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Article

Sustainable Corporate Governance in the United Kingdom: What is the Catch?

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Abstract

Corporate governance priorities for 2021 include workforce engagement mechanisms and corporate sustainability reporting in the UK. The consideration of these priorities mainly falls under corporate social responsibility and is part of initiatives dealing with environment, social, governance – 'ESG'. This consideration aims to ensure a sustainable corporate governance and to increase the consideration of stakeholders in the decision-making of directors. In this context, it is essential to consider workforce engagement mechanisms due to the recent amendments to the UK Corporate Governance Code and the COVID-19 pandemic (since the workforce was particularly affected by this pandemic due to, inter alia, working from home). Furthermore, it is also important to consider a new listing rule dealing with Task Force on Climate-Related Financial Disclosures (TCFD) disclosures because it applies, such as the workforce engagement mechanisms, on a comply or explain basis. Therefore, this paper identifies the relevant legal framework of these priorities and focuses on the new reporting provisions. Subsequently, it examines their impacts as well as their burdens on directors in practice. In addition to high short-term expenses and despite the priorities' business case, this paper concludes that there is the risk that the additional narrative reporting (which accompanies these priorities) can increase the temptation to obscure the true actions of companies. However, the risk of misleading information about the workforce engagement is lower because the company's culture could easily be damaged.

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I. Introduction

Corporate governance ('CG') priorities for 2021 include environmental, social and climate-related issues. Furthermore, they contain stakeholder engagement and particularly workforce engagement ('WE'), including COVID-19 specific engagement. This can be proven by, inter alia ('i.a.'), a new listing rule[1] ('LR') of the Financial Conduct Authority ('FCA') and by the fact that communication with stakeholders is vital in crises.[2] Initially, these priorities lead to a greater consideration of stakeholders in directors' decision-making. Furthermore, the consideration of these priorities mainly falls under corporate social responsibility[3] ('CSR') (with environment, social, governance – 'ESG' – as dimensions of CSR[4]) and aims to ensure a sustainable CG.[5] Due to CSR, companies should not only maximise their profits but also contribute to the society.[6]

This requires boards of directors ('directors') to decide what their listed companies should do. It is thereby questionable if this places additional burdens on directors. Subsequently, the directors must decide how their companies' achievements should be reported. This is because information can produce a market response as to the share price[7] and CSR reporting is mainly narrative. Moreover, there is an information asymmetry between the directors and the shareholders (principal-agent issue), and the directors have the power to shape and filter the disclosed information.[8] It is therefore also questionable whether any extra narrative reporting ('NR') increases transparency

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[1] FCA, Listing Rules (Release 13 November 2021) <www.handbook.fca.org.uk/handbook/LR.pdf> accessed 11 November 2021. See, ia, LR, 9.8.6R(8).
[2] Martin N Ndlela, *Crisis Communication: A Stakeholder Approach* (Springer International Publishing 2019) 12.
[3] See Gerda Barauskaite and Dalia Streimikiene, 'Corporate Social Responsibility and Financial Performance of Companies: The Puzzle of Concepts, Definitions and Assessment Methods' (2021) 28 Corporate Social Responsibility and Environmental Management 278, 280 for the different definitions.
[4] Ismail Sila and Kemal Cek, 'The Impact of Environmental, Social and Governance Dimensions of Corporate Social Responsibility on Economic Performance: Australian Evidence' (2017) 120 Procedia Computer Science 797, 798 <www.sciencedirect.com/science/article/pii/S187705091732522X> accessed 22 April 2021.
[5] cf European Commission, *Study on Directors' Duties and Sustainable Corporate Governance* (2020) viii.
[6] Barauskaite and Streimikiene (n 3) 278.
[7] cf Alice Belcher, *Directors' Decisions and the Law: Promoting Success* (Taylor & Francis Group 2014) 148f.
[8] ibid 145.

and comparability in corporate reporting or rather the opportunities of misrepresentation.

This paper is divided into five sections. Following the introduction, the corporate law framework of the aforementioned priorities will be identified in the second section. Subsequently, their burdens and benefits will be evaluated in the third section and the potential results of (extra) NR will be discussed in section 4 thereafter. Finally, a conclusion will be given. The focus thereby lies on the new LR and WE. The paper excludes reporting obligations, such as disclosures in relation to greenhouse gas emissions, that do not contain narrative sections.

