept in Ukraine’ (2015), UDC 352.07:334, at 6-7.

²⁰⁴ *Id* at 6.

²⁰⁵ *Id* at 6.

the “Corporate Social Responsibility and United Nations Global Compact (UNGC)” topic, main target of which was creation and further development of the communication between different CSR interested parties and mobilization of the main group of the companies that would like to sign the UNGC in 2005.²⁰⁶ The signing has become possible after the launch of the UNGC in Ukraine on April 2006.²⁰⁷ The first signatories were 34 leading Ukrainian and international companies, associations and civil society organizations, among which were Coca-Cola, Beverages Ukraine LTD, SCM, Tetra Pak Ukraine, TNK-BP Ukraine, and others.²⁰⁸ The second substage was characterized with an increasing awareness of the CSR in Ukraine and the company's first efforts to rethink and implement the strategic framework for the CSR development.²⁰⁹ Moreover, on 1 November 2007, Ukraine has joined the international team for the development of a new international standard for social responsibility, ISO 26000.²¹⁰ The third substage was most fruitful in the CSR development in comparison to the above mentioned, due to appearance of the first two well-prepared social reports by the Nadra Bank of Ukraine and the DTEK Company with usage of the GRI standards in 2008.²¹¹ In addition, in this substage scholars have started to develop a rational approach to the CSR and to the understanding of the difference between the CSR as a business strategy and a charity.²¹² The fourth substage shows that the CSR development in Ukraine has been slightly decreased due to the refocusing of the business attention to the eco-management and other ecological practices from 2009 till 2010.²¹³

²⁰⁶ *Id* at 6.

²⁰⁷ Donetsk National University of Management, ‘Summary of lectures on discipline ‘Corporate Social Responsibility’ (2012), (*StudFiles*) <<https://studfiles.net/preview/5350171/page:7/>> accessed 22 March 2018.

²⁰⁸ *Id*

²⁰⁹ Antonina Kolpovska, ‘Periodization of the development of social responsibility concept in Ukraine’ (2015), UDC 352.07:334, at 6.

²¹⁰ *Id* at 6.

²¹¹ Donetsk National University of Management, ‘Summary of lectures on discipline ‘Corporate Social Responsibility’ (2012), (*StudFiles*) <<https://studfiles.net/preview/5350171/page:7/>> accessed 22 March 2018.

²¹² *Id*

²¹³ Antonina Kolpovska, ‘Periodization of the development of social responsibility concept in Ukraine’ (2015), UDC 352.07:334, at 7.

Finally, the third stage has started development of the concept of social responsibility in the public sector of Ukraine from 2010 till 2014.²¹⁴ During this period of time, the Ukrainian government in cooperation with entrepreneurs and scholars has activated the cross-sectorial and inter-municipal cooperation in order to foster development of the social partnership and the social entrepreneurship.²¹⁵ Moreover, the Ukrainian government has created a working group on the development of a national CSR strategy.²¹⁶ Under active work of the above mentioned initiative the Decree of the President of Ukraine ‘On the Plan of measures for the implementation of the Strategy of the state policy for promoting of the development of civil society in Ukraine in 2013’ has appeared in order to create the stable strategy of the development of social responsibility of business in Ukraine.²¹⁷ Afterwards, at the same year, the Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Concept of the National Program for the development of small and medium enterprise for 2014-2024’ has been published on the governmental website, which involved fostering of the development of the CSR on the territory of Ukraine.²¹⁸

In addition, in 2016 new Decree of the President of Ukraine ‘On promotion of the development of civil society in Ukraine’ has appeared by canceling in such way 2013 Decree, under which new ‘National Strategy on promoting of the development of civil society in Ukraine for 2016-2020’ (National Strategy) would be used in order to: create favorable conditions for formation and institutional development of civil society organizations; ensure effective procedures for public participation in the formation and implementation of state, regional policy, addressing issues of local importance; encourage the participation of civil society organizations in the socio-economic development of Ukraine; and create favorable conditions for inter-sectoral

²¹⁴ *Id* at 7.

²¹⁵ *Id* at 7.

²¹⁶ *Id* at 7.

²¹⁷ The Decree of the President of Ukraine ‘On the Plan of measures for the implementation of the Strategy of the state policy for promoting of the development of civil society in Ukraine in 2013’ [25 June 2013], № 342/2013, <<http://zakon2.rada.gov.ua/laws/show/342/2013>> accessed 22 March 2018.

²¹⁸ The Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Concept of the National Program for the development of small and medium enterprise for 2014-2024’ [28 August 2013], № 641-2013-p, <<http://zakon2.rada.gov.ua/laws/show/641-2013-%D1%80>> accessed 22 March 2018.

cooperation.²¹⁹ Moreover, in 2017 new Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Strategy for the development of small and medium enterprises in Ukraine until 2020’ has also canceled previous 2014-2024 Strategy and has been provided to help SMEs to create better business environment, foster the development of competitive market and show the innovation potential of the Ukrainian economy.²²⁰

As the result of such a historical development of the CSR concept on the Ukrainian territory, a number of features could be distinguished. First, Ukraine has a big gap in the understanding of the CSR concept and low level of social consciousness²²¹, because of the absence of clear strategy on the CSR development and its misunderstanding in such legislative initiative as National Strategy and Ukrainian Strategy for the development of the SMEs.

