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From Non-Financial Disclosure to Sustainability Reporting:

New Challenges for Financial Analysts and Auditors

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Abstract

In the context of recurrent ecological and societal crises, the European institutions are committed to fostering sustainable development that meets the needs of present and future generations, while providing new opportunities for employment, investment and economic growth. These commitments are the guiding principle of European policies and strategies in terms of financing sustainable growth, green transition, and building an economy at the service of citizens. They have been gradually transposed into a large number of European regulations, including those related to sustainability disclosure by certain categories of economic and financial actors. The significance of the paradigm shift fuels the reflection on the relationship between these new regulations and the social reality, in which and upon which they must act. The new regulations referring to are especially: Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services; Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation); Directive (EU) 2022/2464 of the European Parliament and of the Council amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

As part of the European and international sustainability concerns, this article is a reflection paper on the developments, notably conceptual, axiological and substantive, generated by the Directive (EU) 2022/2464, and their translation into legal and practical innovations. Based on an extensive review of the relevant literature and European legislation, as well as on content analysis and secondary analysis of numerous scientific studies in the field, authors' contribution focuses on the meaning and implications of the switch from 'non-financial information' to 'sustainability information', as well as on the new relationship between the law and the social reality created by Directive (EU) 2022/2464.

The authors assume that such clarifications are a prerequisite for the successful transformation of certain professions significantly affected by this Directive, including those of financial analysts and auditors. This requires, at the same time, upstream changes of

university curricula and continuing education in this area, as well as in research programs.

Key Words: *non-financial information; sustainability reporting; double materiality; value chain; performativity;*

JEL Classification: *M41, M42, Q52.*

1. Theoretical Framework

The Intergovernmental Panel on Climate Change (IPCC) defines 'sustainable development' as: "Development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[1]. Sustainability is defined as "A dynamic process that guarantees the persistence of natural and human systems in an equitable manner"[2]. These definitions did not arise ex nihilo, but are the fruit of a long process of awareness that lasted almost two centuries. In order to understand the maturation of these ideas, which generated much controversy, inspired a diversity of theories and gradually gave rise to new legislation, it is necessary to retrace their genesis and evolution.

1.1. Avant-garde theories

Before the term '*sustainable development'* became an official concept, the idea of the impossibility of unlimited growth had already been theorized by Thomas Malthus in 1798. He opposed population growth, doubling every 25 years, to the natural limitation of land available to feed this population, aggravated by diminishing returns and the fact that the best land was already exploited. Therefore, the only possible remedy was birth control[3], especially among the poorest[4]. But the Industrial Revolution invalidated Malthus' theory of diminishing returns.

The idea of an imbalance between needs and available resources has gained ground. Thus, Theodore Roosevelt, American statesman, declared in his speech at the 1908 Wildlife Conservation Conference in Washington: *"We have a duty to nature, and we must be accountable for how we pay it off every day*." In 1909, in a statement to the U.S. Senate, he defended ideas of sustainability and responsibility, even though the syntagma 'sustainable development' was not used: *"With the steady growth in population and the still more rapid increase in consumption our people will hereafter make greater and not less demands per capita upon all the natural resources (…). If we of this generation destroy the resources from which our children would otherwise derive their livelihood, we reduce the capacity of our land to support a population, and so either degrade the standard of living or deprive the coming generations of their right to life on this continent."*

In 1972, the Club of Rome, a think tank close to the Organization for Economic Co-operation and Development (OECD) that brought together scientists, economists, government officials and business leaders from 52 countries, published the *Limits to Growth Report,* also known as the *Meadows Report*, after its two principal authors. The introduction begins with a quote from Maha Thray Sithu U Thant, the United Nations (UN) Secretary-General at the time, who stated in 1969: "*I do not wish to seem overdramatic, but I can only conclude from the information that is available to me as Secretary–General, that the Members of the United Nations have perhaps ten years left in which to subordinate their ancient quarrels and launch a global partnership to curb the arms race, to improve the human environment, to defuse the population explosion, and to supply the required momentum to development efforts. If such a global partnership is not forged within the next decade, then I very much fear that the problems I have mentioned will have reached such staggering proportions that they will be beyond our capacity to control.*"[5]

This fear of exponential population growth, underlying Malthus' predictions, is illustrated by the metaphor of the water lily. *"A water lily on a pond doubles its surface area every day. Knowing that it takes 30 days to cover the entire pond, thus suffocating all aquatic life, the question arises: is the time it covers half of the*

[1] Intergovernmental Panel on Climate Change (IPCC) (2014), Fifth Assessment Report (AR5) Glossary. (https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_annex-i.pdf)*, p. 133.*

[2] *Ibid.*

[3] Malthus, T. R. (1992), *Essai sur le principe de population*, Paris, Flammarion. First edition in English: 1798.

[4] Malthus was a pastor who only envisaged abstinence to limit births. He demanded much of humanity…

[5] Meadows, D.H., Meadows, D.L., Randers, J., Behrens, W. W. III (1972), *The limits to growth: a report for the club of Rome's project on the predicament of mankind,* New York, Universe Books, p. 17 (https://collections.dartmouth.edu/teitexts/ meadows/diplomatic/meadows_ltg-diplomatic.html#pg-17).

pond the last limit to act?"[1]. Intuitively, one would be tempted to answer that the deadline is 15 days. But dealing with an exponential growth, half of the pond is covered after 29 days and then there is only one more day to reach the point of no return because the pond will be completely covered on the 30th day.

The report on *"The limits of growth"* goes beyond the limits outlined by Malthus, who was concerned only with the earth's ability to meet food needs, integrating environmental pollution and depletion of non-renewable natural resources. The proposed solutions therefore aim at birth control to neutralize the very rapid growth of the world's population, but also at a transformation in the industrial model to save non-renewable natural resources and reduce pollution. The Club of Rome, unlike Malthus, advocated a change whose costs and benefits would be fairly distributed in order to forge a stable society. The idea of sustainable development is present, but the term is not used. The report conceptualizes the notion of '*global equilibrium',* characterized by an essentially stable population and capital (in the sense of investment), with the forces that tend to increase or decrease them being carefully balanced and in accordance with society's system of values[2]. The *Report*[3] also includes matters related to the progress of science in an industrialized world[4], which invalidates Malthus' theory of diminishing returns.

The prospect of an imbalance between actual or perceived needs and the availability of different resources to be consumed became apparent to a large public, affected in their daily lives, with the first oil shock in 1973, after the Yom Kippur War and the oil embargo decreed by the Organization of the Petroleum Exporting Countries (OPEC). The second oil shock, in 1979, after the Iranian revolution and the Iran-Iraq war, precipitated this awareness of an imbalance that could only get worse. In 1983, the Secretary-General of the UN entrusted Gro Harlem Brundtland with the creation of the World Commission on Environment and Development, which published in 1987 a report entitled *Our Common Future*[5], known as the *Brundtland Report*. For the first time, the *Brundtland Report* theorized the concept of 'sustainable development' as requiring "meeting the **basic needs** of all and extending to all the opportunity to satisfy their aspirations for a better life. *(...) Meeting essential needs requires not only a new era of economic growth for nations in which the majority are poor, but an assurance that those poor get their fair share of the resources required to sustain that growth. (…) those who are more affluent [should] adopt life-styles within the planet's ecological means (...) rapidly growing populations can increase the pressure on resources and slow any rise in living standards; thus, sustainable development can only be pursued if population size and growth are in harmony with the changing* ***productive potential of the ecosystem*** *(...). Sustainable development is not a fixed state of harmony, but rather a process of change (…). Painful choices have to be made"*[6]. Moreover, the report states that: *"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs"*[7].

This definition is extremely complex. It introduces the notion of '*basic needs*' while recognizing that they have a social and cultural determination. But meeting these needs extends to everyone and requires sacrifices on the part of the richest and control of population growth. Sustainable development does not exclude economic growth, on the contrary it assumes it, as *"A world in which poverty and inequity are endemic will always be prone to ecological and other crises"*[8]. Finally, the definition introduces the concept of '*productive potential of the ecosystem*', which implies a balance between the multitude of constraints facing humanity.

1.2. Controversies of economists

Despite the warnings mentioned above, economics and management sciences have not always proposed adequate responses to the challenges of sustainable development. One of the fundamental economic theories,

1 Delaunay, J. (1972), *Halte à la croissance ? Enquête sur le Club de Rome*, Paris, Fayard, p. 143, p. 5.

2 Idem, p. 277

3 "*The Limits to Growth*" report was updated by the Meadows team in 2004. Meadows, D. H., Meadows, D. L., & Randers, J. (2004). *The limits to growth: The 30-year update*. White River Junction, VT: Chelsea Green Publishing Co. (https://www.peakoilindia.org/wp-content/uploads/2013/10/Limits-to-Growth-updated.pdf).

4 *Idem*, pp. 278-281

5 Brundtland G. H. (1987), *Our Common Future*, United Nations, (https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf)

6 *Idem*, paragraphs 4, 28,29, 30.

7 *Idem,* paragraph 1.

8 *Idem*, paragraph 4.

that of regulation, found its materialization in the evolution of capitalism and, in particular, in its 'great transformation' in the late 70s: the neoliberalism that succeeded industrial capitalism. *"The reality of this transformation is undeniable. It is attested by (...) control of capital, wage labor and money. This is where investment and growth are decided (...)"*[1]. Neoliberal theory, promoted mostly by the Chicago School, especially by Milton Friedman, dominated the second half of the twentieth century and the beginning of the twenty-first century. It inspired public policies, as well as structural adjustment programs in the context of the so-called 'Washington Consensus', implemented, with highly contested results, by the Bretton Woods institutions. Blind reliance on market forces as a global regulator and concentration of capital on a planetary scale, unparalleled in the history of capitalism, have led to dramatic consequences in terms of wealth polarization, rising inequalities, and anarchic exploitation of resources. In Milton Friedman's view, "*there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud*"[2]. Such theories are at the origin *of "excessive profit demands, such as the famous ROE (return on equity) of 15% or more"*[3].

In opposition to neoliberal theories, at the end of the twentieth century, Amrtya Sen, winner of the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel, drew attention to the fact that economics favored the accumulation of goods and services without concern for the rights and capabilities of individuals[4]. By introducing the notion of *'capability'*, he considers that poverty must be analyzed from the point of view of freedom of action and the ability to act, i.e., beyond monetary matters. Under the influence of his thesis, the United Nations Development Programme (UNDP) proposed as a measuring tool the '*Human Development Index*', which combines three 'capabilities' considered essential: health (life expectancy), education (literacy rate) and monetary resources (GDP/capita in PPP)[5] in assessing development at international level. These proposals are currently reflected in different reporting models[6] as relates to the delivery of the UN 2030 Agenda.

Other, more recent theories emphasize the role of social and environmental factors in human development and the equilibrium of the planet. Thus, Swedish scientist Johan Rockstrom, known for his work on sustainability, has set nine boundaries, which must not be crossed to maintain the balance of the planet: climate change, biodiversity loss; disruption of the nitrogen and phosphorus cycle; change of land use; ocean acidification; ozone depletion; air pollution; use of drinking water; chemical pollution[7]. Some of these boundaries are also benchmarks for sustainability factors embedded in European regulations.

