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(Article begins on next page)

A country-comparative analysis of the transposition of the EU Non-Financial Directive: an institutional approach

Abstract

CSR practices and reporting vary across countries and companies. Accounting studies using institutional theory show that even where there are coercive pressures to converge, local practices and traditions are other types of pressures that play a role in maintaining divergence. Similarly, legal studies indicate that harmonisation attempts made by the European Union are usually challenged by States attempting to maintain the status quo of the local context, and this may also apply to CSR reporting harmonization.

This research investigates whether or not the institutional pressure toward non-financial reporting harmonization represented by the Directive/2014/95/EU led to convergent behaviours between Member States, at least at the transposition stage. Transposition laws in Member States where CSR has historically played a limited role (i.e. Romania and Bulgaria) are compared with those issued by countries where CSR traditions are much more well developed (France, Belgium and the UK). The analysis focuses on how both mandatory and discretionary requirements have been transposed at a national level.

The transposition outcome is analysed in the face of economic-, government- and society-related factors of each country and results show that on several occasions, divergence is catalysed by differences in national business systems. This is aligned with the results of previous studies (e.g. Jamali and Neville, 2011), which argue that historical, cultural, economic and political local contexts mould the CSR conceptualisation existing in a given country, and therefore the convergence of different CSR practices is only apparent.

1. Introduction

For a long time, reporting of non-financial information has attracted the attention of practitioners and researchers. However, historically there were very few initiatives of mandating such type of reporting. At the European level, the Commission's 'Green Paper - Promoting a European Framework for Corporate Social Responsibility' in 2001 laid the foundations for a European CSR policy, but only the recent Non-financial Directive 2014/95/EU ('NF Directive' hereafter) consolidated the regulatory framework for CSR reporting.

The NF Directive requires large entities to publish non-financial information, including social and environmental matters, therefore being an attempt to move toward harmonization of non-financial reporting. The European Union aimed at achieving a similarly high level of transparency across companies in EU States in disclosing impacts and risks related to society and the environment as demanded by public authorities, investors and civil society organizations. However, the EU has also left discretion to the national legislators that shall enact the Directive. Legislators have freedom in adapting or integrating disclosure requirements and the possibility, at times, of choosing from a list of pre-set options, but this aspect could put the goal of harmonization at risk.

Whilst media and politicians advocate that the NF Directive is a significant improvement in corporate transparency, academic researchers have begun to look critically at the real impact of the Directive on corporate reporting (Gulenko, 2018). Venturelli et al. (2019) demonstrated that Italian-listed corporations were potentially less compliant with the new legislative requirements than corporations in the UK. Guse et al. (2016) analyzed the annual reports of Romanian-listed companies and found that only half of them were prepared to implement the Directive. Dyduch and Krasodomska (2017) also revealed that the level of compliance of Polish companies with non-financial disclosure requirements set by the Directive before its transposition was rather low. Finally, Stolowy and Paugam (2018) raised the issue of substantial heterogeneity in non-financial reporting definitions and requirements set by regulators and standard setters worldwide that may hinder convergence of

company reports. Most of these studies focus on one single country and examine companies' readiness to non-financial disclosure as required by the Directive before national transpositions. In addition, they usually explain a company's attitude toward non-financial reporting in light of organizational characteristics such as size and ownership structure (Dienes et al., 2016) without examining the potential impact of context and in particular of national legislations.

Our research aims to fill this research gap by identifying and analysing differences in national laws transposing the NF Directive across five European countries on the back of the European intent of harmonizing and national institutional forces. The novelty of the paper lies in the country comparison, the results of which demonstrate that despite a certain degree of convergence exists, local factors, such as the presence of previous legislation, played a role in maintaining the national status quo.

2. CSR reporting

CSR reporting is the regular disclosure by companies of information on the environmental and social impacts of their activities and on the policies deployed to prevent them. The term 'reporting' refers to both the process of disseminating information and the report produced. Reports can vary in structure and content, ranging from sustainability reports to citizenship or environmental reports.

CSR reporting increased after the 1970s because of corporate needs to demonstrate company attention toward society and the environment (Fifka, 2003). Over time, the use of negative screening by ethical investment funds, corporate scandals (as the case of Enron), environmental disasters (for instance those caused by Exxon Valdez and British Petroleum), the financial crisis and new challenges (such as global warming, corruption, equality) have increased the interest toward reporting on environmental and social aspects, but despite its popularity, CSR reporting has remained a voluntary business practice for decades.

Recently, the quality and comparability of disclosure have become crucial aspects because of the growing amount of investors and financial analysts that ask for reliable information concerning environmental, social and governance (ESG) aspects to support their decision-making process (Orens and Lybaert, 2007; Ioannou and Serafeim, 2015; Luo et al., 2015; EY, 2017). High-quality sustainability reports enable greater accuracy in analysts' earnings forecasts (Dhaliwal et al, 2011) and lowers the cost of capital (Goss and Robert, 2011), particularly in stakeholder-oriented countries and where financial disclosure is opaque. As a result, various initiatives to increase the quantity and quality of the information provided have been put in place, also with the aim of reducing the existing differences in the level of disclosure (Welford, 2003, 2005; Halkos and Skouloudis, 2016). For example, in 2013, the GRI and the IIRC, while promoting the use of sustainability reports and integrated reports respectively, signed a memorandum of cooperation in an attempt to create convergence.

In Europe, the first substantive effort to harmonise the disclosure of ESG information occurred in 2014, when the EU issued the NF Directive, which requires certain companies across Member States to disclose information of a certain quantity and quality. As argued by the EU and some scholars (e.g. Stittle, 2002; Merkl-Davies and Brennan, 2007), mandatory disclosure is necessary because voluntary CSR reporting hinders comparability and leaves significant room for symbolic practices that can endanger the credibility of EGS information (EY, 2017). Moreover, the lack of a universal definition of non-financial information and ESG reporting framework generates confusion among stakeholders (Fee, 2015).