Second, the forced nature of the CSR in Ukraine in few fields for some companies without proper legal understanding of this concept has been classified as form of state racket.²²² Forced nature of the CSR in Ukraine has mostly affected huge international corporations, which follow this concept due to their obligation before the main office with location in the EU and mandatory reporting requirement. In other words, even if Ukrainian companies have been assisted in the CSR development, they are not able to understand concept that is not developed and researched by the both government and scholars in clear manner in Ukraine.

Third, there is a lack of the transparent procedures in the development of social policy at both the state and the regional level as well as at companies’ level.²²³ Moreover, the forms and

²¹⁹ The Decree of the President of Ukraine ‘On promotion of the development of civil society in Ukraine’ [26 February 2016], № 68/2016, <<http://zakon2.rada.gov.ua/laws/show/68/2016>> accessed 22 March 2018.

²²⁰ The Resolution of the Cabinet of Ministers of Ukraine ‘On approval of the Strategy for the development of small and medium enterprises in Ukraine until 2020’ [24 May 2017], № 504-2017-p, <<http://zakon2.rada.gov.ua/laws/show/504-2017-%D1%80>> accessed 22 March 2018.

²²¹ Alexander Romanuha, ‘Corporate Social Responsibility development in Ukraine’ (2016), Herald of Khmelnytsky National University, №2, Volume 1, UDC 005.35, 198-204, at 199.

²²² *Id* at 199.

²²³ *Id* at 199.

methods of social activities of the company depend from their owners, because of the rising role of the companies' managers in the post-privatization period of Ukraine.²²⁴

Fourth, high variation of existing forms of the social activity formed at the companies' level on the basis of its own balance between economic efficiency and social necessity.²²⁵ Companies take an active role in the CSR development only where such necessity appears for them in order to present their company from the best side on the both internal and external markets.

Fifth, there is a high differentiation of social corporate benefits that could be provided by the companies to its low and high ranked employees (top managers or highly skilled personnel).²²⁶ There are legal regulations about the minimum salary of the worker, but there is no workable control over the company's payments for their workers. For instance, a worker has an official salary and at the same time company may pay him 'envelope salary', however such type of payments are accessible mostly for the high ranked workers due to their importance to the company. Moreover, company will not only pay higher salary for its best workers but also will provide them with best workable environment that creates lack of equality between employees.

Sixth, a significant gap exists between society and business in understanding of the priorities of the CSR.²²⁷ Marina Deich's research²²⁸ shows that Ukrainian society understand the CSR concept as a control tool for disclosure of the company financial activities that are not included in the annual financial reports and is controversial to the business opinion. In contrast, in companies' knowledge CSR is a voluntary mechanism of presenting their best practices on the ESG issues through their day-to-day activities.

²²⁴ *Id* at 199.

²²⁵ *Id* at 199.

²²⁶ *Id* at 199.

²²⁷ *Id* at 199.

²²⁸ Marina Deich, 'Formation and development of the multilevel system of social responsibility: management aspect' (2014), National Academy of Sciences of Ukraine Institute of Economics of Industry, Monography, UDC 316.422:338.24, 352, at 116-168.

Finally, one can hardly find enough information on the positive practices of CSR usage and implementation in knowledge of both the business and the Ukrainian society.²²⁹ In regard to the above mentioned historical formation of the CSR concept and presented problems, it could be stated that in Ukraine both the government and businesses have formed different understanding of the CSR concept and its possible ways of usage. Moreover, Ukraine has developed some perspective laws in providing business with better market possibilities, however none of them has touched the CSR development in Ukraine. In addition, both the government and business environment cannot agree on implementation of the workable CSR standards through the national legislation due to the absence of clear vision of its future sustainable development. That is why, Ukraine requires an assistance from other more developed countries in this field in order to clarify the importance of the CSR concept implementation into Ukrainian law and gain the expand explanation for further social and economic growth.

3.2. Feasibility of a Non-Financial Reporting Rule in Ukraine

In regard to the financial, economic and political crisis Ukrainian companies are not able to perform their activities properly. That is why, foregoing issues created a necessity for modification of the existing CSR as a basis of a balanced and systematic approach to future development and most practicable management of the enterprises.²³⁰ The Association Agreement²³¹ between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, signed on the part of the political part on 21 March 2014 and on economic part on 27 June 2014 in Brussels and entered into force

²²⁹ Donetsk National University of Management, 'Summary of lectures on discipline 'Corporate Social Responsibility' (2012), (*StudFiles*) <<https://studfiles.net/preview/5350171/page:7/>> accessed 22 March 2018.

²³⁰ Ganna Moskalyuk, 'Modern conditions of the development of Non-Financial Reporting in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 3, at 1.

