



# EVALUATING NATIONAL POLICIES ON CORPORATE SUSTAINABILITY REPORTING

UNITED NATIONS ENVIRONMENT PROGRAMME



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### Foreword

#### *Group of Friends of Paragraph 47*

Taking advantage of the uniqueness of our government-led international initiative, we aim at promoting a strong and ambitious public policy understanding and vision of corporate sustainability reporting at international, regional and national level. After a first publication addressing key questions raised by governments interested in the agenda of sustainability reporting (*Frequently Asked Questions on Corporate Sustainability Reporting*) and a first working paper on the status of sustainability reporting by state-owned enterprises and public agencies (*Walking the Talk - Leading by Example through State-Owned Enterprise/Public Agency Reporting*), the Group of Friends of Paragraph 47 (GoF47) is taking a major step further in its effort to support the implementation of Paragraph 47 of the Rio+20 Outcome Document through governmental action to promote sustainability reporting.

The member governments of the GoF47 share the common vision that corporate transparency and accountability are key elements of a well functioning market economy, and that sustainability reporting constitutes an essential leverage for the transformation of corporate practices and to ensure their contribution to sustainable development. The publication *Evaluating National Policies on Corporate Sustainability Reporting* provides in-depth insights into the key role of governments and other national authorities in facilitating this transformation.

Developed with UNEP's guidance and strong support, this publication is an important pioneering contribution to global debates, as it is the first study which undertakes an in-depth evaluation of current policy for corporate sustainability reporting in our member countries, as well as provides recommendations for policy makers in the process of designing national policies or considering the improvement of the current policy framework. Thanks to the diversity of GoF47 members' experience, the resulting recommendations can be applied regardless of a country's status of economic development or its regional context.

Since its creation, the GoF47 has been a space to exchange experiences and best practices, and *Evaluating National Policies on Corporate Sustainability Reporting* provides concrete support to this goal. More importantly, this publication offers the opportunity to share the progress we achieved with other governments and interested stakeholders at a global level in view of actively promoting a culture of transparency and accountability among business of all sectors. By promoting sustainability reporting together, we have the ambition to create value for all.

**Robin Edme**

*Chair of the Group of Friends of Paragraph 47*



### Foreword

#### *United Nations Environment Programme*

The past decade has seen a growing number of countries actively encouraging companies to report on their sustainability performance and impacts. In 2013, 45 countries had sustainability reporting related policies in place, an increase of 26 countries since 2006. This rapid evolution demonstrates a stronger recognition of the positive role of sustainability reporting in enhancing social and environmental accountability in corporate practices, and in addressing society's needs for transparency through qualitative and comparable reports.

This positive role was clearly acknowledged by the UN Member States in Paragraph 47 of the Rio+20 Outcome Document, which also highlights the need to develop models of best practice that can guide and improve disclosure of non-financial information. Evaluating National Policies on Corporate Sustainability Reporting highlights the crucial role that governments can play in advancing this practice. Governments have the capacity to create a favourable environment to foster sustainability reporting through diverse public policy instruments. These can include economy-wide or sector-specific disclosure requirements, diverse combinations of mandatory approaches and incentives to report voluntarily, and gradual dissemination of reporting practices by differentiating requirements according to company size.

This publication is a landmark in global research, as it constitutes the first comparative analysis of governmental action in this domain. It was developed through a collaborative process by the Group of Friends of Paragraph 47 (GoF47) and the United Nations Environment Programme (UNEP). It is meant to be a key resource for policy makers to understand the most suitable paths to introduce or enhance sustainability reporting in their country, by benchmarking their own approaches with those of leading Governments.

Looking towards the future, UNEP considers that sustainability reporting has the potential to play an important role in measuring the contribution of companies to the Post 2015 Development Agenda. In this context, UNEP is coordinating a global effort to identify measuring and reporting practices and therefore strengthen the quality of sustainability reports. At the same time, active governmental engagement in this area will be instrumental to monitor progress towards achieving a sustainable path for development in the coming decades.

UNEP therefore supports the efforts conducted by the Governments of the GoF47 in promoting and strengthening sustainability reporting in their countries and regions, as well as in assessing and sharing their experiences with all stakeholders. We trust that their achievements, as described in this publication, will inspire other countries to scale up efforts and invigorate governmental leadership in the global agenda of sustainability reporting.

**Ligia Noronha**

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# 1. Introduction

Following the 2012 UN Conference on Sustainable Development (known as Rio +20), the Group of Friends of Paragraph 47 (hereafter GoF47) was convened to contribute to the advancement of an international culture of corporate transparency and accountability through the key driver of corporate sustainability reporting.

Founded by the Governments of Brazil, Denmark, France and South Africa, the Group has since been joined by the Governments of Argentina, Austria, Chile, Colombia, Norway and Switzerland to promote corporate sustainability reporting through appropriate regulatory instruments. The aim is for sustainability reporting to become a widespread practice that facilitates a transparent, well-functioning market economy and accelerates the private sector's contribution to sustainable development. Moreover, sustainability reporting will help companies reap the competitive advantages of responsible and transparent business conduct.

In this report, five up-to-date examples of national public policies on sustainability reporting have been assembled, each of them highlighting valuable lessons for policy-makers worldwide. The examples, or case studies, have been drawn from GoF47 member countries, each of which brings a different history of experience with legislation to the table. The aim is to show how different approaches and instruments can be effective in developing greater transparency and accountability around organizations' sustainability performance. The case studies are from Brazil, Denmark, Chile, France and South Africa.

Whether designing new regulation or improving existing policy, these case studies offer good practice examples and inspiration for anyone involved in setting the right enabling regulatory environment for sustainability reporting within different national contexts.

The report also proposes a framework for evaluating national public policies on corporate sustainability reporting, incorporating a range of criteria and indicators of good practice. The framework is designed to assist policy-makers and regulators in identifying the key elements of an effective sustainability reporting policy.

The resulting case studies and framework therefore support the GoF47 in providing leadership and meeting the charter mandate, by sharing different experiences in building an effective and efficient regulatory environment of 'carrots and sticks' appropriate to different countries and contexts.

## Evaluating public policy

The global landscape of sustainability reporting is changing fast. Although many organizations today choose to report voluntarily, a growing number of governments and stock exchanges are introducing requirements for sustainability reporting and becoming important agents for change. In particular, government policy is emerging as a key driver for ensuring the increased corporate transparency and accountability – and by extension the corporate-led innovation and technology – that is required for progress towards sustainable development.

Governments can employ a range of policy instruments to facilitate activities towards this objective: they range from informational instruments (such as guidelines, training, resource databases, learning fora etc.) to legal instruments (such as laws and regulations) and financial instruments (such as financial incen-

A public policy is a social decision to regulate a certain activity. It seeks to address a perceived need by defining an objective, identifying inputs, monitoring outputs, assessing outcomes and evaluating impacts.

tives/subsidies or incentives in public procurement). This study is focused on legal instruments but incorporates how financial and informational instruments have been employed to design and support the implementation of policy.

Careful evidence-based (ex-post) analysis of different policy paths – based on good process – is fundamental to making the case for well-conceived new policy or for adjustment or reform of existing policy. Clarity of purpose, scope and application are fundamental factors for success in developing effective policy and regulation. Furthermore, the parameters of efficiency and effectiveness are critical for evaluating what makes a 'good public policy' on sustainability reporting.

But is introducing public policy relevant to achieving better sustainability reporting? There are several advantages to policy-making in this field: National public policy on sustainability reporting introduces a 'level playing field' of expectations; this in turn can lead to more efficient provision of consistent and comparable sustainability information that is tailored to the needs of the marketplace, policy-makers and broader society and upon which they can act.

It is also important to recognise the limits of policy. Even a good public policy is no panacea for limited or deficient sustainability reporting. Several case studies in this report highlight the achievement of increasing first the provision of sustainability information (incorporated into annual management reports or in separate sustainability reports) and over time the level of compliance with specific policy requirements. Yet the same policy-makers describe the on-going challenge of how to facilitate a reporting process that improves the quality of reporting and embeds sustainability considerations into corporate management and decision-making to a point where it really adds value to the company and its investors. In the end, that is perhaps not achieved through legislative rules – and it may indeed not be their objective; but policy-makers can always provide clear and comprehensive guidance to companies on how to move 'beyond compliance' and how different reporting frameworks can help ensure better quality of reporting.

### **Sustainability reporting and sustainability disclosure**

Different stakeholders have different information requirements, whether in the content or format of such information. Company managers need reliable information to measure, monitor and manage their sustainability performance. Employees need to understand how management is making choices that affect their terms and conditions of employment. Investors need to know if they can trust the company to give the expected returns on their investment. Consumers need clear and understandable product information to make choices. Civil society requires detailed narrative information to monitor corporate conduct. And governments need reliable information to enable them to assess the corporate tax base and understand key corporate statistics for public policy purposes.

Such diversity in information needs and underlying motivations does not mean, however, that it is impossible to find common disclosure grounds. Different disclosure approaches serve different categories of stakeholders. It may therefore be useful to distinguish between sustainability disclosure and sustainability reporting.

This report considers sustainability disclosure as the provision of any information regardless of its content, whether narrative or quantitative, and its format (interview, policy document, label, annual report, management report, indicators, etc.).

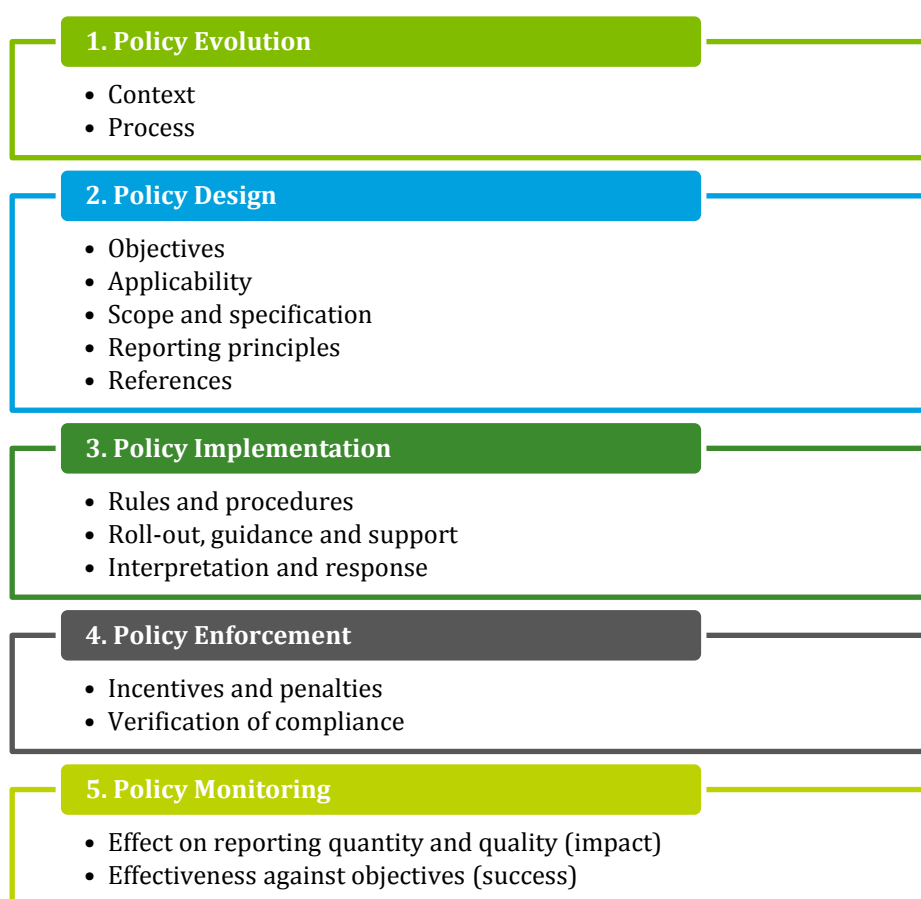
This report considers sustainability reporting as a sub-category of sustainability disclosure: Sustainability reporting combines (in a separate document or within the management report) extra-financial/non-financial quantitative data, supported and documented by narrative evidence.



## 2. A framework for policy evaluation

This project has developed a framework for evaluating national public policies on corporate sustainability reporting. Structured across five pillars of a policy 'lifecycle', the framework starts with the national (and if relevant international) context in which policy evolved and tracks the policy through its design, implementation and enforcement, ending up with the monitoring phase where its emerging impact can ideally be gauged.

*Figure 1: Framework for evaluating public policy on sustainability reporting*



The framework is supported by a tool for assembling an overview of a national public policy across each of the five pillars of a policy 'lifecycle'. The tool contains a set of questions (some descriptive, some normative) to help collate information for evaluating the relevance, effect and efficiency of each national public policy. The tool also contains guidance to each question to help review the available information as well as locate the type of information and possible sources to draw on for the evaluation. The complete tool for policy evaluation can be found under chapter 6.

Key questions to ask under each phase include:

### ***Policy Evolution***

What was the existing policy environment? Were there already other - policies related to corporate social responsibility (CSR) in place that the new policy could build on? What were the national drivers and pressures for increased transparency? Who were the key stakeholders involved in negotiating the policy content? What were the main points of contestation and how were they resolved?

### ***Policy Design***

Is the objective of the policy clearly described? Who does the policy apply to? Is the policy linked to other corporate reporting legislation? Is the policy complex and difficult to understand? Does it take a rules-based or principles-based approach? Does it define which sustainability issues to report on and how it should be done? Is it explicit in the requirements for reporters to be in compliance? Does it reference any international frameworks or regional/transnational policies?

### ***Policy Implementation***

How was the policy announced, and what kind of guidance was published to support the roll-out? Who helps reporters understand and interpret the requirements? How have reporters responded – with minimum compliance reporting or more comprehensive disclosure? What are the requirements for compiling and publishing the report? Have any analyses been undertaken to understand the costs of compliance?

### ***Policy Enforcement***

Does the policy have any built-in mechanisms to ensure compliance? Does it specify any incentives or penalties? Who verifies compliance? How is enforcement administered, where there is no mandatory verification of compliance (e.g. by a third party)? Have there been any cases of non-compliance and what were the consequences? Are there any grievance mechanisms or mediating bodies to handle disputes?

### ***Policy Monitoring***

What has been the effect (impact) of the policy on reporting – either estimated or known through e.g. studies? Is the policy on track to achieving its objectives?

Based on responses to these questions in the tool, a case study can be drawn up or the questions can simply be used as a checklist of issues for policy-makers to consider. Whether policy-makers are working in countries that have had policies and initiatives in place for some time, or in places that have adopted policies more recently, the framework will help in the design or improvement of a policy.

The case studies in this report have been compiled using the tool to test its application and whether it is fit for purpose. Minor adjustments have subsequently been made to the pilot tool to ensure that it is reasonable, complete and robust and can be used not only for internal policy-making purposes but also to facilitate the exchange of public policy experiences across the GoF47 membership who find themselves at different stages of experience with public policy on sustainability reporting.

## 3. Lessons learned and recommendations

This report presents five examples of how policy-makers and regulators in different countries have introduced requirements for corporate sustainability reporting. The five case studies examine the evolution and implementation of the following approaches:

**Brazil:** The mandatory reporting requirements issued by the Brazilian Electricity Regulatory Agency (Agência Nacional de Energia Elétrica, or ANEEL) for electric utility companies to disclose their sustainability performance.

**Denmark:** The mandatory 'comply or explain' requirement contained in the Financial Statements Act for listed and large companies in Denmark to report on their sustainability performance.

**Chile:** The mandatory requirement underway for state-owned enterprises to report on their sustainability performance and the (for now) voluntary comply or explain approach which will apply to listed companies in 2015.

**France:** The mandatory 'comply or explain' requirement in French law for sustainability reporting from listed and large companies.

**South Africa:** The mandatory requirements for sustainability (and integrated) reporting for companies listed on the Johannesburg Stock Exchange.

The five case studies in this report thus present a range of comparative insights into how policies on sustainability reporting are developed and implemented in different national historical contexts. The objective of the comparison is not to identify a perfect policy (because no such one-size-fits-all model exists); rather it is to present a consolidated assessment of the experiences and good practices emerging from the case studies, and collect a set of recommendations for those countries which are starting out on the path of public policy for sustainability reporting, as well as for those countries who have been reporting for longer and who may seek to improve their existing policies.

# 3.1 Lessons learned

The five case studies offer a range of insights. The main results emerging from a comparison of the case studies are as follows:

1. All policies have emerged from broad multi-stakeholder consultation, where objectives, opportunities and challenges have been discussed in a transparent manner, and levels of buy-in from different stakeholder groups have been sought. The resulting policy texts have thus been quite heavily negotiated, helping in each case to ensure its acceptance and adoption.
  - a. Multi-stakeholder processes have brought key representative stakeholders together to discuss the policy design, seeking to address both public (government), civil society and private sector interests and build consensus around the policy.
  - b. Multi-stakeholder processes have also helped to promote transparency and participation in the policy process through a range of methods and tools of engagement, from working groups to broader public face-to-face discussions and online consultations.
2. Most policies broadly define an overarching goal of wanting companies to engage more actively and positively with corporate social responsibility (CSR) and sustainable development concerns, implying that mandatory disclosure of corporate sustainability performance will help drive that. The objective is rarely specified in the policy text but rather in the related guidance documents as well as being defined in the multi-stakeholder consultation and broader public debate.
  - a. The Danish and French guidance material clarify the motivation for companies: their rationale is that by engaging more strategically with international sustainability principles and communicating this to the public, both the accountability and the global competitiveness of Danish and French companies will be strengthened.
  - b. The policy for the Brazilian energy utility industry highlights the important contribution of a socially responsible public service to the development of an environmentally sustainable, fair and economically viable society; holding such public services to account through mandatory disclosure is considered a critical mechanism for mitigating or reversing negative impacts.
  - c. The South African stock exchange listing requirements aim among other things to facilitate an increased availability of 'investment-grade' sustainability information data in the market place.
3. The case studies clearly show how public policy can be instrumental in increasing the number of reporting companies, and that over time the quality of reports shows a steady improvement.
  - a. But while legislative requirements might have achieved high rates of reporting, it remains a challenge for all to ensure sufficient quality of data and reporting.
4. The 'comply or explain' approach underpins the regulation in all but one of the case studies.<sup>1</sup>
  - a. In the cases of France, Denmark and South Africa, companies who fall within the scope of the legislation or applicable stock exchange listing requirements must report or explain why they are unable to do so. This is also the case for listed companies in Chile. For state-owned enterprises in Chile and for electric utility companies in Brazil, reporting is mandatory.

