Louvain School of Management

Regulating Greenwashing: The Effectiveness of EU Legal Instruments in Ensuring Sustainability

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Declaration regarding AI tool usage in Master's thesis

During the preparation of this master's thesis, the authors utilized DeepL and Chat GPT for the following purpose:

1. DeepL Translator and DeepL Write were used to translate, correct and improve the tone of various sections of this thesis.

2. Chat GPT: was used to search sources about research questions and enrich the overall literature of the thesis. The authors also used ChatGPT to rephrase and improve certain expressions and sentences in this thesis.
3. After using DeepL and Chat GPT, the authors diligently reviewed and edited the content produced by the tool. We take full responsibility for the final content of this thesis.

Through this statement, we confirm that the content of this master's thesis is our own original work, enhanced through the careful and ethical use of AI tools.

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Abstract

This thesis addresses the issue of greenwashing in corporate sustainability communication and analyzes the effectiveness of the European Union's legal instruments, particularly the CSRD. Greenwashing refers to misleading communication by a company about its practices or products, falsely presented as environmentally friendly, which undermines the credibility of commitments and stakeholder trust. To tackle this, the EU has gradually established several instruments aimed at enhancing the transparency and reliability of sustainability reporting.

The analysis begins with a study of existing European instruments such as the Directive on Unfair Commercial Practices, the Non-Financial Reporting Directive (NFRD), the SFDR regulation on sustainable finance, and the Taxonomy Regulation. The second chapter focuses on the new CSRD directive, which expands non-financial reporting obligations, introduces the principle of double materiality, imposes common standards (ESRS), and strengthens verification and sanctions, aiming to make reports more credible and limit greenwashing.

The third chapter assesses the legal effectiveness of the CSRD against greenwashing by comparing it with the South African experience, a pioneer in integrated reporting. The analysis of the South African framework, combining soft law and recent legislative developments, highlights its strengths and weaknesses in terms of oversight, standardization, and implementation, offering insights to strengthen the CSRD.

The study highlights that, for the CSRD to be fully effective against greenwashing, major challenges must be addressed, particularly European harmonization, strengthening companies' capacities, and establishing robust and coherent control mechanisms.

Contents

Introduction

In recent years, the growing interest in environmental, social, and governance (ESG) issues has led many companies to portray themselves as sustainable actors. This trend may be seen as positive because it signals a growing awareness of environmental and social challenges within the corporate world, and a willingness, at least in discourse, to integrate broader societal concerns into business strategy.

However, it also facilitated the rise of a controversial practice: greenwashing. This term refers to misleading communication by a company regarding its practices or products, which are falsely presented as environmentally friendly (Fourreau, 2022, p. 13). As sustainability becomes a strategic priority, some companies exploit this narrative to improve their image without making substantive changes to their operations. In this context, regulating corporate environmental claims has become increasingly necessary.

To address these challenges, the European Union has introduced several legal instruments aimed at enhancing the transparency and reliability of corporate sustainability reporting. This term refers to the structured disclosure by companies of environmental, social, and governance (ESG) information, including their sustainability goals, impacts, risks, and strategies (EcoVadis, n.d.). However, when such reporting lacks precision, standardization, or external verification, it can become a vehicle for greenwashing, allowing companies to appear more sustainable than they truly are (Green Computing Foundation, 2023).

Among the EU instruments designed to regulate this practice, the Corporate Sustainability Reporting Directive (CSRD), adopted in December 2022, represents the most ambitious initiative to date. Building on previous texts such as the Non-Financial Reporting Directive (NFRD) and the Sustainable Finance Disclosure Regulation (SFDR), the CSRD seeks to establish a harmonized and robust reporting framework across the EU. This thesis focuses specifically on greenwashing risks within corporate sustainability reporting and analyzes the extent to which current EU instruments, particularly the CSRD, can mitigate them.

The recent regulatory developments such as the CSRD require closer legal analysis to assess whether they offer not only transparency, but also effective safeguards against misleading environmental claims.

This thesis therefore aims to assess to what extent the CSRD provides a credible legal response to the issue of greenwashing within sustainability reporting. It first examines the scope, strengths, and limitations of the directive in light of earlier EU regulations. The analysis then shifts to South Africa, recognized as a key player in advancing ESG transparency. The country stands out for its hybrid regulatory ecosystem, combining soft law instruments (such as the King IV Code and the Integrated Reporting Framework), sector-specific guidelines issued by the Johannesburg Stock Exchange (JSE), and a recent shift toward more binding regulation with the 2023 Companies Amendment Bill. The comparative analysis between the European and South African approaches seeks to identify the CSRD's shortcomings and explore what lessons might be drawn from the South African experience.

This approach allows for a critical evaluation of regulatory frameworks and their actual impact on corporate practices. The ultimate objective is to determine whether the CSRD constitutes a robust and operational legal tool to ensure sustainability transparency and effectively combat greenwashing, or whether it still requires further adjustments. The research is based on a review of legal texts, institutional reports, and recent empirical studies.

Chapter 1: Understanding greenwashing and previous regulations

1. Definition and mechanisms of greenwashing

1.1. Definition of the concept

The term greenwashing refers to all forms of communication or action aimed at portraying a company, product, or public policy as more environmentally friendly than it actually is. Initially associated with corporate marketing, the phenomenon has now extended into political and institutional spheres, reflecting the growing instrumentalisation of environmental issues for image-building or legitimacy purposes (Fourreau, 2022, p. 13 ; Cordelier, 2020, pp. 23–24). Traditionally, greenwashing is defined as a deceptive communication strategy used by companies to present themselves as environmentally responsible, without undertaking any concrete or meaningful actions in support of environmental protection. This practice can manifest at two levels (Fourreau, 2022, p. 13) :

- At the product level: through unverified or exaggerated environmental claims about a specific product.
- At the corporate level: through broad communication campaigns promoting environmental commitments, while the company's actual practices do not align with these claims.

However, in the context of this research, the focus remains on corporate greenwashing, as addressed by the CSRD. While the broader concept of greenwashing may also include public institutions or political discourse, this study concentrates on the corporate level, where misleading environmental claims can undermine the credibility of sustainability reporting and investor trust.

While greenwashing is often portrayed as a deliberate strategy, it is important to acknowledge that it can also occur unintentionally. As highlighted by recent studies, greenwashing may result from a lack of understanding or awareness within an organization. In such cases, companies might genuinely believe they are engaging in sustainable practices, while their actions fall short of the high standards expected by today's informed consumers. For example, a firm may claim that its products are "sustainably sourced," but without transparency in its supply chain or oversight of its suppliers' practices, these statements can mislead, even if deception was not the intent. This unintentional greenwashing reveals a critical gap between internal corporate perceptions and external expectations regarding environmental responsibility, further reinforcing the need for education, standardized benchmarks, and transparent reporting mechanisms to align claims with reality (Dumesges, 2024).