However, the influence of the EU on harmonization of sustainability disclosure has still to be investigated in depth. As stated by Sahabana et al. (2017) and Hahn and Kühnen (2013), the role of regulation on sustainability matters is a new research area, and more studies are necessary to evaluate whether a coercive pressure such as EU regulations may modify companies' attitudes toward CSR. Initial research attempts on this topic mostly examine corporate reports issued before and after the Directive with the aim of understanding whether the quality of sustainability reporting increased after

the regulatory change (e.g. Mion and Loza Adauí, 2019; Tiron-Tudor et al., 2019). Others searched for changes in reporting behaviour. For instance, Sierra-García et al. (2018) found a variation in the media/channel used by Spanish companies to report non-financial information. What seems under researched is the assessment of convergence in non-financial reporting among European companies after the NF Directive. Being aware that this is a challenging objective, we believe that a first step toward this direction is the examination of national regulations transposing the Directive because regulation plays an important role in encouraging convergence of practices. Formal harmonisation (or de jure harmonisation) is a crucial driver of material (or practical) harmonisation, which relates to the compliance by regulated subjects (Tay and Parker, 1990).

Therefore, our first research question is the following: ‘Is there clear evidence of convergence or divergence of national legislations transposing the NF Directive?’

Previous accounting research demonstrates that national financial reporting regulations are heavily influenced by local factors (e.g. legal system, financing system), and these national differences continue to exist even after the mandatory use of IFRS (international financial reporting standards) for listed companies (Nobes, 2006). Similarly, other studies (Ball, 2006; Chua and Taylor, 2008; Stecher and Suijs, 2012; Standler and Nobes, 2014) suggest that countries' institutional factors remain relevant under IFRS and determine international differences in accounting policy choice. The link between corporate reporting and the cultural, historical and economic background that shapes a local context is also emphasized by research on CSR and sustainability reporting. Voluntary CSR reporting practices across countries are rooted in local cultural characteristics (Skouloudis et al. 2015; Miska et al., 2018) and shaped by context-related factors such as economic stability and institutional mechanisms (Jamali and Neville, 2011) ranging from regulations to less formal constraints including normative pressures from stakeholders (Jackston and Apostolakou, 2010).

Grouped together, these insights suggest that NF reporting convergence pushed by the NF Directive can be hindered by opposition of Member States whose national context does not fit with the changes required by the new EU requirements. Therefore, our second research question is the following: ‘Are divergences in national regulations transposing the NF Directive linked to national context characteristics?’

3. Methodology

3.1. Country selection and institutional characteristics

To answer the research questions, this study focuses on the formal implementation of the NF Directive in a group of selected EU Member States traditionally characterized by highly different sustainable reporting practices as well as different cultural and economic background: Romania, Bulgaria, the UK, France and Belgium. The interest of our work is comparing how these EU States treated different options allowed by the NF Directive to check for convergence in regulation even when States have considerable freedom in the transposition stage.

We selected the five countries on the basis of an analysis of their national contexts and in light of constraints on data availability.

As described below, these five countries are characterised by differences that can explain a certain use of discretion locally. Firstly, information on national context characteristics was searched and extracted from previous academic studies describing CSR national divergence. Differences relate to national business systems (Matten and Moon, 2008), social, cultural and political aspects that could prevent harmonisation (Albareda et al., 2007; Baker, 2014) and the extent of CSR awareness and reporting practices before the NF Directive was issued. Secondly, information about the CSR implementation in each of the five countries is retrieved from the literature that develops indicators based on the number of companies involved in international CSR schemes and initiatives (Gjolberg, 2009; Midttun et al., 2006). A valuable study is provided by Skouloudis et al. (2015), who compares 86 countries worldwide. According to their research, the UK ranks among the first top five countries

(scoring 9.64), whereas Romania and Bulgaria have negative scores (-17.98 and -19.68 respectively) and rank after the thirtieth position, denoting poor CSR activities. France comes tenth in the ranking (with a score of 2.58), and Belgium ranks fifteenth (score of -1.22). Finally, the classification of Vashchenko (2018) in three groups of economic-, government- and society-related factors is adopted to describe context-related factors impacting CSR diffusion.

Both Bulgaria and Romania are considered to be developing countries with modest financial markets, and poor social and political stability (Boghean, 2014). When entering the EU in 2007, both countries shifted from a centrally governed economy characterized by a policy of full employment but low productivity and inefficiency to a market economy. Yet, their socio-political transformation did not lead to stable development.

With reference to CSR, Romania and Bulgaria are often described as similar countries in terms of policies and companies' CSR disclosure practices, but they both carry substantial differences from Western Europe with reference to CSR praxis and reporting (Steurer et al., 2012). This is commonly understood to be caused by differences in historical and socioeconomic development (Simeonov and Stefanova, 2015).

They are also both characterised by a weak societal pressure toward CSR (Line and Braun, 2007). No previous laws or government initiatives held companies responsible for the social and environmental consequences of their actions (Horváth et al., 2017). Conducting 'environmentally friendly activities' was not considered to be a key component of CSR (Mazurkiewicz and Crown, 2005).

In Romania and Bulgaria, the discourse on CSR was introduced by the EU and foreign multinational companies (Line and Braun, 2007), whereas national governments remained almost silent (Simenov and Stefanova, 2015). Therefore, with reference to society-related factors, the attention to CSR has primarily developed in response to international pressure, with the EU being the most dominant force in this respect (Ribarova, 2011).

Finally, even if the Romanian State has demonstrated a higher interest in committing to the international sustainability agenda than the Bulgarian one (Romania was the first European country to ratify the Kyoto Protocol at the United Nations Framework Convention on Climate Change), the quality of non-financial disclosure provided by Romanian companies is still quite limited (Jindrichovska and Purcarea, 2011; Alin et al., 2011).