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<sup>1</sup>'Comply or explain' is an approach whereby a company must comply with a set of requirements, but if they do not comply, they must explain publically why that is so. The same idea may also be referred to as 'apply or explain' and 'report or explain'.

5. Reporters are encouraged –and in several cases required – to apply the principle of materiality, when determining what topics to include in their report.<sup>2</sup>
  - a. In the South African case, the Johannesburg Stock Exchange explicitly requires reporters to apply the principle of materiality.
  - b. The requirements for state-owned enterprises in Chile and for electric utility companies in Brazil to produce a sustainability report based on the GRI Guidelines will help ensure that the materiality principle is applied.
  - c. In Denmark and France, only the guidance which accompanies legislation recommends the use of the internationally recognised frameworks, to help companies assess the most relevant scope of their disclosure.
6. Each case study presents different scopes for mandatory disclosure, ranging from general topics to sector-specific indicators.
  - a. Danish companies are given substantial flexibility in selecting what to disclose, except for having to specifically address human rights, climate impacts and gender balance. Chilean state-owned enterprises must produce a GRI-based report, but there is no requirement for specific issues to be addressed.
  - b. French, Brazilian and South African policies propose a comprehensive list of environmental, social, economic, corporate governance issues to cover. In the case of Brazil, the ANEEL Accounting Manual contains sector-specific indicators which electric utility companies must address in disclosing their sustainability performance.
  - c. The new EU Directive on disclosure of non-financial and diversity information will require listed and/or large companies to disclose information on, among other topics, environmental, social and employee-related policies, human rights and anti-corruption, as well as diversity policies. See Box 1 for more information.
7. All policies which have existed for more than five years have undergone amendments over time, particularly on the scope of subject matters requiring disclosure.
  - a. The Danish policy has gradually clarified specific subject matters, such as human rights, climate impact and gender balance.
  - b. The requirements for Brazilian energy utility companies have also changed in both the scope and quantity of information, requiring further disclosure (similar to Denmark) on human rights, gender and environmental impact, and in the most recent amendment introducing compliance with GRI's guidelines.
  - c. The changes may be due to changes in governments (e.g. in Denmark) or updates in related governance codes (e.g. South Africa).
8. All policies contain an element of self-regulation but only in few cases enforcement through external audits to provide assurance.
  - a. For companies listed on the Johannesburg Stock Exchange in South Africa, auditing of integrated reports is mandatory. Similarly, French legislation contains mandatory verification of compliance, which is gradually being phased in – first for listed companies (2012), later for non-listed companies (2017).
  - b. Denmark has a built-in compliance mechanism which amounts to a limited check by a company's auditor of the consistency of sustainability reporting contained in the management report, but there is no requirement for verification of actual performance.
  - c. Neither in the cases of Brazil or Chile is there mandatory auditing for compliance.

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<sup>2</sup>The reporting principle of materiality asserts the notion that companies should focus their sustainability reporting on the most relevant industry challenges and opportunities. It is commonly understood to take a broader focus than financial materiality. Guidance can be found in e.g. the GRI Sustainability Reporting Guidelines, the AA1000 Accountability Principles Standard, the International Integrated Reporting Council's framework guidance, and in UNEP's publication *Frequently Asked Questions on Corporate Sustainability Reporting (2013)*.



9. The introduction of mandatory reporting for companies in France and Denmark was accompanied by similar requirements for specified financial institutions.
  - a. In Denmark, institutional investors, mutual funds and listed financial companies have been subject to similar reporting requirements as companies, since legislation was introduced in 2008. They must report how they apply any sustainability principles, standards or guidelines in their business activities.
  - b. In France, in addition to the regular sustainability reporting regulations, which apply to financial institutions, portfolio management companies and investment companies with variable capital are also required to provide information on how they integrate environmental, social and governance data into their investment and voting policies.

## 3.2 Recommendations to policy-makers

The GoF47 recommends that policy-makers and regulators take into account the findings from the case studies presented above. The following recommendations are based on the lessons learned (chapter 3.1) and may be relevant to consider when developing a new policy on sustainability reporting or strengthening an existing one.

### ***1. Understand the context of the policy***

*The GoF47 recommends that policy-makers and regulators map out the historical and current regulatory context for sustainability reporting.*

It is important to understand the historical as well as the current context and actors to be prepared for both support and concern from different stakeholders. The context is not only shaped by expectations around disclosure, but also the broader policy environment aimed at sustainable business practices. The GoF47 recommends policy-makers and regulators to chart existing disclosure rules which may overlap with the proposed scope of sustainability disclosures in order to clarify requirements and minimize confusion (legislation may already exist requiring companies to report on aspects of e.g. environmental or social performance).

### ***2. Understand the dimensions and dynamics of implementation***

*The GoF47 recommends that policy-makers and regulators recognize the different challenges faced by companies in different sectors and of different sizes which will affect implementation.*

Putting policy into practice is not a straightforward mechanical process; there are many points along the way where both authorities and reporters will encounter challenges that may affect the prospects for a policy's success. The GoF47 believes that establishing an on-going dialogue with stakeholders – both prior to and after issuing a policy – around interpretation and application across different companies (e.g. due to complex company structures or sector-specific characteristics) is an example of an important and effective activity to ensure successful implementation and the desired policy outcome.

### ***3. Set clear objectives for the policy***

*The GoF47 recommends that policy-makers and regulators set clear objectives for the policy.*

It is advisable to clearly explain in the legal text itself what the policy is designed to do, why it is needed, and how it intends to achieve its objectives. This can serve as the basis for creating the policy and enabling later evaluation of whether it has been effective. Collaboration across relevant governmental and regulatory departments, based on transparent and shared goals, is one way to help ensure consistency and co-operation across the policy 'life-cycle'.

### **4. Test the policy through multi-stakeholder consultation**

*The GoF47 recommends that the policy is tested through multi-stakeholder consultation.*

The GoF47 believes that the most successful policies have been based from the outset on consultation, communication and co-operation with a broad range of stakeholders, where the policy objectives and practicalities of implementation have been challenged and the final text has been negotiated, helping to ensure its acceptance and enactment. The GoF47 recommends that multi-stakeholder consultation includes as a minimum reporters, policy-makers, regulators as well as investors, business associations and other external users of sustainability reports.

### **5. Consider a combination of mandatory and voluntary measures**

*The GoF47 recommends that policy-makers and regulators consider a combination of mandatory and voluntary sustainability reporting.*

Mandatory and voluntary sustainability reporting are not exclusive but rather complementary. The GoF47 encourages policy-makers and regulators to consider each approach carefully, and if they conclude that a voluntary approach will not meet, or is not meeting, the policy goal, they might consider implementing a mandatory approach. The GoF47 further encourages policy-makers to consider a combination of the two approaches, striking a balance between the strong need for standardisation and comparability (typical of mandatory reporting) and the desire to allow industry and size flexibility and innovation in sustainability reporting (as provided for by the voluntary approach), both for listed and non-listed companies.

### **6. Consider gradual application**

*The GoF47 recommends that policy-makers and regulators consider a gradual application of requirements to companies.*

The GoF47 encourages policy-makers and regulators to consider and compare other countries' thresholds for which companies are to be included under the regulation, before setting realistic criteria for the policy application – see Figure 2 on thresholds for application of policy below. Smaller companies may need more time to adapt and prepare, while large corporations may already have experience in sustainability reporting prior to a new policy, given their global activities. Being mindful of different cultures and jurisdictions, they may consider whether the policy from the outset should apply to all companies of a certain size (whether public or private), or whether or not to gradually extend the scope of the policy application, starting for example with high-impact sectors, state-owned enterprises or the top set of companies on the stock exchange.

### **7. Apply a comply or explain approach**

*The GoF47 recommends that policy-makers and regulators adopt a comply or explain approach as a basis for policy.*

The GoF47 recommends that policy-makers and regulators consider the merits and drawbacks of principles-based and rules-based approaches<sup>3</sup> to sustainability reporting. This mainly translates into a decision between flexibility and prescriptiveness on the methodology and choice of topics to be reported, however,

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<sup>3</sup> A principles-based approach provides a conceptual basis for companies to follow by laying out key objectives of good reporting, while rules-based refers to a set of detailed rules that must be followed. The fundamental advantage of a principles-based approach is that its broad guidelines can be practical for a variety of circumstances, while the advantage of a rules-based approach is its ability to generate more reliable and consistent information that enables better comparison between companies.

both are not necessarily mutually exclusive. The model of 'comply or explain' is considered best practice, because it encourages transparency while allowing some flexibility for reporters, and it may help to remove uncertainties around purely voluntary reporting by requesting reporters to explain any omission of prescribed topics. The approach should encourage the application of the materiality principle, which is also considered best practice in sustainability reporting as it provides solid procedures for reporters to identify relevant topics and therefore to explain possible omissions. A hybrid of the two approaches may also be considered, for example combining principles with a pre-defined set of indicators (see Recommendation 9 below).

### **8. Ensure a focus on the material issues**

*The GoF47 recommends that policy-makers and regulators ensure a focus on material issues in reporting.*

The GoF47 recommends that a policy should explicitly encourage a focus on reporting of issues that are material to the company, to its 'economic' stakeholders (shareholders, investors, etc.) as well as to other stakeholders such as civil society.<sup>4</sup> The GoF47 believes that reporters should undertake a materiality-based review of all topics to ensure disclosure of relevant information. Reporting organizations should provide information on the methodology applied in the process and publish the outcomes of the review for determining relevance. Both policy-makers and regulators should consider explicit guidance on what is included in definitions of material information. They may consider introducing the concepts of risk and due diligence to help companies focus on and prioritise material issues on which to act and to report.<sup>5</sup>

### **9. Consider a minimum set of pre-defined indicators**

*The GoF47 encourages policy-makers and regulators to consider requiring a minimum set of pre-defined indicators to be reported.*

The GoF47 believes that by giving companies flexibility on the topics to be reported on, a less-prescriptive policy can positively contribute to the dissemination of sustainability reporting practices. At the same time, the GoF47 recognises that it can also lead to under-reporting or no reporting on topics considered relevant by certain stakeholders. Policy-makers and regulators may consider how to strike an appropriate balance between ensuring flexibility and avoiding under-reporting. The GoF47 suggests that they may consider requiring a small set of material pre-defined cross-sector sustainability indicators to be disclosed as a minimum.

### **10. Make use of international frameworks**

*The GoF47 recommends that policy-makers and regulators draw on existing and internationally recognised frameworks.*

The GoF47 recommends that policy-makers and regulators consider whether to require – or strongly encourage – companies to report in accordance with existing international standards and guidelines for sustainability reporting and to follow developments of international standards closely. This not only contributes to greater harmonisation of sustainability reporting and enables more consistency and comparability in companies' disclosure, it also provides a supporting structure for companies in their reporting processes.

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<sup>4</sup>For more information, please see UNEP's publication *Frequently Asked Questions on Corporate Sustainability Reporting (2013)*.

<sup>5</sup>The new EU Directive on non-financial reporting introduces a requirement for companies to report explicitly on risks and their due diligence procedures for identifying, preventing and mitigating those risks.

### **11. Ensure national disclosure needs are met**

*The GoF47 recommends that policy-makers and regulators consider a balance between local and international disclosure requirements.*

The GoF47 recommends that policy-makers and regulators evaluate how companies can apply international frameworks to their local context and ensure that disclosure requirements first and foremost reflect the priorities and context of the country in which they are reporting and the national stakeholders to whom they report.

### **12. Link disclosure to improving sustainability performance**

*The GoF47 recommends that policy-makers and regulators link increased sustainability disclosure with improved performance.*

The GoF47 believes that a policy should aim to raise both the quantity and quality of reporting but recognises that transparency is not an end in itself. It must lead to improved accountability and action. The GoF47 recommends policy-makers and regulators to consider how disclosure can help to improve organizations' sustainability performance, for example by strengthening organizational processes underpinning such disclosure, such as managing, measuring and monitoring the sustainability impact of the organization's activities.

### **13. Coordinate policy with stock exchanges**

*The GoF47 recommends that policy-makers and regulators coordinate a common direction for future reporting.*

The GoF47 encourages policy-makers and/or regulators to work with stock exchanges to assess the overall level of sustainability disclosure and to coordinate a common direction for the future.<sup>6</sup>Policy-makers and regulators should also consider how to bring the timing of sustainability reporting fully in line with filing requirements and dates for financial reporting (a possible option is to include sustainability information in the management report), in order to enhance the value of the sustainability performance data, especially for investors and broader economic stakeholders, such as shareholders, suppliers and customers.

### **14. Consider accountability mechanisms from the outset**

*The GoF47 advises that policy-makers and regulators consider how to build appropriate accountability mechanisms into the policy from the outset.*

The GoF47 recognises that while sustainability reporting itself can be considered an accountability mechanism, it is important for the policy design phase to address tools that discourage potential non-compliance (a possible option is to include sustainability information in management reports). These tools can vary from 'soft' recognition through public awards or rankings to sanctions and penalties for non-compliance, which e.g. may go as far as including fines. The GoF47 believes that at the very least, independent verification of the sustainability report or the inclusion of a sustainability section in a management report should be encouraged.

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<sup>6</sup>Stock exchanges may consider joining the Sustainable Stock Exchanges (SSE) initiative, a peer-to-peer learning platform for exploring how exchanges, together with investors, regulators, and companies, can enhance corporate disclosure – and ultimately performance – on sustainability matters.



### ***15. Set clear expectations for publication and accessibility***

*The GoF47 recommends that policy-makers and regulators set clear requirements for where and how sustainability information must be disclosed in order to ensure timely and accessible disclosure.*

Transparency is greatly enhanced when all stakeholders can refer to common and clear policy requirements for when and where they can expect to find corporate sustainability information. In addition, encouraging disclosure in regular time intervals can support the dissemination of a habitude of sustainability reporting. Such requirements should seek alignment of publication modalities and reporting cycles between sustainability and financial information (see Recommendation 13). Good practice is to allow for a company's financial and sustainability reporting to be contained within one management report. This may also implicate similar accountability mechanisms for both reporting components (see Recommendation 14). However, this should not exclude reporting on sustainability in a separate document (provided there is clear cross-referencing) nor be seen to impose a limit on overall sustainability disclosure.

### ***16. Consider how to set an example with public sector reporting***

*The GoF47 recommends that policy-makers and regulators consider how to increase sustainability reporting from the public sector.*

The GoF47 encourages governments and regulators to lead by example. The experiences from, for instance, state-owned enterprises and public interest organizations across the world<sup>7</sup> can provide valuable examples of how to proceed. Governments and regulators may also find guidance in *Walking the Talk: Leading by Example through State-Owned Enterprise / Public Agency Reporting* (2014) by the GoF47.<sup>8</sup>

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<sup>7</sup> One may for example refer to Denmark, where state-owned enterprises are required to report on social and environmental responsibility policies under the 2009 Danish Financial Statements Act.

<sup>8</sup>The publication is available for download at [UNEP's](#) and [GRI's](#) websites.

## Evaluating National Policies on Corporate Sustainability Reporting

*Figure 2: Thresholds for application of policy*

Brazil	Chile	Denmark	France	South Africa
<p>Mandatory for the electricity sector:</p> <ul style="list-style-type: none"> <li>- Distributors</li> <li>- Licensees (permit holders)</li> <li>- Transmitters</li> <li>- Generating companies</li> </ul>	<p>Mandatory for state-owned companies</p> <p>Voluntary for listed companies under a comply or explain approach (under implementation)</p>	<p>Mandatory for listed companies</p> <p>Mandatory for state-owned companies</p> <p>Other companies exceeding at least two of the following:</p> <ul style="list-style-type: none"> <li>- A balance sheet total of EUR 19.2 million</li> <li>- Net revenue of EUR 38.3 million</li> <li>- More than 250 full-time employees</li> </ul>	<p>Mandatory for listed companies</p> <p>As of 31 December 2011: Mandatory for non-listed companies with over 5000 employees and a turnover or total balance sheet above EUR 1 billion</p> <p>As of December 31, 2012: Mandatory for non-listed companies over 2000 employees and a turnover or total balance sheet above EUR 400 million</p> <p>As of December 31, 2013: Mandatory for non-listed companies over 500 employees and a turnover or total balance sheet above EUR 100 million</p>	<p>Mandatory for listed companies</p>

*Figure 3: Summary of recommendations*

<b>Recommendations to policy-makers and regulators</b>			
	<b>General risks</b>	<b>Writing new policy</b>	<b>Improving existing policy</b>
1	Policy is disconnected from broader context and legislative developments	Understand the context of the policy	Understand the context when assessing policy improvements
2	Policy is misinterpreted and misapplied	Understand the dimensions and dynamics of implementation	Critically review previous assessments of the dimensions and dynamics of implementation in order to better understand and address shortcomings in reporters' interpretations and application of requirements
3	Policy objectives are vague and/or inconsistent	Set clear objectives for the policy	Set clear objectives for the policy improvements, based on an evaluation of current objectives
4	Policy is not accepted and complied with by stakeholders	Test the policy through multi-stakeholder consultation	Conduct consultations to understand the policy's limitations in addressing stakeholders' concerns, expectations and/or reporting capacities
5	The reporting mandate is unclear and/or ineffective	Consider a combination of mandatory and voluntary reporting	Assess the clarity and effectiveness of the current reporting arrangement in view of potential changes
6	The application requirements are too tough and unrealistic	Consider gradual application	Consider whether the current application requirements need changing
7	Policy approach is too strict or too flexible to achieve reporting goals	Apply a comply or explain approach	Consider whether the current approach needs changing
8	Reporting does not address material issues	Ensure a focus on the material issues	Understand how current disclosure requirements may be failing to address issues that are material to stakeholders
9	Under-reporting or no reporting on issues that stakeholders consider relevant	Consider a minimum set of pre-defined indicators	If a minimum set of pre-defined indicators exists, consider its revision based on an assessment of possible shortcomings (such as clarity in the definition of indicators, or reporters' actual capacities to gather necessary information, among others)

## Evaluating National Policies on Corporate Sustainability Reporting

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10	Lack of framework to guide companies and enable consistency and comparability in reporting	Make use of international frameworks	Understand how international frameworks are being used in order to promote them suitably
11	Requirements do not sufficiently reflect national disclosure needs	Ensure national disclosure needs are met	Evaluate the possible gap between requirements and national disclosure needs in order to ensure the latter are met
12	Transparency is the only goal	Link disclosure to improving sustainability performance	Consider whether disclosure is sufficiently linked to improving sustainability performance
13	Inconsistent and/or uncoordinated reporting requirements for listed companies	Coordinate policy with stock exchanges	Associate stock exchanges to an evaluation of current requirements and jointly explore options for improvement
14	Policy is not enforced and non-compliance has no consequences	Build in accountability mechanisms from the outset	Consider if the policy contains sufficient accountability mechanisms
15	Publication practices do not ensure timely and accessible disclosure	Set clear expectations for publication and accessibility	Assess the efficiency of publication and accessibility requirements in view of potential changes
16	Criticism that public sector is not held to same standards for transparency and accountability as private sector	Consider setting an example with public sector reporting	Explore opportunities to improve public sector reporting

### ***Box 1: The EU Directive on disclosure of non-financial and diversity information***

On 29 September 2014, the Council of the European Union adopted a Directive on disclosure of non-financial and diversity information for certain large companies. This Directive amends the 2013 Accounting Directive on the preparation of annual and consolidated financial statements. Its objective is to increase the transparency and improve the performance of large European companies on environmental and social matters. It is estimated that 6.000 companies in the European Union will fall under its scope.