²³¹ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [27 June 2014], № 984-011, <http://zakon2.rada.gov.ua/laws/show/984_011/page> accessed 22 March 2018.

in Ukraine on 16 September 2014,²³² envisages a deep economic integration of Ukraine within the EU and the creation of a comprehensive free trade zone, which would cover almost all major sectors of Ukraine.²³³ Moreover, the EU is seriously intending not only to transfer cooperation to a qualitatively new level, but also to bring Ukraine's economic system closer to the European Union's economic system on the basis of mutual liberalization of the movement of goods, capital and services, the harmonization of approaches and principles on which sectorial economic policies and systems of regulation of production and commercial activity relies on. Moreover, by choosing of the European vector of development, Ukraine and in particular its enterprises should recognize the priority areas of their activities: respect for human rights, guaranteeing safe working conditions and opportunities for sustainable development and self-improvement, support for spiritual values, care for youth, responsibility towards partners and clients, and prevention of corrupt practices, etc.²³⁴ All the above mentioned to a certain extent shows that the sustainability development has already started through systematic integration with international practices, which are based on three main components of the development: economic, environmental and social.²³⁵

Moreover, today for all types of companies that exists under Ukrainian legislation it becomes clear that in order to have best market positions on the both national and international level, companies would have been required to increase their efficiency, competitiveness, transparency and build a balanced relationship with all groups on which companies would directly affect.²³⁶ In regard to the above mentioned, the CSR could be interpreted as responsibility of companies before society on whom they directly or indirectly affects.²³⁷ This approach has been used by many companies that are on their way to best transparency practices by disclosing both

²³² The Law of Ukraine, 'On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand' [16 September 2014], № 1678-18, <<http://zakon2.rada.gov.ua/laws/show/1678-18/paran2#n2>> accessed 22 March 2018.

²³³ Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 1.

²³⁴ *Id* at 1.

²³⁵ *Id* at 1-2.

²³⁶ *Id* at 4-5.

²³⁷ *Id* at 5-8.

the strategy of the company and the results of their activities in the NFR, which become the part of a responsible business practices around the globe.²³⁸

In addition, in order to foster sustainability development in Ukraine, enterprises and the government should have been given priority to the CSR principles development as well as to the extension of the foreign experience in the NFR practice.²³⁹ Moreover, such opinion is based on the fact that according to the Ukrainian CSR Development Center research in 2012 the number of companies that prepared the NFR has doubled in Ukraine from 12 in 2011 till 35 in 2012.²⁴⁰

One of the most important global players in the development of the CSR issues is the UNGC, which as it was stated before, is aimed at involving of the companies in solving of different global problems.²⁴¹ The UNGC is based on the 10 universal principles concerning the implementation of socially responsible business practices in the areas of the human rights, labor standards, environmental responsibility and anti-corruption.²⁴² More than 8000 participants from around 130 countries have already joined the UNGC.²⁴³ For instance, relying on the article of the UN in Ukraine²⁴⁴ nearly 200 companies and organizations have become the UNGC signatories in Ukraine till 2013, but according to the UNGC overview²⁴⁵ only 59 companies have become participants from Ukraine till 2018. In other words, the above mentioned situation shows retrospective tendency of joining the UNGC by the Ukrainian companies. However, the UNGC was based solely on the voluntary business initiative in order to support the principles of sustainable development, business transparency, public accountability and the implementation of

²³⁸ *Id* at 5.

²³⁹ *Id* at 2.

²⁴⁰ *Id* at 5.

²⁴¹ *Id* at 5-6.

²⁴² United Nations Global Compact, 'The Ten Principles' <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> accessed 22 March 2018.

²⁴³ Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 6.

²⁴⁴ United Nations in Ukraine, 'UN Global Compact Network Ukraine Is Changing Its Organizational Format' <<http://www.un.org.ua/en/information-centre/news/1721-2013-10-31-11-25-45>> accessed 22 March 2018.

²⁴⁵ United Nations Global Compact, 'Ukraine overview' <<https://www.unglobalcompact.org/engage-locally/europe/ukraine>> accessed 22 March 2018.

the UNGC principles in the business strategy, corporate culture and their everyday practice.²⁴⁶ Therefore, the companies that have been actively participating in the UNGC could easily leave it at any suitable for them moment, because of its voluntary form.

In addition, Oliver Adam the UN Coordinator in Ukraine states that the NFR is a necessary tool of multi-vector dialogue with the social environment, which would significantly contribute to its consolidation and sustainable development in Ukraine.²⁴⁷ Indeed, thanks to the implementation of the proper CSR measures the Ukrainian companies would have been able to contribute to increasing of their competitiveness on both the global and the domestic markets.²⁴⁸ Worldwide research proves that in the companies that have implemented the CSR, sales revenue has increased by 3%, the assets has been risen up on 4%, and the capital and the stocks by more than 10%.²⁴⁹

However, even if Ukraine has been able to fully or partially implement both the EU NFR Directive and the Guideline into national law, such legal adaptation could not guarantee fast CSR development. Firstly, this law should follow the process of ratification and adaptation in regard to the existing Ukrainian laws that will take, in the best case, approximately 6 months. Moreover, it will take even more time if before the adaptation process Ukraine has not created appropriate steps in creation of the National Strategy on the CSR development. Secondly, Ukraine will be required to create additional governmental and non-governmental structures for monitoring how these changes will impact on both business environment and economy. Finally, Ukraine should invite international observer that could help Ukraine to implement better law by making an appropriate advices in regard to what Ukraine should concentrate more at the beginning as well as which further direction in national law development Ukraine should take into account.