On the contrary, France and its neighbour Belgium are characterised by a stable economy, developed financial markets and investors that pay attention to non-financial information. In both countries, pressures from stakeholders, such as NGOs, media and social movement organisations, encouraged the adoption of socially responsible corporate behaviour. In Belgium, for example, pension funds have a legal obligation to indicate the ethical, social and/or environmental criteria included in their investment policy. France was the pioneer in social reporting in Europe and the first country to mandate the reporting of social and environmental performance (Chauvey et al., 2015; Chelli et al., 2017).

Another common characteristic is the role played by the State in diffusing the culture of social responsibility (Delbalr, 2008). In France, the State launched several social reporting initiatives already in the 1970s (Antheaume, 2018). More recently, the French State issued three laws: the NRE Act in 2001 (Law of New Economic Regulations No. 2001-420), the Grenelle I and Grenelle II Acts in 2009 and 2010 respectively that oblige large companies to prepare a CSR report. Also, Belgian companies have been obliged to disclose social information since mid 1990s. However, as Jacques Igalens wrote (1997): 'the Belgian social balance sheet is more modest, job-centred, more readable' than his French brother. Recent studies also indicate that the CSR report in Belgium still has a long way to go (Bouten et al., 2011).

Finally, the UK is usually considered as a stand-alone case study because of its unique 'liberal' market economy, as opposed to the coordinated market economies common to Continental Europe. The UK economy is characterized by equity financing, dispersed ownership and active markets for corporate control (Aguilera et al., 2006), where the relationship between the State and businesses is the opposite of that emerged in France. According to the varieties of capitalism theory (Hall and Soskice, 2001),

a liberal market economy allows economic agents to coordinate themselves through competitive market mechanisms (Hall and Soskice, 2001). The UK finance-driven corporate culture is deemed to influence companies' CSR disclosure (Adams et al, 1998; Bartolomeo et al., 2000).

In fact, the UK has long been viewed as a leader in sustainability reporting (Coombes, 2017) and keener on CSR matters than its European neighbours (Moon, 2004). Maltby (2004) shows that, as early as the early 20th century, British manufacturing companies disclosed sustainability issues. However, CSR initiatives may be oriented to increase shareholder value and investors' short-term returns (Bartolomeo et al., 2000).

A number of factors can explain the strong inclination of UK businesses to disclose non-financial information, including the significant role played by organisations such as the Association of Chartered Certified Accountants in encouraging best practices (Idowu, 2009). Over time, UK governments also placed a significant emphasis on disclosure and reporting, acting as a facilitator with the aim of promoting better corporate governance and long-term value in large companies. The UK Companies Act 2006 required the publication of a Strategic Report for all UK incorporated companies that are not small businesses almost a decade before the transposition of the NF Directive. However, the government of the day has also played as a force against regulatory changes in corporate non-financial disclosure. For example, the Thatcher government did not support the value-added statement (Laughlin, 2007). Years later, Cameron, although supportive in principle of the NF Directive, negotiated to ensure that the NF Directive proposal would have been watered down to reduce its effects, including a restriction in its scope of application (Kinderman, 2019).

Additional countries were not included in the analysis due to different reasons. Countries were excluded because their consideration would not have added any new relevant information to the research (e.g. Poland is similar to Bulgaria and Romania in terms of the historical background) or due to difficulties in accessing and translating national legislations. Certain countries, such as Croatia and Serbia, also raised little academic attention, resulting in scarce information on past and current CSR practices and other contextual factors to rely on.

National regulations transposing the NF Directive were identified through the Eurolex database that collects enactment laws of all directives, and then the original text was downloaded from the official website of each government authority. The text of national regulations was then analyzed. Regulations are listed below:

- Romania: the Order of the Ministry of Public Finance n.1938 published in the Romanian State Gazette (Monitorul Oficial al României), No. 680 on 2 September 2016;
- Bulgaria: the Accounting Act published on Bulgarian State Gazette (Държавен вестник), No. 95 on 8 December 2015;
- Belgium: the Law No. 2017/20487 of 3 September 2017 published on the Sate Gazette (Moniteur Belge) on 11 September 2017;
- France: the Ruling No. 2017-1180 of 19 July 2017
- The UK: the Statutory Instruments No. 1245/2016 named 'The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016' of 19 December 2016.

For each State, the translations from the original language to English was double-checked.

3.2. Textual Analysis

Directives leave Member States some discretion when transposing the regulation in national contexts. Discretion is considered to be a deliberate choice of the European legislator aimed at allowing Member States to adjust their laws to local circumstances (Franchino, 2007; Hartmann, 2016). Discretion especially emerges when the EU provides Member States with options or alternatives on how to achieve a particular objective. As a result, law and political studies often perform textual analysis on discretionary obligations (Dörrenbächer and Mastenbroek, 2017). However, national actors transposing directives may also settle for a particular point outside the margins of EU discretion

(Dimitrova and Steunenberg, 2013).

Therefore, to answer our research question on legislation convergence/divergence, this work considers both mandatory obligations and discretionary obligations included in the NF Directive. Firstly, the wording of the transposition laws was analyzed and classified into sections and codes that refer to different aspects of reporting. For example, one section refers to the content of reporting, and another section refers to the type of report/media used. Secondly, the same sections were searched in the text of the NF Directive. Then, each section of every national regulation was compared with the requirements included in the original provisions of the NF Directive to determine whether or not these departed from the intent of the EU legislator.

The five tables used to explain the results show the wording of the transposition laws. Given the length of regulations, only the articles of national legislations that differ from the original provisions included in the NF Directive are reported so that it is easier to identify where Member States used their discretion that hinders convergence.