According to the new measures, large (more than 500 employees) public interest enterprises\* will report on environmental, social and employee-related, respect for human rights, anti-corruption and bribery, and diversity matters. The statement will also include a description of the policies, outcomes and the risks related to these topics. Where a company does not pursue policies, it will be required to explain why ('report or explain').

The Directive is not prescriptive on the reporting framework to be used to disclose, however, companies are encouraged to rely on one of the internationally recognized instruments such as the Global Reporting Initiative (GRI) Framework, the UN Global Compact Principles, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, ISO 26000, the ILO Tripartite Declaration of principles concerning multinational enterprises and social policy and European Eco-Management and Audit Scheme (EMAS).

The Directive entered into force on 6 December 2014. From the entry into force, Member States have a maximum of two years to transpose it into national law. The European Commission will review the effectiveness of the Directive in 2018, and, among other things, it may consider enlarging the scope and the possibility of including a country-by-country reporting requirement on profits, taxes paid on profits and public subsidies received for each country (EU and not-EU) of operation.

\* Art. 2 of the 2013 [Accounting Directive](#) defines 'public-interest entities' as: listed companies, credit institutions, insurance undertakings, and others defined by Member States as public-interest entities.

The Directive can be accessed here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&qid=1421170320518&from=EN>



## **4. Case studies**

# 4.1 Brazil

*In 2006, the Brazilian Electricity Regulatory Agency implemented mandatory annual reporting on social-environmental responsibility for Electric Energy Companies. It has been a frontrunner for other reporting developments underway in the country.*

## 1. Policy evolution

In Brazil, there is no official national policy or strategy to encourage the publishing of sustainability reports, although several attempts at policy have been made. While efforts at a national policy are currently held up in the Brazilian parliament, the country nonetheless has a history of various initiatives around sustainability reporting, from industry- and state-level requirements, to listing requirements on São Paulo stock exchange.

Because of this, Brazil is increasingly developing a context of acceptance and encouragement that can support the development of a national policy.

To this end, a Working Group on Sustainability Reporting was established in July 2014, coordinated by the Ministry of the Environment of Brazil. The Working Group consists mainly of public and private institutions that have a central role in the implementation of sustainability reporting in Brazil.<sup>9</sup> The purpose of this Working

Group is to set out guidelines for the Federal Government to follow in developing a national strategy to promote integrated sustainability reporting.

Meanwhile, one of the frontrunners has been the electricity sector and the Brazilian Electricity Regulatory Agency, ANEEL.

Navigating through a long list of normative and regulatory frameworks, and recognising sustainability as a fundamental criterion for the continued provision of electricity, ANEEL issued a requirement in 2006 for all the electric energy companies to produce an annual sustainability report.

The electricity sector in Brazil remains under pressure from a range of stakeholders to demonstrate their social and environmental responsibility. The sector's role as an engine of economic development must be balanced with the social and environmental impacts occurring through the construction of hydroelectric plants, the operation of power plants etc.

Given the challenges of the sector, ANEEL believes that the sustainability report can be an important instrument to demonstrate the policies and actions for social responsibility that are specific to the sector, both as a service provider and as an industry that invests in energy efficiency and technology to secure the long-term energy needs of the country.

Through the sustainability report, the sector is able to demonstrate its contribution to the development of a society that is environmentally sustainable, socially just and economically viable, by incorporating the concept of a socially responsible public service.

While the roots of government requirements for the electricity sector to publish information go back to 1950 (Decree No. 28525 and subsequent

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<sup>9</sup>The Working Group includes the Ministry of the Environment (MMA); The National Electrical Energy Agency (ANEEL); Ministry of Finance; Brazilian Commission of Integrated Reporting Follow-Up/BNDES; BM&F BOVESPA; Carbon Disclosure Project (CDP), Brazilian Business Council for Sustainable Development (CEBDS); Sustainability Study Center of the Getúlio Vargas Foundation(Gvces); Brazilian Bank Federation (FEBRABAN); Brazilian Institute of Corporate Governance (IBGC); Global Reporting Initiative (GRI); The Institute of Independent Auditors in Brazil (IBRACON); and the Central Bank of Brazil.

amendments), ANEEL stepped up requirements in 2001 with Resolution No. 444/2001, which established the Accounting Manual of Public Provision of Electric Energy (Manual de Contabilidade do Serviço Público de Energia Elétrica - MCSPEE). This manual was designed according to the Accounts Plan of the Electricity Sector with instructions regarding the dissemination of accounting, financial, administrative and social responsibility data, among other information.

ANEEL's requirement for disclosure was a way of complying with several other existing pieces of legislation, including Law N° 8987 from 1995 which describes among other things the rights and obligations of electricity users to receive proper information "in order to defend individual and collective interests" and to bring to the attention of government any irregularities regarding the service provision.

By the end of 2006, and based on public consultation, ANEEL introduced a mandatory requirement for electricity companies to produce an annual report on their social-environmental responsibility, in Order No. 3034/2006. The Order introduced a new report model titled 'Report on Social-Environmental Responsibility of Electric Energy Companies'.

At the same time, ANEEL also approved a series of amendments to the Accounting Manual, which became the Accounting Manual of the Electricity Sector (Manual de Contabilidade do Setor Elétrico - MCSE).

In 2012, a reformulation of the Accounts Plan was initiated, which led to Normative Resolution No. 605, from March 11, 2014, which is expected to come into force on January 1, 2015. This resolution provides a further update of the Accounting Manual of the Electricity Sector to match the new requirements of the Public Provision of Electric Power Accounts Plan.

Therefore, from 2015 social-environmental reporting must take place alongside other mandatory disclosure, such as the Financial Statement, report of Fiscal Council, and the report of the independent auditors.

## 2. Policy Design

### *Scope of application and publication*

The requirements today apply to all concession and license holders in the areas of distribution, transmission and generation of electric energy. The companies obligated to comply are 63 distributors, 38 licensees (permit holders), 132 transmitters and 60 generating companies.

As of 2015, the requirement will include all companies granted authorization to operate in the electric energy sector, with the exception of self-producers and independent producers that use electric energy as an input for their productive process totally or partially.

The report must be submitted electronically to ANEEL by April 30 of the following financial year, to be made available and published by ANEEL on its website. The companies may publish the report on their respective sites as well.

### *The requirements*

The Accounting Manual of the Electricity Sector (MCSE) provides for a minimum standard for disclosure, and companies can then choose to produce a report based on broader frameworks, such as the GRI, provided they meet all the indicators and information requirements in the Accounting Manual.

The scope of disclosure is rules-based, defined by a set of requirements for narrative reporting as well as specific requirements in the form of tables with direct data to be included in these reports.

The reporting must apply a set of guiding principles, as follows:

"The Report should adopt as minimum principles: transparency, relevance, integrity, clarity, precision and regularity, which express the corporate commitment towards delivering accountability to society on actions carried out in promoting citizenship (social inclusion); continuity and quality of services to consumers; concerns with the life standards of their employees; optimizing the use of natural resources in order to preserve the integrity of the planet for future

generations; and the adoption of the best corporate governance practices, creating value for shareholders".<sup>10</sup>

Furthermore, the Accounting Manual specifies a set of indicators specific to the Brazilian electricity sector. This list of indicators coincides with some of those in the GRI's guidelines and sector supplement, but also goes beyond the GRI guidance, in particular regarding quantitative data.

The objectives pursued are multiple:

- To define strategic priorities that express the values of socio-environmental and economic responsibility
- To enable a balanced planning of economic, social and environmental aspects
- To monitor the performance on these three dimensions of sustainability
- To identify corrective actions for any deviations
- To accumulate data and performance information comparable over time, and
- To enable dialogue with stakeholders to evaluate the performance.

### *Structure of disclosure*

Both the disclosure requirements currently in effect and the new report model applicable from 2015 are, in their regulatory framework, structured in five parts, called dimensions; they require descriptions of activities and performance indicators (quantitative and qualitative), in order to provide a broad, consistent and consolidated view of relevant and particular issues to the electric sector, besides other general rules of socio-environmental responsibility.

The five dimensions are: 1) Overall Dimension; 2) Corporate Governance; 3) Economic and Financial; 4) Social and Sectoral; 5) Environmental.

In each dimension, the company must set out its considerations in a descriptive and quantitative way. The company must present the motivations that led it to establish policies and projects or

programs that deal with subjects covered in each dimension.

Under the corporate governance dimension, the Accounting Manual requires that companies make explicit:

- whether the company guarantees tag-along rights for their preferred shares
- its position on adopting a code of conduct as well as of norms and standards relating to corporate social responsibility, such as SA8000, OHSAS 18001, ISO 14000 and NBR 16000
- inclusion of and support to global initiatives such as Agenda 21, Global Compact, Millennium Development Goals and Kyoto Protocol
- its position on international principles such as the Sarbanes-Oxley Law and OECD's principles of Corporate Governance.

Besides demonstrating that it institutionally deals with socio-environmental responsibility issues, the organization may highlight which actions it has taken to minimize the possible social impacts already caused and other actions taken to predict the impacts for future activities.

Performance indicators must be presented in each of the five dimensions, classified according to their economic, social, sectoral or environmental relevance, enabling comparisons among data related to behaviour, an activity, a process, or performance level, within a specific time and according to parameters, levels and distinct patterns.

The indicators of economic, social, sectoral and environmental performance must first be reported in a narrative way, aiming at disclosing the general context and wider interest issues, to enable a better understanding and interpretation of quantitative indicators.

The Accounting Manual allows companies to distinguish between those indicators that monitor performance and those indicators that verify the process. The manual includes quantitative indicators, of objective nature, and qualitative indicators, of subjective nature; descriptive or normative nature; simple or compound; absolute or relative; financial-economic and socio-environmental; corporate, organizational or sectorial; management, of public or private use; local, national or global; sustainable development; human development; and quality of life.

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<sup>10</sup> ANEEL, Manual de Elaboração do Relatório Anual de Responsabilidade Socioambiental das Empresas de Energia Elétrica, 2006.

The quantitative and qualitative indicators are organized in tables, in a self-explanatory way, and in general, they refer to performance results from the past two years. In some cases, they are required for more than two years, along with targets, to allow analysis and comparisons over the periods requested.

The qualitative part refers to analysis, graphs and explanations that the company must provide and that enables the evaluation of results, benefits, improvement and/or socio-environmental performances related in particular to:

- company management, products, services and productivity
- competitiveness, as an opportunity to offer new products or services and attract new customers
- relationship standards with customers, employees, suppliers, community, shareholders and government agencies
- impacts generated and corrective actions; and
- strengthening the company's reputation.

Finally, companies must describe the learning process within the organization, as a result of implementing projects and strategies. This description should focus on:

- factors that drove success
- main difficulties and challenges encountered to implement programs and projects
- assessment and balance between the results/benefits generated and the financial costs and/or other nature involved
- comparison between results/benefits expected and achieved
- contribution to training of technical competence and capacity building of its employees.

In the event of difficulties reporting on actions related to each of the dimensions, as well as the data requested by the suggested indicators, ANEEL recommends that the information be registered as “not applied” or “not available.”

### *Use of other frameworks*

The Accounting Manual explicitly refers to other reporting standards and sustainability indexes in the global context, such as:

- Global Reporting Initiative – GRI
- Dow Jones Sustainability Index (DJSI)
- Accountability – AA1000

as well as national initiatives, including the Annual Social Report requirements issued by IBASE, the Brazilian Institute of Social and Economic Analyses, which are also mandatory for concession holders and permit holders. In addition, companies may use other sets of indicators available, such as those issued by the Ethos Institute.<sup>11</sup>

Both the disclosure requirements currently in effect and the new report model applicable from 2015 cover the three types of GRI standards disclosures: i) Strategy and Profile; ii) Management Approach; and iii) Performance Indicators.

The 2015 version of the Electricity Sector Accountability Manual explicitly requires companies to adopt the GRI framework as a basis for their annual sustainability report, and the report will be accepted as compliant with ANEEL's requirements, as long as it follows the specified requirements of performance indicators in the Accounting Manual.

## 3. Policy implementation

The roll-out of the reporting requirements and the Accounting Manual has been and remains the responsibility of ANEEL.

Over the years, a range of activities have taken place in order to implement the requirements and ensure that companies follow them and keep improving the quality and quantity of their reporting.

For example, public consultations have been held with a range of stakeholders through calls for comment (issued through various official communications as well as through a forum on ANEEL's website) and workshops presenting the

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<sup>11</sup>For example, Ethos Indicators on Corporate Social Responsibility, issued in 2007 by the Ethos Institute of Business and Social Responsibility in Brazil.

amendments to the Accounting Manual for discussion.

In implementing the requirements, certain indicators have emerged as being at times difficult to report on, because they are new to companies, or too generic, or requiring a conceptual adaptation. ANEEL considers these to be positive hurdles to jump and values the report development process as an important instrument for learning.

Several analyses by ANEEL of the reports published so far have identified a number of issues and challenges remaining in ensuring good quality reporting across all companies. For example:

- Companies not completing all the required fields, especially those relating to Environmental Indicators
- Non-integral adherence to the model
- Lack of uniformity
- Absence of indicators and fields relating to new sector policies
- Concession holders are at different stages of engagement with principles around social responsibility. For example, much variation between companies around the use of Codes of Conduct, corporate governance practices, adherence to the UN Global Compact etc.

Companies experiencing difficulties in elaborating their report from the minimum content required can seek assistance from the Superintendent of Economic and Financial Supervision/ANEEL staff to help with their questions and difficulties.

### 4. Policy enforcement

Reporting in accordance with the Accounting Manual of the Electricity Sector is mandatory. Failure to comply with the reporting obligation is framed by Normative Resolution no. 63 of May 12, 2004, which regulates penalties applicable to concession holders, permit holders, authorized companies and other agents of the electricity sector.

There is, however, no specific requirement or process to verify compliance. ANEEL requires that the reported information is organized and systematized by companies through internal controls that allow for supervision by the regula-

tor as well as future verification by independent auditors, when determined by ANEEL.

Nonetheless, a small number of companies that have failed to publish a report as required have been fined.

### 5. Policy monitoring

Based on ANEEL's information and supported by a number of studies, the effect and impact of the mandatory reporting requirement for electricity companies has been a higher level of compliance, since companies now increasingly recognize the importance of disclosing information about their social and environmental responsibility. To that end, the policy has achieved its primary objective of disclosure.

For example, an analysis from 2011 of the sustainability reports of 60 companies of the electric sector published from 2006 to 2009 found that complying with ANEEL's requirements brought an increase, on average, of environmental disclosure by 20%.<sup>12</sup>

In addition, a number of companies are moving 'beyond compliance' with ANEEL's requirements towards more comprehensive reporting, particularly based on the GRI framework. The same study found that the additional voluntary information using the GRI framework increased, on average, the environmental disclosure by 10.6%.

Other research observed that, for the most part, where GRI indicators have a corresponding indicator in ANEEL's Accounting Manual, the level of utilization is high. 35% of the indicators of this group were used by all the companies and 83% of the indicators were used by more than 80% of the companies. When looking only at the indicators exclusive to the GRI (in other words, not required by ANEEL), only 3% of the GRI indicators were used by all companies, while 32% were used by more than 80% of the utilities.<sup>13</sup>

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<sup>12</sup>Braga et al. 2011. *Fatores Determinantes do Nível de Divulgação Ambiental no Setor de Energia Elétrica no Brasil*. Advances in Scientific and Applied Accounting. São Paulo, v.4, n.2, p.230-262.

<sup>13</sup>Camargos et al. 2014. *Analysis of the sustainability reporting initiatives of electric utilities in Brazil*. Indústria, Vol.42, No.1,



This indicates that GRI and ANEEL indicators together have a high level of use, while the exclusive GRI indicators are less used by companies. It suggests the influence that mandatory reporting has on the reporting on GRI indicators. Moreover, the use of GRI guidelines helps companies meet their obligation with the regulatory agency and, at the same time, gives them the opportunity to report more fully on their sustainability performance. ANEEL indicators, in turn, are adapted to the reality of the Brazilian electricity sector, and present a useful framework to shape the sustainability reporting practices of Brazil's electricity companies.

This case study therefore shows that the combined use of the two frameworks can bring about a positive effect on sustainability reporting. ANEEL's model undergoes a constant process of improvement, as the sector searches for more ethical, transparent and sustainable business processes.

The challenge remains to ensure reporting of high quality and comparability by all the electricity companies across all five dimensions required by the ANEEL Accounting Manual.



### ***Box 2: Reporting in Brazil***

Below is a list of initiatives that favour wider transparency in Brazil.<sup>1</sup>

#### **Governmental laws and regulations**

##### ***Instruction 480***

Instruction 480 from 2009 was issued by the Securities and Exchange Commission (CVM), aiming to raise the bar of transparency in public companies by setting new disclosure requirements. Securities issuers are obliged to provide information on an annual basis that ranges from board practices to risk management policy, and the main risk factors that impact the organization.

##### ***Resolution no. 4.327***

This resolution, from 2014, requires financial institutions and other institutions authorized by the Central Bank of Brazil to implement the Social and Environmental Responsibility Policy (PRSA). The PRSA contains principles and guidelines for socio-environmental actions in business and relationship with stakeholders. The PRSA has established guidelines in strategy actions in its governance, including a proposal to manage socio-environmental risks that financial institutions are exposed to. One important contribution to this resolution is that PRSA and its action plan have to be approved by the executive board following the board of directors. This ensures proper integration with other policies of the institution. The PRSA may provide a context that encourages the Central Bank to require financial institutions to disclose a CSR report.

##### ***Solid Waste National Policy***

Law no. 12.305 from 2010 requires that all entities that generate identified types of hazardous waste (e.g. from mining and industrial activities, construction, transport systems, health services and sanitation), develop and report a solid waste management plan. Provisions on mandatory information disclosure include: a diagnosis of the waste produced or managed by the organization and the environmental liabilities it has incurred; waste management operational procedures; preventive and corrective actions; and reduction and recycling goals. Complete and updated data is to be provided to the competent body of the state administration and is taken into account either during environmental licensing or by the competent municipal authority.