1.2. Origins of the term greenwashing

Greenwashing emerged in response to the rise of environmental concerns during the 1960s and 1970s. Initially, major corporations either denied their environmental responsibilities or sought to discredit environmental movements, a phenomenon known as green backlash. However, by the 1980s, when this strategy proved ineffective, many companies shifted tactics, co-opting environmental criticism by adopting a façade of ecological awareness. This marked the rise of corporate environmentalism. The concept of greenwashing emerged as a counter-reaction from civil society, with the term first introduced in 1986 by American environmentalist Jay Westerveld. In an essay, he criticized certain hotel chains that encouraged guests to reuse towels under the pretext of protecting the environment, when their true motivation was to cut laundry costs. His critique highlighted the use of misleading communication strategies designed to convey an ecological image without any corresponding concrete actions (Vargas, 2020, p. 21).

The word *greenwashing* is a blend of the English terms green and whitewashing, the latter originally referring to the practice of applying a coat of whitewash to hide imperfections on a wall. By analogy, greenwashing involves concealing the negative environmental impacts of a company or product behind a misleadingly green façade. This metaphor underscores the intent of some organizations to obscure their real practices behind a superficial layer of environmental messaging, often for marketing or public relations purposes (Vargas, 2020, p. 21 ; Cordelier, 2020, p. 22).

The term also evokes brainwashing, a concept associated with propaganda and advertising, which aims to influence perceptions to the point of reshaping an individual's thinking. This association suggests that greenwashing is not merely about hiding inconvenient truths; it also involves manipulation designed to elicit public approval and shape opinion, mirroring common public relations strategies.

Finally, the word echoes *hogwash*, which literally means pig feed and, by extension, nonsense intended to deceive. This final connotation aptly captures the essence of greenwashing as a collection of misleading ecological messages, often devoid of logic but rendered persuasive through intensive media repetition, ultimately shaping collective opinion (Fourreau, 2022, pp. 14-15).

Over time, the concept of greenwashing has expanded beyond corporations to include public institutions and governments. These actors may also adopt ecological rhetoric or policies without implementing meaningful or effective environmental actions. This broadening of the concept underscores the need for heightened vigilance regarding proclaimed environmental commitments, whether they originate from the private or public sector.

1.3 Conceptual basis: Regulation, transparency and greenwashing

Before assessing the effectiveness of regulatory frameworks in the field of sustainability, it is essential to clarify what it means to effectively combat greenwashing. In the context of sustainability reporting regulation, this concept refers to a legal framework's ability not only to reduce misleading or exaggerated claims about companies' environmental or social performance but also to create the conditions for verifiable transparency that is useful to stakeholders. Effectiveness does not lie solely in the existence of standards, but in their implementation, enforceability, and deterrent capacity (European Securities and Markets Authority [ESMA], 2024).

The performance of a regulatory instrument in addressing greenwashing can thus be evaluated through several criteria:

- *The quality of reporting*: High-quality ESG reporting relies on the standardization of disclosed information, its auditability (the possibility of independent verification), and its comparability across companies and over time. The absence of clear and uniform standards in ESG reporting leads to significant variability in practices, making it difficult to compare ESG performance across firms and creating opportunities for greenwashing (Liu and Zhang, 2022, pp. 1215-1218).
- *The deterrent capacity of the legal framework*: The presence of binding rules, sanction mechanisms, and normative clarity is essential to discourage greenwashing practices. The lack of strict regulatory frameworks and third-party verification exacerbates these practices, leading to a decline in stakeholder trust (Leong, Chong, Pek, Yong, Lee, and Leow, 2025, p. 91).
- *Transparency*: Transparency plays a critical role in balancing the relationship between companies and their stakeholders, serving as a powerful form of indirect regulation. It allows stakeholders to monitor, compare, and exert social or economic pressure on companies. Increased transparency in sustainability disclosures can help companies build stakeholder trust (Sustainability Directory, 2025).

With these analytical criteria in mind, the next section investigates whether current legal instruments offer a robust and coherent framework capable of effectively addressing greenwashing and fostering credible sustainability reporting.

2. Common techniques used by companies

Greenwashing is increasingly prevalent in corporate communications, particularly in B2B contexts, where companies adopt environmental messaging without genuinely implementing sustainable practices. This raises major ethical and credibility issues in corporate reporting. This trend highlights the need for a clear conceptualization of greenwashing as it applies to corporate disclosures (Sales & Marketing Management, 2024).

Companies employ a variety of strategies to portray themselves as environmentally responsible, often without any substantial transformation of their actual practices. One common approach involves the use of vague terms such as “eco-friendly,” “100% natural,” or “environmentally responsible.” These expressions, while appealing, frequently lack precise definitions and may mislead consumers about the true nature of the products or services offered (Cordelier, 2020, pp. 22-23).

Another common technique is the use of euphemisms to downplay the environmental impact of certain activities. For example, referring to “plant protection products” instead of “pesticides” serves to soften the negative perception associated with these substances. Similarly, terms like “natural gas” or “biofuels” are often used to present controversial energy sources in a more favorable light (Fourreau, 2022, pp. 13-14).

Greenwashing is not limited to language; it also extends to visual and auditory elements. Companies often incorporate images of pristine natural landscapes, calming sounds like birdsong, or nature-inspired colours to reinforce their ecological image. A notable example is McDonald’s, which replaced the red in its signage with green in several European countries, suggesting environmental commitment without implementing substantial changes in its operations.

Corporate communication also relies on strategic actions aimed at drawing attention to positive aspects while concealing less favourable ones. This manipulation of perception lies at the heart of many greenwashing practices. A common method involves showcasing a genuine but marginal environmental initiative, such as changing product packaging, while the product’s overall environmental footprint remains problematic (Fourreau, 2022, pp. 13-14).

Finally, some companies establish partnerships with environmental organizations or fund sustainability-related projects to enhance their public image. While such initiatives can yield positive outcomes, they are sometimes used as a façade to obscure environmentally harmful internal practices. It is therefore essential to assess the sincerity and scope of these commitments in order to distinguish genuine actions from mere image-driven greenwashing (Fourreau, 2022, pp. 13-14).