II. Corporate law framework

The CA 2006[9] enshrines an enlightened shareholder value ('ESV'). Whilst promoting the company's success for the shareholders' benefit, directors are required to have regard to the company's stakeholders. These include the interests of the company's employees, suppliers, and its environmental impact.[10] Furthermore, a section-172(1)-statement needs to be included in the annual report (within the strategic report) of large UK companies. It must describe how the directors have had regard to the aforementioned factors when performing their duty.[11] More NR can be found in the strategic report, depending on the company's size and listing.[12] For instance, traded companies with more than 500 employees must disclose a non-financial information statement in their strategic report,[13] containing information relating to, i.a., environmental matters and the company's employees.[14]

The UKCGC 2018[15] further states that boards of companies with an UK premium listing should ensure and review effective engagement mechanisms with

[9] Companies Act 2006.
[10] CA 2006, s 172(1). Andrew R Keay, *The Enlightened Shareholder Value Principle and Corporate Governance* (Routledge 2013) ch 4.
[11] CA 2006, s 414CZA(1).
[12] See, ia, CA 2006, ss 414C(4)(b) and 414C(7)(b).
[13] CA 2006, ss 414CA(1)(a) and 414CA(3)–(6).
[14] CA 2006, s 414CB(1)(a)–(b). See also CA 2006, ss 414CB(2)(b)–(d) and 414CB(4).
[15] FRC, The UK Corporate Governance Code (July 2018) <www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf> accessed 21 April 2021.

stakeholders.[16] In principle, stakeholder engagement is interacting with stakeholders to gather information on common interests and the potential for collaborative action.[17] Additionally, boards should understand the views of the companies' key stakeholders and describe in the annual report (in line with the section-172(1)-statement) how their interests have been taken into account in decision-making and board discussions.[18]

Furthermore, the UKCGC 2018 addresses the engagement with the company's workforce. A director from the company's workforce should be appointed, a formal workforce advisory panel established or a non-executive director for the engagement with the workforce designated (on a comply or explain basis). If the board uses alternative arrangements, these and their effectiveness should be explained.[19] The Guidance on Board Effectiveness of the Financial Reporting Council ('FRC') additionally emphasises the importance of the communication with stakeholders and stresses WE (employee voice in the boardroom).[20]

Recently, a new LR requires premium listed companies in the UK (on a comply or explain basis) to add a further statement to their annual financial reports. It shall explain, i.a., whether these companies have included climate-related financial disclosures. The disclosures should be consistent with the Task Force on Climate-related Financial Disclosures ('TCFD') recommendations and recommended disclosures[21].[22] Furthermore, there is currently a consultation by the Department for Business, Energy and Industrial Strategy ('BEIS') on requiring mandatory TCFD disclosures by, i.a., publicly quoted companies by 2022.[23]

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[16] UKCGC 2018, Principle D. UKCGC 2018, Provision 5 sentence 2.
[17] Aimee L Franklin, *Stakeholder Engagement* (Springer International Publishing 2020) 2.
[18] UKCGC 2018, Provision 5 sentence 1.
[19] UKCGC 2018, Provision 5 sentence 3 and 4.
[20] FRC, 'Guidance on Board Effectiveness (July 2018)' paras 34, 41f, 50-56 <www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF> accessed 28 March 2021 (Guidance).
[21] See LR, Appendix 1 for the relevant TCFD's documents.
[22] LR, 9.8.6R(8)(a) and 9.8.7R.
[23] Department for BEIS, 'Consultation on Requiring Mandatory Climate-Related Financial Disclosures by Publicly Quoted Companies, Large Private Companies and Limited Liability Partnerships (LLPs).' (2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972422/Consultation_on_BEIS_mandatory_climate-related_disclosure_requirements.pdf> accessed 25 April 2021.

III. Burdens and motives for misrepresentation

The ESV has no practical enforcement mechanism, as the barriers are too high for shareholders and stakeholders have no enforcement possibilities.[24] However, the CG priorities have a different purpose than the core of the ESV. They impose, i.a., new reporting requirements and should lead to greater consideration of the relevant stakeholders in directors' decision-making (resulting in a more sustainable corporate governance).

A. General burdens: new duties, costs and market pressure

There are general burdens for directors that arise from these priorities.