##### ***Resolution no. 254/2012/V/I***

Issued by the Environmental Agency of Sao Paulo (CETESB), this Resolution from 2012 obliges companies from a series of industry sectors to submit an annual greenhouse gas inventory for monitoring the developments in emission levels and the results of mitigation actions. According to the rule, scope 1 and 2 emissions must be reported and, for the time being, ABNT NBR ISO 14064-1-GHG, the GHG Protocol or similar accounting methodologies are accepted. The information disclosed on the inventory may be verified by CETESB or a third party, at the discretion of the Agency.

##### ***Resolution no. 64***

Resolution no. 64 from 2012 issued by the Environmental State Agency (INEA) establishes mandatory GHG reporting for obtaining environmental licenses in the state of Rio de Janeiro. The rule applies to the oil and gas, mining and metals, energy and fossil fuels, and chemical sectors, among others. It determines the GHG Protocol to be the accepted accounting methodology and requires companies to annually report on scope 1 and 2 emissions. Prior to submission, the GHG inventory must be verified by a qualified entity.

### ***Box 2: Reporting in Brazil (continued)***

#### ***Resolution no. 65***

This Resolution from 2012 establishes additional criteria for environmental licensing. Since December 14, 2012, companies from the sectors listed above, in the state of Rio de Janeiro, are obligated to present a GHG emissions mitigation plan when obtaining or renewing licenses, or within 90 days of the date of the first GHG inventory in the case of new ventures. The plan must inform how much, when and how the company intends to reduce its emissions. The working group responsible for the ruling will evaluate the achievements made by the organization, considering the annual GHG inventories and the implementation of the actions initially set out.

#### ***Bill no. 3613***

This bill from 2008 requires state-owned companies, mixed companies, concession holders and permit holders, as well as private companies which have received public financial support, to disclose a CSR report, including information on labour practices, and community and environment-related investments. If the bill is enacted into law, non-compliant companies will not only be subject to fines but also denied access to public procurement, tax incentives and public credit. The proceedings of this bill have been paralyzed in the House since 2008.

#### ***Bill no. 289***

This bill from 2012 requires listed companies to disclose a CSR report. The proceedings of this bill were at an advanced stage but have since been paralyzed in the House.

### **Other regulatory bodies**

#### ***BM&F BOVESPA rules***

BM&F Bovespa rules for differentiated listing segments stipulate that, as of May 2011, issuers must file and disclose the company's Code of Ethics, in which it states the core values and principles that underpin obligations toward all parties.

#### ***BM&F BOVESPA recommendations***

In 2012, the São Paulo stock exchange recommended that listed companies provide information on whether they publish a regular sustainability report, or explain why if they do not. In its mission to inspire best practice in transparency and management, BM&F BOVESPA believes that the implementation of the report-or-explain model will encourage listed companies to report on environmental, social and governance issues, which will improve sustainability actions and create greater transparency for investors.

#### ***Pronouncement no. 13***

Published by the Brazilian Steering Committee for Information Disclosure to the Market (CODIM) in 2012, this pronouncement sets up annual report guidelines, in order to foster best practices in reporting, information disclosure, and corporate governance. It stipulates that the annual report should include information on financial, social, environmental and governance aspects of the business, including an overview of its past performance, main risks and opportunities, and the corporate strategy in place to address these items in the short, medium and long-term. Regarding sustainability, it also recommends including a GRI Content Index, and information on adherence to initiatives such as the UN Global Compact, and inclusion in sustainability indexes.

### *Box 2: Reporting in Brazil (continued)*

#### ***Pronouncement no. 14***

This pronouncement, from 2012, recommends that companies disclose information on the integration of key sustainability issues to their strategy, including Key Performance Indicators and goals, as a means of adding value to the business and the organization's stakeholders. It also advises the use of the GRI Guidelines, IIRC principles and BM&F Bovespa Sustainability Guidelines (Novo Valor: Sustentabilidade das Empresas) for such reports, as well as third party verification. According to CODIM, reports should be made as accessible as possible, on the Investor Relations area on the company's website, through the Periodic and Eventual Information (IPE) system, and other means which may be appropriate.

# 4.2 Chile

*Rapid growth in sustainability reporting has been primarily driven by market demand for companies to explain their social and environmental impacts. Regulation is catching up and formalising requirements for state-owned enterprises and listed companies.*

## 1. Policy evolution

In Chile, the real change emerged in 2012 after the Rio+20 summit, when the government initiated a multi-stakeholder working group to draw up a national policy on sustainability reporting, as part of a broader policy on sustainable development.

In this context, it is also important to mention the CELAC-EU meeting of January 2013, where all Latin American and European heads of state agreed to develop national action plans on CSR and promote sustainability reporting.

Due to this process, the Council of Social Responsibility for Sustainable Development was established in April 2013 as a proposal of the working group. Its members are various stakeholders from the public, private and civil society sectors, including business associations, network groups under the UN Global Compact and the World Business Council for Sustainable Development, trade unions and NGOs.

The objective was to create a space for discussion of how to design policies, programs and instruments that integrate economic, social and environmental issues and entrench the principle of public liability as cornerstones of sustainable development.

Since its creation, the Council has been working on the development of a “National Action Plan on Social Responsibility for Sustainable Development”. The main objective of the policy is to

facilitate the positive contribution of business to sustainable development through corporate social responsibility, as defined in Rio+20 Article 46. The first version of the National Action Plan was recently approved on 25 March 2015 and will be complemented with new initiatives over time.

## Sustainability Reporting Policy

A further driver to develop the public policy was the rapid rise of sustainability reporting by Chilean companies in recent years. According to a 2013 survey by KPMG, 73% of the 100 largest companies in Chile report on their sustainability performance – this is an increase of almost 50% in two years.

The Council established technical working groups, one of which was dedicated to Reporting and Corporate Governance. Additionally, the Council was tasked with drafting a public policy on social responsibility, which included sustainability reporting.

Much of the Council’s debate centred on three key questions:

- Should the reporting be mandatory or voluntary?
- Should the policy specify a reporting framework to be used?
- Who should be included in the scope of such policy?

## 2. Policy design

Chile took into consideration the experience of other countries, such as Sweden and Denmark, to build and benchmark its reporting requirements.

Many months of debate resulted in the following decisions:

- It was recommended that reporting be mandatory for all state-owned enterprises, with a

recommendation to use the Global Reporting Initiative (GRI) framework, although companies may choose any reporting framework. This mandate is under implementation.

- Reporting will be voluntary for all listed companies, under a 'report or explain' model.
- In principle, the regulation excludes small and medium enterprises. However, the Council considered that the policy should gradually evolve and include these enterprises as far as possible and in the most flexible way.

Therefore, the policy was designed to direct, firstly, state-owned enterprises towards enhanced transparency: All state-owned enterprises are expected to report (or be working on their first report) on their sustainability performance by the end of 2016. The policy does not spell out which specific issues must be addressed, but by suggesting the use of the GRI framework, it is expected that it will be followed.

Secondly, listed companies are encouraged to increase their reporting activities on a 'comply or explain' basis. This is in part because an estimated 50% of these companies (which include some of the largest enterprises in Chile) are already reporting on their sustainability performance, in some form or other. Indeed, some have done so for almost 15 years.

However, there is an expectation that the reporting of listed companies will progressively improve in both quantity and quality, and that by the end of 2016 these companies will be more transparent, not least in explaining why they – perhaps – cannot report on certain areas of performance.

Pursuant to this objective, the Superintendence of Securities and Insurance is currently in the process of modifying its Rule Number 341 to encourage listed companies to report to shareholders and the general public on policies and practices in matters of social responsibility and sustainable development. Listed companies will be expected to disclose whether directors have approved procedures to inform annually about social responsibility and sustainable development policies, including corresponding targets and progress towards their fulfilment.

To date, the policy does not provide any further detail on the specific topics to be addressed in

the sustainability report. Likewise, there are no particular presentation requirements, leaving to companies the decision to include the sustainability information in the annual financial report or to publish it as a separate report, and to disclose it in electronic or paper format.

### Underpinned by global frameworks

In general, the sustainability reporting policy draws on a number of international principles and guidelines. The main documents referred to in designing the policy are:

- The OECD Guidelines for Multinational Enterprises
- The UN Global Compact
- ISO 26000 (national guide: *Guía de Responsabilidad Social*)
- The ILO Tripartite Declaration on Multinational Enterprises and Social Policy
- The UN Guiding Principles on Business and Human Rights

As stated above, the policy suggests to report according to the provisions of the GRI framework) as well as to engage with these other internationally recognized instruments and initiatives to guide the organizations' efforts to embed sustainability principles into their business.

## 3. Policy implementation

In Chile, a governance body called SEP (System of Public Enterprises) will be responsible for the roll-out of the policy among those state-owned enterprises under its supervision. This body is currently developing draft legislation for this purpose. Then, the SEP will be responsible for raising awareness on the policy among state-owned enterprises and for the training needed to implement the requirements in order to ensure that these enterprises do in fact report and that they understand how to do so.

As stated above, the rate of reporting among listed companies is already at an estimated 50%, but the 'report or explain' requirement is nevertheless expected to require some enhancements to current reporting practices. The partnership with the Superintendence of Securities and In-

insurance is therefore expected to play a significant role in implementing the policy to ensure greater transparency around listed companies' sustainability practices.

### 4. Policy enforcement

All state-owned enterprises have received a government mandate to comply with the new policy. The SEP (System of Public Enterprises), will be responsible for ensuring the timely publication of sustainability reports by those state-owned enterprises under its supervision.

For listed companies, no decision has yet been made on any incentives to report, but it is expected that the new version of Rule Number 341 of the Superintendence of Securities and Insurance will represent progress in translating the 'soft law' of voluntary reporting into a mandatory requirement on a 'comply or explain' basis.

In terms of other enforcement mechanisms, the policy does not set out any further detail on how it will be administered to ensure compliance. It does not contain any requirements for verification, for example by a third party.

### 5. Policy monitoring

It is too soon to evaluate to what extent the policy is effective in facilitating the positive contribution of business to sustainable development through corporate social responsibility.

What is clear, however, is that the policy has emerged from an inclusive, multi-stakeholder consultation process, and that there has been no significant resistance from neither state-owned enterprises nor listed companies to the new requirements, be they 'hard' or 'soft'. This is a very positive starting point for ensuring long-lasting, effective policy-making on sustainability reporting. It also underlines the general status that the majority of the country's largest companies already report on their sustainability performance.

In many ways, therefore, it is the large companies in the market which have led the developments in sustainability reporting in Chile. The new national regulation is now seeking to formalise this activity, leading the way first of all with mandatory reporting for state-owned enterprises and anticipating a significant scaling-up for all companies.

### *Box 3: Chile's Council of Social Responsibility for Sustainable Development*

The Council of Social Responsibility for Sustainable Development was established in April 2013. An initiative led by the Ministry of Economy, in formal collaboration with four other ministries (Finance, Labour, Environment and Foreign Affairs), the main objective is to encourage the development of public policies related to social responsibility.

The creation of the Council is in response to Paragraph 46 of the Rio+20 Conference Report from June 2012 and the Santiago Declaration of CELAC/EU from January 2013, in which all presidents and heads of state of Latin America and the Caribbean committed to develop national action plans on corporate social responsibility, incentivise sustainability reporting and report back to their peers on a regular basis.

It is a multi-stakeholder body, established to act as a coordinating body between the various organs of the state, the private sector, unions and civil society. The Council provides a space for discussion and debate on policy, programs and tools. A key objective is to propose concrete measures and public policy actions to ensure effective integration of Social Responsibility in the growth strategy of Chile.

The National Action Plan on Social Responsibility for Chile's sustainable development is expected to be published by January 2015.

The founding document states that the Council shall consist of:

1. Director of Environment under the Ministry of Foreign Affairs
2. Director General for International Economic Relations
3. Chief of Natural Resources Division for Waste and Risk Assessment, Ministry of the Environment
4. Director, ChileCompra, a Public Procurement Agency
5. Director, Institute of Human Rights
6. Executive Director, UN Global Compact Chile
7. The OECD National Contact Point
8. A representative of the Minister of Labour and Social Welfare
9. A representative of the Minister of Economy, Development and Tourism
10. Three representatives of business associations
11. Two representative associations bringing together smaller companies and entrepreneurs
12. Two representatives of NGOs
13. A trade union representative
14. Two representatives from academia
15. Executive Secretary of the Board



## 4.3 Denmark

*Since 2009, Danish financial reporting law has contained a 'voluntary requirement' to report on sustainability. Five years on, the policy has achieved a positive effect on overall reporting levels, although quality of reporting remains quite variable.*

### 1. Policy evolution

In Denmark, requirements for the country's largest companies to report annually on their approach to social responsibility grew out of the Danish Government's Action Plan for Corporate Social Responsibility (CSR), launched in 2008. This Action Plan was based on a clear objective from government to strengthen Danish companies' competitive advantages in global markets through their profiles as responsible businesses contributing to 'responsible growth'.

The Action Plan articulated a stronger link between companies' CSR activities, their business strategy and their core competencies, promoting the concept of 'business-driven social responsibility' with a clear underlying economic rationale.

The Action Plan began shifting the political discourse from a common understanding of CSR as a voluntary effort by business and towards the concept of regulating CSR by law.

This shift in the policy approach came at a time when the global economic crisis made it politically less acceptable to impose new administrative costs on business. Yet, informed by the same economic crisis, a concurrent demand for increased transparency and accountability developed from especially civil society organizations in Denmark, who saw regulation as a critical lever.

The 2008 Action Plan for CSR set two overall goals for companies: to promote the application

of international principles and standards for CSR and to promote the integration of CSR in their core business strategy. Thus, any new regulation also had to be aligned with these two goals.

Led by the Ministry of Business and Growth, the 2008 Action Plan marked a move towards institutionalization of CSR. A survey at the time showed that while 77% of Danish companies worked with CSR principles in some way or other, only 55% of them reported on their activities. Mandatory reporting on companies' CSR performance was therefore considered an important step to encourage in particular large companies to communicate on CSR.

In fact, mandatory reporting on sustainability-related issues was actually not completely new to all Danish companies: In 1996, Denmark implemented a Green Accounting Scheme (revised in 2010) with two primary purposes: making information about large businesses and heavy polluters' environmental impact publicly available, as well as encouraging businesses to address environmental matters.<sup>14</sup>

The proposal for more regulation was (as is standard practice) subject to a hearing process involving a range of relevant stakeholders; these included the inter-governmental working-group coordinating governmental policy initiatives on CSR, alongside business, labour unions, NGOs and the general public.

The debate in Denmark generally reflected similar fundamental issues debated at the time (and continue to be debated) in other national and international contexts around CSR and sustainability reporting. For example:

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<sup>14</sup>Recently, the activity of environmental accounting and reporting has received renewed interest from the Government as well as companies working to develop new methods for environmental accounting and reporting. This has resulted in a pilot project on a methodology for producing an "Environmental Profit & Loss" account, which involves assessing the costs of environmental impacts across the value chain of a company.

- How should one balance individual businesses' competitiveness with the sustainability needs of broader society? How should one balance short-term vs. long term-interests? How can we promote the concept of shared value?
- What is the interdependence between financial and non-financial information? How does one know that non-financial reporting in fact creates value, e.g. in terms of strengthened business competitiveness?
- Should CSR remain a voluntary aspect of business or should it be regulated? How does one strike the right balance between obligations and flexibility, to allow companies to report according to their specific needs and circumstances?
- Should reporting on CSR be based on an indicator-based approach or a principles-based approach?

While recognising that such questions cannot all be resolved in one piece of legislation, they helped to shape the debate. The consultation resulted in the *"Act amending the Danish Financial Statements Act (Accounting for CSR in large businesses)"*, where Section 99a sets out the disclosure requirements. Act no. 1403 was adopted by Parliament in December 2008 and came into force 1 January 2009.

## 2. Policy design

The objectives of the policy are clearly stated in the official comments to the law and related guidance; they were to inspire businesses

- to engage more actively and strategically in CSR in line with international principles, and
- to communicate their policies and actions

in order to contribute to a more sustainable society and improve the international competitiveness of Danish trade and industry.

### A 'voluntary requirement' approach

The policy takes a principle-based 'comply or explain' type of approach to reporting: The starting point is for companies to state whether or not they have a policy / policies regarding their social responsibility. If they have not, they must report just that, and then they do not have to comply with the rest of the requirements. In fact, they are not obliged to explain their reasons for

not having a CSR or corporate sustainability policy but only to state clearly, in other words report, in case they do not have such a policy.

The objective of this approach has been to nudge those companies which have not developed a public 'position' on their social responsibility to do so.

Thereafter, those who have such a public position must proceed to report on three elements:

- **Policies:** The company's CSR policy or policies, including specifically human rights and climate (see below).
- **Implementation:** How the company translates its CSR policies into action, including any systems or procedures used.
- **Results:** The company's evaluation of what has been achieved through the CSR initiatives during the financial year, and any expectations it has regarding future activities and performance.

From the outset, Section 99a did not prescribe particular issues to be reported on, leaving this decision to companies themselves. A government change in 2011 meant a launch of a new national Action Plan for CSR, which included a proposal to amend the requirements in the Financial Statements Act to address two specific topics: a company's commitment to upholding human rights and to reducing their climate impact.

Therefore, in June 2012, Parliament adopted an amendment so that businesses in future must expressly account for these two topics, regardless of whether they are addressed in the businesses' CSR policies. If the topics are not included, the companies must explicitly declare this. The aim has been to encourage more companies to actively include these topics in their CSR-policies.

A further amendment – Section 99b – was implemented, building on the same model and effective from 1 April 2013, which requires companies to report on the gender balance at the highest governance level (typically the Board) and on policies to improve gender balance at lower levels of management. Again, the aim has not been to prescribe a particular quota but to encourage more companies to actively address the issue of gender balance.

The model of reporting on the three elements (policy, implementation and results) is in itself fairly simple. This relatively low level of complexity enables a high level of flexibility for companies to adapt their reporting to their specific context and priorities.

### Applicability

Section 99a and Section 99b of the Act applies to approximately 1100 listed companies and state-owned companies as well as companies exceeding at least two of the following three size limits:

- A balance sheet total of EUR 19.2 million
- Net revenue of EUR 38.3 million
- More than 250 full-time employees

In other words, it does not apply to small and medium enterprises, and subsidiaries are exempt from reporting, if the parent company does so on behalf of the entire group.