3. European legal instruments addressing greenwashing

3.1. A complementary legal framework

The fight against greenwashing within the European Union relies on a set of legal instruments. When combined, these instruments form a comprehensive regulatory framework for corporate sustainability, understood as the integration of environmental, social, and governance (ESG) considerations into corporate strategy, risk management, and reporting practices (European Commission, 2018a). Rather than isolated initiatives, these instruments are designed to operate in a complementary manner, each targeting a specific aspect of the issue: the regulation of environmental claims in commercial practices, financial transparency requirements, or even the definition of what qualifies as "sustainable" (European Supervisory Authorities, 2022).

From combating misleading practices in business-to-consumer (B2C) relations to imposing non-financial reporting obligations and regulating sustainable financial products[1], European law adopts a multifaceted approach to prevent unfounded environmental or social claims.

This section examines the main legal instruments currently in force and highlights how their interplay progressively shapes a coherent normative ecosystem aimed at strengthening the credibility of environmental, social and governance (ESG) commitments[2]. The analysis will follow a progression from general consumer protection frameworks to more specialized mechanisms applicable to financial markets.

[1] Sustainable financial products refer to investment products, such as funds, bonds, or portfolios, that promote environmental or social objectives, or contribute to sustainable economic activities as defined by the EU Taxonomy and disclosed under the SFDR (Regulation (EU) 2019/2088, art. 2 (12)).
[2] ESG (Environmental, Social and Governance) refers to three key dimensions of sustainability used to evaluate corporate behavior and investment decisions. While "sustainability" is a broader concept, ESG provides a structured framework through which it is assessed in financial and regulatory contexts.

3.2. Key instruments contributing to the regulation of sustainability communication

3.2.1. Directive on Unfair Commercial Practices (2005/29/EC)

a. Objectives and scope of the Directive on Unfair Commercial Practices

Directive 2005/29/EC on unfair commercial practices is one of the cornerstones of European consumer law. It aims to establish a harmonized legal framework to protect consumers against misleading or aggressive practices in business-to-consumer (B2C) relationships. Its fundamental objective is to ensure a high level of consumer protection while safeguarding the proper functioning of the internal market (European Commission, 2021a).

This directive applies to any action, omission, commercial communication, or business practice, regardless of its form, that directly affects consumer's economic decisions. This notably includes environmental claims made by companies, even though sustainability was not yet an explicit priority in European policy at the time of the directive's adoption (Directive (EU) 2005/29/EC, 2005). While the directive was not originally designed to address the issue of greenwashing, it can nevertheless be applied in this context, particularly when a company knowingly misleads consumers about the true environmental impact of its products or services.

b. Relevant provisions in the context of greenwashing

Although Directive 2005/29/EC on unfair commercial practices was not specifically designed to regulate environmental communication, it can indirectly contribute to the fight against greenwashing by providing a robust legal basis to sanction misleading environmental claims in business-to-consumer relationships.

Article 6 of the directive explicitly prohibits misleading commercial practices. This includes situations where a company provides false information or information likely to deceive the consumer regarding, for instance, a product's characteristics, composition, environmental impact, or the ethical commitments of the company. Therefore, when a business misleadingly communicates about the environmental benefits of its products or services without sufficient supporting evidence, it may fall within the scope of this prohibition (Directive (EU) 2005/29/EC, 2005, art. 6).

Article 7 introduces the notion of omission of material information. A company that fails to disclose certain elements necessary for the consumer to make an informed decision, such as the presence of polluting substances or the fact that a so-called "green" product is only superficially so, may also be subject to sanctions. This provision is particularly useful in cases of indirect greenwashing, where advertising messages are not explicitly false but omit key information (Directive (EU) 2005/29/EC, 2005, art. 7).

The directive also addresses misleading advertising in a cross-cutting manner, requiring that claims be substantiated, verifiable, and unambiguous. This means that companies must be able to justify any environmental claim with tangible and objective evidence. In line with article 12 of the directive, in the event of a dispute, the burden of proof lies with the trader, who must demonstrate the accuracy of the information provided, offering an additional legal tool to challenge unfounded environmental claims (Directive (EU) 2005/29/EC, 2005, art. 12).

Finally, Annex I of the directive lists 31 commercial practices that are deemed unfair under all circumstances. Point 2 of this list specifically prohibits displaying a trust mark, quality label or equivalent without having obtained the necessary authorization. This provision may apply in greenwashing cases where companies use uncertified or entirely fabricated environmental labels, thereby creating a false impression of official recognition (Directive (EU) 2005/29/EC, 2005, Annex 1).

c. Limitations in terms of sustainability and complementarity with other instruments

Despite its relevance in addressing certain forms of greenwashing, the Directive on Unfair Commercial Practices presents several limitations that reduce its effectiveness in combating misleading environmental communication.

Firstly, the directive applies exclusively to business-to-consumer (B2C) relationships, thereby excluding greenwashing practices targeting investors or occurring between businesses (B2B), which are common (Sales & Marketing Management, 2024).

Secondly, the directive was not specifically designed to address sustainability communication-related challenges. Its primary objective is to protect consumers from misleading or aggressive commercial practices, not to safeguard the environment as such. As a result, it is necessary to demonstrate that an environmental claim is likely to mislead the average consumer, a task that remains difficult, especially when vague terms such as “green” or “responsible” are used. The directive can thus address certain green claims when they are false or unsubstantiated, but it does not impose substantive requirements on the quality of environmental information disclosed. In other words, it functions more as a repressive rather than a preventive tool, and it does not set clear standards on how ESG performance should be communicated.

Lastly, the directive does not provide a clear definition of environmental claims nor any prior verification mechanism to assess their accuracy. It therefore needs to be complemented by more targeted instruments to more effectively regulate greenwashing practices.

Ultimately, while Directive 2005/29/EC offers a useful legal tool to sanction specific greenwashing practices in B2C contexts, it remains insufficient on its own to comprehensively regulate companies’ ESG disclosures. It complements instruments such as the NFRD and the CSRD, which impose more targeted sustainability-related transparency obligations, but its effectiveness largely depends on how well it is integrated with these other components of the EU legal framework.

3.2.2. The Omnibus Directive (EU) 2019/2161 amending Directive 2005/29/EC

As part of the broader legal framework, the European Union adopted the Omnibus Directive, which strengthens consumer protections, particularly by adapting existing rules to digital practices and sustainability-related challenges.

a. Objectives and scope of the Omnibus Directive

Directive (EU) 2019/2161, more commonly known as the Omnibus Directive, was adopted in November 2019 as part of the European Commission’s “New Deal for Consumers.” This initiative aimed to enhance consumer protection in response to evolving market conditions, especially those driven by digital transformation and emerging online commercial practices.