The regulatory choices made by national governments were interpreted following textual meaning where possible. When the wording was not clear, we used a purposive approach, which means using teleological argumentation and structuralism to interpret legislations. Those are two common interpretation methods in the EU legal order (Barak, 2005; Baratta and Carli, 2014). Often used in case law of the European Court of Justice, these methods lead to interpret laws in light of the finalities of EU provisions.

Every instance in which national regulations merely reports the same obligations as the NF Directive (i.e. ‘copying-out approach’) was classified as absence of discretion and therefore potential for convergence. Differences were not assessed in terms of quantity (i.e. frequency of words or concepts) because we aimed at describing the aspects that generate divergence in regulations so that future research can include them in their studies.

3.3. Interpretation of divergencies in light of Institutional Theory

Differences in national transpositions can be attributed to various factors.

Legal studies prefer to focus on administrative and political variables (e.g. Mastenbroek, 2003, Bursens, 2002; Dimitrakopoulos, 2001), the role of domestic politics (e.g. Dimitrova and Steunenberg, 2000; Borzel and Risse, 2003) or attribute discretion and divergence to the poor quality and clarity of the Directives (e.g. Knill and Lenschow, 1998; Dimitrakopoulos, 2001). Others investigated the degree of legal fit or misfit between the European legislation and the domestic situation (Aureli et al., 2019) building on the assumption that Member States endeavour to minimize the cost of institutional adaptation caused by the transposition (Borzel, 2003; Heritier, 1995).

This paper uses institutional theory (DiMaggio and Powell, 1983; Scott, 1995)¹ in line with many political science scholars who explained Europeanization—the adoption of EU regulations (Mastenbroek, 2005) — and accounting scholars who addressed the implementation of accounting Directives (Aisbitt, 2008). They used institutional and neo-institutional theory to explain the differential impact of the EU on the choices made by Member States (Börzel, 2005). Research posits that the EU exercises coercive pressures over its Members. Therefore, issuing a Directive is a form

¹ Institutional theory is based on the belief that any organization is influenced by the institutional context (i.e. social, political, economic and legal contexts) in which it operates. If organizations want to endure, they must conform to the rules and belief systems prevailing in the local context (Meyer and Rowan, 1977). In other words, the environment exercises pressures on how an organization makes decisions, behaves and is structured, eventually leading to isomorphism (Hambrick et al., 2005). This theoretical framework applies to organizations, society and nations, to both micro and macro phenomena (Scott, 2008), although most institutional-based research has focused on understanding businesses’ organizational behaviour (Wooten and Hoffman, 2008). However, identifying and measuring institutional pressures and their impact is not an easy task (Garrido et al., 2014). Moreover, both formal and informal institutions must be considered (North, 1990). Formal institutions refer to explicit rules such laws and regulations, whereas informal institutions are constraints embedded in traditions, customs, religion and other cultural aspects.

of coercive mechanism that should lead to isomorphism. However, there is no single common response. Compliance to EU regulations may vary because of the role played by different domestic institutions that also exercise pressures (Green et al., 2001; Börzel and Risse, 2003). In fact, pressures may also come from institutions at different hierarchical levels (i.e. national vs international level) (Paauwe and Boselie, 2003). As Scott (2008) states, institutional processes can be top down, which means that organizations or States may adapt to the top-down pressure coming from governments or other supranational actors such as the EU, but also a bottom-up reaction is possible, which leads to a different ‘response’ (Oliver, 1991).

With reference to CSR, institutional theory was used to understand how States define their CSR-related policies and regulations. For example, institutional theory explained the case of the UK where CSR emerged as the response to the neo-liberal economic policies associated to the Thatcher government, suggesting that the understanding of CSR in the UK is the outcome of political pressures, US influence and historical relationships between trade unions and companies (Brammer et al., 2012). Moreover, institutional theory has been used to explain variations in companies’ CSR practices in different countries (Jackson and Apostolakou, 2010; Chen and Bouvain, 2009).

This linkage between CSR and institutional theory sustained by previous literature also suggests adopting this theoretical framework in this paper to analyze the convergence/divergence of national regulations transposing the NF Directive.

Because the work of Héritier et al. (2001) indicates that the behaviour of a State at the transposition stage depends on both the nature of the EU pressure (i.e. its degree of prescription and flexibility) and the domestic contexts described in terms of pre-existing domestic norms and practices (Mastenbroek, 2005), the analysis of the legislative text of the five countries selected will focus on both mandatory requirements and options left by the EU, whereas the description of the national context will concentrate on pre-existing national regulations and CSR practices.

4. Results

A range of differences emerges from the analysis of national enacting laws in relation to both mandatory and optional obligations.

4.1. Differences in mandatory obligations

The NF Directive mandatory requirements are easily identifiable by the use of expressions such as ‘Member States or companies shall’, ‘must’ or ‘have to’.

Among mandatory obligations, the first section of legislations that shows differences with the EU provisions refers to the scope of application and where the non-financial information should be located.

Art. 1 of EU Directive (Modification to Article 19 bis. Point 1) – ‘Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity [....]’

Although Bulgaria and Romania reported the same obligations in their transposition laws (Table 1), France and Belgium introduced additional thresholds that are the same of pre-existing reporting obligations described in the national legislations (e.g. the Grenelle II and its subsequent amendments in the case of France). France maintains differences because it keeps the pre-existing lower thresholds for compliance, whereas Belgium sets lower thresholds that better reflect the local economy mainly made of SMEs. The UK also adapted the EU provisions of this section to the pre-existing obligations by specifying that ESG information shall be reported in the Strategic Report (and not in the

Management Report) that all UK-incorporated companies already prepared annually and detailing the types of company that must comply with the new provisions.