(i) Environmental and climate-related issues exemplified by the new LR

Initially, disclosures exert pressure on companies to change their behaviour[25] and therefore also on directors (since they are collectively responsible for the company's governance[26]). Belcher previously stated in 2014 that the amount of information involved in annual reports would make the reporting duties both difficult and onerous.[27] However, the new LR enshrines new duties (at least an explanation for non-compliance) for directors. This leads to more burdens because duties always are accompanied by liability risks. It further stipulates novel and comprehensive disclosures alongside a detailed assessment.[28]

Furthermore, an annual review found out that only 26% of the Financial Times Stock Exchange ('FTSE') 350 companies published TCFD reports in 2019/2020.[29] Although the long-term benefits of such climate disclosures can far outweigh the costs, the additional (short-term) costs for compliance are high and will initially reduce the companies' profits.[30] Additionally, a recent survey concluded that most of the in-scope

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[24] Keay (n 10) 137–141.
[25] Charlotte Villiers, *Corporate Reporting and Company Law* (Cambridge University Press 2006) 31.
[26] UKCGC 2018, Introduction. See also Belcher (n 7) 178.
[27] Belcher (n 7) 162.
[28] LR, 9.8.6BG. See hereto FCA, 'Proposals to Enhance Climate-Related Disclosures by Listed Issuers and Clarification of Existing Disclosure Obligations: PS20/17' (2020) paras 1.17, 3.84 <www.fca.org.uk/publication/policy/ps20-17.pdf> accessed 27 March 2021 (PS20/17).
[29] PwC, 'Accountability in a Time of Uncertainty: PwC's Annual Review of Corporate Reporting in the FTSE 350 2019/2020: November 2020' (2020) 9 <www.pwc.co.uk/audit-assurance/assets/pdf/accountability-in-time-of-uncertainty.pdf> accessed 2 April 2021.
[30] See FCA, 'PS20/17' (n 28) paras 3.96–3.99 regarding the new LR.

companies would not be well prepared for TCFD disclosures.[31] The LR nevertheless already applies and the required short-term implementation was described as 'an ambitious timeframe', especially in the times of COVID-19 and Brexit.[32]

However, both the new LR and the UKCGK reporting requirements are based on a comply or explain basis and are voluntary.[33] Voluntary disclosures give directors the possibility to avoid the publication of negative information.[34] Therefore, companies are not required to be compliant. Companies are thus more flexible,[35] in contrast to the mandatory CA 2006's reporting requirements. Although this speaks against a new burden on directors regarding the LR, it is likely that TCFD disclosures could shortly become obligatory.[36]

Additionally, the LR requires the disclosure of non-included TCFD recommendations, the reasons for the non-inclusions and the intended actions to be able to make those disclosures.[37] The FCA even expects consistent disclosures[38] and, exempli gratia ('e.g.'), Tortoise Media publishes a responsibility ranking.[39] Hence, many companies could choose to comply to avoid a negative public image, resulting in market pressure. The incentive of voluntary disclosures, differentiating the company from its competitors,[40] is thus transformed into pressure if many competitors comply.

To summarise, the new LR imposes high, additional costs on companies, especially for premium listed asset managers with two different audiences (their shareholders and clients).[41] However, the more companies are obliged to disclosures, the more likely

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[31] Willis Towers Watson, 'TCFD: Is UK PLC Readying Itself for Climate-Related Financial Disclosures? Willis Towers Watson TCFD Pulse Survey – Volume 1 (October 2020)' (2020) 3 <www.willistowerswatson.com/-/media/WTW/Insights/Trending-Topics/tcfd-is-uk-plc-readying-itself-for-climate-related-financial-disclosures.pdf> accessed 21 April 2021. See also FCA, 'PS20/17' (n 28) paras 3.46, 3.94.
[32] FCA, 'PS20/17' (n 28) paras 3.91, 3.94, 3.99.
[33] LR, 9.8.6R(8)(a) and 9.8.6R(b)(ii)(B).
[34] Villiers (n 25) 32.
[35] FCA, 'PS20/17' (n 28) para 3.48.
[36] n 23.
[37] LR, 9.8.6R(8)(b)(ii).
[38] LR, 9.8.6EG. See also FCA, 'PS20/17' (n 28) para 3.55.
[39] Tortoise Media, 'Responsibility100 Index' (*Tortoise*, 15 October 2020) <www.tortoisemedia.com/intelligence/responsibility> accessed 2 April 2021.
[40] Villiers (n 25) 232.
[41] FCA, 'PS20/17' (n 28) paras 3.19f, 3.27.