Section 99a and Section 99b requirements are fully integrated in the Danish Financial Statements Act, and in that sense are aligned with the regulation on financial reporting.

The same reporting requirement has also been introduced for institutional investors, mutual funds, and other listed financial businesses not covered by the Danish Financial Statements Act.

### Options for publication

Since Section 99a and Section 99b are part of the Financial Statements Act, companies are typically required to report on these two parts in the management review section of the annual report. However, the information can be published in several ways:

- as part of the management review
- as an appendix to the management review with a clear reference in the management review to the appendix
- as a supplement to the annual report with a clear reference in the management review
- on the company's website with a clear reference in the management review, and
- as a UN Global Compact Communication on Progress report (COP) or a Global Reporting Initiative (GRI) report with a clear reference

in the management review. (Investors may refer to a Principles for Responsible Investment, or PRI, report).

In other words, companies that prepare an independent report on their CSR / sustainability performance may attach this as a supplement to the annual report or publish it on the company's website, subject to some further requirements on e.g. format and timing of the publication.

If a company chooses to refer to a UN Global Compact COP or a GRI report, it is exempt (to a certain extent) from complying with the provisions on publication, as the form, content and publication in that case must comply with the rules that apply to these other reports. Although it is possible to include the information on CSR in other documents than the annual report, the documents in question must be available to users of the annual report at the same time as the annual report.

By making specific reference to e.g. the UN Global Compact and the Global Reporting Initiative (GRI), the Danish policy encourages companies to look for guidance in international frameworks and standards for sustainability, in line with the goal of the Action Plan and subsequent legislation.

## 3. Policy implementation

To oversee the new legislation, a dedicated CSR-unit was set up within the Danish Business Authority (DBA). With a strong business focus and being directly responsible for the Danish Financial Statements Act, the DBA is well positioned to drive the transparency agenda.

One of the DBA's activities has been to publish supporting material to help roll out and implement Section 99a and Section 99b. For example, the DBA has produced explanatory comments, introductions for supervisory and executive boards as well as practical guidelines and inspirational material to help companies understand and comply with the legislation. FSR-Danish Auditors (Denmark's trade organization of auditing, accounting, tax and corporate finance), has also published guidance material for its members to provide ongoing support with up-to-date online explanations.

A further outcome of the Action Plan for CSR was the establishment of the Danish Council for CSR to support and contribute to Danish companies' work on CSR. Acting as a consensus-seeking mechanism, the council consists of 17 members representing Danish business organizations, NGOs and civil society, local municipalities and trade unions. Furthermore, the Council includes observers from the Ministry of Employment, Ministry of Business and Growth, Ministry of Climate, Energy and Building, Ministry of the Environment and Ministry of Foreign Affairs. The recent amendments to the Danish Financial Statements Act have all been based on recommendations from the Council.

### Level of compliance

Since the legal requirement became effective in 2009, several studies have been undertaken to understand how reporters interpret and comply with the policy requirements. The assessments have found that the majority of the companies surveyed had made use of the guidance material published by the DBA and had found the guid-

Every year the best CSR reporting practices are honoured by the FSR-Danish Auditors and at a CSR Awards event. These yearly events highlight best practices and indicate how reporting is becoming more advanced and mainstreamed every year.

ance useful. Overall, the assessments show that only a very small minority of companies fail to comply with the law, and that reports are gradually improving in scope and quality each year.

However, there is still room for improvement in the quality and consistency of reporting. The biggest challenge for companies has proved to be ensuring consistency in reporting, in other words describing policies, initiatives and results. For example, many companies report about e.g. their environmental policy but not on its implementation or the results. Nor is it sufficient to

disclose a policy in one area, activities in another, and results in a third. In particular, it remains a challenge for companies to describe the results of their initiatives.

Furthermore, surveys show that most companies include their CSR report in the annual management report, while only a small number report via their websites or publish separate CSR reports. According to the companies themselves, they often (unsurprisingly) spend less time on reporting once the data collection and processing routines are in place. Several companies have used the DBA's guide as the basis for their reporting, and most prepare their reports themselves, without the assistance of consultants or auditors. Many also use other companies' reports as a source of inspiration.

Finally, results show that Danish companies increasingly apply an international framework of reference, such as the UN Global Compact or Global Reporting Initiative (GRI), when reporting on CSR. This indicates that CSR is seen as a framework condition for companies operating on global markets.

### Cost of compliance

A first year impact assessment concluded that companies' recurring costs depend on the type of reporting chosen and vary between EUR 871 and EUR 4,383 per company. While this may have reflected a higher administrative burden than initially expected, the assessment also concluded that companies generally reacted positively to the new reporting requirement, not least because they are free to decide on the form and content of their report.

Later surveys showed it is important to distinguish between first year costs and subsequent years' costs of reporting. The impact assessment after the second year found that, "Most of the businesses state that they spent less time on reporting than last year, as the procedures are now established. Most of the businesses also managed to complete the report without the assistance of consultants and auditors. [...] A few of the businesses thus respond that they did not find reporting to be challenging, as it has become a natural part of their work."

### 4. Policy enforcement

Because the reporting requirements are contained within the Financial Statements Act, they are subject to checking (though not mandatory assurance) by a company's auditor: The auditor's opinion on the CSR report is an integral part of the auditor's overall opinion on the management review, regardless of the form of publication the company chooses to use. If the company has chosen to publicise the legally required CSR report on the company's website or refers to its GRI or UN Global Compact reports, the auditor must check for compliance and consistency.

This enforcement mechanism is strengthened by the fact that penalties can be sanctioned in cases of non-compliance. For example, in June 2014, a penalty of DKK 75,000 (around EUR 10,000) was given to two auditors for a number of deficiencies, including not complying with the duty to comment on errors and omissions in a specific case concerning a listed company's reporting in accordance with Section 99a.

The Danish Act on Approved Auditors and Audit Firms (Act no. 468 of 17 June 2008) defines the conditions for approval and registration of auditors and audit firms, the conditions for the performance of audit assignments and the rules on public oversight of approved auditors and audit firms.

Overall, there is a constructive debate among companies, auditors and other interested parties on how to interpret the legislation: The model of reporting on the three elements of policy, implementation and results appears in itself to be fairly simple. Such a relatively low level of complexity enables a high level of flexibility for companies to adapt their reporting to their specific context and priorities. However, it also leaves much room for interpretation, particularly around its applicability across different company structures or what constitutes the minimum level of compliance with reporting requirements.

### 5. Policy monitoring

To evaluate the impact of introducing mandatory sustainability reporting for Danish companies, it is important to recognize that almost half of all large Danish companies were already reporting

some aspect(s) of their sustainability performance, prior to the introduction of Section 99a in January 2009.

Moreover, prior to introducing new regulation on non-financial reporting, the Ministry of Business and Growth had already produced a number of successful CSR initiatives in partnership with different stakeholders, including business associations.<sup>15</sup> Although Danish business associations support increased transparency, they are generally sceptical towards a regulatory approach to sustainability reporting. The success of concrete outcomes from these partnerships contributed positively to dialogue between stakeholders and to effective implementation of regulation.

The result is that five years after introducing the new regulation, a significant majority of large companies in Denmark are reporting annually on sustainability policies, their implementation and performance. Granted, there are still those companies who state that they do not have any policy or position on how and why sustainability matters to them, but this is a small number and declining fast.

While the long-term effect is not yet possible to fully assess, there is little doubt then that the policy and its 'comply or explain' type of approach has served as a positive incentive for large Danish businesses to move towards more openness and a strategically focused approach to CSR and reporting.

After several years of monitoring, studies have found that almost 100% of those required to report now do so, either independently through their own reporting or through their parent company. Less than 10% report that they do not work actively with CSR. In overall terms, the data show that the quality of the companies' sustainability reporting in the financial statement is steadily increasing, although the quality remains highly variable.

Research also suggests that there has been a gradual increase in management attention on

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<sup>15</sup>For example, the *CSR Compass*, a free online tool to help companies implement responsible supply chain management.



social responsibility, triggered in part by the fact that it has to be addressed in the annual management review. This may indicate that CSR is on its way to gradually becoming an integral part of the overall business strategies of companies, rather than a mere add-on, although the pace and level of management engagement remains quite variable.

Finally, the studies show that the legislation has been an important trigger for aligning sustainability reporting with international guidelines. Encouraging companies to report through a UN Global Compact COP no doubt contributed to the significant increase in the number of Danish companies signing the UN Global Compact – an estimated 30 companies were signatories in 2009, while five years later there are more than 300 Danish signatory companies.

Given that the policy objectives were to help ensure that companies work strategically with international CSR principles, and report regularly on their activities, it is fair to say that after five years, reasonable progress has been made in that regard. There is still some way to go before the largest 1100 companies in Denmark truly incorporate sustainability principles into their business strategy, but there is tangible evidence of the value of doing so from a range of large companies, some of which are highlighted in the box on case studies of Danish companies.

### **Incorporating international developments**

The Danish legislation explicitly encourages companies to apply international frameworks such as the UN Global Compact and the GRI, and many companies have now incorporated both frameworks into their activities, measurement and reporting.

While NGOs generally would have liked a more rules-based approach in Danish reporting legislation, companies generally praise the flexibility of the policy's 'voluntary requirement' which has served as a positive incentive towards reporting. The overall assessment of the Danish approach to reporting is positive, particular due to the high level of companies reporting on CSR (even if they do not always have activities to report on).

Challenges remain, however as there are still some companies that do not fully meet the legal requirements. Quality and consistency of reporting is also varied but appears to be improving yearly.

Reporting today under Section 99a shows that the most common issues reported on are a company's environmental impact, including its impact on the climate (as prescribed in the 2012 amendment), as well as social and human resources issues. Issues less commonly reported on include human rights, labour rights and anti-corruption.

At the end of the first year of reporting on the gender balance at the board and senior management level (as required in Section 99b), a survey has found that approximately 25% of companies have not yet complied with the requirements.

In view of the 2012 amendment to the Danish Financial Statements Act and the latest developments in the field of international CSR principles, gender balance, human rights and supply chain management can be expected to command more attention in future reporting. This is in part due to the development of the UN Guiding Principles on Business and Human Rights, but also the upcoming EU Directive on non-financial reporting.

The EU Directive in many ways resembles and builds on the Danish requirements in Section 99a and Section 99b of the Danish Financial Statements Act. But it is worth noting that companies subject to the EU Directive must disclose not only policies and outcomes on a range of specified matters such as environmental, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors; they must also provide information on risks. Finally, companies are obliged to give a clear and reasoned explanation, if they do not pursue any policies on these matters. This is a noteworthy difference from the Danish requirements. It is estimated the EU Directive will affect approximately 50 Danish companies, once it enters into law.

### **Box 4: CSR reporting as a driver for responsible growth – case studies from Danish companies**

#### ***Active commitment systematised***

“The statutory requirement has been a facilitator for us to bring together everything we already do and to set goals to enable us to monitor our progress. Reporting has increased transparency and made us more certain that we are moving in the right direction. It has also made us better able to measure and live up to the requirements we set for ourselves. One of our targets is to be CO<sub>2</sub> neutral by 2020, which is a very ambitious goal for a company that has highly energy-intensive production processes.” *Jakob Thøisen, CEO of Palsgaard*

#### ***A good tool for stakeholder dialogue***

“We can see very clearly that customers appreciate how our dialogue with them is not just a question of service and quality. We must also be able to offer cooperation on minimising the environmental impact of their transport operations. The CSR report therefore adds an extra dimension to the dialogue with our customers, and our efforts to increase our market shares. We can also see how we can better convince our institutional investors when we can document that we have the required policies and processes.” *Jens Bjørn Andersen, CEO of DSV*

#### ***Integration with financial data***

“We have built up a system that in many ways resembles the one we use to gather and process financial data, and that can be handled in China, the USA and Mexico. This is primarily raw data that employees register, such as meter readings. They do not have to consider conversion factors and units, since the system takes care of this”. *Poul Erik Stockfleth, Group Finance Manager, NKT*

#### ***International alignment***

“The statutory requirement has influenced our Global Compact reporting, as well as our knowledge sharing with our clients, partners and suppliers, with whom we are in ongoing dialogue on the progress of our CSR activities. When we advise our clients in such areas as human rights and anti-corruption, it is highly relevant that we can draw on our own experience.” *Randi Bach Poulsen, Managing Partner of BechBruun*

#### ***Reporting as a differentiation parameter***

“Thanks to our CSR reports, many now regard us as one of the CSR frontrunners in our industry. For example, we have seen how more and more of our customers, large and small, gain inspiration from our reports. We have also been contacted by investors with questions about the reports, such as our anticorruption and supplier management processes. So we believe that CSR has become a differentiation parameter for us.” *Michael Tønnesjørgensen, CFO, D/S Norden and Chairman of the company's CSR Executive Body*

#### ***Flexibility is important***

“We appreciate being able to describe how we are unique, and wish to retain the personal touch that is also reflected in our corporate slogan: Heart working people. This uniqueness should not be allowed to get lost in requirements to streamline reporting to such an extent that it becomes hard for companies to show how they are different. It is important to us that we are a company that is visible in the market.” *Jakob Thøisen, CEO of Palsgaard*

Source: [http://csrgov.dk/file/407519/csr\\_reporting\\_responsible\\_growth.pdf](http://csrgov.dk/file/407519/csr_reporting_responsible_growth.pdf)



### Box 5: Organization of public oversight in Denmark



#### Danish Business Authority (DBA):

- Agency under The Ministry of Business and Growth
- Administration of the audit legislation delegated to DBA by ministerial order
- Supervisory Authority for Auditors and Audit Firms since 2008
  - Responsible for the supervision of e.g. quality assurance, investigations, disciplinary sanctions
- Political responsibilities include
  - Preparation of legislation
  - Member State representative in EU in audit matters (AuRC)
- Supervisory responsibilities include
  - Approval and registration of auditors and audit firms, withdrawal of approval, continuing education, investigations

#### Disciplinary Board on Auditors:

- Set up by DBA with responsibility for
  - Complaints about misconduct by auditors and/or audit firms
- Sanctions include warning, fines, withdrawals

#### Supervisory Authority on Auditing:

- Set up by DBA with responsibility for
  - Ensure the statutory quality assurance review is performed in accordance with the audit act
  - All approved audit firms and auditors employed with the audit firm are subject to statutory Quality Assurance Review

#### Auditors Commission:

- Set up by DBA with responsibility for
  - Professional examination
  - Assist DBA in the administration of the audit act, incl. requirements for continuing education

# 4.4 France

*After more than three decades of evolution, French legislation has achieved a high rate of compliant reporting. The challenge remains how to encourage better quality and comparability.*

## 1. Policy evolution

The practice of regulated sustainability reporting in France dates back to 1977, when Parliament passed the first law requiring companies with more than 300 employees to publish a form of social accounts, based on a list of 100 performance indicators. Over the next 20 years, this requirement gradually extended to parts of the public sector, including local authorities.

Not satisfied with the level of corporate transparency achieved, the Parliament passed the Law on New Economic Regulations (*Loi sur les Nouvelles régulations économiques – the NRE*) in May 2001, with effect from February 2002. Article 116 of the NRE targeted companies listed on stock exchanges by introducing a new article into the Trade Code, thus requiring listed companies to disclose both financial and sustainability information in the same management report.

The first part of Article 116 concerned disclosure of corporate officers' salaries and benefits. The second part required companies to report on how they were taking social and environmental consequences of their activities into account and on corresponding measures. These were defined by a list of 30 topics.

### Drivers for increased transparency

While Article 116 of the NRE has been instrumental in increasing both the number of reporting companies as well as the quality of sustainability reporting, however, it presented a number of shortcomings. It only targeted listed companies and did not specify whether information was to be disclosed at the level of companies'

subsidiaries or at a consolidated holding level. Despite its mandatory character, it did not include sanctions and mechanisms for the verification of compliance. Furthermore, its formulation intentionally gave companies great flexibility on which topics to report on, which positively contributed to the dissemination of sustainability reporting practices but also allowed for under-reporting of several topics.

These shortcomings of Article 116 were recognized at different levels by various groups of stakeholders. NGOs were a major voice, advocating for increased transparency through a more prescriptive legislation that would target a larger number of companies and increase the number of topics addressed in sustainability reporting.

The call for change in legislation also came from investors, including venture capital funds, who sought more and better reporting to help evaluate risks in their portfolios, and from specialist rating agencies who were evaluating risk on their behalf.

### Multi-stakeholder negotiations

The next policy development emerged from a major multi-stakeholder dialogue known as *Grenelle for the Environment*, convened in 2007 by the Government to develop a roadmap towards a more sustainable economic model in the face of the global financial crisis. With widespread public approval, the dialogue gathered 40 state representatives, local authorities, employers and employees (represented through unions) as well as NGOs.

While NGOs argued for greater transparency from a wider range of enterprises as well as sanctions and penalties for non-compliance, employees were more cautious; they welcomed better disclosure of social information internal to the company but also saw potential risks to their employment arising from increased disclosure of e.g. environmental impacts, which might restrict their company's activities.

Employers engaged actively in the dialogue, primarily to prevent too restrictive regulation from being developed. On the one hand, employers recognized that a flexible framework could bring about competitive reputational advantages. On the other hand, they were concerned over an increased administrative burden and related costs of reporting sustainability information, particularly if the legislation was extended to include small and medium sized enterprises.

Reporting on the sustainability performance of subsidiaries abroad would constitute a major complication, given the associated costs and the diversity of social and environmental contexts in which said subsidiaries evolve. And finally, certain topics could entail risks for companies if reported on, such as disclosure of industrial secrets or the average level of wages among different employee categories which could fuel social demands.

Thus, by July 2009 a planning law was passed that required the Government to prepare concrete legislation on the issues raised in the dialogue around sustainability reporting. The resulting Article 225 of Law no. 2010-788 on the *National Commitment for the Environment* was adopted by Parliament in July 2010, replacing the previous NRE legislation. The promulgation received significant specialised media coverage, not least due to the historical background of the *Grenelle for the Environment* process. Article 225 amends article L225-102-1 of the Trade Code, which constitutes the new sustainability reporting requirement in France, together with Article 225's implementation decree no. 2012-557 of 24 April 2012.

## 2. Policy design

### Policy objective

Although the policy text itself does not describe its objective, the multi-stakeholder dialogue called on companies to engage more directly with sustainable development objectives, not least because it was in the companies' own self-interest through potential competitive advantages.