Table 1. Mandatory obligation on the scope of application

Romania	<i>Same obligations as those mandated by the NF Directive</i>
Bulgaria	<i>Same obligations as those mandated by the NF Directive</i>
UK	‘A strategic report of a company must include a non-financial information statement if the company was at any time within the financial year to which the report relates— (a) a traded company (f), (b) a banking company (g), (c) an authorised insurance company (h), or (d) a company carrying on insurance market activity (i).’
France	‘An extra-financial performance declaration is included in the management report. The thresholds are set by a decree issued by the Conseil d’Etat and refer to the balance sheet total or the net turnover, in addition to the number of employees: ‘1 ° For the companies mentioned in 1 ° of I of Article L225-102-1 of the French Commercial Code (Grenelle II - Law 2010/788 of July 12, 2010): €20m for the balance sheet total and €40m for the net turnover and 500 employees... 2 ° For the companies mentioned in 2 ° of I of Article L225-102-1: €100m for the balance sheet total and €100m for the net turnover and 500 employees.. 3° For the purposes of paragraph 6 of Article L. 225-37-4, the companies concerned are those that exceed two of the following three thresholds: a total balance sheet of €20m, a net turnover of €40m, an average number of permanent employees of 250.’
Belgium	‘This paragraph applies toa company that exceeds... at least one of the following two criteria: ...the balance sheet total referred to in Article 16 (1) [€17m]; the annual turnover referred to in Article 16 [€34m]’ ‘the annual report referred to in Article 95 shall include a statement containing the following information...’

Another section of mandatory provisions refers to the matters (environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters) and the aspects related to these matters that companies have to disclose.

Art. 1 of EU Directive (Modification to Article 19 bis. Point 1) - ...information relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters including (a) a brief description of the undertaking's business model; (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; (c) the outcome of those policies; d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; (e) non-financial key performance indicators relevant to the particular business.

In this respect, local adaptations refer to additional obligations inserted by Member States. This is the case of France that reiterates the aspects and detailed list of indicators used to measure company social and environmental performance in Grenelle II. In detail, France specifies reporting obligations (Table 2) referring to both employee-related (i.e. employment, the organization of work, employees’ safety, social relations and training), environmental (i.e. procedures related to the general protection of the environmental, pollution, circular economy, the management of waste and the sustainable use of resources, climate change and protection of biodiversity) and social (i.e. stakeholder engagement) aspects. Surprisingly, Romania also specifies which information and indicators to provide in addition to the list of matters (from letters a to e) reported by the NF Directive. Yet, Romania did not have a previous law on this matter. Belgium and the UK followed a copying-out approach instead, merely transposing the minimum requirements set by the NF Directive. Finally, Bulgaria preferred to rephrase the obligations. The use of discretion in this case brought some changes. For example, the criterion of ‘relevance’ in choosing the risks and key performance indicators to disclose was eliminated from the obligations. In addition, there is no obligation of reporting ‘how undertakings manage risks’ related to the list of matters indicated by the NF Directive.

Table 2. Mandatory obligation on the content of reporting

Romania	<p><i>Same obligations as NF Directive</i> In addition: '6) The non-financial declaration must contain, with regard to environmental aspects, details concerning the current and future impact of the company's activities on the environment and, where appropriate, on health and safety, use of renewable and non-renewable energy sources, emissions of greenhouse gases, use of water resources and air pollution. As far as social and personnel aspects are concerned, information can refer to the actions taken to guarantee gender equality, the application of the International Labor Organization's conventions, working conditions, social dialogue, respecting the rights of workers to be informed and consulted, respect for trade union rights, health and safety at work, dialogue with local communities and/or actions taken to ensure the protection and development of these communities. With regard to human rights and the fight against corruption, the non-financial declaration may include information concerning the prevention of human rights violations and/or the instruments set up to fight corruption. 7) The non-financial declaration also includes the impact of the company's activity and the use of goods and services that it produces on climate change, as well as its commitments to sustainable development, to the fight against food waste and the fight against discrimination and the promotion of diversity.'</p>
Bulgaria	<p>'1. a brief description of the business model of the enterprise—goal, strategy, organisational structure, infrastructure, products, policies pursued in relation to the primary and ancillary activities of the enterprise and other; 2. a description of the policies adopted, followed by the enterprise in respect of environmental and social issues, including the activities performed during the reporting period and the results thereof; 3. the objectives, risks and tasks that lie ahead in terms of environmental and social policies, including a description of activities that would have an adverse impact on ecology, employees or other social issues; 4. a description of the key indicators of the results of the activities related to environmental and social issues.'</p>
UK	<p><i>Same obligations as NF Directive</i></p>
France	<p><i>Same obligations as NF Directive.</i> In addition '... A.-For all the companies mentioned in I of the article L. 225-102-1, the following information has to be provided: - 1 ° Employee-related information: The number and distribution of employees by sex, age...the remunerations and their evolution... the organization of work schedule and absenteeism...the number of work accidents... the organization of the social dialogue, including procedures for informing and consulting staff ..the total number of training hours; - 2 ° Environmental information: ..how the company addresses environmental issues ...environmental assessment or certification procedures...the resources devoted to the prevention of environmental risks and pollution;... measures to prevent, reduce or repair releases of polluted air, water and soil;.... measures of recycling, reuse, other forms of waste recovery and disposal;.. actions to fight food waste; ... water consumption and water supply.. consumption of energy, measures taken to improve energy efficiency and the use of renewable energies...the greenhouse gas emissions generated as a result of the company's activities...the measures taken to adapt to the consequences of climate change; ...measures taken to preserve or restore biodiversity; - 3 ° Societal information:.. the impact of the company's activity on employment and local development ...on local populations;...the relations with stakeholders and the means used for a dialogue with them'</p>
Belgium	<p><i>Same obligations as NF Directive</i></p>

A further section that raises differences refers to the requirement for Member States to indicate the standards or frameworks that companies may adopt to prepare the non-financial statement (Table 3).