they are to avoid questionable practices.[42] This results in a lower liability risk for companies. Furthermore, companies can save costs due to CSR disclosures, such as DuPont, whose environmental costs significantly decreased after its first disclosures.[43]

(ii) Stakeholder engagement

The structure for the chosen WE mechanism needs to be provided; e.g., the selected employees need training for their new position. Therefore, the WE also results in short-term costs. These costs will initially reduce the shareholder value (along with the impacts of the COVID-19 pandemic).[44] This especially applies for 31.7% of 280 FTSE 350 companies that did not adopt any of the three proposed WE mechanisms if they intend to comply with any of these mechanisms.[45]

In the case that a workforce director is appointed, the directors must not only balance shareholders' interests but also the workforce's interests. These interests can be at times opposing and can also differ within the workforce.[46] This issue increases as more views of stakeholders are considered, which challenges the directors. For instance, the workforce could demand an expensive change to remote work due to COVID-19, whereas the directors intend to save costs.

Furthermore, the decision-making could be slower in the beginning,[47] which could hinder fast decisions (needed in the pandemic). Moreover, the involvement of the workforce in the decision-making can lead to conflicts of interest[48] that must be managed.[49] For instance, a workforce director could vote against furloughs due to COVID-19, affecting employees he knows personally. Nevertheless, a workforce

[42] Villiers (n 25) 233.
[43] ibid 234.
[44] Andreas Kokkinis and Konstantinos Sergakis, 'A Flexible Model for Efficient Employee Participation in UK Companies' (2020) 20 Journal of Corporate Law Studies 453, 463. See also FRC, 'Guidance' (n 20) para 54.
[45] FRC, 'Review of Corporate Governance Reporting: November 2020' (2020) 30 <www.frc.org.uk/getattachment/c22f7296-0839-420e-ae03-bdce3e157702/Governance-Report-2020-2611.pdf> accessed 1 April 2021.
[46] FRC, 'Guidance' (n 20) paras 43, 50.
[47] Kokkinis and Sergakis (n 44) 457.
[48] ibid.
[49] UKCGC 2018, Provision 7.

director has the same duties as the remaining board, such as the duty to disclose conflicts of interest.[50]

However, the WE only applies on a comply or explain basis because it is an UKCGC 2018 provision.[51] The company's workforce was nonetheless particularly affected by the COVID-19 pandemic due to, i.a., working from home, furlough, lay-offs and short-time working. It is therefore feasible that the workforce could exert internal pressure to adopt a WE mechanism.

B. Business cases

The business case for disclosures can also exert pressure on directors.

(i) CSR and ESG

There is an investor interest for (better) climate-related reports[52] because they reduce the information asymmetries and thus the principal-agent issue.[53] This especially applies in the case of a correlation with the company's profits.[54] Furthermore, (voluntary) CSR (and particularly ESG) disclosures can also have positive impacts on the company's profits. They can enhance the company's reputation and financial performance.[55] Moreover, companies engaging in ESG are more attractive for institutional investors (that prospectively are required to comply with new ESG laws).[56] Studies further found that higher levels of CSR disclosures are associated with greater market values of equity in the UK[57] and that there is a positive correlation between CSR disclosures and the performance of large UK companies.[58]

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[50] FRC, 'Guidance' (n 20) para 54.
[51] UKCGC 2018, Introduction.
[52] cf FCA, 'PS20/17' (n 28) 3.92. See also Zhihong Wang, Tien-Shih Hsieh and Joseph Sarkis, 'CSR Performance and the Readability of CSR Reports: Too Good to Be True?' (2018) 25 Corporate Social Responsibility and Environmental Management 66, 66.
[53] Suzanne Bowerman and Umesh Sharma, 'The Effect of Corporate Social Responsibility Disclosures on Share Prices in Japan and the UK' (2016) 13 Corporate Ownership and Control 202, 214.
[54] Villiers (n 25) 251.
[55] ibid 32; Wang, Hsieh and Sarkis (n 52) 66, 68; Federica Balluchi, Arianna Lazzini and Riccardo Torelli, 'CSR and Greenwashing: A Matter of Perception in the Search of Legitimacy' in Mara Del Baldo and others (eds), *Accounting, Accountability and Society: Trends and Perspectives in Reporting, Management and Governance for Sustainability* (Springer International Publishing 2020) 156f.
[56] Kokkinis and Sergakis (n 44) 475. See hereto FCA, 'PS20/17' (n 28) para 1.22.
[57] Bowerman and Sharma (n 53) 214.
[58] Parminder Johal, 'Corporate Reporting: From Numbers to Narrative' in Elaine Conway and Darren Byrne (eds), *Contemporary Issues in Accounting: The Current Developments in Accounting Beyond the Numbers* (Springer International Publishing 2018) 110.