The Omnibus Directive is not a standalone legal act; rather, it amends four existing pieces of EU consumer protection legislation: Directive 93/13/EEC on unfair terms in consumer contracts, Directive 98/6/EC on price indications, Directive 2005/29/EC on unfair commercial practices, and Directive 2011/83/EU on consumer rights.

In a context where sustainability claims increasingly feature in commercial communications, particularly online, the directive also aims to better regulate practices that may mislead consumers about the environmental performance of products.

Its scope remains focused on business-to-consumer (B2C) relationships, with the goal of ensuring a uniform level of protection across all Member States. The directive takes into account evolving societal expectations, notably the growing importance of sustainability criteria in consumers' purchasing decisions (Directive (EU) 2019/2161, 2019).

Although it does not explicitly address greenwashing, some of its amendments update the existing legal tools to more effectively tackle misleading environmental claims. In particular, it strengthens the foundations laid by Directive 2005/29/EC by adapting the rules to new forms of commercial communication, often digital, where "green" claims are increasingly common (European Commission, 2018b).

In this respect, the Omnibus Directive can be viewed as an important evolution in consumer law, paving the way for more refined regulation of sustainability-related practices. However, it does not constitute a legal instrument specifically designed to combat greenwashing. Instead, it complements other EU instruments, such as the NFRD and the CSRD, which more directly regulate companies' sustainability-related disclosure obligations.

b. Relevant provisions in the context of greenwashing

Although Directive (EU) 2019/2161, the Omnibus Directive, does not explicitly address greenwashing, it introduces several legislative amendments that are useful in combating such practices, particularly in B2C contexts. These provisions aim to better regulate corporate commercial communication and to provide consumers with more effective legal tools to challenge misleading environmental claims.

i. Strengthening Directive 2005/29/EC on Unfair Commercial Practices

One of the key contributions of the Omnibus Directive lies in its amendments to Directive 2005/29/EC, particularly articles 6 and 7, which deal with misleading practices. Article 3 (3) of Directive 2019/2161 adds a new point (c) to article 6 (2) of Directive 2005/29/EC, stating that any environmental claim, such as the assertion that a product is “eco-friendly,” “carbon neutral,” or “sustainable”, must be based on verifiable evidence, and that the absence of such evidence may constitute an omission of material information, that is information that the average consumer needs in order to make an informed transactional decision (Directive (EU) 2019/2161, 2019, Art. 3 (3)-(4)).

Article 6(2) (c) of Directive 2005/29/EC therefore provides that : “*A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise, and it involves : any marketing of a good, in one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors*” (Directive (EU) 2019/2161, 2019, Art. 3 (3) ; Directive 2005/29/EC, 2005, as amended, Art. 6).

Similarly, Article 7 requires that material information be presented clearly and accessibly, including, where applicable, the specific criteria on which an environmental claim is based (Directive (EU) 2019/2161, 2019, Art. 3 (4) ; Directive 2005/29/EC, 2005, as amended, Art. 7).

ii. New Prohibited Practices in Annex I

Article 3(7) of the Omnibus Directive adds four new practices to the blacklist (Annex I) of Directive 2005/29/EC, which enumerates commercial practices that are prohibited under all circumstances (Directive (EU) 2019/2161, 2019, Art. 3 (7)). Among these, some may indirectly relate to greenwashing, particularly when companies manipulate the online presentation of environmentally friendly products :

- Point 11a: Obligation to clearly inform consumers when the ranking of search results is influenced by paid advertising or any form of payment.

This provision is useful for preventing disguised sponsored promotions of “green” products. It ensures that products presented as “eco-friendly” do not appear at the top of search results solely due to paid placement, without clear disclosure of such sponsorship. By addressing misleading rankings, this measure strengthens online transparency and protects consumers from deceptive presentation practices.

- Points 23a and 23b : Prohibition of falsifying consumer reviews or presenting them as coming from verified buyers without prior verification.

This is important to prevent the fabrication of false positive reviews regarding a product's environmental performance. This requirement enhances online transparency by limiting practices in which allegedly "green" products are artificially promoted through undisclosed sponsored placements, potentially misleading consumers about their actual environmental credentials.

c. Limitations in terms of sustainability and complementarity with other instruments

Although Directive (EU) 2019/2161, the Omnibus Directive, represents a significant step forward in consumer protection in the digital age, its impact on the fight against greenwashing remains limited by several factors.

Firstly, like the Directive on Unfair Commercial Practices (2005/29/EC), which it amends, the Omnibus Directive is strictly focused on business-to-consumer (B2C) relationships. It does not apply to business-to-business (B2B) communication or to information intended for investors. Yet, in the context of ESG challenges, sustainability-related communication increasingly targets a broader audience than just end consumers. This limits the directive's ability to comprehensively address greenwashing risks across the sustainable economy.

Secondly, as a directive rather than a regulation, the Omnibus Directive requires transposition into national law to become fully effective. The impact of its new obligations has therefore depended, and continues to depend, on how each Member State integrates them into its domestic legal framework and on the degree of enforcement by national authorities. Inconsistent implementation could result in disparities in consumer protection against greenwashing across Member States, undermining the directive's goal of harmonisation.

Finally, the Omnibus Directive is only one element among several in the EU's legal arsenal against greenwashing. It must be interpreted and applied in conjunction with other instruments.

Only through the coordinated combination of multiple legal texts can the European Union effectively regulate corporate "sustainability" communication and mitigate greenwashing in all its forms.

In conclusion, the Omnibus Directive does not introduce a legal framework specifically dedicated to greenwashing, but it reinforces the relevance of existing rules for addressing this phenomenon.. It modernises Directive 2005/29/EC by accounting for new forms of consumption, particularly digital, and provides better regulation of environmental claims in advertising, labelling, and online communication.

3.2.3. Directive 2014/95/EU: Non-Financial Reporting Directive (NFRD)

While the previous directives primarily fall within the scope of consumer protection, the NFRD marks a shift toward regulation of corporate non-financial reporting, which lies at the heart of ESG transparency.

a. Objectives and scope of the NFRD Directive

Adopted in October 2014, Directive 2014/95/EU, commonly referred to as the Non-Financial[3] Reporting Directive (NFRD), represents a major initial step in the European Union's efforts to promote non-financial transparency among large companies. It requires certain companies to disclose key information on their environmental, social, and governance (ESG) impacts (Directive 2014/95/EU, 2014).