British economist Kate Raworth, author of the Doughnut theory, argues for the need to rethink the economy, taking into account both the satisfaction of basic human needs and Earth's limited ability to meet them. According to this theory, a just and sustainable world must be situated in the space[8] between external limits, expressed by planetary limits, and internal limits, expressed by human rights, essential to human dignity.

These demands for change have also found a certain materialization in management science. The famous *agency theory,* which develops the agency relationship[9] between the shareholder (the principal) and the agent (the manager), is gradually replaced by the *stakeholder theory,* according to which a multitude of actors are affected by a company's activities, either directly starting from contractual relationships (employees, suppliers, customers) or indirectly, through the impact these

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1 Aglietta M. (2004), *Régulation et crises du capitalisme*, Paris, Odile Jacob, 1997; R. Boyer, Théorie de la régulation: les fondamentaux, Paris, La Découverte.

2 This statement appeared in a *New York Times* article on September 13, 1970. (https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html)

3 Orléan, A. (2013), "Le néolibéralisme entre théorie et pratique, Entretien avec André Orléan", *Cahiers philosophiques*, n° 133, p. 9-20

4 Sen, A. (2003), *Un nouveau modèle économique. Développement, justice, liberté*, Paris, Odile Jacob.

5 PPP signifies purchasing power parity.

6 In French, the equivalent is 'rapportage', but the English term 'reporting' is more commonly used in the business world.

7 Rockström, J. *et al*. (2021): *Breaking Boundaries: The Science Behind our Planet*, DK.

8 Raworth, K. (2018), *La théorie du donut: l'économie de demain en 7 principes*, Paris, Ed. Plon.

9 Jensen, M. C., & Meckling, W. H. (1976), "Theory of the firm: Managerial behavior, agency costs and ownership structure". *Journal of Financial Economics*, Volume 3, Issue 4, October, p. 305-360

activities have on their environment[1]. More recently, the principle of double materiality (see §3.1.1.2.), which underpins the European standardization of sustainability reporting, refers to key decision-makers focusing both on the financial performance of the company and its impact on the social and natural environment.

1.3. The impetus given by international organizations and civil society

Commitment to sustainable development is one of the priorities of the UN. The UN 2030 Agenda for Sustainable Development, adopted in 2015, reflects growing global awareness that a sustainable development model for current and future generations is the best way to eradicate poverty and protect the planet. All other international organizations, as well as countries that are signatories to the 2020 Agenda, support the UN in achieving the 17 Sustainable Development Goals. Thus, Romania has recently adopted the National Strategy for Sustainable Development for 2030 (NSSDR 2030), and France, its National Strategy for Biodiversity, complementary to other sectoral strategies, as an expression of national commitments to achieve universal goals.

To the warnings of scientific circles and international organizations are added those of the civil society and religious bodies. We mention, among others, the intervention of one of the highest religious and moral authorities, Pope Francis, who published in 2015 an encyclical *"On the care of our common home*", *Laudato si'*. This solemn letter of the Pope to all members of the universal[2] Church is not intended to deal with scientific debate, but to place the notion of sustainable development in the social and ethical context of a civilization, which could go to its own destruction, adding a moral and religious dimension to it. *"Following a period of irrational confidence in progress and human abilities, some sectors of society are now adopting a more critical approach."*[3] "*The urgent challenge to protect our common home includes a concern to bring the whole human family together to seek a sustainable and integral development, for we know that things can change*"[4].

The Pope emphasizes the link between technology, and the production and consumption of goods in society. *"[T]echnological products are not neutral, for they create a framework which ends up conditioning lifestyles and shaping social possibilities along the lines dictated by the interests of certain powerful groups. Decisions which may seem purely instrumental are in reality decisions about the kind of society we want to build. (...) The technological paradigm has become so dominant that it would be difficult to do without its resources and even more difficult to utilize them without being dominated by their internal logic. (...) those who are surrounded with technology «know full well that [what is at stake] is neither (…) profit nor (…) the well-being of the human race», but (…) power*[5]*."*

The question that arises naturally is whether that in the face of this power, there is a counterpower. The Pope is very critical in this regard. *"It is remarkable how weak international political responses have been."* However, in "dealing with grave environmental and social problems worldwide*, (...) [a] global consensus is essential*", as *"[p]olitics and business have been slow to react in a way commensurate with the urgency of the challenges facing our world. (...)[T]he post-industrial period may well be remembered as one of the most irresponsible in history"*[6].

Can the market then regulate externalities resulting from human activities? According to the Pope, *"by itself the market cannot guarantee integral human development and social inclusion"*[7]. "*The environment is one of those goods that cannot be adequately safeguarded or promoted by market forces*". If "*the market tends to promote extreme consumerism … [a] change in lifestyle could bring healthy pressure to bear on those who wield political, economic and social power"*[8]. "*Purchasing is always a moral – and not simply economic – act"*[9].

1 Freeman, R.E. (1984), *Strategic Management: A Stakeholder Approach*, Cambridge University Press.

2 'Catholic' means 'universal' in Greek.

3 Encyclical Letter (2015), *Laudato si' On the Care of Our Common Home,* paragraph 19, (https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html)

4 *Idem*, paragraph 13

5 *Idem*, paragraph 107, 108

6 *Idem*, paragraph 54, 164, 165

7 *Idem*, paragraph 109 – quotes Benedict XVI, Encyclical Letter *Caritas in Veritate* (29 June 2009), 35: AAS 101 (2009), 671.

8 *Idem*, paragraph 190 quotes Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, 470.

9 *Idem*, paragraph 206 quotes Benedict XVI, Encyclical Letter *Caritas in Veritate* (29 June 2009), 66: AAS 101 (2009), 699.

However, the Pope probably doesn't have too many illusions.

2. Moving from non-financial disclosure to sustainability reporting: meaning and implications of the change

Sustainability has long been at the heart of the European Union's project, as its social and environmental dimensions were already in the treaties establishing the Union. According to Article 11 of the Treaty on the Functioning of the European Union (TFEU), *"Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development."*[1]. An important number of articles also concern fundamental social rights (Articles 151-166, Article 8, etc.), respect for the European Social Charter (Turin, 1962), the European Charter of Fundamental Social Rights etc.

The European institutions have repeatedly expressed concern about the increasingly damaging consequences of climate change and resource depletion on life on the planet. In recent years, especially in the context of the COVID-19 crisis, they have committed to promoting a system of development that meets the needs of present and future generations, while offering new opportunities for employment, investment and growth[2], commitments that are the guiding principle of European policies and strategies. These include the *Action Plan: Financing Sustainable Growth*[3], *the European Green Deal*[4], which is the Union's new growth strategy, and the *Strategy for financing the transition to a sustainable economy*[5]. Sustainability issues are subject to a significant number of European regulations, their dynamics and content being in line with the social reality, in which, and upon which, they must act. In this context, the European legislator has paid particular attention to the disclosure of sustainability information by certain categories of companies, whose availability, relevance, comparability and reliability are a prerequisite for achieving European strategic objectives.

The recent Directive (EU) 2022/2464 of December 2022 on corporate sustainability reporting amended the Accounting Directive 2013/34/EU[6], more specifically its provisions on disclosure of non-financial information introduced by Directive 2014/95/EU[7]. This change is a response to new demands to improve companies' reporting on social and environmental information, to make it more transparent, reliable and relevant, to serve as levers for the transition to a more sustainable and inclusive economy. Directive 2014/95/EU entered into force in 2016 and was applied for the first time in 2018 for the fiscal year 2017. It was transposed into Romanian national legislation by OMFP No. 1938/2016[8], and into French legislation by Ordinance No. 2017-1180 of July 19, 2017[9]. Shortly after the first application of Directive (EU) 2014/95, in December 2019, the European

[1] TFEU, *Treaty on the Functioning of the European Union*, consolidated version (2012), Art. 11, Official Journal C326/47

[2] COM(2018) 97 final, Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: *Action Plan: Financing Sustainable Growth.*

[3] *Ibid*.

[4] COM(2019) 640 final Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: *The European Green Deal.*

[5] COM(2021) 390 final Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: *Strategy for Financing the transition to a sustainable economy.*

[6] DIRECTIVE (EU) 2013/34/ of the European Parliament and of the Council of 26 June 2013 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, hereinafter referred to as the Accounting Directive.

[7] DIRECTIVE (EU) 2022/2464 of the European Parliament and of the Council amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting.

[8] MPF Order No. 1938/2016 of 17 August 2016 amending and supplementing certain accounting rules.

[9] Ordinance No. 2017-1180 of 19 July 2017 on the publication of non-financial information by certain large companies and certain groups of companies; Decree No. 2017-1265 of 9 August 2017 implementing Ordinance No. 2017-1180 of 19 July 2017 on the publication of non-financial information by certain large companies and groups of companies.

Commission committed to reviewing its provisions in one of the above-mentioned reference documents, the *European Green Deal*. The commitments to revise, followed by the replacement of the Directive (EU) 2014/95 after five years of application, raise a number of questions about the causes, content and extent of these changes, of which we state a few, that will serve as a guiding thread for our reflection:

– What is the significance and implications of changing the syntagma ‘non-financial information’ to ‘sustainability information’?
– What is the new relationship between rules of law and social reality, created by Directive (EU) 2022/2464?
– What are the new challenges for analysts and auditors?

To answer these questions, we propose a reflection paper on the developments, notably conceptual, axiological and substantive, generated by the Directive (EU) 2022/2464, and their translation into legal and practical innovations. We assume that such clarifications are a prerequisite for the implementation of this Directive, but also for the successful transformation of certain professions significantly impacted by the Directive, including analysts and financial auditors. Their reflection is based on extensive documentation from literature and European legislation, content analysis and secondary analysis of numerous scientific studies in the field.

2.1. A meaningful change of syntagm

Directive (EU) 2022/2464 marks a break with Directive (EU) 2014/95, primarily at a terminological level, by replacing the syntagm 'non-financial information' with 'sustainability information'. Recital 8 of the Directive provides the following arguments in favor of this amendment:[1]

– inaccuracy of the term, since the adjective 'non-financial' would mean '*that the information in question is of no financial relevance*';
– the practices of a significant number of organizations, initiatives and practitioners that refer to *‘sustainability information’;*
– the increasing financial relevance of this type of information.

However, beyond these considerations, other arguments can be made in favor of this change of syntagm. First, there is a lack of consensus about the current meaning and academic definition of the term ‘non-financial information’. Very conclusive in this regard is the study[2] of a group of French researchers on the content of publications in relevant journals on the topic of non-financial information, conducted between 1980 and 2012. According to the authors, of the 318 articles identified, which contain the syntagm ‘non-financial’, "*only 14 give a definition of the concept, while 56 do not define it, but develop research or reflections based on themes or examples clear and detailed enough to help define it. The other texts (...) address issues related to this concept without providing any definition or concrete example that could help clarify it*"[3].

The 14 definitions, although different in content, implicitly promote the idea that the notion of non-financial information refers to information presented outside the financial statements and therefore does not originate from accounting. This approach also reflects the Financial Accounting Standards Board (FASB)'s view that non-financial information is defined as information that is not disclosed in the basic financial statements, namely the Balance Sheet, Income Statement, Statement of Cash Flows and Notes. The definition proposed by the authors of this study is based on the same logic: "*non-financial information covers all quantitative or qualitative information that is provided outside the financial statements, that is not produced by accounting and financial information systems and that does not have a direct and easily measurable link to financial performance"*[4]*.*

Without mentioning the content of the term ‘non-financial’, the vast majority of academic definitions take the form of negations: "not related to the balance sheet", "outside the scope of financial statements", "outside financial statements" etc. This wording is as vague as it is broad, as it covers matters related to corporate social responsibility (CSR), as well as matters related to the company's non-financial performance, such as number of defects, quality classes, number and preferences of

[1] Directive (EU) 2022/2464, Whereas 8.