Art. 1 of EU Directive (Modification to Article 19 bis. Point 1)—Member States shall provide that undertakings may rely on national, Union-based or international frameworks, and if they do so, undertakings shall specify which frameworks they have relied upon

Table 3. Framework for reporting

Romania	<i>Same obligations as NF Directive</i>
Bulgaria	<i>No specifications</i>
UK	'If information required by subsections (1) to (5) to be included in the statement is published by the company by means of a national, EU-based or international reporting framework, the statement must specify the framework or frameworks used, instead of including that information'
France	'If a company complies voluntarily with a national or international framework to fulfill its obligations under this article, then the statement must indicate which recommendations of the framework have been retained and the procedures for consulting this framework'
Belgium	'For the preparation of the non-financial statement, companies rely on recognized European and international standards. Companies indicate in the statement which standard they relied on. The King can establish a list of European and internationally recognized standards and due diligence procedures on which the company can rely'

In contrast to Romania, which adopted a copy-out approach, the UK, France and Belgium preferred rewording the obligation. Similar wording used domestically may lead to assume convergence between Member States. In fact, these countries similarly allow companies to use different types of reporting frameworks. However, more subtle differences exist. The UK and France apply the obligation using 'if' clauses', therefore giving companies the freedom to decide whether or not to adopt frameworks. Belgium mandates the use of reporting frameworks or standards, but it only allows international or European standards, revealing the absence of national ones that are allowed in France and the UK. In Bulgaria, no obligations are specified. This absence of provisions means that undertakings may also not rely on well-established frameworks. This choice fits with scarce local knowledge of CSR and reducing the cost of adaptations of local companies, but generates problems in terms of understandability and comparability (i.e. stakeholders may have difficulties when reading unstructured narratives). Lastly, Romania made no adaptations, therefore suggesting that companies in this country might be somehow aware of and prepared for CSR reporting.

4.2. Differences in discretionary obligations offering options to Member States

Discretionary obligations can be identified by the use of soft expressions such as 'Member States may ask undertakings' used in the NF Directive. The analysis of optional obligations raises differences across countries.

One interesting section that displays divergence at the transposition stage refers to the possibility for Member States to allow the presentation of a separate report containing non-financial information instead of providing the non-financial statement within the management report and the timeline to make the reports available to the public.

Art. 1 of EU Directive (Modification to Article 19 bis. Point 4) Member States may exempt ... the undertaking that prepares a separate report covering the information required for the non- financial statement ...from the obligation to prepare the non-financial statement laid down in paragraph 1, provided that such separate report: (a) is published together with the management report in accordance with Article

30; or (b) is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertaking's website, and is referred to in the management report.

All selected countries use the discretion toward the same goal: to allow companies to prepare a separate report, with the exception of the UK, which obliges companies to use the strategic report only. The major difference relates to France, which grants companies a period of eight months (instead of six) to publish the report on corporate websites, while prescribing online publication for five years. This long period of internet publicity suggests a significant amount of attention of France toward the information needs of all type of stakeholders, including individual citizens that may not have the possibility to access annual reports (Table 4).

Table 4. Type of report

Romania	<i>Discretion used - Same obligations as NF Directive</i>
Bulgaria	<i>Discretion used - Same obligations as NF Directive</i>
UK	<i>Discretion not used (the only reference is the Strategic Report)</i>
France	‘Without prejudice to the disclosure requirements applicable to the report provided for in Article L. 225-100, these declarations shall be made freely available to the public and made easily accessible on the company's website within eight months from the end of the financial year and for a period of five years. ‘
Belgium	‘The company that prepared the non-financial statement in a separate report is exempted from the requirement to file a non-financial statement in the annual report for the same year. In this case, the annual report includes a statement that the non-financial statement is set out in a separate report. This separate report is attached to the annual report’

Another important section of legislation that shows divergence refers to the third-party verification or audit of the non-financial information reported (Table 5). The EU requires the statutory auditor or an audit firm to verify the preparation of the document (either non-financial statement or separate report) and leaves Member States free to decide also whether to mandate the verification of the content included in the document.

‘Art. 1 of EU Directive (Modification to Article 19 bis. Point 6) - Member States may require that the information in the non-financial statement referred to in paragraph 1 or in the separate report referred to in paragraph 4 be verified by an independent assurance services provider.

In this case, the UK and Romania did not use this discretion to require content assurance at the national level. Similarly, Bulgaria does not explicitly require the verification or assurance on the content—probably because it might be difficult to find professionals with CSR expertise in developing countries such as Bulgaria and Romania—; however, it changes the wording of the enactment law to give importance to compliance with legal provisions (a key element of CSR understanding in Bulgaria), which may open the possibility for deeper scrutiny from auditors. This approach suggests that the institutional context and particularly the pre-existing regulations may have influenced the choices made by Member States. The French transposition somehow confirms this perception because its legal support for the use of EMAS in environmental reporting is here reinforced by specifying that an EMAS verifier (instead of an audit firm) may also fulfil the required obligation. Finally, Belgium does not explicitly require the verification of the information given in the report by an external auditor; however, it asks the statutory auditor to check whether that separate report includes the information required by the law and whether it agrees with the consolidated accounts. Therefore, it is possible to devise a different requirement for a soft verification or legal compliance (a sort of checklist of reported matters).

Table 5. Verification of the information (content)

Romania	<i>Discretion not used</i>
Bulgaria	'The registered auditors who carry out an independent financial audit of the annual and consolidated financial statements shall give an opinion in the audit report whether the non-financial statement is submitted and whether it is drawn up in accordance with the requirements of this Act'
UK	<i>Discretion not used</i>
France	'When the information is published by companies whose thresholds exceed 100 million € for the balance sheet total or 100 million € for the net turnover and 500 for the average number of permanent employees..., the report of the independent third-party organization includes: (a) A reasoned opinion on the conformity of the statement with the provisions laid down and on the accuracy of the information provided; b) The steps undertaken to perform the verification When a company complies voluntarily with EMAS..., the declaration signed by the environmental verifier, means the opinion of the independent third party on environmental information. Information that is not verified by an environmental verifier referred to in the previous paragraph remains subject to the verification of the independent third-party organization in accordance with the terms and conditions'.
Belgium	'If the non-financial declaration is established in a separate report, the report on the statutory audit of the consolidated accounts shall contain an opinion as to whether that separate report includes the information required and whether it agrees with the consolidated accounts for the same financial year'.