²⁴⁶ Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 6.

²⁴⁷ *Id* at 5-6.

²⁴⁸ Alexander Zinchenko and Marina Saprykina, 'Corporate Social Responsibility 2005-2010: status and development prospects' (2010), Type "Farbovii List", 56, at 13.

²⁴⁹ *Id* at 13.

In conclusion, It is evident from the data that at this stage Ukraine is in a high need of the improving of the methodical apparatus and in raising the overall culture of the NFR.²⁵⁰ Moreover, under current conditions of the European integration it is necessary to intensify the implementation of National Strategy of the CSR development in Ukraine in order to improve the general picture of our country within its territory and abroad, in such way demonstrating our aspiration to move in accordance with the contemporary European and world trends, adherence to the concept of sustainable development, acceleration of the modernization of the economy, responsible attitude to the problems of the society and the environment, as well as facilitating the process of European integration in general.²⁵¹

3.3. Non-Financial Reporting Rule in Ukraine: solution to CSR development?

Nowadays the NFR in Ukraine is in a phase of the active development and has significant untapped potential, despite the low percentage of the reporting companies. This problem has become more relevant for domestic enterprises with the evolution of a market economy in Ukraine. At this moment, the Ukrainian business uses two forms (free and standardized) through voluntary non-financial reporting under the existing international recommendations and standards. Therefore, it has created the necessity for the additional academic research of possible directions for the further development of the NFR in order to increase socially responsible behavior of Ukrainian business.

Unfortunately, even with successful implementation of both the EU NFR Directive and the NFR Guideline into Ukrainian legislation the CSR would not be able to evolve immediately. However, on the one hand, the NFR Directive will help Ukraine to solve existing NFR problems,

²⁵⁰ Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 6.

²⁵¹ *Id* at 6-7.

such as: the absence of a unified notion and the general form of the NFR; the ineffectiveness of its compilation; the poor presentation of information in the reports; and the voluntary obligation of disclosure of the non-financial information.²⁵² On the other hand, the implementation of the NFR Directive should be made during the introduction of relevant changes in civil, commercial and labor laws as well as elimination of corruption issues in Ukraine. Therefore, as it was explained in subchapter 2.2, all specific requirements should be included in Ukrainian legislation in order to provide both national and international companies with the best NFR practices and foster CSR development. However, the Ukrainian legislator should take into account possible problems of the NFR and the Guideline in the EU exposed in subchapter 2.3.

Referring to the absence of the unified NFR notion, representatives of international organizations in Ukraine and Ukrainian scholars provide different understanding of its definition to be implemented into national law.²⁵³ For instance, Oliver Adam, the current UN Coordinator in Ukraine, states that introduction of the NFR's notion in Ukraine would significantly contribute to its consolidation and sustainable development by establishing a multi-vector dialogue with the social environment.²⁵⁴ Marina Saprykina, the Head of the Center of the CSR development in Ukraine, states that Ukrainian notion of the NFR should include information about the results of economic activity as well as social and environmental indicators.²⁵⁵ Moreover, foregoing author specified that it is an instrument for informing the company's stakeholders about how and at what pace the company implements the goals of the economic, social and environmental sustainability in the strategic development plan.²⁵⁶ Anatolyi Kolota explains that the Social or the Non-financial reports should be understood in Ukrainian legal doctrine also as an institutional reflection of the

²⁵² Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 8.

²⁵³ *Id* at 8.

²⁵⁴ *Id* at 5-6.

²⁵⁵ Marina Saprykina, 'CSR practice: 12 steps in preparing of the Non-Financial Report' (2012), <<https://delo.ua/business/kso-praktika-12-shagov-pri-podgotovke-nefinasovogo-otcheta-185313/>> accessed 23 March 2018.

²⁵⁶ *Id*.

state of the CSR concept implementation in the special documentation.²⁵⁷ Tatiana Dovga has summed up mentioned authors' notions and introduced her own definition of the NFR (Sustainability Reporting) to be implemented in Ukrainian legislation. Consequently, the NFR should be treated as a documented set of the data of an enterprise or organization irrespective of the form of ownership which reflects: the environment of the company's existence, the principles and methods of cooperation with the groups of influence, the results of the company's activities in the economic, social and environmental spheres of life of the society in order to provide stakeholders with non-financial information in the context of the sustainable development and its principles.²⁵⁸

There are some other Ukrainian authors that mistakenly equate the NFR with the integrity reports (IR) in such way tangling these concepts.²⁵⁹ It is important to understand that the IR is a new reporting format that, unlike to the traditional financial reporting and the NFR, comprehensively reveals the indicators of finance, social responsibility of business and ecology.²⁶⁰ In other words, the IR is a combination of the financial and the non-financial reports.²⁶¹