[2] Protin, P., Gonthier-Besacier, N., Disle, Ch., Bertrand, F., Périer, S. (2014), "L'information non financière. Clarification d'un concept en vogue", *Revue française de gestion* 2014/5 (n° 242), p. 37-47.

[3] *Idem*, p. 39

[4] *Idem*, p. 45

consumers, etc. By inducing the idea that the issues mentioned have no financial impact, the approach is misleading, both for the company and for the other stakeholders.

Directive (EU) 2014/95 takes the same approach. Non-financial information contributing, in the spirit of this Directive, to 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"*[1]. The information required in the non-financial statement covered five priority areas: business model, policies related to the above issues, outcomes of these policies, risks, and non-financial performance indicators.

The vagueness of the term and the perspective of the approach affect the relevance, reliability and comparability of information and, consequently, the quality of reporting on social, environmental and governance issues, justifying the change of syntagm. Compared to the term 'non-financial information', 'sustainability information' refers to a clear idea, carrying a precise meaning, which refers to the 'persistence' of things, human and natural systems. Its connection with current reality and representation in the collective consciousness are, a priori, more easily perceptible, especially in association with social and environmental emergencies, with the challenges of sustainable development.

2.2. A change of syntagm that makes information more performative

Directive (EU) 2022/2464 is also based on the implicit assumption that information is performative: it creates reality, it modifies behaviors. *"To say is to do."*[2] It opposes an ascertaining statement to a performative one[3]. Article 1(4) (§ 3) states that *"Large undertakings, and small and medium-sized undertakings, except micro undertakings (…) shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position".*

Stating such a policy constitutes a commitment, a promise and creates an obligation. The change of syntagm is important because of its symbolic effects, as it generates changes in the representation of actors and individuals[4].

However, no statement is performative in itself. Performativity (realization of speech predictions) requires collective engagement, involving both the authors of the 'performative statement' and the targets of these pronunciations. Directive (EU) 2022/2464, through the meaning, value, content and status of statements, makes sustainability information more performative.

2.3. An incremental change of syntagm

The transition from 'non-financial information' to 'sustainability information' has been progressive, following the logic of European thinking that starts from the general aspects of building the sustainable and inclusive European single market, to the proposal of European sustainability standards with a global vocation. This logic corresponds at microeconomic level to that of decision-making, which starts from financing decisions and investment options to operating decisions. The changes were necessarily ensured in an incremental, step-by-step manner, which led to an evolution of information and reporting requirements. Thus, general policy documents such as the European Green Deal (2019) and the Action Plan: Financing Sustainable Growth (2018), which set the objective of achieving climate neutrality by 2050, respectively redirecting capital flows towards sustainable investments, were followed in 2019 by the Regulation on sustainability reporting in the financial services sector and, in 2022, by the Directive on corporate sustainability reporting (CSRD).

This incremental change is evidenced, *inter alia*, by the frequency of the keywords 'sustainable' and 'sustainability' in European legislation related to taking environmental, social and governance requirements into account in the disclosure of information, as shown in **Table no. 1**.

[1] Directive (EU) 2014/95, Art. 1.

[2] Austin, J.L. (1970), *Quand dire, c'est faire*, Ed. Le Seuil, Paris

[3] Burlaud, A., Niculescu, M. (2015), "Non-financial information: a European perspective", *Financial Audit* XIII Nr. 6 (126), p. 102-112, Bucharest

[4] Guibentif, P. (1079), "Les effets du droit comme objet de la sociologie juridique. Methodological reflections and research perspectives", *Travail CETEL* n° 8, Genève, Université de Genève, p. 33-34.

Table no. 1. The concept of sustainability in European legislation

Month/ Year	Legislative act	Word frequency		Syntagms that include the term 'sustainable ' or 'sustainability'[1]
		Sustainable	Sustainability	
0	*1*	*2*	*3*	*4*
06.2013.	Directive (EU) 2013/34 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings	6	0	
10.2014	Directive 2014/95 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups	4	3	Sustainable growth Sustainability information Sustainability risks
03.2018	COM(2018) 97 final Action Plan: Financing sustainable growth	96	90	Sustainable finance Sustainable investment Sustainable growth Sustainable governance Sustainability information Supply chain
12. 2019	COM(2019) 640 final The European Green Deal	79	10	Sustainable growth Sustainable resource management Sustainable products Sustainable finance Sustainable investment Sustainable value chain
11. 2019	Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector	23	82	Sustainability information Sustainability risks Sustainable investment Negative impact on sustainability Sustainability factors Sustainability indices
06. 2020	Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy)	142	44	Sustainability criteria Degree of environmental sustainability Sustainability indicators Sustainable investment Sustainability information Sustainability reporting standards
12.2022	Directive (EU) 2022/2464 as regards corporate sustainability reporting	41	684	Sustainability information Sustainable investment Sustainable finance Sustainable growth Sustainable economic and financial system Value chain (frequency = 22) Sustainability reporting standards
02.2022	Proposal for a Directive of the European Parliament and of the Council on corporate sustainability due diligence	51	50	Sustainability due diligence Sustainability information Sustainability factors Sustainability indicators Sustainability of governance systems Value chain sustainability (syntagm frequency = 54)

Source: The authors

[1] *Except for expressions commonly used in all areas: sustainable development, sustainable economy, sustainable future, sustainable strategies, sustainable management, sustainable policies.*

According to the elements presented in **Table no. 1**, it can be seen that in the older directives, the 2013 Accounting Directive and the 2014 Non-Financial Reporting Directive, the words 'sustainable' and 'sustainability' are very little used. Since 2018 and especially after the crises associated with the Covid 19 pandemic, the two terms have become the reference point of legal devices, as an expression of awareness of the gravity and urgency of finding solutions to environmental and social problems facing human society. Thus, for example, the word 'sustainability' is used 684 times in the recent Directive (EU) 2022/2464 and only three times in Directive (EU) 2014/95. Also, gradually the syntagms that include these terms increase their frequency or new syntagms such as ‘sustainability factors’, ‘sustainability criteria’, ‘sustainability of the value chain’, ‘sustainability vigilance’ appear, with an information load of major conceptual and empirical interest.

2.4. A change of syntagm in line with the new European legal framework

Table no. 1 (column 4) summarizes the main syntagms that appear in European regulations on sustainable development, such as: sustainable growth, sustainable finance, sustainable investments, sustainability of governance systems, sustainable value chains, sustainability factors, sustainability indicators, sustainability due diligence, etc. Beyond the formal, natural coherence of 'sustainability information' with the other terms that make up the European conceptual framework on sustainability, there is also consistency in terms of content.

Thus, in March 2018, the European Commission stressed in its communication on *the Action Plan for Financing Sustainable Growth*[1], the need for urgent action to adapt public policies to current realities, marked by the negative effects of climate change and resource depletion. The Commission rightly started from the idea that the financial sector has a key role to play in promoting the ecological transition, which it can assume thanks to its position as an intermediary between users and capital providers. The three objectives of the plan[2] were broken down into ten flagship measures[3], which were subsequently implemented in a significant number of directives, regulations and delegated acts. Directive (EU) 2022/2464 gives concrete expression to the 9th measure adopted in this plan, the implementation of which must enable *“investors and stakeholders to assess companies' long-term value creation and their sustainability risk exposure”*[4]. The definition of 'sustainable finance' in the *Action Plan: Financing Sustainable Growth*, as *“the process of taking due account of environmental and social considerations in investment decision-making”*[5], is conceptually fundamental. This process must respond to two priorities: improving the contribution of the financial system to sustainable and inclusive growth by financing society's long-term needs, and strengthening financial stability by integrating environmental, social and governance (ESG) factors into investment decision-making.

At operational level, channeling capital towards sustainable investments is essential for the success of European commitments, as access to finance is a major barrier to sustainable investment by companies, especially small and medium sized entities (SMEs). According to a survey conducted by the European Investment Bank,

[1] COM(2018) 97 final, Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, to the European Economic and Social Committee and the Committee of the Regions: *Action Plan: Financing Sustainable Growth.*

[2] *Idem*, p. 3: “*1. reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth;2. manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues; and 3. foster transparency and long-termism in financial and economic activity.”*

[3] *Idem*, p. 18-20:
i. establishing an EU classification system for sustainable activities;
ii. create standards and labels for green financial products;
iii. fostering investment in sustainable projects;
iv. incorporating sustainability when providing financial advice;
v. developing sustainability benchmarks;
vi. better integrating sustainability in ratings and market research;
vii. clarifying institutional investors' and asset managers' duties;
viii. incorporating sustainability in prudential requirements;
ix. strengthening sustainability disclosure and accounting rule-making;
x. fostering sustainable corporate governance and attenuating short-termism in capital markets.

[4] *Idem*, p. 12.

[5] *Idem*, p. 3

28.3% of SMEs in the EU face such difficulties, as well as 31.7% of small and micro enterprises.[1]

According to the European Commission, "[a] lack of clarity among investors regarding what constitutes a sustainable investment is a contributing factor behind this investment gap and also an obstacle to financing the social infrastructure that is needed to address inequality and inclusiveness issues"[2]. Despite this warning, this Communication does not provide the definition of sustainable investment. It will be developed a little later, in relation to other key concepts (sustainability factors, sustainability risk), in Regulation (EU) 2019/2088, which requires disclosure of specific sustainability-related information by companies active in the financial services sector. The purpose of this regulation is to lay down "harmonized rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products."[3]

Thus, "'sustainable investment' means an investment in an economic activity that contributes to an environmental objective (…) or (…) a social objective (…) provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices"[4]. Environmental objectives must be measurable through the use of key indicators relating to resource efficiency (energy, raw materials, water, land), waste production and greenhouse gas emissions, or impacts on biodiversity and the circular economy. As regards social objectives, the regulation aims to combat inequalities, strengthen social cohesion, social integration and industrial relations, invest in human capital or economically or socially disadvantaged communities. The value of the investment shall be addressed in relation to sustainability risk, defined as "an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment."[5].

The implementation of the mechanisms mentioned above and the orientation of capital flows towards sustainable investments also required the definition and a common understanding of the concept of 'sustainable', i.e., the criteria for classifying and identifying sustainable activities. It was at the heart of the most important and urgent actions in the Action Plan to finance sustainable growth. The clarification on the above issues was provided by Regulation (EU) 2020/852, known as the 'Taxonomy' Regulation, which "establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable."[6]. It contains basic definitions for 'environmental sustainability' in the EU and sets out harmonized criteria for qualifying an activity as 'sustainable'. The Taxonymy Regulation also amends the reporting requirements for companies, which must report, by means of measurable and verifiable indicators, how and to what extent their activities are environmentally sustainable.