5. Discussions

With reference to the first research question, results show a mix of convergence and divergence of national regulations enacting the NF Directive.

Surprisingly, differences in national transpositions also apply to mandatory obligations. These differences refer to the following aspects:

- A lack of key items or concepts necessary for the quality of reporting in national transpositions. This is the case of Bulgaria that does not make any reference to the concept of relevance when asking companies to disclose information on risk and key performance indicators. Similarly, it makes no reference to the disclosure of due diligence processes regarding policies on social, environmental, employee-related and other matters which is instead required by the EU.
- Different wording used to transpose the requirements prescribed by the NF Directive. Again, here Bulgaria only requires the 'description of policies adopted and followed by the enterprise in respect of environmental and social issues', disregarding the description of policies on human rights, employees and corruption made by the NF Directive.
- The inclusion of new requirements by national legislators in addition to those prescribed by the EU. For example, Bulgaria, Romania and France included size criteria in addition to the number of employees to define which undertakings are considered to be a large business in the national context. In relation to key indicators, France and Romania provide another example of additional disclosure requirements.

At the same time, we found differences regarding aspects that the EU did not regulate/standardize in the NF Directive, the main ones referring to the following aspects:

- The discretion left to Member States in choosing which reporting frameworks companies had to follow for the preparation of the non-financial report. The NF Directive allows Member States to opt for national, international or European reporting standards. All countries except Bulgaria include a provision on the use of a recognized standard or framework. As a result,

Bulgarian companies may even not adopt a recognized standard, therefore endangering the comparability of non-financial information.

- The discretion left to Member States in choosing whether or not to ask to verify the information included in the non-financial statement. None requires verification of the information included in the non-financial report but France.
- Additional specifications made by each Member State. A specification may be necessary to translate specialized terminology originated outside that country. Specification might be considered not material but necessary to fit the local environment. This is the case of Bulgaria, which specifies the information to provide when reporting about the business model of a company (company goal, strategy, organizational structure, infrastructure, products and policies).

As reported in section 3, differences might be examined in relation to the national context of the selected countries. Therefore, results are discussed below in light of economic-, government- and society-related factors. Countries with similar CSR practices are grouped together so that it is easier to grasp the traditional distinction made by academic researchers when comparing Eastern with Western European countries.

France and Belgium

From a context perspective, France and Belgium appear to be similar. As described in section 3.1., they both have a stable and developed economy, developed financial markets and the presence of investors concerned with environmental, social and governance aspects. Moreover, in both countries, both societal-related external factors and the State played an important role in the diffusion of CSR culture within businesses.

This situation is coherent with the fact that neither France nor Belgium limited or avoided EU obligations on non-financial reporting. They either followed a copy-out approach or integrated additional requirements to increase a company's transparency. Institutional pressures for better reporting exercised at the EU level through the NF Directive were aligned with national pressures stemming from the French State and national investors.

Yet, the enactment laws of France and Belgium entail some differences. France added several indicators, whereas Belgium did not. France also adopted the verification of the information included in the non-financial statement and allowed EMAS verifiers to audit it. This difference can be explained in light of previous French legislation.

Historically, in several occasions the French government intervened to regulate non-financial disclosure and encourage socially responsible corporate behaviour. After the proposal of a social report by France government in 1973, in 1977 the State issued a law to mandate the preparation of social reports to all companies with more than 300 employees. Reports focused on working conditions and the relationship between employees and employers (the aim was to support trade unions) and had to include a wide range of indicators. Additionally, the existing French regulatory framework supporting the adoption of the European Environmental Management and Audit Scheme (EMAS) by allowing EMAS registered organisations to use the EMAS statement to replace part of the mandatory CSR report and exempting them from environmental inspections (European Commission, 2015).

In Belgium, only after the Royal Decree of 4 August 1996 did companies begin to be obliged to prepare a social balance sheet, which was a report containing information on staff and training activities. Belgium seems not to have a strong national tradition on non-financial reporting, but it looks at its neighbours. Lately, the Belgian government has adopted an Action Plan for CSR that encourage companies to follow the Global Reporting Initiative (GRI). No attempt to develop national standards was made. This is probably the reason why the enactment law in Belgium only refers to European and international standards when obliging companies to publish non-financial statements.

Bulgaria and Romania

Bulgaria and Romania also appear similar from a context perspective. They share modest financial markets and poor social and political stability (Boghean, 2014). With both countries having experienced a past of socialist regime that made social responsibility and social caring the primary role of the central government, there was no previous regulatory attempt to encourage CSR within businesses (Horváth et al., 2017). Companies' concern was limited to compliance with legal provisions, thus providing information on legal compliance and corporate governance (Line and Braun, 2007). Social responsibility of Bulgarian and Romanian companies was understood mainly as corporate philanthropy because of a weak civil society in these countries.

Therefore, in both cases, the strongest pressures toward non-financial disclosure were exercised by external parties, especially the EU (Ribarova, 2011). Yet, if we examine the enactment laws in these two countries, we find that Bulgaria lags far behind its neighbour Romania. Bulgarian law does not refer to the concept of relevance when disclosing information; it does not require the description of policies on human rights, employees and corruption and does not oblige companies to use a recognized standard or guideline in preparing a non-financial statement. This 'weak' implementation can be explained in light of the fact that Bulgaria is still facing socioeconomic challenges. Bulgaria is still among the least-developed EU countries, with the lowest wage level among Member States (Maiväli and Stierle, 2013). According to Eurostat (2014), it records the highest poverty levels of all EU countries, and it was in second-to-last place among EU States in the most recent Corruption Perceptions Index of Transparency International (2014). Even today, expectations of Bulgarian citizens on businesses are primarily market oriented and less directed towards social or environmental issues (Simenov and Stefanova, 2015). A weak society has societal-related factors that do not create pressures for CSR. Here, CSR stakeholders (e.g. NGOs, think tanks, trade unions, media and academics) often lack knowledge and means for a meaningful dialogue with companies (USAID, 2013).