The directive mandates that large public-interest entities, particularly listed companies, credit institutions, insurance and reinsurance undertakings, with more than 500 employees must publish non-financial information either within their management report or in a separate report (Directive 2014/95/EU, 2014, Art. 1). To fall within the scope of the directive, such entities must also meet at least one of the following thresholds: a balance sheet total exceeding €20 million or a net turnover exceeding €40 million (Directive 2013/34/EU, 2013, Art. 3 (4)).

[3] "Non-financial reporting is a process by which a company reports on its non-financial performance, i.e. the impact of its activities on the environment, society and corporate governance. It complements traditional financial reporting, enabling stakeholders to gain a better understanding of the consequences of a company's activities beyond just its economic results" (Impulsa, 2024).

Subsidiaries may be exempted if their parent company provides a consolidated group report (Directive 2013/34/EU, 2013, Art. 19*bis*).

The primary objective of this directive was to enhance corporate accountability to stakeholders by requiring companies to disclose their policies, risks, outcomes, and impacts across five key areas: environmental matters, social and employee-related issues, respect for human rights, anti-corruption and bribery, and board diversity.
If a company does not pursue a policy in one or more of these areas, it must state this and explain why, in line with the "*comply or explain*" principle. This mechanism seeks to prevent strategic silence on ESG issues and to encourage transparency without imposing predefined policies (Directive 2013/34/EU, 2013, Art. 19*bis*).

Although the directive does not yet establish common standards for ESG data presentation, it represents the first legal attempt to regulate non-financial reporting in Europe and serves as a crucial starting point in the fight against greenwashing.

b. Relevant provisions in the context of greenwashing

The NFRD marked a significant milestone in the fight against greenwashing by laying the groundwork for a structured non-financial reporting framework for large European companies. By requiring the disclosure of non-financial information in five key areas, it established a minimum level of transparency. This obligation compels companies to publicly explain how they manage their impacts in these domains.

Even in the absence of relevant policies, companies are still required to disclose and justify this under the "*comply or explain*" principle. This mechanism limits strategies of deliberate silence or vague communication on sensitive issues such as climate change, human rights, or diversity. In this regard, the NFRD helped reduce the space available for vague or misleading statements, which are often used as tools for greenwashing (Directive 2013/34/EU, 2013, Art. 19bis).

To support this obligation, and pursuant to Article 2 of the NFRD, the European Commission published non-binding guidelines in 2017 to help companies structure their non-financial disclosures effectively. The objective of these recommendations is to improve the quality, comparability, and clarity of non-financial reports while limiting the use of unverifiable marketing claims (European Commission, 2017).

These guidelines are based on six core principles. First, the information must be relevant, meaning it should provide insight into the company's development, performance, and impacts. Second, it must be reliable and balanced, understandable, reflecting both positive and negative effects, and free from distortion. Third, the data should demonstrate both completeness and conciseness: reports must be comprehensive while avoiding generic or superfluous content. Fourth, a strategic perspective is essential, placing the company within a broader and forward-looking context. Fifth, disclosures must follow a stakeholder-oriented approach, addressing the needs of the collective rather than isolated individuals. Lastly, the information must show consistency, remaining coherent and aligned over time (European Commission, 2017).

Although these guidelines are not legally binding, they aimed to encourage greater consistency and comparability in non-financial reporting practices, by promoting shared principles and expectations. Their publication represented an early attempt to structure voluntary disclosure practices, paving the way for subsequent regulatory developments.

c. Limitations in terms of sustainability and complementarity with other instruments

Although the NFRD represented a step forward in non-financial transparency, its impact remains limited. First, its narrow scope excluded a large number of companies, including SMEs, unlisted firms, and certain subsidiaries of international groups. This limitation allowed some actors to delegate their most sensitive activities to entities not subject to disclosure obligations, thereby reducing the directive's actual influence on sustainability practices.

Secondly, the NFRD's transposition into national law left room for member states to interpret and implement its provisions with varying degrees of strictness and scope. This flexibility resulted in significant differences between countries in terms of reporting formats, scope, and enforcement, which undermined the comparability of non-financial information within the internal market (Carbo, 2025). By contrast, the newer CSRD sets more detailed and stringent minimum requirements at the EU level, aiming to harmonize reporting standards and reduce discrepancies among Member States, thus improving the consistency and comparability of sustainability disclosures (PwC, 2025; European Commission, 2021d)

Finally, one of the main criticisms of the NFRD lies in the absence of a standardized and binding framework regarding the content, format, and verification of reports. The directive allowed companies a high degree of discretion in selecting the indicators, methodologies, and frameworks used for their non-financial disclosures. According to the European Commission's 2021 fitness check, this flexibility has led to significant inconsistencies, insufficient detail, and a lack of comparability across companies, which ultimately fails to meet the needs of report users in terms of reliability and relevance. Moreover, the directive did not impose mandatory external assurance at the EU level, leaving member states free to decide whether to require such verification. As a result, the reliability of the information disclosed was further diminished, undermining the transparency objective of the directive (European Commission, 2021e).

In summary, while the directive increased the volume of non-financial information available, it failed to ensure its quality or to establish a rigorous framework applicable to all companies (Ringe & Gözlügöl, 2022, p. 151).

3.2.4. Regulation (EU) 2019/2088: Sustainable Finance Disclosure Regulation (SFDR)

Building on the foundations of the NFRD, the European Union has adopted more binding instruments in the financial sector, starting with the SFDR, which directly regulates ESG-related disclosures in investment products.

a. Objectives and Scope of the SFDR regulation

Regulation (EU) 2019/2088, commonly known as the Sustainable Finance Disclosure Regulation (SFDR), entered into force on 10 March 2021. It is one of the central legal instruments of the European Commission's 2018 Action Plan on Financing Sustainable Growth, alongside the Taxonomy Regulation. This plan aimed to redirect financial flows toward sustainable investments, integrate environmental, social, and governance (ESG) factors into risk management, and enhance transparency and accountability in the financial sector (European Commission, 2018a).

The SFDR pursues a core objective of transparency: to improve the quality, comparability, and reliability of ESG information available to investors. It seeks to reduce information asymmetry between financial market participants (such as asset managers or financial advisors) and their clients, while curbing greenwashing practices whereby financial products are marketed as more sustainable than they truly are. This form of greenwashing, specific to the financial sector, can mislead investors and distort capital allocation decisions (Durand, 2024, p. 18). In other words, the SFDR does not define what is sustainable (that is the role of the Taxonomy), but it requires that any sustainability-related claim with respect to a financial product be justified, explicit, and traceable.