The legislator returns to the definition of environmentally sustainable investment, specifying that 'environmentally sustainable investment' is an investment in one or more economic activities that can be considered environmentally sustainable.[7] Therefore, the sustainability of the investment is conditional on the sustainability of the economic activity in which it is invested. According to the Taxonomy Regulation, "an economic activity shall qualify as environmentally sustainable where that economic activity (…) contributes substantially to one or more of the environmental objectives (…) does not significantly harm any of the environmental objectives"[8] and is carried out in

[1] Commission Européenne (2022), *Annual Report on European SMEs 2021/22, SMEs and environmental sustainability, SME Performance Review 2021/2022*, p. 79-90

[2] COM (2018) 97 final, Communication from the Commission to the European Parliament, the European Council, the Council, the Council, the European Central Bank, to the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth, p. 4

[3] Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector, Art. 1.

[4] *Idem*, Art. 2 (§ 17)

[5] *Idem*, Art. 2 (§ 22)

[6] Taxonomy Regulation, Art. 1.

[7] *Idem*, Art. 2 (§1)

[8] See Article 9 of the Taxonomy Regulation: "*For the purposes of this Regulation, the following shall be environmental objectives: (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; (f) the protection and*

compliance with the minimum human and fundamental rights safeguards[1]. Of the six environmental objectives, only the first two, climate change mitigation and adaptation, are subject to a delegated regulation[2] specifying the content of information to be published by different financial and non-financial actors. As we have seen, in this regulation 'sustainability' is limited to environmental matters, while in Regulation (EU) 2019/2088, sustainability is addressed in a broader vision, that is "environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters."[3]

Given the concepts circulated and the magnitude of the implications of these legislative devices, changing the syntagm 'non-financial information' to 'sustainability information' gives coherence to the European conceptual framework, making the interconnections between different European legal acts clearer and more operational.

2.5. A change of syntagm in line with the UN 2030 Agenda

The change is also conceptually coherent with the international declarations on sustainable development[4] and international commitments under the 2030 Agenda adopted by the UN General Assembly in 2015. The publication by certain categories of companies of relevant, comparable and reliable sustainability information ensures better monitoring and transparency of progress made at the European and international level towards achieving the proposed objectives. The obligation for companies to extend the scope of disclosure and the proposal for new instruments for measuring and assessing sustainability will lead to the achievement of certain objectives, in particular targets 5, 10, 12, 13[5]. The Commission's top proposal on classifying activities according to their potential to contribute to environmental objectives (i.e., the 'Taxonomy') makes it possible to position companies' activities on the path of sustainable transition and orient financial flows towards priorities defined by the European and international community.

3. New relationship between rules of law and social reality created by Directive (EU) 2022/2464

The relationship between the legal system and the social reality in which it operates can be approached from three perspectives: legality, legitimacy and effectiveness[6].

In the spirit of the Enlightenment, 'legality' is associated with freedom, rationality, and the role of the state in ensuring security, freedom and equality between people. In European law, where *"there is no law in the sense of expressing the will of the sovereign people, European legality is therefore essentially jurisdictional legality (...) which is explained by the competence (mainly economic) and the* sui generis *institutional architecture of the European Community*[7]. European legality *"operates by respecting, under the supervision of a court, a network, an archipelago of principles*".[8] It is measured by compliance with the substantive principles and values that guide actions.

restoration of biodiversity and ecosystems." See also Art. 2 (§5), (§6).

1 *Idem*, Art. 3 and Article 18

2 Commission delegated regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation. Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

3 Regulation (EU) 2019/2088, Art. 2 (24)

4 UN, Resolution of 25 September 2015 "*Transforming our world: the 2030 Agenda for Sustainable Development"; The United Nations Framework Convention on Climate Change of 12 December 2015 (Paris Agreement), etc.*

5 Gender equality, Reducing inequalities, Sustainable consumption and production, Climate action.

6 Mincké, Ch. (1998), "Effets, effectivité, efficacité et efficacité du droit: le pôle réaliste de la validity", *Revue interdisciplinaire d'études juridiques*, Vol. 40, p. 115-151

7 Slingeneyer, T. & Vogliotti M. (2019), *The New Paths of Legality. Au-delà de la modernité juridique*, Brussels, Presses de l'Université Saint-Louis, p. 275-281.

8 *Ibid*.

As for 'legitimacy', it is generally associated "*with that which conforms, not only to laws, but also to morality, reason*."[1] Etymologically, legitimacy is "*the characteristic of what is grounded in law and/or justice".* It therefore refers only to *"those things which may be the subject of debate from the point of view of law or justice, namely, essentially, human actions, insofar as they take place in a social context defining acceptable and unacceptable, conforming and non-conforming, convenient and inconvenient norms*"[2].

'Effectiveness' refers to the effects of the law "*determined by itself and by the way in which it is implemented"*[3], regardless of whether these materialize through changes in the actors' practices or their representations. The effectiveness of the law also refers to the effectiveness and efficiency of rules and regulations, since, once identified, their effects must be assessed. The shift from non-financial to sustainability information implies new relationships between legal rules and social reality, both at the level of actors' representation and the modification of their practices and effectiveness, as we will see below.

3.1. Pillars of the new sustainability legal framework

Economic and social reality is a complex and dynamic set of interconnected facts and values. Interferences between legal norms and the functioning of the economy and society in general have always existed, because the law directs economic and social actors towards a certain type of action, generating at the same time certain constraints in their choices. The constraints have multiplied recently, in the context of the globalization of the economy, the increasing diversification of legal sources, the emergence of new environmental challenges and resource depletion, the widening of disparities and social problems, the diversification of the types of actors and often conflicting interest categories they represent. Therefore, the perimeter of the 'confrontation' between social reality and law has expanded considerably, aiming at: coherence between legal norms, social values and economic and social laws; the relationship between the objectives pursued by a legal text and the mobilized/mobilizable means to achieve them; the relationship between legal instruments and social needs to which these instruments should respond, etc.[4] This is also the perspective from which we analyze below the relationship between the rules of law and social reality, created by Directive (EU) 2022/2464 on sustainability reporting by companies. Such an approach opens the way to reflection and indirectly to innovative practices, since "*law constitutes not only the armor of society, providing certainty to citizens (...), but also an instrument of progress: legislation not only ratifies morals, in many respects it arouses them".*[5]

3.1.1. Axiological pillar

3.1.1.1. Compatibility with the fundamental values of the European Union

The provisions of Directive (EU) 2022/2464 are drafted in the spirit of respect for European principles and values with a universal purpose, respect for human rights, fundamental freedoms and democratic standards stemming from, in particular, the International Charter of Human Rights, the International Labour Organization Declaration on Fundamental Rights at Work, the European Social Charter, the Charter of Fundamental Rights of the European Union, etc.

It also gives concrete expression to the Commission's commitments under the *European Green Deal* to review the provisions of the Accounting Directive (EU) 2013/34 as amended by Directive (EU) 2014/95 on disclosure of non-financial information. This revision contributes to achieving the objectives of the *European Green Deal* of "*building an economy that works for people and strengthening the Union's social market economy (…) and transforming the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases (…) by 2050*"[6]. Its implementation should increase companies' awareness of fundamental human rights and climate issues, motivate them to direct capital flows to those activities that comply with sustainability requirements, influence them in defining management and corporate governance priorities in decision-making, and lead to changing the behavior of all actors in the value chain.

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1 *Ibid*.

2 Laufer, R., Burlaud, A. (2022), *Legitimité,* in Encyclopédie du management public, Open Edition Books, pp. 419 – 423

3 Mincké, Ch. *op. cit.* pp. 115-151.

4 Niculescu, M., Galabov, A. (2023), "The interpretation of the law of social economy: economic and sociological perspective", *Honorem, Branduşa Ştefănescu,* Bucharest, Ed. Hamangiu,

5 Legeais*, R. (1973), Clefs pour le droit,* Paris, Seghers, 1973, p. 143.

6 Directive (EU) 2022/2464, Whereas 1

The directive is drafted in accordance with classical European principles, particularly those of subsidiarity and proportionality. Thus, consistency of sustainability disclosure rules with other Union legislation can only be ensured by the Union. Also, compliance with the principle of proportionality allows determining the categories of companies subject to information obligations and the field of information to be disclosed, depending on the resources, capacities and complexity of their activities. Sustainability information must meet users' needs without imposing a disproportionate burden on companies covered by the Directive or indirectly affected as part of their value chain[1]. Thus, SMEs benefit from simplified sustainability reporting obligations as well as longer deadlines for publishing the first sustainability report (2027, with the possibility to postpone to 2029), non-Union companies only have to provide information on their social and environmental impacts, not on their risks and opportunities, etc. This directive also promotes specific technical principles.

3.1.1.2. Double materiality principle

Directive (EU) 2022/2464 explicitly introduces the *'double materiality perspective'* into corporate sustainability reporting obligations. That expression has been translated in the French version of the directive as *"double importance relative"* and in the Romanian language version as *"dubla perspectivă a pragului de semnificație"*. The word "materiality" has in this context the same semantic connotation as: 'meaning', 'importance', 'relevance'.

In accounting, 'materiality' corresponds to the relevance of accounting information, to the fact that it is material[2]. Article 2 (§16) of the Accounting Directive, in the Romanian version, implicitly defines the term 'semnificație', within the respective syntagm "prag de semnificație", as "*statutul informațiilor în cazul în care se poate anticipa în mod rezonabil că omiterea sau prezentarea eronată a acestora influențează deciziile pe care utilizatorii le adoptă pe baza situațiilor financiare ale întreprinderii (...)"*[3]. The French version uses the word 'significatif', similarly defined as *"le statut d'une information dont on peut raisonnablement penser que l'omission ou l'inexactitude risque d'influencer les décisions que prennent les utilisateurs sur la base des états financiers de l'entreprise".*

Double materiality is a complex concept, the definition of which combines two perspectives to considering sustainability information in decision-making:

an '*outside-in'* perspective, according to which only information on the positive and negative impact of the (economic, social, natural) environment **on the entity** is relevant and therefore must be taken into account. It is a perspective that considers the opportunities (positive impacts) and risks (negative impacts) of the company ("*financial materiality*") an '*inside-out*' perspective, according to which information about the company's negative and positive impact **on the** (economic, social, natural) **environment** is also material ("*impact materiality*").

This approach is based on the theory of 'externalities', according to which externality (positive or negative) is by definition a gain or loss that one economic agent (individual or company) imposes on another (or others) outside the market, thus excluding compensation[4]. In this sense, externality refers to the notion of impact. For EFRAG (European Financial Reporting Advisory Group), the body entrusted by the European Commission with developing technical sustainability rules, 'materiality' should be understood as a criterion for including information in companies' management reports. This criterion reflects:

- the importance of the information in relation to the phenomenon it is supposed to describe or explain;
- the ability of information to meet the needs and expectations of stakeholders and the enterprise itself, enabling sound decision-making;
- and, more generally, the needs for transparency in the public interest[5].

[1] *Idem*, Whereas 46

[2] Edgley, C. (2014), "A genealogy of accounting materiality". *Critical Perspectives on Accounting*, 25(3), p. 255-271.