As in regard to the form of the non-financial statements, the Ukrainian business has been practicing two different forms of them: free and regulated (standardized).²⁶² In reports of free form the enterprise independently chooses the volume, quality and the form of the presentation of information for disclosure to the interested persons.²⁶³ Moreover, free form reports could be distributed by the company via the internet, mass media or in the form of booklets without any

²⁵⁷ Anatoliy Kolota, 'The Corporate social responsibility, social reporting and audit as modern institutions and technologies of the social development' (2010), Ukraine, aspects of labor: scientific-economic and socio-political magazine, Publishing house 'Pratsia', № 3, 3-9, at 4-5.

²⁵⁸ Tatiana Dovga, 'Forming of ecological reporting of the waste processing enterprises' (2012), Visnyk of Taras Shevchenko National University of Kyiv, № 143, 50-53, at 51.

²⁵⁹ Ganna Moskalyuk, 'Non-Financial Reporting in the implementation of the Sustainability Development Concept in Ukraine' (2014), DSpace (electronic library) at Odessa National Economic University, 20, at 11.

²⁶⁰ *Id* at 11.

²⁶¹ *Id* at 11.

²⁶² *Id* at 11.

²⁶³ *Id* at 11.

control of its authenticity.²⁶⁴ In addition, the standardized form of the NFR exists in Ukraine only by virtue of the extensive usage of international standards, such as: the GRI standards, AccountAbility 1000, ISO 14000, SA 8000, ISO 26000 and etc.²⁶⁵

Taking of all the above mentioned into account, it becomes clear that Ukraine requires clarification in understanding of the NFR notion and its reporting form. With consideration of best national and international practices in non-financial information disclosure, the EU created the NFR Directive and its Guideline that have solved a huge amount of different existed problems in this field. For instance, the NFR notion and its reporting form have been already clarified in Article 1 (Article 19a (1)) of the NFR Directive as:

“[t]he management report on a non-financial statement that should include 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 brief description of company business model; its policies and due diligence; the outcome of used policies; the principle risks and their management; and the key performance indicators relevant to the particular business.”²⁶⁶

Moreover, the Guideline has exposed additional recommendation to disclose the non-financial information in accordance with the materiality test, thus companies will make better connection of their overall activities and shareholders will obtain more clarified information about companies' actions in the CSR field.²⁶⁷

In regard to the fact that the CSR have arisen and formed in response to the actual requirements of the practice, nowadays the Ukrainian business has faced with the new problem of the ineffective compilation of the non-financial information in the NFR.²⁶⁸ The basic voluntary

²⁶⁴ *Id* at 12.

²⁶⁵ *Id* at 12.

²⁶⁶ The European Parliament and the Council of European Union Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) [22 October 2014] OJ L 330/1, at 4-5.

²⁶⁷ The European Commission Guidelines on non-financial reporting (methodology for reporting non-financial information) [5 June 2017] OJ C 215/01, at 5-9.

²⁶⁸ Svetlana Korol, 'Non-Financial Reporting of an Enterprise' (2011), *Visnyk of Kiev National University of Trade and Economics*, № 6, 102-113, at 103.

concept of a triple reporting approach that companies use at this moment, requires from them to fully and reliably disclose information about: the financial position and business strategy of company (financial statement), the company's participation in solving of different social problems (social report) and environmental protection (environmental report).²⁶⁹ However, the practice of such voluntary publishing of the NFR in Ukraine from 2005 to 2010 has made it possible to establish that the companies presents their reports thorough 'progress reports' (91,5%) rather than the GRI standards (8.5%) which requires additional control from the audit firms over their transparency and quality.²⁷⁰ Therefore, it shows that companies prefer reports without additional burdens, which could provide assurance of the authenticity of the real situation in the company due to the fact that national legislation does not have any practical recommendations for the proper drafting of the NFR into national law.²⁷¹

Therefore, in order to solve aforementioned problems, Ukraine should concentrate on creation of measures, which could ensure a high level of confidence in the NFR that will be required for obtaining of the equivalent status as the financial reports.²⁷² Considering results of the EU, the NFR Directive could help the Ukrainian legislator to resolve those problems through implementation of clear requirements that will be clear enough in order to answer 'who', 'how', 'what' questions in such way clarifying by whom, in which way and in regard to what companies are required to disclose the non-financial information statements. Moreover, the government could create agency in cooperation with representatives of international organization to check authenticity of the provided NFRs. Unfortunately, if companies would be obliged to check their reports at the statutory auditor office or in audit firm as the NFR Directive states that could create

²⁶⁹ *Id* at 103.

²⁷⁰ *Id* at 105.

²⁷¹ *Id* at 104.

²⁷² *Id* at 106-107.

additional corruption and extra monetary expenses for companies in Ukraine and decrease the reliability level in general.