The regulation has a broad scope. According to Article 2, it applies to financial market participants, including portfolio management companies, alternative investment fund managers (AIFMs), insurance undertakings offering investment products, institutions for occupational retirement provision (IORPs), and financial advisers (Gilbert-d'Halluin, 2024, p. 19). All of these actors are required to comply with sustainability-related disclosure obligations, both at the entity level (e.g., general strategy, consideration of ESG risks in investment processes) and at the product level (e.g., specific ESG characteristics and objectives) (Regulation (EU) 2019/2088, 2019, Art. 2).

One of the key contributions of the SFDR is the introduction of a regulatory classification of financial products based on their level of ESG integration :

- Article 6 products: These do not integrate ESG criteria into their investment strategy. However, this must be explicitly stated to avoid ambiguity (Regulation (EU) 2019/2088, 2019, Art. 6).
- Article 8 products: These promote environmental and/or social characteristics without necessarily pursuing a sustainability objective. They must specify the concrete means of promotion and the criteria used (Regulation (EU) 2019/2088, 2019, Art. 8).
- Article 9 products: These have a specific objective of sustainable investment. They are subject to enhanced transparency obligations, particularly regarding their assessment methodology, asset selection, and the environmental or social impact indicators employed (Regulation (EU) 2019/2088, 2019, Art. 9).

This classification, now widely used in asset managers' communication, aims to structure the market and help investors clearly distinguish between sustainable investment products and those that are less so, or not at all.

Moreover, the transparency obligations imposed by the SFDR are organised on two complementary levels. First, financial actors must provide pre-contractual disclosures in documents made available to investors prior to subscription, such as prospectuses or product factsheets (Regulation (EU) 2019/2088, 2019, Art. 6, 8 and 9).

Second, periodic disclosures are required, involving regular updates of ESG-related data and its publication, particularly in annual reports or on the entities' websites (Regulation (EU) 2019/2088, 2019, Art. 11). This two-tiered approach seeks to enhance the traceability of ESG commitments over time, limit opportunistic and undisclosed strategy changes, and foster long-term trust between asset managers and investors.

Finally, it is worth noting that the SFDR operates in a complementary manner with the Taxonomy Regulation, as articles 5 to 7 of the Taxonomy explicitly refer to SFDR requirements for disclosing sustainability information in financial products. For instance, an article 9 SFDR product must indicate the share of its investments aligned with the Taxonomy. This interaction is essential: it links the form (what is said about sustainability) with the substance (the criteria that define sustainability).

b. Relevant provisions in the context of greenwashing

The SFDR introduces several transparency obligations that directly contribute to limiting greenwashing practices.

On the one hand, articles 3 and 4 require entities to provide standardised disclosures on how they integrate sustainability risks into their investment decisions, as well as on the principal adverse impacts of their activities on the environment and society. This requirement is grounded in the "*comply or explain*" principle set out in article 4, which obliges financial market participants to either publish their due diligence policy or explain why they do not (De Cuyper & Janssen, 2023, p. 355). This obligation to self-assess forces financial actors to align their stated ESG commitments with their actual practices (Regulation (EU) 2019/2088, 2019, Art. 3 and 4).

On the other hand, when a financial product is marketed as "green" or "socially responsible," articles 8 and 9 require providers to justify such characteristics or objectives using specific indicators, clear methodologies, and verifiable data. The required disclosures must include (Regulation (EU) 2019/2088, 2019, Art. 8 and 9) :

- the ESG objectives targeted by the product,
- the investment strategy employed to achieve them,
- the proportion of investments aligned with the EU Taxonomy,
- and the selection or exclusion criteria applied.

These requirements make it more difficult to use vague terms like "sustainable," "responsible," or "ESG-friendly" without solid evidence. They narrow the scope for misleading communications by requiring that every claim be substantiated with concrete data. In addition, the required disclosures must be published on asset managers' websites, in prospectuses, and in periodic reports, thereby enhancing visibility and comparability (Regulation (EU) 2019/2088, 2019, Art. 6-11).

By compelling financial actors to report in a structured and consistent way, the SFDR acts as a powerful tool to align ESG communications with actual practices, making it a key instrument in the fight against unfounded environmental claims in the financial sector.

c. Limitations in terms of sustainability and complementarity with other instruments

Although the SFDR aims to improve transparency and support sustainable finance, it presents major limitations in preventing greenwashing. One of the main issues lies in the vague definition of "sustainable investment" under Article 9 (Regulation (EU) 2019/2088, 2019, Art. 9). The regulation allows asset managers to interpret this notion broadly, without requiring strict or standardized criteria. As a result, many Article 9-labelled funds have invested in companies linked to fossil fuels, aviation, or arms, sectors generally considered incompatible with sustainability goals.

Recent studies also show that these so-called "dark green" funds tend to favor large multinationals with strong ESG reporting capacity, rather than smaller, potentially more responsible companies. This reflects a tendency to focus on ESG scores rather than real-world impact, weakening the SFDR's credibility. Furthermore, the European Commission confirmed in 2023 that it does not plan to further clarify the definition of sustainable investment, leaving room for interpretation and increasing the risk of regulatory greenwashing.

Finally, the downgrading of nearly 40% of Article 9 funds to Article 8 in late 2022, due to the introduction of more detailed technical standards, demonstrates that many funds may have been overclassified. These gaps highlight the need for stricter definitions, harmonized standards, and stronger alignment with complementary tools like the EU Taxonomy to ensure that sustainable finance delivers on its promises (Youmatter, 2023).

3.2.5. Regulation (EU) 2020/852: The Taxonomy Regulation

Complementing the SFDR, the Taxonomy Regulation clarifies what should be considered “sustainable” by establishing a common classification framework across the European Union.

a. Objectives and scope of the Taxonomy Regulation

Regulation (EU) 2020/852 of 18 June 2020, commonly known as the Taxonomy Regulation, is a key element of the European Commission’s strategy to support sustainable finance. It seeks to channel investments toward environmentally sustainable activities, strengthen the integration of sustainability in risk management, and enhance transparency in financial markets regarding ESG considerations (European Commission, 2018a).

Within this framework, the regulation establishes a unified classification system at the EU level to objectively identify which economic activities can be considered environmentally sustainable. One of its main goals is to combat greenwashing, that is, misleading or unfounded claims about the environmental benefits of certain activities, products, or services. The taxonomy thus provides a standardised reference framework, based on detailed technical criteria, allowing investors, companies, and public authorities to base their decisions on transparent and verifiable foundations (Regulation (EU) 2020/852, 2020, Art. 1).