In the new policy embedded in the Trade Code, this objective was reflected in a series of compromises:

- While the scope of topics to be reported on was increased to include areas such as corruption and human rights, the need for flexibility was preserved through the application of the 'comply or explain' principle, which still demands a justification for any omission. In addition, the legislation only lists topics to be reported on instead of prescribing specific indicators (it is left up to the company to develop those).
- By including non-listed companies in its scope of application, the legislation significantly increases the number of enterprises required to report, though it excludes small and medium sized enterprises by setting the lower boundary at 500 employees. It also distinguishes between reporting obligations of listed and non-listed companies.
- Reporting boundaries are clearly addressed to differentiate between the holding company and its subsidiaries. The reporting scope is restricted to companies operating in France, conceding that there may be some difficulty in gathering information from foreign subsidiaries.
- A mandatory external, independent audit was introduced, but there are no sanctions apart from the reputational risk stemming from an external auditor's negative evaluation of the company's report.

### Scope of issues to report

The Trade Code mandates reporting on a company's social and environmental impacts, both internal and external to the company, on a 'comply or explain' basis.

It provides a series of topics, divided into three categories: social information, environmental information and information on societal commitments for sustainable development (the latter especially with regard to local communities). Companies must report on subject matters relating to their activities, but can choose to exclude a number of items under the condition of providing a valid justification.

The listed topics are not indicators, thus leaving room for interpretation and giving reporters a

choice of measurement. The list of topics builds upon the requirements of the previous article 116 of the NRE law, which it has extended from 30 to 42 topics. Only listed companies must report on all 42 topics, while all others are only required to report on 29 subject matters.

The topics to be reported are written in an understandable language. Nevertheless, it has been pointed out that the formulation of topics and the absence of indicators may not provide enough guidance to the user. It might therefore be simplicity, not complexity, which presents a barrier to the quality of the report. These issues are nevertheless counterbalanced by the extensive development of guidance materials.

### Alignment with global frameworks

Among the guidance materials are useful documents showing the alignment between French legal requirements and internationally recognized CSR reporting frameworks, such as GRI Guidelines, UN Global Compact, ISO26000, OECD Guidelines for Multi-national Enterprises and EFFAS Key Performance Indicators.

A company may choose to follow an internationally or nationally recognised reporting framework or an internally developed methodology, as long as neither conflicts with the requirements of the Trade Code. The alignment tables in the guidance give a clear picture that the French legislation is compatible with international standards.

The list of topics to be reported on by listed companies explicitly includes measures to promote and respect a number of fundamental ILO conventions ratified by the French state.

On the other hand, the French legislation does not make any explicit reference to other national policies or instruments relating to sustainability, CSR, corporate governance, environmental policy, health and safety or corruption. The exception is the reference to the European Eco-Management & Audit Scheme (EMAS), as explained in the section on Policy Enforcement below.

### More companies required to report

Article 225's implementation decree increased the number of companies required to report. The policy applies primarily to all listed companies as well as any non-listed company falling under the scope of the Trade Code.

But it also applies to credit institutions, investment and financial companies, cooperatives and agricultural cooperatives, mutual insurance companies and French non-profit funds managing collective professional insurance contracts (*instituts de prévoyance*), provided these companies have more than 500 employees and a turnover or a total balance sheet over EUR 100 million.

Subsidiary companies are required to disclose sustainability information in their own management reports, as soon as they fall under one of the above categories. This concerns all French companies, including French subsidiaries of foreign groups. However, subsidiaries are granted an exemption, if the parent company provides both consolidated sustainability information at group level as well as detailed information for each of its subsidiaries falling under the scope of the Trade Code. In that case, subsidiaries must indicate in their own management report, how the reader can access their sustainability information in the parent company's report.

Excluded from reporting are limited liability companies, private limited companies, general partnerships, property investment companies and joint-interest organizations.

## 3. Policy implementation

### Gradual phasing in of compliance

In order to allow companies to prepare for compliance, the new requirement of the Trade Code was introduced gradually, becoming mandatory for different sizes of companies between 2012 and 2014:

- As of December 31, 2011 for listed companies, as well as non-listed companies over 5000 employees and a turnover or total balance sheet above EUR 1 billion;

- As of December 31, 2012 for non-listed companies over 2000 employees and a turnover or total balance sheet above EUR 400 million;
- As of December 31, 2013 for non-listed companies over 500 employees and a turnover or total balance sheet above EUR 100 million.

A company must report on compliance with the Trade Code and its performance on the selected topics within its management report. In other words, the requirements for compilation, presentation and publication are contained within the Trade Code, and therefore there is no need for added specifications.

However, over the years a range of supporting materials has been developed by sectoral stakeholders, employers' unions and consulting firms to assist with the implementation of Article 225.

In particular, the website of the National Platform of Global Actions for Corporate Social Responsibility, also known as the CSR Platform<sup>16</sup>, centralises guidelines and publications to support reporters with interpretation on an ongoing basis.

### Response from reporters

Generally, the companies falling within the scope of Article 225 possess a good level of understanding of legislative obligations. The majority of them provide sustainability information for most required topics. Shortcomings tend to stem from the broad formulation of these topics, allowing companies to choose the nature and type of indicator that is most easily accessible. In line with sustainability reporting challenges at international level, a company can therefore be considered to be compliant by providing a low quantity and low quality of information (or justification for any omission), without necessarily going into a detailed description or performing a thorough materiality assessment.

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<sup>16</sup> The CSR Platform is a multi-stakeholder platform created in June 2013 by the Prime Minister with the aim of discussing CSR issues and providing recommendations. It is composed of public institutions, corporations, professional associations, trade unions, expert and civil society organizations. It is divided into four working groups, of which the second working group focuses on the improvement of corporate transparency and governance, including through sustainability reporting.

As mentioned above, the legislation itself may not provide enough guidance to the user, resulting in reports of varying quality and comparability among companies.

Take, for instance, the topic "Measures undertaken to protect or develop biodiversity": The Ministry of Ecology found in a 2010 assessment that the indicators provided were mostly qualitative and hard to compare between companies. Other topics, such as waste management, tend to be reported in a more standardized manner.

On the other hand, almost 60% of CAC40 companies reported on external partnerships with civil society organizations. Such activities are rather limited in time and space and may not provide a clear vision on challenges for the company and its impacts on the environment.

### Levels of compliance

Since the new article L225-102-1 of the Trade Code came into effect, several studies have examined the extent to which reporters are complying with the new legislation.

A 2013 study by KPMG looked at compliance with Article 225 among the sustainability reports from 34 CAC40 companies. Most companies provided information on social items and societal commitments, either at the level of the entire company or for a restricted number of subsidiaries. Furthermore, the data on societal commitments for sustainable development, especially with regard to local communities, was where reporters provided the most complete responses (73%). Most of the answers in this section were qualitative.

On the other hand, the study found environmental information to be in shorter supply: Almost half of the companies provided incomplete answers or responded for only a part of their activities or subsidiaries, while a third of the companies did not report on all the environmental topics, as data was either not available or the company justifiably considered the topic non-relevant to the company's activities. The environmental information is the only area where all of the companies studied provided a valid justification when omitting a legally required item.



Overall, and despite shortcomings, it appears that the general level of compliance among CAC40 companies is satisfactory, with a significant majority of companies in the study providing comprehensive or partially complete answers on all subject matters (85% for social data, 68% for environmental data and 91% for data on societal commitments).

A 2013 study by Deloitte found similar results among SBF120 companies, which include all CAC40 companies and a selection of 80 additional stocks listed at Euronext Paris. This study therefore provides an additional perspective on the level of compliance for slightly smaller companies. It found that most companies provided quantitative or qualitative information on the three subject matters covered by the legislation: 85% of companies reported on social data (13% did not, without any justification), 68 % on environmental data (15% did not, without any justification) and 80 % on societal commitments for sustainable development (15% did not, without any justification).

In other words, the data most easily compiled and reported by companies – of large or medium size – is on social commitments and social data rather than environmental data. But even then, almost half of the companies subject to the Trade Code could not report on all social data topics for all their operations.

Moreover, and with the exception of some particularly virtuous companies, both surveys indicate that the current understanding of sustainability reporting under the Trade Code appears to be driven by conformity to the legislation, rather than utilizing the reporting process to reflect and steer corporate strategies and internal policies.

### Estimated cost of compliance

In 2011, the French government issued an estimation of the costs of compliance with the requirements of Article 225, reported in the table below. Although there is no legal requirement for external verification of compliance, the costs were also included. The results suggest that the cost of reporting and verification increases almost geometrically with the size of the company workforce.

## 4. Policy Enforcement

The legislation does not include any built-in penalties or sanctions for non-compliance. There can, however, be an incentive to strive for compliance internally in the company, not least because the Trade Code already provides concerned shareholders with legal rights to pursue a company not in compliance.

### Compliance mechanisms

There are no specific legal sanctions for non-compliance with sustainability reporting requirements, but only sanctions for non-disclosure of the company's management report which includes both financial and non-financial information. Indeed, shareholders must approve the management report. Failure to provide the management report entails the cancellation of the general assembly of shareholders (articles L.225-121 and L.225-100 of the Trade Code). In addition, the president, general director and administrators as well as the members of the management board and of the supervisory board can face six months of imprisonment and a fine of EUR 9000 if they fail to submit the manage-

**Table 1: Estimated Cost of Compliance**

Size of company by number of employees	Cost of creating report (EUR)		Cost of having report verified (EUR)	
	Reasonable estimate	High estimate	Reasonable estimate	High estimate
500-999	17 000	33 300	7 200	11 000
100-4999	30 300	61 600	11 000	18 000
5000+	197 000	357 000	30 000	100 000
Evaluation for CAC40 companies			60 000	200 000

ment report to the general assembly (articles L.242-10 and L.242-30 of the Trade Code). Finally, shareholders may file a lawsuit requesting disclosure of the management report (articles L.238-1 and L.225-115 of the Trade Code).

### Enforcement process

So while the legislation does not include any built-in penalties or sanctions for non-compliance, it does however impose mandatory verification of compliance by an independent third party. The absence of mandatory verification was considered a significant shortcoming in previous legislation, though a number of companies underwent such audits on a voluntary basis at the time.

The new reporting legislation therefore introduced mandatory verification of compliance for all companies falling under the scope of Article 225, to be performed by an external and independent third party for no more than six years in a row. This verification has been a legal obligation for listed companies since December 31, 2011 and will be extended to all non-listed companies, mentioned in the policy design section, after December 31, 2016.

The auditor can be a financial auditor or a sustainability expert, but the auditing organization must be accredited by COFRAC (the French Accreditation Committee) or by any other accreditation organization which signed the EA (European co-operation for Accreditation) multilateral agreement. An exception applies to companies voluntarily complying with the European Eco-Management & Audit Scheme (EMAS). In this case, the external auditor can be accredited by the EMAS regulation, and the signed audit statement within the audited company's annual report can substitute COFRAC- or EA-compliant verification.

Nevertheless, an EMAS accredited auditor may only verify the company's sustainability report regarding environmental topics. The verification of information on social criteria and societal commitments still remains the responsibility of a COFRAC- or EA-compliant auditor. This poses the question of whether it is relevant for a company to call in an additional auditor for the sole verification of its environmental information.

The procedure for an external auditor to verify compliance is set out in an implementation decree of June 14, 2013. Despite the temporal gap between the adoption of Article 225 and the approval of this decree, external verification was already common practice among companies prior to June 2013.

Despite mandatory verification by an independent third party – and the theoretically applicable penalties and sanctions described above – there are no reported cases to date of companies fined for non-compliance. This might stem from stakeholders lacking knowledge about avenues of legal recourse, given that penalties and sanctions are not directly addressed in the sustainability reporting legislation. Developing indicators to link financial and non-financial information would be a major step towards improving legal liability of sustainability reporting.

## 5. Policy Monitoring

Article 116 of the NRE law was instrumental in increasing the number of reporting companies as well as the transparency and quality of sustainability reporting up to 2010. An evaluation by the Financial Markets Authority (AMF) in 2013 found that significant improvements were brought in by the new legislation, Article 225, albeit with opportunities for further progress.

### Effect of the policy

Firstly, a better definition of the reporting scope between a holding and its subsidiaries has been drawn up. It is positive to observe that over 80% of sampled companies disclosed information at the group as well as its subsidiary levels. The

Given that the French sustainability reporting legislation is based upon a 'comply or explain' approach, there are currently no grievance mechanisms specifically targeting the roll-out of sustainability reporting requirements.

AMF noted that the reporting scope is usually conceived on a consolidated basis, although 25%



of the companies do not clearly state the scope in the management report. At the level of individual companies, this scope can even vary from one dataset to another.

The second positive impact emerging is the apparent increase in reporting of quantitative indicators on extra-financial information, with 14% of sampled companies introducing new indicators compared to 2012. Nevertheless, while the indicators are mostly comparable over time at the individual company level, they remain diverse and are difficult to compare across different companies and sectors. At the same time, the measuring methodology for one same indicator can differ among two companies.

For instance, almost every CAC40 company provides information required under the topic “Absenteeism from work”, but some of them only take into consideration absences for medical reasons, while others might integrate parental leave, work accidents and/or strikes. Some topics are rarely addressed and mostly with a qualitative approach, such as “Measures undertaken to protect or develop biodiversity”. Nonetheless, a few topics such as waste management are addressed rather well and overall comparable with quantitative indicators for similar companies operating within the same sector.

Thirdly, there is a generally high level of compliance in the strict provision of information on required topics, but certainly still room for improvement in terms of quality. A company can be a 100% compliant with the legislation, but provide information of mediocre quality for the reader to gain a real understanding on a topic and a perspective on its significance for the company. Materiality assessments remain a rare practice. Thus, items are omitted without strong justification and analysis, while others are extensively presented and described without having necessarily been identified as a major issue.

And fourthly, some stakeholders believe the importance of sustainability reporting legislation since 2001 to be such that most companies would not perform sustainability reporting in its absence. For instance, many companies no longer report on restructuring, since this topic was removed from reporting obligations under Article 225. Similarly, while it is now common practice to describe data collection and measurement methodologies, this was rarely done prior to the

introduction of mandatory third-party verification. For instance, only 50% of the CAC40 companies described their methodology in 2011, a figure which rose to 86% only one year later.

Finally, Article 225 requires that both financial and non-financial information be disclosed in the same management report, as did the NRE law. Over time, this model has partly inspired international reporting initiatives, which in recent years have seen the development of frameworks such as Integrated Reporting, <IR>. Yet, it also allows for the financial and non-financial components of the management report to be elaborated separately, so although they may be disclosed in the same management report, this does not mean that they are presented in an integrated manner. Indeed, the vast majority of annual reports present financial and non-financial performance independently from one another, which renders the task of understanding the linkages between them in terms of risks and opportunities very difficult. An increase in the development of environmental, social and governance indicators, qualitative or quantitative, and intra-enterprise trends in their utilization are still encouraging developments.

In view of the above, sustainability reporting currently seems to be mostly used to conform to a legislative obligation rather than to integrate sustainability information into the appraisal of long-term value and risks with a view to steering the company’s strategy and internal policies accordingly. This is of course a general observation, as there are a number of companies providing high quality sustainability reports, sometimes resulting from thorough materiality assessments, and which actively take into account social and environmental matters in their decision-making and strategies.

These elements pose the question of the quality of reported information and its relevance for investors as well as internal and external stakeholders. The French situation thus reflects current sustainability reporting challenges at global level.

### **Assessing the policy against its objectives**

The 2001 NRE law played an important role in promoting sustainability reporting practices and in encouraging companies to establish dedicated departments focusing on corporate social re-

sponsibility and/or sustainability reporting. Three years after the law was passed, most CAC40 companies provided sustainability information in their management reports. In 2007 the Ministry of Ecology observed that over 80% of companies made efforts to report on sustainability matters and in a number of cases even incorporated such information for the development of their strategies.

Almost 60% of France's 100 largest companies provided some degree of reporting on corporate social responsibility in 2008 and, under both the effect of the NRE law and the *Grenelle for the Environment* process, which aimed at improving the legislation, this proportion increased to 94% in 2011.

Several studies have concluded that the level of compliance with Article 225 by the vast majority of CAC40 and SBF120 companies is so far satisfactory, with only a very small percentage not in compliance. Most companies already provided

sustainability information in their management reports under the previous NRE law and therefore had extensive experience when the new legislation entered into force. CAC40 companies, in particular, seem to provide quantitative information more readily – perhaps not surprisingly, given the data collection and reporting systems that they have invested in building up over time.

Sustainability reporting in France has reached an advanced stage in terms of quantity of reporting companies and their conformity to legal obligations. In that regard, the country's policy on sustainability reporting can definitely be considered a success. However, there is still much room for improvement in terms of strengthening the quality and comparability of reported information, which would increase its value for corporate management and other internal stakeholders as well as investors.

### *Box 6: Topics to report on, according to implementation decree of Article 225*

#### **1. Social information**

##### **a. Employment**

- Total workforce and its distribution according to gender, age and geographic location
- Recruitments and layoffs
- Wages and their evolution

##### **b. Work organization**

- Working time organization
- Listed companies must also report on absenteeism from work

##### **c. Social relations**

- Organization of social dialogue within the company, especially procedures to inform and consult staff and negotiate with it.
- State of collective corporate agreements

##### **d. Health and security**

- Health and security conditions at the workplace
- Listed companies must also report on agreements signed with unions or other staff representatives with regard to health and security

##### **e. Training**

- Staff training policies in place
- Total number of training hours

##### **f. Equal treatment**

- Measures in favour of gender equality
- Measures in favour of employment and inclusion of people with disabilities
- Anti-discrimination policy

##### **g. In addition, listed companies must report on how they promote and respect fundamental International Labour Organization (ILO) conventions on:**

- Respect of the freedom of association and of the right to collective negotiation,
- Elimination of employment and professional discrimination,
- Abolition of forced or mandatory labour,
- Effective abolition of child labour.