[3] Accounting Directive (EU) 2013/34, art. 2 (§16)

[4] Perman, R., Ma, Y., McGilvray, J., & Common, M. (2003). *Natural resource and environmental economics* (3rd ed.). Pearson Education, citat de Rimbaud, A. *et al*. (2022) in *Papier de recherche: Mesure et définition d'impacts extra-financiers des investissements: retour des théories et pratiques de l'Impact Investing et apports possibles de la comptabilité*, ANC, Paris

[5] EFRAG (2022), [Draft] *European Sustainability Reporting Guidelines 1 Double materiality conceptual guidelines for standard-setting*, p. 4 (https://www.efrag.org/, Accessed February 2022)

Therefore, the dual meaning is, in the sense given by EFRAG, a concept that provides criteria for determining whether or not a subject/theme or sustainability information should be included in the company's sustainability report. Double materiality must be understood as a combination, a symbiosis of the two forms of materiality (financial materiality and impact materiality). A sustainability topic or information fulfils the dual materiality criterion if it is significant in financial terms or in terms of its impact or both at the same time[1]. This dual approach is of interest in decision-making, both for the reporting company and for all other stakeholders.

The perspective of the enterprise becomes visible in financial materiality, being an '*outside-in'* perspective. An information is material (financial materiality) if it "*triggers financial effects on undertakings, i.e., generates risks or opportunities that influence or are likely to influence the future cash flows and therefore the enterprise value of the undertaking in the short, medium or long term but are not captured by financial reporting at the reporting date*"[2]. Impact materiality is the perspective of other stakeholders, i.e., an '*inside-out' perspective*. Sustainability information is material from an impact perspective *"if the undertaking is connected to actual or potential significant impacts on people or the environment".*[3]

These meanings given by EFRAG are found in Directive (EU) 2464/2022, which requires companies to *"report both on the impacts of the activities of the undertaking on people and the environment, and on how sustainability matters affect the undertaking. That is referred to as the double materiality perspective".*[4] The same recital specifies the reporting obligation for situations where sustainability issues are significant from only one of two perspectives: *"It is therefore necessary to clarify that undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective."*[5]

The definition of financial materiality adopted by the European legislator is very similar to that proposed by EFRAG. Thus, an aspect of sustainable development is considered financially material if it triggers or is likely to trigger significant financial effects on the development of the enterprise, including its cash flow and financial condition. In terms of impact materiality, the directive refers to *"actual or potential, positive or negative significant impacts of the company on humans or the environment in the short, medium or long term".* These include both "*impacts directly caused by the undertaking*" or "*to which the undertaking contributes*" or "*are otherwise linked to the undertaking's value chain*" and commercial relationships. *Commercial relationships include the upstream and downstream value chain of the company and are not limited to direct contractual relationships*.[6]

Assessments of materiality of impact and financial materiality are interdependent and companies need to take them into account in their sustainability reporting. The application of this principle allows companies to identify from all impacts, risks and opportunities, those that are material and therefore need to be included in their sustainability reports. However, the provisions of the Directive do not clarify how to apply the principle of double materiality. Such clarifications are expected from the sustainability rules currently being developed by EFRAG.

3.1.1.3. Information on value creation: a new perspective of European regulations

Taking inspiration from *the UN Guiding Principles on Business and Human Rights*[7], the new European directives create obligations for companies to report and due diligence on value creation. This orientation of corporate reporting towards value creation was developed and recommended by the International Integrated Reporting Council (IIRC)[8] in *the International Integrated Reporting Framework*. Without defining value, IIRC focuses on the value creation process and advocates *"an approach that draws on diverse sources of information to reflect the full range of factors that have a significant impact on the organization's ability to create short, medium and long-term value for itself, stakeholders and society as a whole."*[9]

[1] *Idem,* p. 5
[2] *Idem,* p. 6
[3] *Idem,* p. 5
[4] Directive (EU) 2022/2464, Whereas 29
[5] *Ibid*.
[6] Directive (EU) 2022/2464, Whereas 31
[7] www.ohchr.org, accessed March 2023
[8] IIRC (International Integrated Reporting Council) is a global coalition of companies, investors, regulators, standards bodies, representatives of the accounting profession and NGOs promoting integrated reporting.
[9] IIRC, *International Integrated Reporting Framework*, https://ceccar.ro/ro/wp-content/uploads/2021/09/3103_IIRC_framework_doc_8a-RO-FINAL.pdf, Accessed March, 2023

The European legislator takes the same approach, evoking value creation from two angles: that of the contribution of intangible resources to value creation and that of the value chain[1]. Thus, Directive (EU) 2464/2022 introduces an obligation for undertakings to provide information on '*key intangible resources*'[2] generated internally, in order to allow information users to better understand the undertakings' development, performance and position, as well as the growing gap between their book value and their market value. Information on the skills, competencies and experience of employees, loyalty to the company and the desire to improve processes, goods and services, as well as information on the quality of relations between the company and stakeholders are considered inseparable from development issues[3]. The Directive underlines the importance of information on research and development and the obligation for companies to base the information provided in their sustainability reports on scientific evidence.

The obligation to disclose information on sustainability matters as well as sustainability due diligence concerns not only the activities of the undertaking but also the entire value chain. Moreover, as can be seen from **Table 1**, there has been a gradual replacement of the term supply chain by that of value chain, cited 24 times in Directive (EU) 2464/2022[4] and 54 times in the draft of the Directive on corporate sustainability due diligence[5]. This concept introduced in managerial theory by Michel Porter designates the set of activities located upstream or downstream of the enterprise (basic activities: internal and external logistics, production, marketing/sales, services and, respectively, support activities: infrastructure, human resources, research and development, purchasing) that influence its competitive advantage[6].

The draft of the Directive on corporate sustainability due diligence defines a 'value chain' as: "*activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company*"[7].

Although the first part of the definition has a managerial connotation, it gradually moves away from it by including requirements covering the entire product cycle, from design to disposal, as well as adding requirements for including well-established business relationships of the company within the value chain. The legislator defines an 'established business relationship' as "*business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain*"[8], without specifying thresholds for assessing the duration, intensity or non-negligibility of the relationship. These require the use of professional judgement[9].

The new regulations obliging companies to inform about the value creation process and monitor their value chain from the point of view of human rights, environmental protection and labor standards are new in European legislation. There is no doubt that further clarification is needed on the concept and configuration of value chains, i.e., established business relationships, but also on the understanding and interpretation of companies' legal obligations.[10] They are opening up new avenues for reflection for academia and research.

3.1.2. Teleological pillar

The main objective of Directive (EU) 2464/2022 is to harmonize and improve the availability and quality of information on the sustainability of undertakings. This objective is part of the concerns to reduce information asymmetry from the perspective of different stakeholders, to reduce power gaps and also the risks associated with them[11].

Disclosing quality, comparable, relevant and reliable sustainability information is beneficial for the reporting company as well as for all stakeholders: those with whom it does business, civil society organizations, citizens and society as a whole. Thus:

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1 Directive (EU) 2022/2464, whereas 31

2 '*Essential intangible resources*' are resources devoid of physical substance on which the company's business model fundamentally depends and which constitute a source of value creation for society, Directive (EU) 2022/2464, Article 1, point (1); (§19).

3 Directive (EU) 2022/2464, whereas 32

4 *Ibid*.

5 COM(2022) 71 final 2022/0051 (COD) Proposal for a Directive of the European Parliament and of the Council *on corporate sustainability due diligence and amending Directive (EU) 2019/1937.*

6 Porter, M. (1980), *Competitive strategy: techniques for analyzing industries and competitors*, New York, The Free Press; Porter, M. (1985), *Competitive Advantage: Creating and Sustaining Superior Performance.* New York, The Free Press.

7 COM(2022) 71 final 2022/0051, Art. 3, g.

8 *Idem*, Art. 3, f.

9 Burlaud & Niculescu: "An accountant right that appeals to professional reasoning: a threat or an opportunity for the accounting profession?" *Financial Audit* no. 144, December 2016, Bucharest, pp. 1267-1276.

10 Beckers A. (2021), "Chaînes de valeur mondiales: théorie et dogme des obligations de l'entreprise", Revue internationale de droit économique, vol. 4, t. XXXV.

11. Hill, C.W. et Jones, T.M. (1992). "Stakeholder agency theory", *Journal of Management Studies*, vol. 29, pp. 131-134.

- investors, including asset managers, will be able to maintain and ensure, based on available information, increased financial flows towards activities qualified as sustainable;
- companies' business partners will be able to use this information to understand sustainability risks and impacts within their value chains;
- trade unions and employees' representatives will be better informed and more appropriately involved in social dialogue;
- civil society actors will be better aware of the impact of business activities on people and the environment;
- environmental agencies will be better able to monitor social and environmental trends;
- individuals and investors will have useful information to invest in line with their beliefs on sustainable development.

Such information will also be useful to policy makers in designing and implementing public policies, respectively in substantiating their economic, social and environmental decisions. These mechanisms for publishing, disseminating and using sustainability information should contribute to the evolution of social economic realities towards a stable, sustainable and inclusive system that benefits all.

3.1.3. Accountability[1] pillar

New European regulations increase companies' responsibilities for their impact on the environment and fundamental rights, as well as those for sustainability due diligence. Do companies need to disclose a variety of sustainability information beyond the obligations laid down in Directive (EU) 2014/95, being responsible for their content and obligated to be accountable to interested parties for their decisions and actions. Their responsibility is substantively increased, but also in terms of scope, nature and content of information, as well as its clarity, quality and presentation form.

Companies falling within the scope of Directive (EU) 2022/2464 must include in their management report information in accordance with European sustainability reporting standards, which will be adopted by the Commission by June 30, 2023, and June 30, 2024, respectively, for SMEs and third-country companies.[2] The reporting obligation covers quantitative and qualitative, prospective and retrospective information, including, where appropriate, short, medium and long-term horizons. Companies shall be required to publish the sustainability report as an integral part of the management report within a reasonable period not exceeding twelve months from the balance sheet date. This ensures that sustainability information is linked with financial information, facilitating correlations and analyses useful for decisions. In terms of various actors' representation, the integration of sustainability information into the management report can have a positive significance as it is considered to have the same relevance for reporting companies. Companies must comply with the requirement to publish in a single electronic format, which will allow for more efficient exploitation of information but also lower costs for all stakeholders. Directive (EU) 2022/2464 introduces new responsibilities for ensuring annual and consolidated sustainability information (see paragraph 4). Management and governance bodies have a collective responsibility to ensure that the company has published sustainability information in line with European standards and in the required digital format[3]. In addition, the sustainability report should include a description of the role of administrative, management and supervisory bodies with regard to sustainability issues and a description of their expertise and skills in exercising their role, or the opportunities to acquire such expertise or skills[4].

3.1.4. 'Substantive' pillar[5]

In order to meet the information needs of all stakeholders, sustainability reporting, based, as seen above, on the principle of double materiality and the conceptual approach of EFRAG, can be structured three-dimensionally, as illustrated by ***Figure no. 1***:

i. level of information: cross-sector information (sector agnostic[6]), sector-specific information, company-specific information;

[1] The term 'accountability' ('redevabilité'; Fr.) means that enterprises, through their representative bodies, must be accountable for their decisions and actions.

[2] Directive (EU) 2022/2464, § 4.

[3] *Idem*, Whereas 59.

[4] *Idem*., Whereas 50.