The scope of application is defined in Articles 1 and 4 of the regulation (Regulation (EU) 2020/852, 2020, Art. 1 (4) and Art. 4).

It primarily covers:

- financial market participants that market financial products labelled as “sustainable”,
- large companies subject to non-financial disclosure obligations,
- and EU institutions or Member State bodies when setting standards, labels, or public policies related to environmental sustainability.

It therefore does not directly apply to advertising messages aimed at consumers or to traditional marketing communications (which fall under the scope of Directive 2005/29/EC or the Omnibus Directive). Rather, it is designed to regulate ESG information used in sustainable finance, non-financial reporting, and investment products marketed as "green."

To ensure the robustness of this framework, the European Commission mandated an independent group of experts in 2018, the Technical Expert Group on Sustainable Finance (TEG), to develop the technical screening criteria (Regulation (EU) 2020/852, 2020, Recital 5).

This group laid the groundwork for the current framework by defining environmental performance thresholds and was subsequently succeeded by the European Platform on Sustainable Finance, ensuring the ongoing evolution of the taxonomy based on scientific evidence (EU Technical Expert Group on Sustainable Finance, 2020, p. 9).

This legal framework is particularly useful in curbing misleading terminology in sustainable financial products or corporate ESG reports, where environmental claims may mislead investors or stakeholders. In this regard, the taxonomy contributes to strengthening the credibility of environmental commitments made by economic actors by imposing a verifiable compliance logic grounded in scientific criteria (Schulz & Kouloumpi, 2022).

b. Relevant provisions in the context of greenwashing

Regulation (EU) 2020/852 establishes a clear methodology for determining whether an economic activity can be considered environmentally sustainable. This framework is based on four cumulative conditions that must all be met for an activity to qualify as "taxonomy-aligned" (Article 3). This requirement for objectivity makes the regulation particularly effective in limiting greenwashing, as it compels companies to rigorously justify any sustainability-related claims (Regulation (EU) 2020/852, European Union, 2020, art. 3).

i. The four sustainability criteria

An activity is recognised as environmentally sustainable if, and only if, it meets all of the following conditions:

- It contributes substantially to one or more of the six environmental objectives set out in Article 9, including: climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems (Regulation (EU) 2020/852, European Union, 2020, art. 3, point (a); Sotiropoulou, 2022, p. 250; Gilbert-d'Halluin, 2024, p. 17).

These contributions are further specified by Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021, which establishes technical screening criteria for the first two climate objectives (Regulation (EU) 2021/2139, European Commission, 2021b).

- It does not significantly harm any of the environmental objectives listed in Article 9. This is the "do no significant harm" (DNSH) principle, set out in Article 17. It requires a thorough assessment to ensure that an activity deemed "green" in one area does not cause damage in another (for example, a CO_2 capture technology that harms water quality) (Regulation (EU) 2020/852, European Union, 2020, art. 3, point b).
- It complies with minimum social safeguards, such as the OECD Guidelines for Multinational Enterprises and the International Labour Organization (ILO) core conventions, as specified in Article 18. This criterion links environmental sustainability with a broader, more inclusive approach that incorporates social responsibility (Regulation (EU) 2020/852, European Union, 2020, art. 3, point c).
- It complies with technical screening criteria established by the European Commission through delegated acts (Articles 10 and following). These criteria are based on scientific, sector-specific, and verifiable data, significantly limiting subjective or arbitrary interpretation (Regulation (EU) 2020/852, European Union, 2020, art. 3, point d).

In addition to these four conditions, the taxonomy recognises two categories of activities:

- Enabling activities, which facilitate the transition of other sectors;
- Transitional activities, which reduce environmental impact in areas where no viable sustainable alternative yet exists.

This distinction avoids a binary view of sustainability and enhances the credibility of the framework in addressing greenwashing (Regulation (EU) 2020/852, European Union, 2020, arts. 10, §2 and 16).

ii. A Rigorous framework against unfounded environmental claims

This normative approach repositions sustainability claims within a strict legal framework, excluding communications based on vague, subjective, or unverifiable criteria. In contrast to common marketing practices often associated with greenwashing, the taxonomy imposes clear obligations of evidence and transparency, particularly in the context of ESG reporting under the SFDR and the CSRD.

As such, any company or financial actor that claims an activity is "green" or "taxonomy-aligned" must demonstrate compliance based on the technical criteria validated by the European Union. Oui However, if such claims are made without proper substantiation, the current framework does not systematically provide automatic sanctions. The Taxonomy Regulation leaves it to Member States to lay down the rules on measures and penalties applicable to infringements, which may result in uneven enforcement across the EU. Instead, the regime relies heavily on transparency, investor scrutiny, and supervisory mechanisms to detect and discourage false or misleading declarations. This means that while the Taxonomy enhances the comparability, reliability, and traceability of published environmental information, its effectiveness still depends on proper enforcement and market vigilance (Foraus, 2021).

This high level of scrutiny limits opportunistic behaviour and the misuse of ecological claims. According to Marcos S. and Castrillo Lara M. J., the implementation of the taxonomy aims to establish clear standards for determining whether an economic activity can be considered environmentally sustainable. This initiative is essential for strengthening transparency and investor confidence in so-called "green" financial products, while also reducing the risk of greenwashing (Marcos & Castrillo Lara, 2021, pp. 119-120).

Finally, by making ESG data public and comparable, the EU taxonomy contributes to increasing market trust and providing investors with reliable, coherent, and hard-to-manipulate information, offering a direct response to the rise of greenwashing in economic activities.

c. Limitations in terms of sustainability and complementarity with other instruments

While the EU Taxonomy Regulation is a structuring tool, it presents several limitations.

First, it is highly technical. It requires companies to collect a large volume of detailed environmental data and to comply with complex criteria (European Commission, 2021c). This requirement represents a significant challenge, particularly for SMEs or companies operating in complex or cross-sectoral activities (European Commission, 2021c).

Second, the taxonomy focuses primarily on economic activities and their environmental contribution, rather than on companies' overall sustainability strategies or their consumer-facing communications (B2C). As such, it does not directly apply to advertising messages, marketing campaigns, or product labelling, channels that are often used to disseminate greenwashing (Regulation (EU) 2020/852, European Union, 2020, art. 1 and 3).