#### **2. Environmental information**

##### **a. General environmental policy**

- Organization of the company to take into account environmental issues, as well as evaluation and certification procedures in this area
- Staff training and information activities on environmental protection
- Means allocated to prevent environmental risks and pollution
- Listed companies must also report on the amount of provisions and insurances for environmental risks, provided that such information causes no serious prejudice to the company in an ongoing legal dispute

### *Box 6: Topics to report on, according to implementation decree of Article 225 (continued)*

#### **b. Pollution and waste management**

- Measures for preventing, reducing or repairing releases into the air, water or soil which severely affect the environment
- Waste prevention, recycling and elimination measures
- How noise and any other type of activity-specific pollution is taken into account

#### **c. Sustainable use of resources**

- Water consumption and supply according to local constraints
- Raw material consumption and measures taken to improve use efficiency
- Energy consumption and measures undertaken to improve energy efficiency and use of renewable energies
- Listed companies must also report on soil utilization

#### **d. Climate change**

- Greenhouse gas emissions
- Listed companies must also report on the manner in which they adapt to the consequences of climate change

#### **e. Measures undertaken to protect or develop biodiversity**

### **3. Societal commitments**

#### **a. Territorial, economic and social impact of company's activities**

- Impacts relating to employment and regional development
- Impact on neighbouring or local populations

#### **b. Relationships with individuals or organizations interested in the company's activities, in particular associations combating social exclusion, educational institutions, environmental protection associations, consumer organizations and neighbouring populations**

- Conditions of dialogue with the above named organizations or individuals
- Partnership or patronage activities

#### **c. Outsourcing and suppliers**

- Consideration of social and environmental issues in procurement policies
- Listed companies must report on the importance of outsourcing, as well as whether and how the social and environmental responsibility of suppliers and subcontractors is taken into account

#### **d. In addition, listed companies must report on the fairness of their practices**

- Measures undertaken to prevent corruption
- Measures undertaken in favour of consumer health and security

#### **e. In addition, listed companies must report on any other relevant activities undertaken in favour of human rights**

# France: Socially Responsible Investments

*Law no. 2010-788 not only expanded the reach of legislation on reporting to companies; it also introduced substantial requirements for portfolio management companies to report in how they integrate environmental, social and governance (ESG) criteria into investment decisions.*

## 1. Policy evolution

In France, Socially Responsible Investment (SRI) has been addressed in law since 2001. Two laws have encouraged the integration of social and environmental criteria into investment policies of the Public Pensions and Employee Savings Reserve Fund: Law 2001-152 of February 19, 2001 on employee savings and Law 2001-624 of July 17, 2001 establishing the Fund.

Law no. 2010-788 introduced a major innovation targeting investors, which is the obligation for portfolio management companies and investment companies with variable capital to report on the integration of environmental, social and governance (ESG) criteria in their investment policies. Known as Article 224 which amends article L.214-12 of the Monetary and Financial Code, it emerged in part from the context of the global financial crisis and the realisation that out of EUR 2,360 billion in total assets managed by French portfolio management companies, socially responsible investment (SRI) represented only EUR 30 billion in that year (1,27%).

Despite the development of SRI funds by a number of these companies since the late 1990s and

the existence in 2008 of 63 portfolio management companies commercializing the so-called Undertaking for Collective Investments in Transferable Securities (UCITS) as SRI, a Senate report from 2009 highlighted that there was no “shared doctrine to determine which of them actually adopted a relevant approach”. In fact, existing legislation did not address UCITS and alternative funds, which are often aimed at retail investors. Thus, the report called for legislative standardisation of transparent disclosure on those UCITS which integrate ESG criteria.

While the amendment to the Trade Code on requirements for corporate reporting was hotly debated among a broad group of stakeholders, there was significantly less debate on what would become Article 224 of law no. 2010-788. The main topic of discussion was the competitive constraints of the expected administrative burden resulting from sustainability reporting set against the societal need to channel capital towards ESG-responsible investment.

The final text received insights from both mainstream finance professionals, such as the French Management Association and the French Banking Association, as well as SRI specialists such as the Forum for Responsible Investment and Novethic.

## 2. Policy design

Given that there was no previous legislation on the subject, Parliament adopted a text which is less restrictive compared to the Trade Code requirements, despite demands from NGOs and certain political parties for a more prescriptive legislation.

The Monetary and Financial Code now states that all portfolio management companies and investment companies with variable capital are required to provide information on the manner they take into account ESG objectives in their investment policies for each UCITS and alternative investment funds that they manage. Management companies must also indicate how they exercise voting rights attached to these financial instruments.

Portfolio management companies and investment companies with variable capital must also indicate which of their managed funds do not take ESG criteria simultaneously into account. For those funds not taking ESG criteria into account at all, no justificatory explanation is required. The intent is to allow for a better standardisation of sustainability reporting for companies already managing SRI funds or possessing some type of sustainability policy, with a view to disseminating such practices over time among those who do not. Nevertheless, The Monetary and Financial Code does not provide much guidance other than on the structure and presentation of the report as described in the implementation decree of article 224 of law no. 2010-788 (decree no. 2012-132).

The text allows for great flexibility as it does not provide any definition of the mentioned ESG criteria, nor does it detail any accompanying indicators. It clearly states that companies must define themselves the nature of ESG criteria and leaves the choice of indicators up to the company, if it chooses to use any. However, where the company decides to report on ESG matters, it must describe the criteria it uses and how these are measured.

Article L.214-12 of the Monetary and Financial Code applies to all portfolio management companies and investment companies with variable capital operating in France, in other words, third-party fund managers. It does not cover investors acting on their own account, such as institutional investors, pension funds, insurance companies or foundations, which are mostly covered by the Trade Code, though the reporting purpose and the subject matters to be addressed differ significantly between the two sustainability reporting requirements.

### 3. Policy implementation

The implementation decree of Article 224 states that portfolio management companies must include sustainability information in the annual reports of each Undertaking for Collective Investments in Transferable Securities (UCITS) which they manage. It provides a detailed list of

requirements for the compilation and publication of information:

- Provide information on its general policy on social, environmental and governance matters
- Report on the manner and frequency in which it informs its investors
- List UCITS that simultaneously take social, environmental and governance criteria into account as well as the percentage these UCITS represent within the total outstanding liabilities of all UCITS managed by the company. For these UCITS, the report must describe the main criteria relating to ESG objectives, by differentiating by sector or type of assets
- Report on the general information used for analysing issuers of securities, such as non-financial ratings, internal and external analyses, or any other relevant source of information
- The company is required to describe the methodology used for analysing issuers of securities with regard to sustainability criteria and how the results of these analyses are integrated into the investment/divestment process.

For any other UCITS managed, the management company must simply state that it does not integrate sustainability criteria, but does not have to provide the reason. This information must appear in each UCITS' annual report. In case the report was elaborated following a particular code or guideline, the company must specify which one. Finally, the information must be published on the company's website.

#### Interpreting legislation

Most portfolio management companies who include ESG criteria in their investment and divestment strategies have a good level of understanding of the Monetary and Financial Code's reporting requirements.

Nevertheless, socially responsible investors, including French Asset Management Association and the certification organization Novethic, have observed diverging interpretations concerning the outstanding liabilities on which portfolio management companies must report.



The legislation requires reporting on the percentage of managed funds taking ESG criteria simultaneously into account. These are commonly considered SRI funds on the French market, though the definition is not a formal one.

Despite the fact that their UCITS do not take ESG criteria simultaneously and systematically into account, a number of companies who operate a general ESG policy appear to report a significant percentage of SRI funds under management by including in this percentage those funds which consider ESG criteria only partially (i.e. not simultaneously) and on a case-by-case approach.

The latter practice is considered in France an 'ESG integration practice' and has a less substantial impact than stricter SRI fund management, as the latter would, for example, systematically exclude certain investment opportunities despite their financial attractiveness.

Notwithstanding the clarity of the policy text in this regard, the confusion between the two investment strategies might stem from the lack of an official definition of both SRI funds and 'ESG integration practice'. The development of additional guidance could help adding clearness in this area.

Overall, the level of compliance with the Monetary and Financial Code appears somewhat low, notwithstanding the fact that the new policy has only been implemented since the approval of its implementation decree in January 2013.

The French Ministry of Environment, Sustainable Development and Energy carried out an assessment in 2013, based on a sample of 100 portfolio management companies, out of which 52 manage SRI funds and 48 are signatories of the UN's Principles for Responsible Investment (PRI). There were 100 SRI funds managed in this sample. Although the sample thus is comprised of companies already concerned with responsible investment, the assessment observed that 84% complied with the obligation to present their general policy on social, environmental and governance matters.

The results further showed that 54 sample com-

panies manage UCITS that take ESG criteria simultaneously into account. Almost half of them clearly listed these UCITS and informed about the percentage they represent within the total outstanding liabilities of all UCITS portfolio. 58% also described the criteria used for identifying ESG objectives. Half of these companies described the methodology used to analyse issuers of securities and 38% also outlined the manner in which the analysis is integrated into investment processes. However, only 15% out of these 54 portfolio management companies reported on the general types of information used for analysing issuers of securities, such as non-financial ratings or internal and external analyses.

Although these figures show several leading companies in responsible investment falling short of compliance, they can be considered satisfactory, given that the law had been in place less than two years at the time of the survey.

Nevertheless, there is one area where reporting companies can significantly improve their reporting practices: the assessment found that 70% of all sample companies did not report on the manner and frequency in which they informed their investors about the ESG criteria taken into account in their investment policies. 19% did this partially and only 11% reported this information in a clearly identifiable manner.

## 4. Policy enforcement

Sustainability reports by portfolio management companies are not required to undergo any external verification under article L.214-12 of the Monetary and Financial Code. Given that this is very recent legislation, a parallel can be drawn to the first mandatory legislation in France (the NRE law) which also did not request external verification and thus rather favoured the dissemination of reporting practices per se.

### 5. Policy monitoring

It is perhaps too soon to say what the effect of the amended article L.214-12 of the Monetary and Financial Code has been on the sustainability reporting of the portfolio management industry – or indeed what it will be.

Within the socially responsible investment community, adherence to legislation on SRI is not surprisingly high and can be expected to approach 100% in a few years. However, they are only a very small fraction of portfolio management companies in France. And since portfolio management companies generally do not need to explain their reasons for not integrating ESG criteria in their investment/divestment policies, and given that there is no mandatory third-party verification, only a small number of this group currently performs sustainability reporting.

Moreover, only few management companies report on the manner and frequency in which they inform their investors on the consideration of ESG criteria in investment policies. Such a low figure is an obstacle to understanding whether the actual owners of managed assets can value responsible investment practices. This is an important area for improvement, as raising interest and awareness among investors is instrumental in channelling capital towards responsible investment.

This is not necessarily in contradiction with the objective of the law. Its spirit here seems rather to promote sustainability reporting in a ‘soft’ manner, by allowing the most virtuous companies to showcase their responsible practices.

## 4.5 South Africa

*South Africa has been one of the front-runners in terms of sustainability reporting and the first country with mandatory integrated reporting for listed companies.*

### 1. Policy evolution

South Africa's political history and transition to democracy in the 1990s spurred on debates about disinvestment under the old Apartheid administration. Demands for transparency and disclosure therefore became part of the debate from an early stage in South Africa, even before the concept of sustainability reporting was popularized.

Since the transition to democracy in 1994, measurement and reporting on social transformation issues, such as black economic empowerment and employment equity, have become entrenched in legislation. A focus on mining and other heavy industries has also had a positive effect on environmental and health and safety reporting practices.

Since 2010, hundreds of South African companies have begun to produce integrated reports, in order to comply with one of the listing requirements on the Johannesburg Stock Exchange. As a result, South Africa became the first country with mandatory integrated reporting for listed companies.

An integrated report aims to give users an all-round view of a company by including social, environmental and economic performance along with the company's financial performance.

The South African approach to sustainability reporting has also been in response to increasing global calls for business to integrate the management of non-financial issues in corporate annual reporting. At the Rio+20 meeting in 2012, South African delegates were strong, vocal supporters of sustainability reporting as a means of enhancing global development efforts, and South Africa was a founding member of the Group of Friends of Paragraph 47.

Today South African companies are subject to not one single policy but a broad scope of both mandatory reporting requirements as well as non-mandatory guidance for listed companies.

### Multistakeholder dialogue

Generally, new legislation in South Africa is subject to public consultation. Over the years, discussions on reporting requirements have been held between stakeholders, including

- Relevant government departments
- The private sector (primarily large listed companies)
- Corporate governance institutions
- Investor organizations
- State-owned enterprises
- Civil society

Particularly – and not surprisingly – the private sector has conducted extensive discussions and sought strong collaboration between CEOs and boards to ensure consensus on the questions around materiality and how to integrate material sustainability issues into their companies' business strategies.

Another important player in bringing attention to the importance of sustainability disclosure has been the South African Public Investment Corporation (PIC), the single biggest investor on the Johannesburg Stock Exchange and one of the largest investment managers in

Africa. The PIC's Corporate Governance Rating Matrix has helped to focus on the disclosure of environmental, social and governance performance.

From these discussions, consensus has emerged on e.g. the principles contained in the King Code and the Johannesburg Stock Exchange requirements for publishing an integrated report that includes corporate sustainability performance.

Interestingly, commercial state-owned enterprises are still largely not reporting on sustainability issues. As a result, there is currently a draft bill being formulated by the Department of Public Enterprises reviewing governance aspects for state-owned enterprises as a whole, including disclosure.

## 2. Policy design

The various policies and voluntary frameworks describe their common primary objective: strengthening transparency and accountability measures as well as supporting the corporate sustainability performance of South African companies.

Several policies have a clear secondary mandate, which is to provide insight for policy-makers to enable measurement of the transformative impact of policy interventions on the lives of affected communities, in terms of aspects such as job creation, community empowerment and sustainable livelihoods.

As described above, reporting on sustainability performance is mandatory for all companies listed on the Johannesburg Stock Exchange (as part of an integrated report). This means adopting the principles detailed in the King III report and reporting progress on a 'comply or explain' basis in the annual report.

Other large companies may also be subject to reporting under the various policies listed above. However, small and medium-sized enterprises are exempt in order to limit the regulatory burden that may result from being subjected to stringent measures of compliance.

### Scope of issues to be reported on

The scope of issues to report on is set by the Johannesburg Stock Exchange Securities Exchange Listing Requirements. Under the King III code, companies are also expected to 'apply or explain' 75 different recommendations referred to as 'principles'. The principles for reporting are broadly stated and can easily be adapted to companies (except perhaps for small and medium-sized enterprises, but they are not required to adhere to the principles anyway).

As it is a list of recommendations, the Code does not explicitly demand compliance, but rather recommends that companies apply each of the 75 principles, or explain the reasons for not doing so in their annual integrated report.

King III requires companies to address the following nine elements:

1. Ethical leadership and corporate citizenship
2. Boards and directors
3. Audit committees
4. The governance of risk
5. The governance of information technology
6. Compliance with laws, rules, codes and standards
7. Internal audit
8. Governing stakeholder relationships
9. Integrated reporting and disclosure

King III makes it clear that sustainability reporting and disclosure should be integrated with the company's financial reporting. A company's board should ensure that the positive and negative impacts of the company's operations, and its plans to improve the positives and eradicate or ameliorate the negatives in the financial year ahead, are conveyed in the integrated report. It states that integrated reporting means a holistic and integrated representation of the company's performance in terms of both its finances and sustainability.

There is currently no instruction on where the information can or should be published (apart from in a publically available integrated report) nor for how long or in what format the reporting must be available.

### International frameworks

The reporting requirements make explicit reference to a number of national policies (they are listed above) as well as the South African Constitution and the Auditor General. The requirements also reference a number of international frameworks, including:

- The GRI Sustainability Reporting Guidelines (over 90% of the top 100 South African companies use the framework).
- The UN Global Compact (UNGC) (more than 70 South African companies are signatories)
- The OECD Guidelines on Multinational Enterprises
- The ISO standards for e.g. social responsibility (ISO 26000) and environmental management (ISO 14000)
- The AA1000 Series developed by Accountability to promote sustainability through social and ethical accounting, auditing, stakeholder engagement and reporting.

The policies that are still being formulated and implemented also show promise of alignment with international good practice, particularly with respect to reporting by South African state-owned entities.

### 3. Policy implementation

Given a decade of reporting on one or more aspects of corporate sustainability, South African companies have given themselves a head start with integrated reporting. Many leading companies had a depth of experience around thinking through non-financial issues, assessing the most material aspects and pulling them into an integrated report.

In 2009, the roll-out of the King III requirements was therefore a relatively smooth process, supported by a range of guidance material on integrated reporting. By the time the International Integrated Reporting Council (IIRC) issued its framework for Integrated Reporting <IR> in December 2013, South African companies had already been honing their own version of integrated reporting, based on the King III.

New guidance was issued to provide clarity to reporters on how to reconcile the two documents:

*King III's purpose:* To set out the principles relating to integrated reporting (i.e. the what). It is not meant to be prescriptive on the content or format of an integrated report. As such, the principles and practice recommendations of King III operate on a conceptual level.

*IIRC's <IR> purpose:* To establish the guiding principles and content elements that govern the content of an integrated report (i.e. the how to). As such, the <IR> framework offers implementation guidance.<sup>17</sup>

The Institute of Directors Southern Africa (IoDSA) has been particularly active in researching and disseminating information on developments relating to sustainability and integrated reporting. Other guidance, including South Africa-specific materials as well as the GRI framework, has been published on various websites<sup>18</sup>, and training is offered widely, including the GRI-certified training on sustainability reporting.

### 4. Policy enforcement

The King Code is not enforced through legislation. However, it co-exists with a number of laws that apply to companies and directors, including the Companies Act. In addition, further enforcement takes place by regulations such as the JSE Securities Exchange Listings Requirements. Here non-compliance for reporting carries penalties, such as a fine.

Compliance is typically verified by auditing firms such as KPMG, PwC, Deloitte and EY.

### 5. Policy monitoring

Overall, the national drivers and pressures for increased disclosure from South African companies have resulted in several initiatives, not only government policy (such as the Companies Act of 2008) but perhaps more effectively a set of increasingly comprehensive corporate

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<sup>17</sup>IoDSA, Practice Notes, June 2014

<sup>18</sup> See for example [www.sustainabilitysa.org](http://www.sustainabilitysa.org)

governance requirements as well as the 2010 Johannesburg Stock Exchange listing requirements, both of which take a 'apply or explain' approach to reporting.

The overall effect of the policies and initiatives on sustainability reporting is at this five-year mark considered positive. The number of reporters among listed companies has increased, and the quality and quantity of the reported information has increased as well, indicating good progress.

There is also emerging evidence that the reported information is becoming increasingly relevant for corporate management decisions and for investors, particularly institutional investors. Integrated thinking is now in evidence among the management teams of many listed South African companies.

Internationally, the initiatives have been very well received and used as a benchmark for 'good practice' for other countries. The reporting initiatives are well aligned with international developments and at some levels more comprehensive than those in countries with a longer history of corporate reporting.

But despite taking a leading position on integrated reporting, the major South African companies taken together still have room for improvement: There are calls for reports to be more succinct, less complex and less cluttered.

In addition, investors have recommended more effective stakeholder engagement, including greater involvement by Boards of Directors in the actual report production. King III assigns responsibility for an integrated report to the Board of Directors, and Boards are now increasingly monitoring strategic non-financial information. Yet many investors are not convinced that the Board is as closely involved with the integrated report as King III proposes.