Differently, Romania has some higher concerns about companies' impacts on society and the environment as demonstrated by the fact that Romania was the first European country to ratify the Kyoto Protocol at the United Nations Framework Convention on Climate Change (UN FCCC). Its companies seem to engage in environmental initiatives but disclose low-quality and scarce environmental information, although there are signs of improvement (Jindrichovska and Purcarea, 2011; Alin et al., 2011).

United Kingdom

Lastly, the UK appears to have preferred a copy-out approach, while maintaining the use of Strategic Reports. The UK did not impose additional requirements, and this is in line with its tradition.

The UK was among the first EU countries to understand the relevance of non-financial information for a better appreciation of company performance. Because of strong capital markets, companies have tended to report more than companies in other countries, such as Germany, to attract investments (Adams et al., 1998; Bartolomeo et al., 2000).

Nonetheless, previous studies highlight limitations in corporate disclosure, especially in relation to the environmental (Fifka and Drabble, 2012) and personnel dimensions (Mio and Venturelli, 2013). The UK government could have taken advantage of the NF Directive to favour improvements, but it preferred to act as a facilitator rather than as a regulator (Fox et al., 2002). Historically, with reference to CSR, the UK government aimed at creating an enabling environment where all stakeholders can play a role and providing incentives for companies' CSR activities by soft regulation (van Wensen et al., 2011). In fact, in the UK, CSR initiatives mainly emerged due to companies voluntarily seeking to fill a social governance gap existing at the end of the 20th century (Albared et al., 2007).

Even in the transposition of the NF Directive, the government was concerned about keeping previous regulatory requirements rather than introducing new ones.

It is likely that Brexit has also played a significant role. As the UK government will need to review existing regulations, it may have not had the incentive at the time to introduce further requirements and create more regulatory uncertainty for businesses.

6. Conclusion

This research investigates whether or not the NF Directive represented an institutional pressure capable of harmonising rules at national level. The comparison between enactment laws in Member States where CSR has historically played a limited role (Romania and Bulgaria) and those in countries where CSR traditions are much more well developed (France, Belgium and the UK) suggests that all five countries share a minimum common understanding on the importance of disclosing non-financial information. The NFD created some convergence, where regulations agree on certain aspects.

Nonetheless, in some instances such convergence is only apparent. Enacting laws use similar words or are the result of the application of a copying-out approach by some countries that merely copied and pasted the text of the EU Directive into the national law; however, as there is no specification of meaning, the actual implementation by companies could be substantially different.

Furthermore, local institutional differences had an impact on the transposition of the NF Directive, hindering the harmonisation of regulations. Despite these countries already having introduced the obligation to disclose environmental and personnel aspects in the management report of companies as imposed by previous EU Directives (namely, EU Directive 2003/51/CE and 2013/34/UE) and having the same civil law tradition (except for the UK), their local contexts are different. States are characterized by different levels of CSR understanding and expertise; different national laws on CSR reporting also emerged in some countries before the NF Directive.

The substance of discretion reveals that some States settled for point-specific positions within the margins of discretion to tailor laws to local conditions. The UK and France mostly used discretion to preserve or include aspects of the pre-existing laws, whereas Bulgaria used discretion to reduce the cost of local adaptation, thus contributing to confirm that some countries attempt to maintain the status quo whenever possible (Mastenbroek and Kaeding, 2006; Falkner et al., 2007). Therefore, local needs seem to counterbalance the coercive pressure exercised by the NF Directive. Findings show that as a consequence of flexibility given to Member States and national regulations wanting to minimise adaptation costs, the impact of the NF Directive on companies could be little. While quantity of information may increase, it seems likely that actual reports may disappoint those users who wished for a real change in quality of disclosure.

These findings provide insights on national regulations and differences between them. The research also contributes to an understanding of how regulations may impact or explain international differences in corporate non-financial reporting. Lastly, it contributes to a better appreciation of differences between Eastern and Western European countries.

While the NF Directive is a first step to get large undertakings across Europe to converge, the discretion left on crucial aspects can partially defeat the purpose of the NF Directive itself. For example, the lack of clarification of what materiality means and the inconsistency across countries in relation to how audit should be conducted can impact on the relevance and reliability of the information provided to users. Therefore, the flexibility provided by the NF Directive in respect to aspects of such importance may be questioned. Policy makers may want to consider whether to restrict options and fill gaps in meaning, putting a stronger intervention in place.

Nonetheless, this work is not free from limitations. First, it is a snapshot of regulations at a certain point in time, while over time, national governments may issue pieces of legislation that can enrich, complement or clarify concepts and aspects that at the moment are troublesome. Therefore, a longitudinal analysis is desirable. Furthermore, this work does not consider the actual companies' behavior. Finally, it focuses on non-financial information only. Future research could extend the analysis to national regulations enacting the NFD requirements related to the disclosure of diversity information.

While this study focuses on formal harmonization, assuming that common rules may lead to similar company behaviour, future research could investigate if and how material harmonisation takes place in spite of differences between rules. For example, global competition could lead to companies' isomorphism. Moreover, studies could shed light on whether large undertakings having the parent

company based in a strong CSR country can lead to improved practices in subsidiaries based in countries less inclined to CSR. Finally, since regulation is a social process in which interested parties intervene to influence the regulator, further research could focus on understanding whether national regulations reflect the local needs as pushed forward by lobbying groups.