The last but not the least problem, is connected with the voluntary form of the obligation to disclose the non-financial information statements.²⁷³ Therefore, it could be stated that the NFR could be taken seriously into account if non-financial information would be of high importance to both business and society and the information disclosed in it would be transparent and reliable.²⁷⁴ From examining stated findings, the creation of a mandatory obligation for companies to provide the NFR in future could be possible only if both the government and the society increase relevance of the non-financial information and its impact in general as it has been done in the EU.²⁷⁵

It could be concluded that the CSR in Ukraine is on its development phase, but fast progress is possible if both the government and the business would work in close cooperation and would have intent to create better business environment in Ukraine for both national and international companies. However, the sole creation of law similar to the EU NFR Directive including both the Ukrainian and the EU best practice and existing problems in this field could provide the real effect on the CSR development. Moreover, the NFR Directive and the Guideline have been developed on the basis of best practices of the EU and different international organizations standards, thus some Ukrainian companies have already started to use international standards that would simplify implementation process of the NFR Directive into Ukrainian legislation.

3.4. Further development and the future of CSR in Ukraine

The transition of Ukraine to the sustainable economic development, its integration into the European and world community requires the introduction of modern practice of interaction

²⁷³ *Id* at 110-111.

²⁷⁴ *Id* at 111.

²⁷⁵ See subchapter 2.1 and 2.4.

between the state and business as well as business and society, which would allow strengthening the mutual responsibility of all participants in public life and creating conditions for the further stable development of society.²⁷⁶

Moreover, in both developed and developing countries the CSR is becoming globally widespread, which is consciously related to the subjects of economic activity in regard to the requirements of social necessity, social tasks, moral and ethical norms and values, an understanding of the consequences of its activities for society, consumers, business partners and their employees.²⁷⁷ However, reporting on the CSR issues is a voluntary activity of private and public sector enterprises aimed at adherence to high standards of economic activity, social standards and quality of work with personnel, minimization of harmful effects on the environment in order to equalize existing economic and social imbalances; creation of partnership relations between business, society and the state; improving the long-term business performance.²⁷⁸ In addition, in the modern world the CSR is a common tradition, which is followed by a great number of large, medium and even small enterprises.²⁷⁹ Considering the extraordinary social and economic significance that includes CSR, its development issues are of particular concern to public authorities in many countries of the world and to leading international organizations.²⁸⁰ The manifestation of this is the development of the CSR standards and measures to stimulate business to this responsibility.²⁸¹

Under SVB research²⁸² in Ukraine, 99.8 percent of all enterprises belong to SMEs, their shares make almost 58 percent of the total volume of sales in Ukraine that is quite similar to

²⁷⁶ SVB.UA, 'Strategy for promoting the development of social responsibility of business in Ukraine for the period up to 2020', (2013), <http://svb.ua/sites/default/files/201309_strategiya_spriyannya_rozvitku_svb_v_ukrayini.pdf> accessed 25 March 2018, 9, at 1.

²⁷⁷ *Id* at 1.

²⁷⁸ *Id* at 1.

²⁷⁹ *Id* at 1.

²⁸⁰ *Id* at 1.

²⁸¹ *Id* at 1-2.

²⁸² *Id* at 3.

situation in the UK.²⁸³ Moreover, almost one third of the employed population of working age is working at the Ukrainian SMEs.²⁸⁴ Therefore, Ukraine could use similar to the UK approach of the NFR Directive implementation in law and future development of CSR through the NFR. However, due to the differences in both legal systems and business models Ukraine could not entirely rely on the UK approach. Consequently, Ukraine should pay high attention on all shortcomings in the experience of the EU countries with a similar business environment, particularly Germany and Poland,²⁸⁵ in order to avoid in such way various problems on early stages of the NFRs implementation and improve existing practices in this field.

In light of the evidence produced by SVB research, further development of the CSR concept in Ukraine would be possible if the number of issues would be solved in cooperation between the business and the Ukrainian government.²⁸⁶ First, Ukraine should deal with the problem of a low level of ‘corporate culture’²⁸⁷ that creates the financial and economic weaknesses of a significant part of entities in Ukraine, whose main activities are concentrated on further survival.²⁸⁸ Second, the legal nihilism and deformation of legal consciousness have created the desire to circumvent the law and not to adhere to it.²⁸⁹ Third, the Ukrainian society has low level of awareness of the role of the business due its relatively short history and practice of its own social responsibility.²⁹⁰ Fourth, both business and society have lack of understanding of the main tasks and mechanisms of implementation of the CSR, because of the terminological or normative

²⁸³ See subchapter 2.3 at

²⁸⁴ *Id* at 3.

²⁸⁵ Eurostat Statistic Explained, ‘Statistics on small and medium-sized enterprises. Dependent and independent SMEs and large enterprises’ (2015) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_small_and_medium-sized_enterprises> accessed 25 March 2018.

²⁸⁶ SVB.UA, ‘Strategy for promoting the development of social responsibility of business in Ukraine for the period up to 2020’, (2013), <http://svb.ua/sites/default/files/201309_strategiya_spriyannya_rozvitku_svb_v_ukrayini.pdf> accessed 25 March 2018, 9, at 1.