This means that there is a business case. CSR disclosures not only increase costs but can also increase company value.[59] Hence, directors are motivated to disclose positive information.[60] Therefore, these benefits are incentives to increase CSR activities and report truthfully on them. However, the advantages can also be a motive to manipulate disclosures. The company would then save costs for expensive CSR activities and benefit from the advantages, provided the misleading information is not revealed.

Accordingly, both non-disclosures and the reporting of negative information can reduce the corporate value. This also constitutes a motive for misrepresentation. However, merely disclosing good news regarding CSR can also have negative impacts. These are, e.g., scepticism, loss of trust and more media attention to scandals.[61]

(ii) WE

Stakeholder engagement is also important to be successful in the long term (in particular, the engagement with the company's key stakeholders).[62] For instance, the workforce is a key stakeholder because it is an internal stakeholder with specific knowledge about the company.[63] Therefore, WE is essential and also emphasised by the UKCGC 2018.[64] The UKCGC 2018 further states that a company's culture should foster openness and responsiveness to stakeholders' perspectives.[65] This especially applies, as the COVID-19 pandemic is a crisis and the communication with stakeholders is generally vital in crisis situations.[66] For example, it can be important to communicate with the creditors about debt restructurings to secure the company's short-term liquidity.

Furthermore, WE can broaden the board's view and support the workforce in communicating concerns to the board,[67] such as concerns about hygiene measures in the workplace. It is thus valuable to gather the workforce's views. For instance, the

[59] ibid.
[60] Wang, Hsieh and Sarkis (n 52) 66f.
[61] ibid 69.
[62] UKCGC 2018, Introduction. See also Franklin (n 17) 2; FRC, 'Guidance' (n 20) para 41.
[63] Kokkinis and Sergakis (n 44) 457.
[64] n 19. See also FRC, 'Guidance' (n 20) paras 41f.
[65] UKCGC 2018, Introduction.
[66] n 2.
[67] FRC, 'Guidance' (n 20) paras 51, 54.

switch to remote working can reduce rent expenses. The workforce's participation in decision-making can also lead to increased productivity, motivation, loyalty, more innovation and enhanced governance.[68] It further enhances a company's culture because it reduces silo thinking.[69] These are all significant factors that companies need to ensure their sustainability during the COVID-19 pandemic (and a possible long-lasting economic crisis).

Hence, there is a business case for WE and stakeholder engagement. Investors also demand more information on the workforce due to COVID-19, especially how they are retained and supported.[70] Since the workforce can easily compare the information disclosed with the real implementations within the company, the incentives for providing misleading information in the case of WE are minimal. Untrue information can harm the corporate culture and result in demotivation and a decline in productivity, which is especially critical in a crisis.

C. Summary

Although the aforementioned duties are accompanied by benefits, additional burdens are placed on directors. This especially concerns the costs that will arise during and due to the COVID-19 pandemic. In particular, the new LR can lead the directors to misrepresent their company despite the risk of reputational damages. As will be shown hereafter, these risks are even higher due to (extra) NR. Finally, it must be noted that a recent study (which examined corporate immunity to the COVID-19 pandemic) found that the pandemic-induced drops in stock returns were milder among companies with more CSR activities.[71] This could lead directors to take CSR more into account in their decisions in the future.