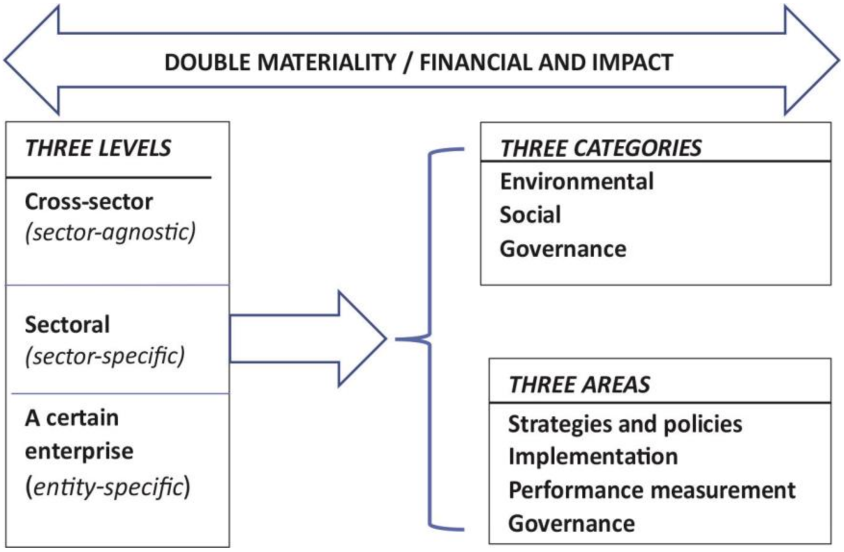
[5] The term 'substantive' (*'substantiel'; Fr.),* of Latin origin, '*substantialis',* means "*rich in content, consistent, full of substance, abundant".* Source*: Larousse.*

[6] The word 'agnostic' used in the EFRAG standards has a particular, contextual meaning denoting 'all sectors'. According to the dictionary of the French Academy, 'agnostic' means: "a philosophical doctrine or attitude which considers illegitimate any metaphysical doctrine and declares inaccessible to knowledge any reality that cannot be perceived by the senses." By extension, it means "indifference in religious matters".

ii. Sustainability matters/Information topics: environmental, social, governance;
iii. Information areas: strategy and policies, implementation, performance measurement.

This approach anticipates the multidimensional substance of information, in line with the expectations and needs of different users and an increasingly complex and dynamic reality.

Figure no. 1. Sustainability reporting architecture



Source: Authors, inspired by ESRS presentation – Outreach France

3.2. The social reality covered by the new European legal framework

Compared to voluntary or non-financial reporting, Directive (EU) 2022/2464 contains additional information requirements to represent the complex reality of undertakings operating in a socially and environmentally binding context.

The reality envisaged by this directive can be approached from two points of view:

– the perimeter of entities subject to this obligation;

– the content of the information, matters considered significant from the point of view of sustainability.

3.2.1. The scope/perimeter of sustainability reporting

The perimeter of sustainability reporting means, in this context, outline of the scope of the obligations imposed by Directive (EU) 2022/2464. It depends both on the reporting entities directly subjected to disclosure obligation (for financial reporting purposes), and on the risks, opportunities and outcomes related to other stakeholders concerning sustainability issues. Directive (EU) 2022/2464 contains radical changes to the reporting perimeter compared to the Non-Financial Information Directive. As shown in Annex 1, sustainability reporting obligations cover:

i. *All large companies*, regardless of whether they are listed on a European regulated market or not, given their significant impact on sustainability factors, both directly and along their value chains. According to estimates[2], only 20% of large enterprises currently apply the standards in this area, and only 30% of them require some form of audit assurance. This

[1] ESRS Presentation – Outreach France, June 2, 2022, EFRAG, https://www.efrag.org/ (accessed September 2022)

[2] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting. Explanatory memorandum, p. 10.

change will lead to an important increase in the scope/perimeter of sustainability reporting: from currently 11,600 companies (or 47% of the turnover of all listed companies), to approximately 49,000 companies (representing 75% of the same turnover).[1]

ii. *All companies, European and non-European, listed on a regulated market in the Union (both large undertakings and SMEs), except for micro-enterprises.* The inclusion of listed SMEs is justified, firstly, by their high proportion in the total European companies and, in this case, in the total listed ones. According to the Commission's latest report[2] on SMEs (enterprises with less than 250 employees), SMEs accounted for 99.8% of all non-financial enterprises in the EU-27 in 2021. They employed 83 million people, equivalent to 64% of total employment, and generated 52% of the total value added produced by the non-financial business sector. Micro-enterprises (enterprises with less than 10 employees) accounted for more than 90% of all SMEs. This requirement to disclose sustainability information will provide financial market participants with the necessary information for their own approach to sustainability, while opening up new avenues for access to finance for the SMEs concerned.

iii. *Credit institutions, investment firms and insurance and reinsurance undertakings*, *including cooperatives and mutual societies* that meet certain size criteria, given their key role in the transition to a fully viable and inclusive economic and financial system.[3]

iv. *Third-country undertakings* with significant activity and which have a subsidiary or a branch within the Union. This obligation makes third-country companies responsible for their impact on humans and the environment, while ensuring a level playing field for companies operating in the internal market.

[1] According to Eurostat, in 2021, the number of large enterprises in Romania was 1,540 and that of SMEs was 530,050. In France, there are 4,723 large enterprises and 2,939,143 entities SMEs; https://ec.europa.eu/eurostat/, accessed May 2023.

[2] European Commission (2022), Annual Report on European SMEs 2021/2022. SMEs and environmental Sustainability. *SME Performance Review* 2021/2022, p. 9.

[3] Directive (EU) 2022/2464, Whereas 27.

The extended reporting perimeter is a prerequisite for providing stakeholders with better access to comparable, relevant and reliable sustainability information

3.2.2. Content of sustainability information

The transition from non-financial to sustainability information takes the administrative form of replacing the *non-financial statement* required by Directive (EU) 95/2014 with *sustainability reporting* required by Directive (EU) 2022/2464.

The deadlines for publishing the first sustainability report differ depending on the categories of entity and their origin[4]. According to Directive 2022/2464*, the list of sustainability matters*[5] on which undertakings are required to disclose information should be consistent with the definition of *'sustainability factors'*[6], to prevent any inconsistencies between the information required by users and information published by companies, and should also correspond to the needs and expectations of users and companies.

The information to be published reflects the interaction between the company, on the one hand, and the impact, risks and opportunities related to sustainable development, on the other. They must enable an understanding of the impact of the undertaking's activities on sustainability matters and how they influence the development, performance and position of the undertaking beyond what is already reflected in the financial statements.

[4] **2025** for the financial year beginning January 1, 2024 for undertakings already subject to Directive (EU) 2014/95; **2026** for the financial year beginning January 1, 2025 for large undertakings not currently subject to Directive (EU) 2014/95; **2027** for the financial year beginning on January 1, 2026 for listed SMEs, with the possibility of delay until 2029; **2029,** for the financial year ending January 1, 2028, for third-country undertakings with a net turnover exceeding EUR 150 million in the EU. Source: *Directive (EU) 2022/2464, art.5.*

[5] 'Sustainability matters' refer to environmental, social and human rights, and governance factors, and also incorporate the definition of the term 'sustainability factors' as defined in point (24) of Article 2 of Regulation (EU) 2019/2088 (Source: Directive (EU) 2022/2464, Whereas 28).

[6] 'Sustainability factors' means "environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters" (Source: Regulation (EU) 2019/2088, Article 2 (§24)).

In order to define sustainability information requirements, topics/themes are divided into sub-topics/themes (and, if necessary, sub-sub-topics), leading, step-by-step, to a coherent set of information, following the logic shown in ***Figure no. 1***. **Annex 2** summarizes the relevant information to be reported, through a comparative presentation of the requirements of the two directives, in order to better highlight the progress envisaged by Directive (EU) 2022/2464, but also the obligations incumbent on businesses.

Without proposing to develop all the matters mentioned in **Annex 2**, we will mention only some significant differences between the two directives, grouped according to the case, by reporting areas or matters (see ***Figure no. 1***). Thus, in accordance with the principle of double materiality, the information to be reported under Directive (EU) 2022/2464 relates, on the one hand, to the impact of the undertaking's activities on sustainability matters and, on the other hand, to how sustainability matters affect the development, performance and position of the undertaking. They are further analyzed from three angles: opportunities, risks and impacts related to sustainability matters.

The recent Directive requires information not only to be provided on the business model, but also on the *company's sustainability strategy*. The classic approach of developing a strategy needs to be reviewed, as companies are forced to integrate new variables on opportunities related to sustainability factors, associated risks, resilience of their business model and to disclose the arguments for their strategic choices. They must also report on how to integrate sustainability considerations into business plans, both operating and financial. Another innovative aspect relates to the obligation to inform on how to include essential intangible resources in the strategic options, beyond the matters reported in the financial statements, as well as on the level of dependence on this type of resources: intellectual, human, social and relational capital, research and development resources.

The formulation of objectives related to sustainability matters must meet the classical requirements of management science, in terms of measurability and deadlines for achievement. Added to this are additional requirements, as targets must be set in line with European environmental commitments[1] and taking into account the objectives undertaken by the European institutions and the international community under the UN 2030 Agenda. A novelty that should increase the relevance of objectives, especially those related to environmental factors, but also the responsibility of companies, relates to the obligation to report information based on conclusive scientific evidence[2]. In addition, undertakings are obligated to provide a statement as to whether objectives related to environmental factors are based on such scientific evidence.

Information on the business model and strategy should also include elements on the quality of the relationship between the company and stakeholders, including customers, suppliers and communities affected by its activities, and on how they are involved in developing and implementing the strategy. Integrating risk[3] into an enterprise's strategy is normal. It acquires new dimensions in the context of sustainable development as the company must take into account and provide information on: its financial risks arising from sustainability matters; risks and impacts arising from business activities (impact directly caused by the undertaking, impacts to which the undertaking contributes and impacts otherwise linked to the company's value chain); resilience of the company to sustainability risks.

The company must provide information on the *implementation of the sustainability strategy*, action plans, concrete actions taken, financial and associated investments. The information should also cover sustainability due diligence understood as *"the process that undertakings carry out to identify, monitor, prevent, mitigate, remediate or bring an end to the principal actual and potential adverse impacts connected with their activities and identifies how undertakings address those adverse impacts"*[4] Sustainable development due diligence is an ongoing practice that responds to changes in company strategy, business model and relationships, operation, sourcing and sales conditions.

In line with the management principle*, 'what cannot be measured cannot be* controlled', European provisions on sustainability, in particular the Taxonomy Regulation and delegated regulations

[1] COM(2019) 640 final: The European Green Deal; Taxonomy Regulation, art. 9.

[2] True statements obtained by applying rigorous scientific methods.

[3] Defined by ISO 31000 Risk Management-Guidelines, as "The effect of uncertainty on objectives".

[4] Directive (EU) 2022/2464, Whereas 31.

mentioned above, but also Directive (EU) 2464/2022 pay particular attention to the measurability of objectives, progress made and results achieved. These documents contain precise, scientifically based technical criteria for classifying companies' activities in terms of sustainability, as well as techniques for measuring their environmental performance.

For example, to measure environmental sustainability, non-financial undertakings must disclose the following indicators:[1]

- the proportion of their turnover/sales from products or services associated with economic activities which can be considered environmentally sustainable (...);
- the part of their capital expenditure and the part of their operating expenditure linked to assets or processes associated with economic activities that can be considered environmentally sustainable (...).