²⁸⁷ Corporate culture – it is a system of values and beliefs that each employee of a firm shares and it is a system of behavior predictions, which determines the nature of the organization's life. Svetlana Vasilenko, ‘Corporate culture as a tool for effective personnel management’ (2008), Publishing and Trading Corporation ‘Daskov and K’, 23, at 4-7.

²⁸⁸ *Id* at 3.

²⁸⁹ *Id* at 3.

²⁹⁰ *Id* at 3.

uncertainty.²⁹¹ Fifth, the detailed information about the company's activity has been closed for internal use by the majority of Ukrainian business entities without appropriate reasons.²⁹² Sixth, there is an absence of sustainable state support in the development of the CSR of the business and the lack of legislative development in this area.²⁹³

Moreover, in order to foster development of the CSR in Ukraine, the existing Ukrainian 2020 Strategy, created under the Association Agreement, defines: the purpose, vectors of the movement, road map, main priorities and indicators of the appropriate defense, socio-economic, organizational, political and legal conditions for the formation and development of Ukraine,²⁹⁴ should be modified with additional provision on socially responsible business by use of existing ideas and practices from the Europe 2020 Strategy²⁹⁵ and the Enterprise 2020 Manifesto²⁹⁶. For instance, Ukraine can add the CSR chapter in the Ukraine 2020 Strategy and start from taking into account the EU strategic objectives on the CSR, namely: production of benevolent products and services for the consumers; invest in the development of production and human potential; strict compliance with the requirements of the legislation (tax, labor, environment and etc.); construction of good neighbor and mutually beneficial relations with all interested parties; the concept of business that aimed at increasing of the national competitiveness; taking into account of the public expectations and generally accepted ethical standards in business practice; and the formation of civil society through partnership programs and projects of social development.²⁹⁷ In other words, Ukraine could implement the CSR reform as an element of its 2020 Strategy by using the above

²⁹¹ *Id* at 3.

²⁹² *Id* at 3.

²⁹³ *Id* at 3.

²⁹⁴ The Decree of the President of Ukraine, 'On the Strategy for sustainable development "Ukraine 2020" ' [12 January 2015], № 5/2015, <<http://zakon1.rada.gov.ua/laws/show/5/2015>> accessed 25 March 2018.

²⁹⁵ European Commission and European Union, 'Smarter, greener, more inclusive? Indicators to support Europe 2020 Strategy' (2016), Eurostat204, <<http://ec.europa.eu/eurostat/documents/3217494/7566774/KS-EZ-16-001-EN-N.pdf/ac04885c-cfff-4f9c-9f30-c9337ba929aa>> accessed 25 March 2018.

²⁹⁶ CSR Europe, 'Enterprise 2020 Manifesto' (2015), <https://www.csreurope.org/sites/default/files/publications/Enterprise2020_manifesto.pdf> accessed 25 March 2018.

²⁹⁷ Natalia Suprun, 'Corporate Social Responsibility as a factor of attraction (In the context of the objectives of the Europe-2020 Strategy' (2013), *Ukrainskii Socium*, № 2(45), UDC 304.4:316.64, 163-176, at 169-170.

mentioned EU objectives and existing Ukraine researches in this field in order to achieve more sustainable CSR development in the future.

In accordance to aforementioned, two possible ways of the CSR development in Ukraine are available at this moment. First way is based on the implementation of the EU NFR Directive and its Guideline in the Ukrainian legislation with some additional work that should be done by the Ukrainian legislator. However, the NFR Directive would not be possible to implement in Ukrainian legislation at the same variant as it has been developed in the EU, because of the specific legislation and business environment issues that exists in Ukraine. The biggest Ukrainian problems that should be solved before the NFR Directive are connected with high corruption level²⁹⁸ inside the country and absence of effective public control over the activities of the Ukrainian authorities.²⁹⁹ Corruption level inside the country could be beaten only via actions from the cooperation of both the Ukrainian society and the international observers invited from the countries with low corruption level. As for public control, Ukraine should modify its existing state governance model by adopting the EU concept of the social state, which is based on the values of freedom, equality of opportunity and lack of discrimination, solidarity and social cohesion, social dialogue and developed civil society, social responsibility and trust.³⁰⁰ In other words, in order to implement the above mentioned documents, both the government and the society of Ukraine should recognize such changes as relevant and requirable step of the CSR development in Ukraine and approve further and possible ways of its adaptation into national law.

Second way is based on modification of the Ukrainian 2020 Strategy and creation of additional legislation on the bases of international standards developed by different international

²⁹⁸ Ukraine is on the 131st position from 176 countries. See Transparency International, 'Corruption Perceptions Index 2016' (2016), countries, <https://www.transparency.org/news/feature/corruption_perceptions_index_2016> accessed 25 March 2018.

²⁹⁹ Marina Deich, 'Formation and development of the multilevel system of social responsibility: management aspect' (2014), National Academy of Sciences of Ukraine Institute of Economics of Industry, Monography, UDC 316.422:338.24, 352, at 83-85.