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[68] See John Child, 'Organizational Participation in Post-Covid Society – Its Contributions and Enabling Conditions' (2021) 35 International Review of Applied Economics 117, 126–131. See also Kokkinis and Sergakis (n 44) 455–457.
[69] cf FRC, 'Guidance' (n 20) figure 2 at para 22.
[70] FRC, 'Company Guidance (Updated 20 May 2020) (COVID-19)' (*FRC.org.uk*, 20 May 2020) <www.frc.org.uk/about-the-frc/covid-19/company-guidance-updated-20may-2020-(covid-19)> accessed 17 April 2021.
[71] See Wenzhi Ding and others, 'Corporate Immunity to the COVID-19 Pandemic' (2021) 141 Journal of Financial Economics 802.

IV. (Dis-)Advantages of an extra NR

NR is the description of a company's non-financial information. It includes, e.g., environmental reporting.[72] The TCFD recommendations are narrative, which can be demonstrated by using Tesco's disclosure as an example.[73]

In principle, NR can increase transparency because it is a complement to the traditional financial accounting reporting and mitigates the principal-agent issue.[74] This particularly is the case when NR is regulated, such as in the case of the new LR, and there is little discretionary power for directors. It can further enhance the understanding of investors via easily understandable language. A positive example of NR, providing valuable information, is the extended auditor's report.[75]

However, NR is always accompanied by flexible language. Before the new LR was introduced, the FCA criticised climate-related disclosures for their unclarity and incomparability.[76] More flexibility and discretion mean more incomparability of information, differing contents and insufficient details.[77] While, e.g., Tesco published its TCFD disclosure as one page with references,[78] the US company Verizon disclosed a whole TCFD report last year.[79]

Since directors have the power to decide how the NR is disclosed, they may intentionally craft it less informatively.[80] For instance, the NR could be published without references to quantified impacts in an annual report (which can be misleading).[81] Furthermore, it is also possible to whitewash numbers to a greater

[72] Johal (n 58) 107.
[73] Tesco, 'Annual Report and Financial Statements 2020' (2020) 20 <www.tescoplc.com/media/755761/tes006_ar2020_web_updated_200505.pdf> accessed 2 April 2021.
[74] Johal (n 58) 113f.
[75] See FRC, 'Extended Auditor's Reports: A Further Review of Experience' (2016) 4 <www.frc.org.uk/getattachment/76641d68-c739-45ac-a251-cabbfd2397e0/Report-on-the-Second-Year-Experience-of-Extended-Auditors-Reports-Jan-2016.pdf> accessed 29 March 2021.
[76] FRC, 'FRC Climate Thematic: Reporting – How Are Companies Developing Their Reporting on Climate-Related Challenges? November 2020' (2020) 7f <www.frc.org.uk/getattachment/6d8c6574-e07f-41a9-b5bb-d3fea57a3ab9/Reporting-FINAL.pdf> accessed 18 April 2021.
[77] cf Johal (n 58) 112, 115. See also Villiers (n 25) 244, 245f.
[78] n 73.
[79] See Verizon, 'TCFD Report 2019' (2020) <www.verizon.com/about/sites/default/files/Verizon-TCFD-Report.pdf> accessed 2 April 2021.
[80] Belcher (n 7) 161f.
[81] cf FCA, 'PS20/17' (n 28) para 2.21. See also Villiers (n 25) 247.

extent through NR. An example of this is the gender pay gap ('gap') reporting, which can be found in, i.a., sustainability and ESG reports within annual reports. Melrose's sustainability report states that the gap of its subsidiary GKN Aerospace Services Ltd is 14.7% and therefore 'materially smaller' than the national average (17.4%).[82] British American Tobacco describes its 2% increase in the gap as 'slightly' widened.[83] Tesco reports 8% ('significantly below' the national average), and lists concrete initiatives to reduce this figure.[84] HSBC reports a 48% gap without a comparison to the national average in its ESG review.[85] This highlights how differently companies report their information. Another example is the latest sustainability report of VRAZ. It highlights the prohibition of discharging chemical products into sewage systems as one of its 'Fundamental Environmental Requirements', although this merely reflects environmental protection laws.[86]

Different studies support the assumption of the risks in NR. A review of the NR by 50 UK listed companies found that 'immaterial clutter' is most prevalent in the CSR (and risk) reporting sections in the examined annual reports.[87] For instance, a company praised the usage of refillable glass bottles in meetings as a CSR activity.[88] Furthermore, a study, examining CSR reports disclosed by US public companies, shows that there is a correlation between companies' CSR performance and the readability of CSR reports. Companies with an inferior CSR performance often reduced the disclosures' readability (window-dressing).[89] Another study examined the narrative sections on corporate community involvements of FTSE 100 companies.