Nevertheless, the South African approach appears to have struck a pragmatic balance between regulation and market-led reporting. Moreover, there is a growing number of non-listed South African companies who are voluntarily publishing integrated reports, which suggests that they see the value of integrated reporting not as a matter of compliance but as a better tool for understanding and articulat-

ing their strategy, risks and opportunities for sustainable value creation.



### ***Box 7: Mandatory reporting in South Africa***

#### ***Companies Act, 2008***

This legislation encompasses all aspects of corporate reporting, including sustainability issues, compelling corporate entities to provide disclosure on social and economic dimensions of their activities. Furthermore, the Act provides for holding directors personally liable for poor performance and poor public disclosure of information. The Act has been effective from May 2011, and its impact on reporting so far has been limited, but it is expected to have an important impact over the longer term.

#### ***Johannesburg Stock Exchange Listing Requirement 2010***

Over 450 companies listed on the Johannesburg Stock Exchange (JSE) are required to produce an integrated report in place of their annual financial and sustainability reports.

#### ***National Black Economic Empowerment Act, 2003 and its Amendment Bill, 2012***

This Act sets out a national framework for the promotion of broad-based black economic empowerment (BEE) and requires progress reports to be submitted to the government. Reporting against the criteria of this Act and the associated charters has driven the structure of some reports.

#### ***Employment Equity Act, 1998 and its Amendment Bill, 2012***

The Act is not a major driver of comprehensive reporting, but it seeks to eliminate unfair discrimination in the workplace and implement affirmative action for 'designated groups' such as black people, women, or people with disabilities. Annual reporting on progress is required. All designated employers, including those with 150 and less employees, must submit Employment Equity reports annually.

#### ***Mineral and Petroleum Resources Development Act, 2002 and its Amendment Bill, 2012***

The Mineral Resources and Petroleum Bill requires affected companies to disclose Social and Labour Plans to the government, describing how they will address the social impacts of their operations during and post operation.

#### ***National Environmental Management Act (NEMA), 1998 and its Air Quality Act, 2004***

The latter introduced a shift from source-based air pollution control to a 'receiving environment' and air quality management approach. It requires the setting of air quality targets, complemented by air quality management plans, pollution prevention plans, access to information (including atmospheric impact reports) and public consultation. The environmental impact assessment regime under NEMA requires that potential environmental impacts of listed activities are assessed and reported to competent authorities. As is the case with various environmental topics, disclosure of information is often only to the authorities while related public reporting is voluntary.

### ***Box 8: Voluntary reporting in South Africa***

#### ***The King Report on Corporate Governance, 1994, 2002 and 2009***

The King Report is a non-legislated code on good corporate governance. Developed by the King Committee on Corporate Governance, the King Report is the definitive document for South African corporate governance and has over the years been very instrumental in driving both sustainability reporting and integrated reporting from South African companies.

The King Report was updated in 2009 (known as 'King III') to reflect a growing expectation that businesses must integrate the management of financial and non-financial issues (risk management and audit). King III thus requires integrated reporting as well as third party assurance. Compliance with the King Code is a requirement for companies listed on the Johannesburg Stock Exchange.

King III requires that companies follow an integrated reporting format, which means describing financial, social and environmental factors in a holistic manner within one report. A company's 'material matters', including sustainability risks, should be disclosed in a timely manner. There is a strong focus on responsible corporate citizenship in King III. In South Africa corporate citizenship includes, among many other things, issues related to transformation, human rights, human capital, social capital, safety and health.

#### ***The Consumer Protection Bill, 2011***

This Bill has no mandatory implications for sustainability reporting but covers the 'right to disclosure and information' on matters such as customer health and safety, product labelling, marketing communications and customer privacy. Companies may look to the Global Reporting Initiative (GRI) framework for guidance on how to report on such matters.

#### ***The Johannesburg Stock Exchange Socially Responsible Investment Index (SRI Index), 2004***

Today, the Johannesburg Stock Exchange (JSE) automatically assesses the entire FTSE/JSE All Share Index on publically available sustainability reporting. While previously, non-public sustainability information could also be considered, the Johannesburg Stock Exchange today only considers publically available information during its assessment process for inclusion in the SRI Index.

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## 6. Tool for policy evaluation

### Guidance for completing the tool

Below is a tool for assembling an overview of a national public policy across each of the five pillars of a policy 'lifecycle'. The table should be completed with core information on a public policy on corporate sustainability reporting. It is understood that the amount of information and sources available in different countries are likely to vary, depending on the length of time that a national policy has been in place.

### Tool for Evaluating Public Policy on Corporate Sustainability Reporting in *[insert country]*

Contact	
Name	
Title	
Telephone	
Email	

Policy	
Official name (local)	
Official name (English)	
Year of adoption	
Ministry responsible	



1. Policy Evolution		Guidance	Possible Sources
<b>A. Context</b>	<b>i. Existing policy environment, ie. other supporting CSR policy requirements</b>	Describe the national background of trends and debates from which the reporting policy emerged. Outline the CSR-related policies in place that relate to and support the reporting policy. If policy has been adopted relatively recently, describe the current context. If the policy has been in place for several years, describe the historical context.	<ul style="list-style-type: none"> <li>• GRI's 'Carrots and Sticks' publication</li> <li>• Government websites</li> <li>• Other national CSR websites</li> <li>• Google search for academic studies, surveys and other research</li> </ul>
	<b>ii. National drivers and pressures for increased transparency</b>		
<b>B. Process</b>	<b>i. Main stakeholders involved in consultation</b>	List as bullet points the key participants and their main position(s) on proposed legislation (on aspects or as a whole).	<ul style="list-style-type: none"> <li>• Government websites</li> <li>• Other national CSR websites</li> <li>• Google search for written submissions to policy-makers</li> <li>• Google search for academic studies, surveys and other research</li> </ul>
	<b>ii. Negotiation of policy content (main points contested, how resolved)</b>	Describe briefly the main issues debated during the policy's development, e.g. in parliament or through public consultation. E.g. the scope, application, terminology, expected costs, enforcement mechanisms etc. Who was advocating what? Was a compromise reached between key stakeholders?	
<b>Other relevant input</b>			
<b>References</b>		List the sources used to complete this section.	



2. Policy Design		Guidance	Possible Sources
A. Objectives	i. Clarity of need for policy and its goal	Does the policy or related documents clearly describe why the policy is needed and what is its objective?	<ul style="list-style-type: none"> <li>Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
B. Applicability	i. Who does the policy apply to?	List the stated scope of intended subjects, including any thresholds for inclusion (e.g. number of employees, revenues, specific industries).	<ul style="list-style-type: none"> <li>Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
	ii. Link to other corporate reporting legislation (if any)	Does the legislation build on or cross-reference any other reporting legislation, e.g. annual financial or environmental reporting requirements? Is the threshold for being subject to the sustainability reporting legislation defined by other legislation?	<ul style="list-style-type: none"> <li>Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
C. Scope and specification	i. Scope of defined issues to be reported on	List the stated scope of subject matters to be addressed in the reporting (qualitatively and/or quantitatively). Is the scope defined in precise and unambiguous terms or is it mere general and open (potentially vague)? The focus here is 'what must reporters report on' – the specified scope could e.g. be a broad sustainability policy or it could be specific CSR topics.	<ul style="list-style-type: none"> <li>Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
	ii. Level of prescriptiveness	Comment on the level of prescriptiveness of the legislation, i.e. to what extent does the text specify exactly the conditions for compliance and how this should be achieved. The focus here	<ul style="list-style-type: none"> <li>Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of com-</li> </ul>



		is 'what does the policy explicitly require reporters to do to be in compliance, beyond addressing any defined sustainability topics'. This could e.g. be prescriptions on where the information must be published, for how long, in what format etc.	merce)
	<b>iii. Level of complexity</b>	Comment on the level of complexity of the legislation, i.e. to what extent does the text provide clear, short and simple instruction / guidance. Consider whether it is complex because it is amending or repealing previous legislation. Consider whether the volume and/or quality of text is a barrier to the user's experience of the legislation – e.g. consider if there is extensive use of legal and technical terms (potentially leading to a perception of disproportionate complexity). Consider if the text introduces poorly-defined, rarely-used or similar-looking concepts. Consider if the text contains long sentences and sections that can complicate its comprehension, incl. if the text contains first a rule and then a lengthy list of exceptions or special circumstances. Consider if there are cross-references to other reporting legislation that may increase complexity for the reader.	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
<b>D. Reporting approach</b>	<b>i. Rules-based or principles-based (i.e. comply or explain)</b>	Does the text comprise a set of detailed prescriptive rules, or does it present more high-level, broadly stated principles to define the standards reporters must respect for the overall elaboration of the report?	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>



<b>E. References</b>	<b>i. International frameworks</b>	Does the legislation and/or any accompanying guidance make reference to any international frameworks for sustainability / CSR, e.g. UN Global Compact, GRI, OECD etc.? The reference may be explicit or implicit, and it may be in the actual policy or in related guidance.	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
	<b>ii. National policies</b>	Does the legislation and/or any accompanying guidance make reference to any national policy or instrument relating to sustainability / CSR / corporate governance / environmental / health & safety / corruption etc.?  * (In future, it may be relevant to reference any regional or transnational policies or directives, such as from the EU).	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> <li>• Other related policies, if relevant</li> </ul>
<b>Other relevant input</b>			
<b>References</b>		List the sources used to complete this section.	





3. Policy Implementation		Guidance	Possible Sources
A. Rules and procedures	<b>i. Requirements for the compilation and publication of reporting</b>	Describe any requirements (contained in the policy or in related guidance) for how a reporter must/should compile their account and how it must be published.	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> <li>• Google search for academic studies, surveys and other research</li> </ul>
B. Roll-out, guidance and support	<b>i. Guidance material to accompany legislation</b>	Describe how the policy was announced and what kind of supporting material (e.g. guidance document, website) was launched to support the roll-out.	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or other authoritative source (e.g. business association, chamber of commerce)</li> <li>• Websites (government, ministerial etc.)</li> </ul>
	<b>ii. Ongoing support with interpretation</b>	Describe any other support provided to reporters, e.g. up-to-date online explanation, FAQ-sheets, seminars, etc., by either the authorities or industry / business groups (e.g. chambers of commerce).	<ul style="list-style-type: none"> <li>• Websites (government, ministerial etc.)</li> <li>• Google search for seminars, working groups etc.</li> </ul>
C. Interpretation and response	<b>i. Reporters' interpretation(s) of the requirements</b>	Gather as much published commentary as you can find and if possible give examples of reporters who have / have not interpreted the requirements correctly.	<ul style="list-style-type: none"> <li>• Websites (government, ministerial etc.)</li> <li>• Google search for news articles, academic studies, surveys and other research</li> </ul>
	<b>ii. Reporters' responses in annual reporting (minimum compliance vs comprehensive)</b>	If possible, collect evidence from different sources about how reporters have responded in practice. E.g. Contact local auditors or consultants who may have reviewed many reports and ask for their assessment.	<ul style="list-style-type: none"> <li>• Websites (government, ministerial etc.)</li> <li>• Local auditors</li> </ul>



	<b>iii. Estimated cost of compliance (if available)</b>	Describe any published cost-benefit analyses of mandatory reporting requirements, either conducted during a public consultation period before the policy came into force or after a few years of implementation.	<ul style="list-style-type: none"> <li>• Government, industry and/or corporate sources</li> <li>• Google search for news articles, academic studies, surveys and other research</li> </ul>
<b>Other relevant input</b>			
<b>References</b>		List the sources used to complete this section.	



4. Policy Enforcement		Guidance	Possible Sources
A. Incentives and penalties	<b>i. Compliance mechanisms</b>	Does the policy have any built-in mechanisms to ensure compliance? Describe any incentives as well as any penalties / sanctions for non-compliance.	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> </ul>
	<b>ii. Enforcement process</b>	Describe the overall enforcement process. How does the government or ministry administer the legislation to ensure that reporters comply, for example in countries where mandatory verification of compliance is not prescribed in the policy (see question B.i. below). If possible, highlight any known cases of non-compliance and how they were handled. Have any companies been fined for non-compliance?	<ul style="list-style-type: none"> <li>• Policy text and related guidance documents issued by the responsible ministry or any other authoritative source (e.g. business association or chamber of commerce)</li> <li>• Websites (government, ministerial etc.)</li> <li>• Google search for news articles, academic studies, surveys and other research</li> </ul>
B. Verification of compliance	<b>i. Who verifies compliance and how?</b>	Do reporting requirements stipulate who can/should verify compliance, e.g. a third party such as a financial auditor? If so, are the requirements to the third party made clear?	<ul style="list-style-type: none"> <li>• Websites (government, ministerial etc.)</li> <li>• National association of auditors</li> <li>• Google search</li> </ul>
	<b>ii. Supporting institutions (e.g. mediation, grievance)</b>	Have any supporting institutions, such as a mediating body or some kind of grievance mechanism been established to support the roll-out of the requirements?	<ul style="list-style-type: none"> <li>• Websites (government, ministerial etc.)</li> <li>• Google search</li> </ul>
Other relevant input			



5. Policy Monitoring		Guidance	Possible Sources
A. Effect (impact) of policy on reporting	i. What has been the effect (impact) of policy on reporting?	<p>Describe the overall effect (estimated or known through concrete evidence) of the policy on sustainability reporting. For countries where the policy is relatively recent, focus on interpretation and compliance. For countries where the policy has been in place for several years, focus on beyond-compliance reporting and evidence of integration into corporate management. For illustrative purposes, consider for example: (nonexhaustive):</p> <ul style="list-style-type: none"> <li>• whether there is evidence of modified reporting practices and content in accordance with the said policy's requirements</li> <li>• whether reported information appears to be used for corporate management decisions (e.g. improved human resources management, improved natural resources use, improved relationships to local communities, etc)</li> <li>• whether reported information appears to be used by external stakeholders (e.g. investors, consumer associations, etc)</li> <li>• whether additional external stakeholders have developed as a result of the introduction of said policy (monitoring groups/watchdogs, rating agencies, consulting firms, NGOs, etc)</li> <li>• indirect effects (development of awards, indexes, additional</li> </ul>	<ul style="list-style-type: none"> <li>• Government websites</li> <li>• Other national CSR websites or authoritative sources (e.g. business association or chamber of commerce)</li> <li>• Google search for academic studies, surveys and other research</li> </ul>



		voluntary initiatives, etc)	
<b>B. Ambition and realism of policy (success)</b>	<b>i. Assess the policy against its objectives (internal effectiveness)</b>	<p>Evaluate the overall ambition and success of the policy. Consider whether there is sufficient evidence to identify causality between the policy and the described impact. Consider if the policy has had any unintended effects (both positive and negative). For illustrative purposes, consider for example: (non exhaustive):</p> <ul style="list-style-type: none"> <li>• whether the number of reporting companies has increased after said policy's implementation (if applicable to the said policy's objectives</li> <li>• whether the quality and/or quantity of reported information has increased (if applicable to the said policy's objectives</li> <li>• whether external stakeholders can confirm increased transparency by reporting companies</li> </ul>	<ul style="list-style-type: none"> <li>• Government websites</li> <li>• Other national CSR websites or authoritative sources (e.g. business association or chamber of commerce)</li> <li>• Google search for academic studies, surveys and other research</li> </ul>
	<b>ii. Assess the policy against international expectations / practice / norms (external)</b>	<p>Evaluate the policy in the context of international good practice. Considering the responses given above:</p> <ul style="list-style-type: none"> <li>• How would you summarise the extent to which the policy lives up to the international 'good practice' policy elements outline in this framework?</li> <li>• How closely does this policy align with international developments and current expectations around sustainability reporting?</li> <li>• Where a policy is not yet fully formulated or implemented, does it</li> </ul>	<ul style="list-style-type: none"> <li>• Government websites</li> <li>• Other national CSR websites</li> <li>• Google search for academic studies, surveys and other research</li> </ul>



		show promise of alignment with international good practice?	
<b>Other relevant input</b>			

## 7. Annex 1

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## 8. Annex 2

# List of Abbreviations

AMF	Autorité des marchés financiers (Financial Markets Authority in France)
ANEEL	Agência Nacional de EnergiaElétrica (Brazilian Electricity Regulatory Agency)
BM&F BOVESPA	Stock exchange in São Paulo (Brazil)
CAC40	A benchmark French stock market index of large listed companies
CELAC	Comunidad de Estados Latinoamericanos y Caribeños (Community of Latin American and Caribbean States)
COFRAC	Comité Français d'Accréditation (national accreditation body of France)
CODIM	Comitê de Orientação para Divulgação de Informações ao Mercado (Brazilian Steering Committee for Information Disclosure to the Market)
COP	A Communication on Progress to the UN Global Compact
CSR	Corporate Social Responsibility
EA	European Accreditation
EFFAS	European Federation of Financial Analysts Societies
EMAS	European Eco-Management and Audit Scheme
ESG	Environmental, Social and Governance
EU	European Union
FTSE	Financial Times Stock Exchange (United Kingdom)
GoF47	Group of Friends of Paragraph 47
GHG	Greenhouse Gas
GRI	Global Reporting Initiative
IoDSA	Institute of Directors Southern Africa
IR	Integrated Reporting
IIRC	International Integrated Reporting Council
ISO 14001	International standard for an environmental management system
JSE	Johannesburg Stock Exchange (South Africa)

## Evaluating National Policies on Corporate Sustainability Reporting

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NBR 16001	Management system for social responsibility, Brazil
NGO	Non-Governmental Organization
NRE	Loi sur les Nouvelles Régulations Économiques (Law on New Economic Regulations, France)
OHSAS 18001	International management system standard for occupational health and safety
PIC	Public Investment Corporation, South Africa
PRI	Principles for Responsible Investment
SA8000	International management system standard for human rights and labour rights
SEP	System of Public Enterprises, Chile
SBF120	A benchmark stock market index of the 120 most actively traded stocks listed in Paris
SRI	Socially Responsible Investment
SSE	Sustainable Stock Exchanges Initiative
UCITS	Undertaking for Collective Investments in Transferable Securities (France)
UNEP	United Nations Environment Programme

This publication has been jointly developed by UNEP and the Member Governments of the Group of Friends of Paragraph 47 (GoF47) of the Rio+20 Outcome Document. It analyses the experiences of five GoF47 Members (Brazil, Chile, Denmark, France and South Africa) in the development, implementation and evaluation of their policies on corporate sustainability reporting. It includes an extensive overview of the existing policy environments in these countries and identifies common trends, best practices and recommendations.

The information in this study aims at supporting Governments in the design or further development of their own corporate sustainability reporting policies, thus directly contributing to the Rio+20 call to encourage companies to integrate sustainability information into their reporting cycle.

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