Indicators relevant to social and governance issues largely relate to the issues mentioned in Annex 2, which we do not intend to develop in this article.

The provision of this information associated with its assurance by an auditor is a guarantee of compatibility of the strategy, business model and overall activities of the enterprise with the requirements of the transition to a sustainable economy.

4. New challenges for financial analysts and auditors

The new European regulations on sustainability reporting raise many concerns among theorists and practitioners, either from accounting and financial professions (accountants, asset managers, analysts, auditors) or other professions involved in the management and governance of companies. They all face new challenges, which are gradually taking shape and of which magnitude will be clearer with the adoption by the Commission of delegated acts supplementing Directive (EU) 2022/2464 with sustainability reporting standards [2].

[1] Taxonomy Regulation, Art. 8.

[2] The Commission will adopt all delegated acts supplementing EU Directive 2022/2464 defining reporting standards no later than June 30, 2024 (according to points 8 and 14 of the directive).

4.1. New challenges for financial analysts

The accounting professions have evolved over time under the impetus of financial paradigms, which naturally expanded from finance to accounting and financial analysis. Spremann identified two major financial paradigms that synthesize this evolution: the 'traditional' paradigm and the '*neoclassical'* paradigm[3]. According to the traditional paradigm, finance is simply a means to bring money into the real economy, to allocate savings to households and businesses with the expectation of a gain. Financial analysis focuses in this case on the efficient management of available funds and the ability to repay them (analysis of financial structure, analysis of liquidity and solvency, analysis of resources and profit, etc.). The neoclassical paradigm that has dominated economic life since the second half of the twentieth century is based on the assumption of an efficient, fully competitive financial market, capable of producing an equilibrium price representing the intrinsic economic value of financial assets. 'Finance' is no longer primarily focused on financing companies, but on creating value for shareholders. Financial analysis focuses in particular on the financial performance of the company, in terms of maximizing dividends and market value of the enterprise, respectively on reducing risks for shareholders.

Despite the obvious differences between the two paradigms, neither responds to today's demands and priorities because it ignores the challenges of sustainable development. The theory of sustainable finance is gaining ground, being transposed at accounting level by the CARE model (*Comprehensive Accounting in Respect of Ecology*)[4], with extension in the field of analysis. This model represents a conceptual step forward, proposing the integration of a new function of capital used for value creation, the prevention function, alongside the traditional operating function. This approach is based on an expansion of the traditional accounting paradigm, in line with sustainability requirements and allowing for a reorientation of funds towards sustainable activities. In this context, analysts

[3] Spremann, K. (2010). "Old and New Financial Paradigms". *In* G. Eilenberger, S. Haghani, A. Kötzle, K. Reding, & K. Spremann (Eds.), *Current Challenges for Corporate Finance: A Strategic Perspective,* (p. 7–26).

[4] Rambaud, A. *et al*. (2022), "Mesure et définition d'impacts extra-financiers des investissements : retour des théories et pratiques de l'Impact Investing et apports possibles de la comptabilité", Paris, ANC, p. 41.

face new challenges, some of which are highlighted below.

4.1.1. Acknowledging the need to change the analyst's profession

Beyond the societal challenges faced by all professions, analysts face technical challenges as expanding reporting obligations profoundly changes the core of the profession. Far from being a simple profession, it is nevertheless facilitated by a number of elements:

- virtually all data is expressed in the same unit of measurement, the monetary unit, which facilitates processing; everything is calculable, measurable, reducible to the same monetary unit;
- the priority of figures over literary expression allows for a strong standardization of content, increased verifiability, giving a sense of scientificity, and therefore of truthfulness;
- the basic ideology is simple: the function of the company is to maximize its profit, provided that a positive cash flow is ensured.

This simplicity is relative. If we consider the case of TotalEnergies, its universal registration document for the financial year 2022, filed on the website of the Autorité des marchés financiers (AMF), contains 672 pages! The consolidated accounts number 130 pages and the social accounts 28 pages. In total, the financial part represents 1/4 of the volume of the annual report. But 300 pages are devoted to risk control, governance and extra financial performance. In these 300 pages, there is, of course, data that can be verified by linking them to financial information, but most of it consists of text, which allows for a holistic approach, a global diagnosis, with infinitely greater freedom of interpretation, which explains why independent third parties auditing this information are allowed to give only limited assurance.

Addressing societal issues, sustainability information, although often qualitative in nature, can be more relevant than financial information. Indeed, ensuring high profitability in the short term can lead to a medium- or long-term catastrophe, which the financial statements will not disclose. In addition, some human or social values cannot be measured. The abolition of the death penalty or slavery was not the result of an accounting or financial calculation, but of the prevalence of a certain idea about the human being. Similarly, maintaining natural or human capital is a political choice, but one to which analysts can contribute by giving a different perspective to their job. All these aspects are examples of the evolution of the profession and of the need for change by enriching skills and quickly mastering the core of knowledge that is reconfiguring before our eyes.

4.1.2. Making financial analysis a tool for sustainable transition

European sustainability regulations make it mandatory for the accounting profession in general and financial analysts in particular to include new topics and benchmarks in their field and professional judgement. This is primarily about *broadening the scope of the analysis* in line with the new reporting requirements. Basically, the perimeter of the analysis should be extended to the sustainability matters and areas retained in **Annex 2** (column 2). Enlargement should not be understood as a quantitative accumulation of new themes, but as a way of a systemic approach, capable of connecting sustainability and financial matters. The analysis is no longer limited to matters under the control of the enterprise, but includes significant activities, risks and opportunities attributable to business relationships with other stakeholders beyond the scope of financial reporting. *The value chain*, which is currently given more or less attention, depending on the author, must become a transversal axis of analysis, being indispensable in formulating professional reasoning and bridging the gap between traditional financial analysis and sustainability analysis.

Traditional analysis oriented towards enterprise results and market values in terms of 'outputs' must naturally be complemented by analysis in terms of 'outcomes' and long-term impact. The methodological tools will be enriched with new grids for analyzing resources, activities and products, but also expenses and revenues. For example, resource analysis can be complemented by including matters of access to natural and social resources, sustainability of access and access conditions, opportunities and associated risks. The analysis of intangible resources, beyond purely financial considerations, must be complemented by the approach imposed by the new rules of the game.

An area that will gain a special magnitude is that of analyzing the position of the enterprise on the trajectory of sustainable transition, according to the requirements of the Taxonomy Regulation. Deepening the analysis by categories of activities: analysis of eligible activities in terms of taxonomy, analysis of the alignment of eligible activities and analysis of the contribution of aligned activities to the overall activity of the enterprise (based on the indicators: share of turnover/sales of eligible and/or aligned activities; share of capital expenditure related to eligible and/or aligned activities; share of operating expenses related to eligibles and/or aligned activities) are already part of the practice of consulting firms and large groups.

The European Green Deal underlines that sustainable and inclusive growth *"will require massive public investment and increased efforts to direct private capital towards climate and environmental action"* [1]. This allocation of resources relies heavily on the work of analysts who connect businesses and investors and can steer capital, as *"[t]he private sector will be key to financing the green transition"*[2]. By giving their profession such a direction, analysts can help focus investments on sustainable activities and gradually transform financial analysis and the financial system in general into a tool to support the sustainable transition.

4.1.3. Reducing complexity through the use of credit rating agencies

Management reports, which sometimes contain hundreds of pages, exceed, by their level of technicality, the complexity of the meanings given to different concepts, the accounting, legal and financial skills of almost all investors. This has caused financial rating agencies to fill the gap and compensate for such difficulties by providing a rating, a grade, which alone sums up the whole. It does not concern itself with nuances. One company = one note![3] Resulting from an algorithm that is unknown, the credibility of this grade, which measures the entity's ability to repay its debts, is based on the agency's reputation. On the same model, ESG rating agencies were established. One of the largest in France, created in 2002 to promote socially responsible investment (SRI), is Vigeo, which has now become a subsidiary of the US rating agency Moody's.

One can, of course, criticize the value of these ratings. Their method of calculation is a well-kept 'kitchen secret'. Credit rating agencies are not a model of transparency, but they legitimately do not want their trade secrets to fall into the public domain. However, it seems that large groups have realized the demands of their social and environmental responsibility and have contributed to a very strong increase in the amount of capital managed from socially responsible funds. Even if they do not know such internal secrets closely, financial analysts must be able to make sense of these ratings, interpret them, and channel such 'complexity reduction' into fueling their professional reasoning. The recent proposal of the European Parliament and the Council regarding the transparency and integrity of ESG rating activities will undoubtedly generate radical changes in the field[4].

4.2. New challenges for auditors

Directive (EU) 2022/2464 regarding corporate sustainability reporting also amends Regulation (EU) 537/2014 regarding statutory audit of public-interest entities[5] and Directive 2006/43/EC on statutory audit of annual and consolidated accounts[6]. An important change concerns the obligation of auditors to ensure that sustainability information is credible and therefore performative. The change in the title of Chapter 8 of the Accounting Directive from 'Auditing' to 'Auditing and assurance of sustainability reporting' is significant. Experience gained since 1978, when the first Statutory Audit Directive was published, has been fully used to address statutory audit with regard to sustainability. This innovation brings new responsibilities and opportunities for auditors, the most significant of which we highlight below.

4.2.1. Extension of audit' scope and auditors' responsibilities

In line with the requirements of Directive (EU) 2022/2464, statutory auditors and audit firms (licenced to carry out

[1] COM(2019) 640 final: The European Green Deal, p. 2.

[2] *Idem,* p. 16.

[3] Burlaud A. (2022), *Comptabilités. L'empire des nombres.* EMS, p. 173.

[4] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 13. 06.2023, on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities {SEC(2023) 241 final} – {SWD(2023) 204 final} – {SWD(2023) 207 final

[5] Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

[6] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

statutory audits) have, beyond their traditional duties[1], a new task to certify annual and consolidated sustainability reportings. They must give an opinion on whether sustainability information complies with European Union requirements[2].

Specifically, this is an opinion concerning:

- compliance of sustainability information with the requirements of this Directive;
- compliance of the sustainability reporting with EU sustainability reporting standards;
- the process carried out by the undertaking to identify information reported in accordance with sustainability disclosure standards;
- compliance with the obligation to mark sustainability information in accordance with the electronic information format;
- compliance with the information requirements set out in Article 8 of the Taxonomy Regulation[3].

4.2.2. How the auditors express their opinion

As stated in the Directive (Whereas 60), "*the assurance profession distinguishes between limited assurance engagements and reasonable assurance engagements*". In relation to the sustainability report, the auditor is required to express his opinion in a limited assurance engagement. In such engagements, the conclusion is usually expressed in a negative form, whereby the practitioner informs that he or she has not identified any issues leading him or her to conclude that the object has been materially misstated. In such an engagement, "*the auditor performs fewer tests than in a reasonable assurance engagement. The amount of work for a limited assurance engagement is therefore less than for a reasonable assurance engagement. (...)*"[4]. This opinion may be issued by a statutory auditor ('commissaires aux comptes' in France, 'auditori financiari' in Romania) or by an audit firm other than the auditor(s) carrying out the statutory audit of the entities' financial statements.