³⁰⁰ *Id* at 87

organization due to their usage in Ukraine at this moment. Moreover, adaptation of the CSR Strategy in Ukraine could improve the international image of the country as well as its business environment, demonstrating in such a way an aspiration of Ukraine to move to contemporary European and world tendencies, and responsibly address on the problems of society and the environment.³⁰¹ However, such way of the CSR development could be slower or may have no effect if both the government and the society of Ukraine would not take an active part in the process of its practical implementation and adaptation.

Conclusion

The CSR has been developing in a different way and with the different pace all around the world. The EU has started its active development since 1993 and during the period of 25 years of hard work and cooperation with business and society, they have concluded that the CSR concept itself could not be fully regulated due to its broad meaning and understanding. However, it was seen practically possible to create the law concentrated on the most important issues of the CSR further development.

The NFR Directive is a perspective and quite comprehensive law that could be called as one of the current best practices in regulation of the non-financial or, in other words, the CSR reporting regimes. On the one hand, this legal act is definitely a huge step forward to the sustainable future of the EU. However, on the other hand, it is clear that the EU internal market and the CSR concept are still on their way of evolution, which means that at this point of time, the NFR Directive is limited in possible ways of its further development. Nonetheless, the Commission has done a great work by summarizing and combining a huge amount of different best practices in the

³⁰¹ SVB.UA, 'Strategy for promoting the development of social responsibility of business in Ukraine for the period up to 2020', (2013), <http://svb.ua/sites/default/files/201309_strategiya_spriyannya_rozvitku_svb_v_ukrayini.pdf> accessed 25 March 2018, 9, at 3.

CSR field through creation of the NFR Directive, which will make an attempt to satisfy existing market needs by the creation of the transparent EU business market.

In addition, the NFR Directive has been created under ‘one-size-fits-all’ approach³⁰² which should provide all MS with the same conditions of its adaptation into national legislation, but this does not mean that implementation of this law and its provisions will be fully successful, and no problems will appear. In regard to the above mentioned, this legal act has not provided MS and business with adequate clarity on how companies are obliged to report on the each ESG factors. Moreover, it could be stated that indistinct wording of the NFR Directive has left MS and their businesses in the situation, where very broad requirements of disclosure of the companies’ information connected with their business model, policies, outcomes, principle risks and KPIs should be elaborated by the MS themselves. From one prospective, broad requirements could both positively and negatively influence on the further NFR development at both the EU and MS national levels. From another prospective, those requirements could low the quality of the overall reporting in the EU and decrease the speed of its further growth.

However, even with unclarity in its wording, the NFR Directive has created more specified requirements as well as brought elaborated structure to the reporting that has not been successfully done by the previous EU initiatives in this field. Despite of the existing NFR Directive problems, this law could have a huge positive impact in regard to the quantity, comparability and consistency of the non-financial reports in the EU as well as show to the other countries that such reporting could change their economy and business environment in the better way, particularly in Ukraine.

As for Ukraine, the development of the CSR concept and the NFR has begun much later than in the EU. The current CSR concept is a combination of new social trends in the business gained from the EU as well as preservation of Soviet traditions, which have been formed in 3

³⁰² See subchapter 2.1

stages.³⁰³ As the result of such historical formation of the CSR in Ukraine, a lot of big gaps appeared in understanding of this concept by both the business and the society.³⁰⁴ In addition, the governmental initiatives in the CSR field have not provided any positive impact on the current and future development of this concept in Ukraine.

Ukraine could use the best existing CSR practice from the EU by successful implementation of the NFR Directive and its Guideline into national law. Moreover, adaptation of the above mentioned law and the Guideline could help Ukraine not only create workable reporting regime, which could create more sustainable market and business growth, but, also would help to foster its Euro-integration process. However, the further CSR development in Ukraine could be possible only via strong cooperation between the government and the business in Ukraine as well as sustainable partnership between Ukraine and the EU for its better future.

Therefore, the NFR Directive represents an advance look on existing disclosure regime, requiring from obliged companies to disclose more global information than just employee's and environmental matters in their management reports. As of the future of the NFR Directive, a lot will depend on the both EU legislator and MS decisions and their further steps.³⁰⁵ Nevertheless, even at this moment other countries could use the NFR Directive as a tool for development of the best CSR practices and create sustainable market growth as well as bring additional perspective opportunities for risen business market value, increasing in such way general state of country's economy.

In addition, it could be highly recommended for the further researchers in this field to concentrate their attention on the development of the CSR concept and the NFR in the national legislation of the MS as well as critically analyze all future reports presented by the obliged EU

³⁰³ See subchapter 3.1.

³⁰⁴ See subchapter 3.2 and 3.3.

³⁰⁵ See subchapter 2.4.

large companies in 2018. Whereas, EU researchers should also take into account further scholars researches and the EU legislator proposals, Ukrainian researchers should concentrate their attention of the national legislative proposals as well as critically analyze both national and international scholars, and examine the existing CSR and the NFR practices in the business environment of Ukraine.

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