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[82] Melrose Industries, 'Annual Report 2020' (2021) 82 <www.melroseplc.net/media/2619/melrose-annual-report-and-accounts-2020.pdf> accessed 2 April 2021.

[83] BAT, 'Annual Report and Form 20-F 2020' (2021) 119 <www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DOAWWGJT/$file/BAT_Annual_Report_and_Form_20-F_2020.pdf> accessed 2 April 2021.

[84] Tesco (n 73) 56.

[85] HSBC Holdings PLC, 'Annual Report and Accounts 2020' (2021) 64 <www.hsbc.com/-/files/hsbc/investors/hsbc-results/2020/annual/pdfs/hsbc-holdings-plc/210223-annual-report-and-accounts-2020.pdf> accessed 2 April 2021.

[86] EVRAZ, 'For a Better Future: Sustainability Report 2020' (2021) 51 <www.evraz.com/upload/iblock/bb9/EVRAZ_SR_2020_eng_final.pdf> accessed 7 July 2021.

[87] Accounting Standards Board, 'Rising to The Challenge: A Review of Narrative Reporting by UK Listed Companies' (2009) 3 <www.iasplus.com/en/binary/uk/0910narrativereporting.pdf> accessed 28 March 2021.

[88] See ibid 11, 9.

[89] Wang, Hsieh and Sarkis (n 52) 67–76.

It concluded that 44% of the examined stand-alone reports on community programmes have a 'doubtful ontological' status.[90] An example could be the latest annual report of Flutter Entertainment. It states that the company would offset its emissions by financing a biogas project in Vietnam. Unfortunately, the annual report does not contain any further information on this project or figures.[91]

Furthermore, the average annual report of the FTSE 350 companies was almost 200 pages long in 2019/2020.[92] For example, the latest annual report of Melrose Industries was extended by 20 pages to a total of 220 pages and does not even contain TCFD disclosures.[93] The current annual report of Fresnillo even consists of 276 pages.[94] However, as shown,[95] the increased amount of information does not necessarily lead to more valuable information.[96] Rather, by reducing readability, directors may intentionally generate information overload, which can obscure negative information and thereby mitigate negative reactions.[97] Therefore, there is a high percentage of shareholders who do not read annual reports due to information overload.[98]

Thus, NR offers the opportunity to lengthen annual reports, as well as to intentionally use vague and inaccessible language. These possibilities weaken both transparency and comparability. Hence, there is the greater risk that directors creatively manipulate companies' disclosures to enhance the reputation, hide faults and appear more competitive.[99] The risk of misleading is further heightened if, as in the case of the new LR, there is no third-party assurance for the NR required.[100] Finally, it must be noted that there is also a new start-up company using machine learning to analyse data, such

[90] Kemi C Yekini, Kamil Omoteso and Emmanuel Adegbite, 'CSR Communication Research: A Theoretical-Cum-Methodological Perspective from Semiotics' (2021) 60 Business & Society 876, 897, 898. See also 878, 885, 895.
[91] Flutter Entertainment, 'Changing the Game: Annual Report & Accounts 2020' (2021) 36 <www.flutter.com/sites/paddy-power-betfair/files/Annual%20reports/annual-report-and-accounts-2020.pdf> accessed 28 June 2021.
[92] PwC (n 29) 4.
[93] Melrose Industries (n 82).
[94] See Fresnillo, 'Annual Report and Accounts 2020' (2021) <www.fresnilloplc.com/media/488895/200421-fresnillo-ar2020-web.pdf> accessed 28 June 2021.
[95] See (n 87).
[96] Johal (n 58) 108.
[97] Wang, Hsieh and Sarkis (n 52) 67.
[98] Villiers (n 25) 34.
[99] cf Balluchi, Lazzini and Torelli (n 55) 152.
[100] See FCA, 'PS20/17' (n 28) paras 3.64–3.69 for different opinions. See also Villiers (n 25) 246.

as satellite images, to assess, e.g., tree planting projects.[101] In addition to the FCA, which is able to, i.a., delist a company,[102] this could lead to further adherence to a company's NP in the future.