The legislator provides for a gradual increase of the level of assurance by moving from limited to reasonable insurance. This prudence is due, at least in part, to the absence at this time of a set of sustainability assurance standards, be they of the International Federation of Accountants (IFAC), the International Sustainability Standards Board (ISSB) or EFRAG. In practice, the transition to a reasonable assurance engagement on compliance of sustainability reporting with EU requirements will be possible when the Commission adopts the assurance standards for reasonable assurance of sustainability reporting by means of delegated acts by October 1, 2028 at the latest[5].

4.2.3. Increasing professional skills requirements

Whether certifying financial statements or sustainability information, the auditors belong to a regulated profession because they serve the public interest. Therefore, the professional must be licensed by an independent authority. It can then audit the annual accounts and/or sustainability report.

The licensing process requires regulated training, the auditor being able to practice: *"only after having attained university entrance (…), then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level."* The professional competence exam or the final exam is a complex one, which guarantees theoretical knowledge in areas relevant from a sustainability perspective, such as: standards for the preparation of annual and consolidated sustainability reporting; sustainability analysis; sustainability due diligence; legal requirements and assurance standards for sustainability reporting. Practical training of at least three years needs to be completed, of which at least 2/3 with a statutory auditor. A special possibility is offered to

1 In accordance with Article 34 of the Accounting Directive, the statutory auditor or the audit firm shall express an opinion on: (i) the consistency of the management report with the financial statements; (ii) preparing the management report in accordance with applicable legal requirements.

2 Directive (EU) 2022/2464, Article 3 and Whereas 60.

3 "Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of this Regulation."

4 Directive (EU) 2022/2464, Whereas 60

5 *Ibid.*

professionals who have worked for at least 15 years or those who are approved in another EU Member State[1].

EU Member States are required to establish a quality assurance system for statutory auditors through public supervision, such as ASPAAS in Romania (Autoritatea pentru Supravegherea Publică a Activității de Audit Statutar/Authority for Public Oversight of Statutory Audit) or H3C in France (Haut conseil du commissariat aux comptes).

4.2.4. Increasing complexity of audit missions

The auditor shall express his opinion on the information produced and presented in accordance with European standards. This information, the content of which has been further developed in point 3.2.2. are of great complexity. The sustainability report is not a promotional, greenwashing, communication document of a company, but a technical document drafted according to well-defined, binding technical rules.

4.2.5. Ethics requirements

As with statutory audit, the auditor is bound by "*professional ethics, independence, objectivity, confidentiality and professional secrecy*". As regards independence, the Directive states that "*fees for statutory audits and the assurance of sustainability reporting*:

- *are not influenced or determined by the provision of additional services to the entity (…);*
- *cannot be based on any form of contingency*[2]*."*

In case of infringements, effective, proportionate and dissuasive penalties are required.

The Accounting Directive entrusts management bodies (board of directors, supervisory board, management board) with ensuring, as part of their collective responsibility commitment, that financial statements have been prepared in accordance with legal requirements. Directive (EU) 2022/2464 extends this responsibility to sustainability reporting. In addition, if it is a public-interest entity, it must have an audit committee. Therefore, the principle of separating preparation from control of information must be respected in both cases.[3]

[1] Directive (EU) 2022/2464, Article 3(4)
[2] *Idem*, Article 13.
[3] Directive (EU) 2013/34, Article 33.

The difficulty of developing and auditing complex, multidimensional and multidisciplinary information like those described above is obvious. Many professions are outside their comfort zone. It will probably take many years to stabilize the device whose stake is fundamental to society.

Conclusions

Issues related to the sustainability of financial, human and natural capital have now become societal problems, too complex to be the subject of research based on checking the causal links between several measurable variables. International governmental organizations (UN and OECD) or non-governmental organizations (ISSB, IFAC, GRI, etc.), aware of the threats affecting the world, try to propose tools capable of leading a change in society, even civilization. For our part, we have essentially confined ourselves to studying the recent European regulations accompanying the transition from a market economy to a 'sustainable' civilization. Their political approach has been studied from the point of view of business law and, in particular, the publication of information by and about companies. Our goal was to clarify and make sense of conceptual innovations.

The basic premise is that of the performativity of information published by companies. In other words, the sustainability objective of the three types of capital can be achieved by informing stakeholders about the impact of sustainability matters on the company and the impact of the company's activities on the environment and society as a whole (the concept of 'double materiality').

European regulations have evolved in the last ten years also by introducing conceptual changes, loaded with meaning and promoting new values, which have given rise to legal innovations. Thus, the term '*non-financial information'* used in the Accounting Directive (2013/34/EU) was gradually deleted in order to eventually retain the term 'sustainability information' in Directive (EU) 2022/2464. Integrated into sustainability reporting, which becomes a component of the management's annual report, sustainability information has a complex content, able to bridge the gap between the information required by stakeholders and those provided by companies. The increasing complexity of the information to be reported was accompanied by the expansion of the perimeter of the actors covered by this obligation. Sustainability information is connected to the financial statements and must be audited by certified professionals to be credible. Another major innovation is related to the emphasis placed on value creation, respectively to the introduction of the concept of 'value chain', which leads to an extension of the liability of the legal person (or even of the consolidated group) beyond the acts for which it is directly responsible. Thus, it becomes liable for certain actions of its suppliers, subcontractors, customers, etc.

These fundamental changes are still in their infancy. We need to wait for implementing texts and case-law for their integration into economic practice to become effective. However, they will have a considerable impact on the accounting profession, professional judgements and interpretation and control models of financial analysts and auditors. Analysis and certification of management reports will require multidisciplinary expertise. Thus, for example, engineers, physicists, chemists or biologists will be called to the table to decide on the indicators belonging to their disciplines, to feed the argument, primarily financial until now.

Finally, university curricula and continuing education of professionals will need to be rethought to enable a holistic approach to performance, which will evolve from *financial performance* towards *a societal performance of the company's value chain*. This is an extremely vast 'construction site' that concerns all countries and all professions. The environment has no borders.

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3. COM(2021) 390 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

Strategy for financing the transition to a sustainable economy.

4. COM(2022) 71 final 2022/0051 (COD) Proposal for a Directive of the European Parliament and of the Council *on corporate sustainability due diligence and amending Directive (EU) 2019/1937.*
5. Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.
6. Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content of, and presentation of, the information to be provided by undertakings subject to Article 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation.
7. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 *amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting.*
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Annex 1: Non-financial and sustainability reporting perimeter. Comparative approach	
Directive (EU) 2014/95	**Directive (EU) 2022/2464**
Non-financial statement	**Sustainability reporting**
Large undertakings which are European ***public-interest*** entities within the meaning of Article 1(a)(1)[1] of the Accounting Directive, governed by the law of a Member State and whose securities are admitted to trading on a regulated market in the Union, having: - more than 500 employees during the financial year; - turnover > EUR 40 million, and/or - balance sheet total > EUR 20 million.	***Large UE and non-UE companies*** **listed** on a European regulated market that meet at least two of the following criteria: - more than 250 employees during the financial year; - turnover > EUR 40 million, and/or - balance sheet total > EUR 20 million.
	Other major UE companies All other large European companies meeting at least two of the following criteria: - more than 250 employees during the financial year; - turnover > EUR 40 million, and/or - balance sheet total > EUR 20 million
	Other large companies outside UE Non-European companies with a turnover in the Union exceeding EUR 150 million and at least one subsidiary or branch in the Union[2]
	SMEs listed on a European regulated market All EU and non-EU SMEs included in an EU regulated market, except microenterprises

Source: Processing after Directive (EU) 2014/95 and Directive (EU) 2022/2464

Annex 2: Content of information to be reported. Comparative approach	
Directive (EU) 2014/95	**Directive (EU) 2022/2464**
Non-financial information	**Sustainability information**
I. Information about the company's development, performance, position and impact A brief description of the company's business model	*I.* ***Information on sustainability matters and information areas*** A brief description *of the company's business model* and strategy - the resilience of the company's business model and strategy - opportunities related to sustainability issues; - company plans, including implementation actions and related financial and investment plans (…); - how the company's business model and strategy take into account the interests of stakeholders and the company's impact on sustainability issues; - how the company implemented its strategy with regards to sustainability issues. Information on essential **intangible resources** and how the company's business model fundamentally depends on these resources. Sustainability targets and their deadlines (...). A description of progress towards the objectives. A statement that the environmental objectives are based on conclusive scientific evidence. A description of the role of administrative, management and supervisory bodies with regard to sustainability issues and a description of their expertise and competences.
Directive (EU) 2014/95	**Directive (EU) 2022/2464**

[1] "*societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni*" in Romania, respectively: "la société anonyme, la société en commandite par actions, la société à responsabilité limitée, la société par actions simplifiée" in France.
[2] Directive (EU) 2022/2464, Whereas 20.

Non-financial information	Sustainability information
A description of the company's policies on these matters and the due diligence procedures implemented.	A description of **the company's policies on sustainability** issues. Information on the existence of incentive schemes related to sustainability matters offered to members of administrative, management and supervisory bodies. A description of: - **the due diligence process** implemented (...); - the main negative impact, actual or potential, related to the company's own activities and value chain (...); - any measures taken by the undertaking to prevent, mitigate, correct or eliminate actual or potential adverse effects and the result achieved in this regard.
Results of these policies	
Main risks related to these matters	A description of **the main risks** for the company related to: - the company's own shares; - its value chain. Risk indicators.
II. Environmental information The current and foreseeable impact of the company's operations on the: - environment; - health and safety; – use of renewable and/or non-renewable energy; - greenhouse gas emissions; - water use; - air pollution.	II. **Information on the following environmental factors:** (i) mitigation of climate change, including greenhouse gas emissions (...); (ii) climate change adaptation; (iii) aquatic and marine resources; (iv) resource use and circular economy; (v) pollution; (vi) biodiversity and ecosystems.
III. Social and employee matters concerning: - measures taken to ensure gender equality; - implementation of fundamental conventions of the International Labour Organisation (ILO); - 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; - dialogue with local communities and measures taken to ensure the protection and development of these communities; - prevention of corruption; - prevention of human rights violations.	**III. Information on social and human rights factors:** (i) equal treatment and **equal opportunities for all, including gender equality** and equal pay for work of equal value, development of training and skills, employment and inclusion of persons with disabilities, measures to combat violence and harassment at work and diversity; (ii) **working conditions**, including job security, working time, decent wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective agreements, workers' rights to information, consultation and participation, work-life balance; health and safety; (iii) **respect for human rights,** fundamental freedoms, democratic principles and standards as set out in International Human Rights Law and other fundamental conventions of the United Nations (...).
It refers to the Corporate Governance Statement, according to Article 20 of the Accounting Directive.	**IV. Information on governance factors**: (i) the role of the **undertaking's administrative, management and supervisory bodies** with regard to sustainability issues, their composition and their expertise and powers (...); ii) the main characteristics of the company's internal control and risk management systems, in relation to (...) sustainability; (iii) corporate ethics and culture, including the fight against corruption, whistleblower protection and animal welfare; (iv) the undertaking's activities and commitments relating to the exercise of its political influence, including its interest representation activities; (v) the management and quality of **relations with customers, suppliers and groups affected by the company's activities**, including payment practices, in particular with regard to late payments to small and medium-sized enterprises.

Source: Processing after Directive (EU) 2014/95 and Directive (EU) 2022/2464