V. Conclusion

Following the introduction, the second section of this paper identified the corporate law framework of the CG priorities for 2021. In this regard, the CG priorities place burdens on the directors, in principle. This is mainly due to new obligations, expected market pressure and additional costs during the COVID-19 pandemic, as analysed in section 3. Undoubtedly, the short-term expenses will be high to solve climate related issues or to provide the internal infrastructure for the WE (which can subsequently be reported positively).

Although the new LR enhances transparency and comparability, due to its references to the TCFD's documents, it is nevertheless (still) voluntary. The fourth section analysed further (dis-)advantages of an extra NR in this context. Specifically, the (extra) NR can increase the temptation to obscure the true actions of companies. However, the companies will also benefit from these measures in the long run and directors should therefore acknowledge the LR's and WE's business cases. Additionally, there is the danger that misleading information is revealed. However, the risk of vague or untrue information about the WE is lower because the company's culture could thereby easily be damaged.

Furthermore, the directors should consider that additional legislations are very likely in order to be competitive with the European Union. This includes mandatory TCFD disclosures (which were also a topic at the recent G7 summit)[103] to achieve the goals of the Paris Agreement and UK's new net carbon account.[104] The latest report of the UK

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[101] Will Mathis and Ivan Levingston, 'Carbon Offsets Have a New Ratings Agency With Startup Sylvera' *Bloomberg* (13 May 2021) <www.bloomberg.com/news/articles/2021-05-13/carbon-offsets-have-a-new-ratings-agency-with-startup-sylvera> accessed 28 June 2021.

[102] Financial Services and Markets Act 2000, s 77(1).

[103] HM Treasury, 'G7 Finance Ministers Agree Historic Global Tax Agreement' (*GOV.UK*, 5 June 2021) <www.gov.uk/government/news/g7-finance-ministers-agree-historic-global-tax-agreement> accessed 20 June 2021.

[104] Climate Change Act 2008, s 1(1) amended by Climate Change Act 2008 (2050 Target Amendment) Order 2019, SI 2019/1056.

Climate Change Committee also describes TCFD disclosures as 'a key development for assessing businesses' preparedness for climate change'.[105] Recently, the Department for BEIS announced to enshrine mandatory TCFD-aligned requirements for the largest companies (and financial institutions) in law[106] and published its consultation response (on mandatory climate-related financial disclosures by publicly quoted companies, large private companies, and LLPs).[107] Moreover, a draft statutory instrument – The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021 – was published in this context, which is expected to come into force on 6 April 2022.

It must further be noted that the European Commission recently proposed its corporate sustainability reporting directive[108] and its proposal for a sustainable corporate governance directive is expected shortly.[109] This could also have impacts on the UK. Finally, the UK government proposed to provide the intended Audit, Reporting and Governance Authority ('ARGA') with powers to investigate and sanction breaches of corporate reporting responsibilities.[110] The strengthening of malus and clawback provisions is also discussed in this proposal.[111] In January 2022, the FRC released a three-year plan and budget to prepare for the transition to ARGA in this context.[112]

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[105] Climate Change Committee, *Progress in Adapting to Climate Change: 2021 Report to Parliament*, vol 2 (2021) 238.
[106] Department for BEIS, 'UK to Enshrine Mandatory Climate Disclosures for Largest Companies in Law' (GOV.UK) <www.gov.uk/government/news/uk-to-enshrine-mandatory-climate-disclosures-for-largest-companies-in-law> accessed 11 November 2021.
[107] Department for BEIS, 'Consultation response: Mandatory climate-related financial disclosures by publicly quoted companies, large private companies, and LLPs' (2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029354/tcfd-consultation-government-response.pdf> accessed 14 November 2021.
[108] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting' COM (2021) 189 final.
[109] European Commission, 'Sustainable Corporate Governance' (*European Commission*, 5 August 2021) <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en> accessed 18 April 2022.
[110] See Department for BEIS, *Restoring Trust in Audit and Corporate Governance: Consultation on the Government's Proposals* (CP 382, 2021) ch 5.1.
[111] See ibid 5.2.
[112] See FRC, 'Financial Reporting Council: Draft 3-Year Plan' (2022) <www.frc.org.uk/getattachment/913ca5ca-9fbb-4c48-96a0-5c53a6254657/FRC-Draft-Strategy,-Plan-Budget-2022-25-(2).pdf> accessed 19 April 2022.