Therefore, the EU Taxonomy Regulation cannot, on its own, be considered an anti-greenwashing standard. Rather, it complements other key instruments:

- The CSRD, which requires large companies to disclose the proportion of their turnover, capital expenditures, and operating expenditures aligned with the taxonomy (Directive (EU) 2022/2464, 2022, art. 8)
- The SFDR, which applies to financial products by requiring investors to report the extent to which their portfolios are aligned with the taxonomy (Regulation (EU) 2019/2088, European Union, 2019, art. 5 and 6).

It is thus not the taxonomy in isolation, but rather its interaction with other European instruments, particularly the SFDR and CSRD, that forms a structured and coherent response to the risks of greenwashing. Together, these texts lay the foundations of a robust regulatory ecosystem based on transparency, accountability, and evidence-based sustainability commitments. They create a coherent and reliable framework for regulating ESG practices across the European Union (Marcos & Castrillo Lara, 2021, p. 127).

3.3. Conclusion

To conclude this section, the diversity and growing complementarity of the legal instruments analysed reflect the European Union's intention to construct a coherent regulatory framework, rather than relying on a single piece of legislation. Each instrument addresses a specific need, whether it be regulating advertising, structuring non-financial reporting, or defining what constitutes a sustainable investment. This complementarity, already evident between the NFRD, the SFDR, and the Taxonomy Regulation, is further reinforced by recent developments such as the CSRD.

However, despite these significant advances, certain limitations persist and continue to challenge the full effectiveness of the European framework against greenwashing.

Chapter 2: The Corporate Sustainability Reporting Directive (CSRD)

1. Overview and objectives of the CSRD

On 16th December 2022, Directive (EU) 2022/2464, commonly referred to as the Corporate Sustainability Reporting Directive (CSRD), was published in the Official Journal of the European Union. This directive is fully in line with the strategy of the European Green deal by enhancing the transparency and comparability of corporate sustainability data. Designed to address the shortcomings of previous frameworks, it aims to harmonise sustainability reporting at European level, while ensuring that the information provided is more accessible, consistent and reliable. The main objective of the CSRD is to improve the quality, comparability and reliability of the non-financial information that companies are required to publish, in order to better inform the decisions of investors and stakeholders. The main objective of the CSRD is to improve the quality, comparability and reliability of the non-financial information that companies are required to publish, in order to better inform the decisions of investors and stakeholders. Strengthened sustainability reporting requirements are a key pillar of the European Green Deal.

The CSRD represents a major advancement in corporate sustainability transparency. It replaces the previous non-financial reporting regime introduced by Directive 2014/95/EU (NFRD), which sought to integrate sustainability and social responsibility concerns into the management reports of large companies and public interest entities. However, that earlier framework proved to be insufficient.

The rationale for the new directive is explained by the limitations of our current economic model, which has long prioritised growth at the expense of social and environmental consequences. The overexploitation of resources accelerated industrialisation have led to a critical situation marked by ecosystem degradation, climate change, biodiversity loss, rising inequalities, and other systemic threats. In this context, sustainability reporting is becoming an essential tool for encouraging companies to take an active part in the transition to a more sustainable model (Gollier, s.d.).

In summary, the CSRD establishes a rigorous framework for the transparency and control of non-financial data, aiming to make such information as reliable and accessible as financial reporting. It thus supports the shift toward a sustainable economy while reinforcing stakeholder trust.

2. Scope of application

One of the major contributions of the CSRD lies in the substantial expansion of its scope compared to the 2014 Non-Financial Reporting Directive (NFRD). While the NFRD applied only to a limited number of large European companies, the CSRD now extends sustainability reporting obligations to a much broader range of entities, including certain smaller companies as well as non-European companies operating within the European Union (Directive (EU) 2022/2464, 2022, art. 6).

While the NFRD only affected around 11,000 companies within the European Union, the CSRD will directly apply to nearly 42,500 companies based in the EU. Moreover, although no official data has yet been published by the European Union, it is estimated that several thousand companies based outside the EU will also be subject to these new reporting obligations (Gilbert-d'Halluin, 2024, p. 7). However, recent developments at the European level suggest that this extended scope may be reconsidered.

In February 2025, the European Commission presented a so-called "Omnibus" proposal aimed at simplifying and adjusting certain obligations related to the CSRD. Although not yet adopted, this proposal notably suggests restricting the directive's scope. It would exclude medium-sized companies with fewer than 1,000 employees, whereas currently, the CSRD applies to companies with more than 250 employees (European Commission, 2025; Dechert LLP, 2025). This revision would thus reduce by approximately 80% the number of companies based in or linked to the European Union that would be subject to CSRD requirements. The stated objective is to decrease the administrative burden on small and medium-sized enterprises while maintaining transparency and sustainability ambitions. However, these changes raise questions about the directive's potential impact on preventing greenwashing by limiting the range of companies subject to reporting requirements (Dechert LLP, 2025).

3. Entry into force of the Directive

In addition to expanding its scope of application, the directive also provides for a gradual implementation. The implementation of the CSRD will take place progressively, in four phases between 2024 and 2028, according to two main criteria: company size and geographical location. This gradual rollout allows different categories of companies the time they need to adapt, structure their reporting, and develop strategies that comply with the new transparency requirements imposed by the directive.

Starting from the 2024 financial year, the first companies required to comply with the directive are those already subject to the NFRD, mainly large listed companies. From 2025 onwards, the scope will expand to include large unlisted companies that exceed certain thresholds in terms of turnover, number of employees, or total assets. In 2026, small and medium-sized listed companies will be included in the scope, with the possibility of a deferral until 2028. Finally, as of 2028, the reporting obligations will be extended to non-European companies conducting substantial economic activities within the European Union. This gradual ramp-up reflects the legislator's intent to ensure a realistic transition, while establishing a solid foundation for enhanced transparency regarding environmental, social, and governance impacts at the European level (Directive (EU) 2022/2464, 2022, art. 5).

4. Regulatory developments: The contributions of the CSRD

4.1. A new legislative framework: Amendments to four foundational texts

Directive (EU) 2022/2464, profoundly reshapes the European legal framework regarding corporate transparency and non-financial reporting. It amends four major pieces of company law legislation to incorporate specific sustainability requirements.

- Accounting Directive (2013/34/EU):

Initially focused on the harmonisation of financial statements, this directive has seen its scope broadened by the CSRD. It now requires the disclosure of detailed information on environmental, social, human rights, and governance issues. It also introduces a structured digital format for the management report, thereby enhancing the comparability and accessibility of the data (Directive 2013/34/EU, 2013).

- Transparency Directive (2004/109/EC):

Aimed at regulating financial disclosure by listed companies, this directive has been adjusted to align its sustainability requirements with those applied to unlisted companies. The CSRD provides investors with a common basis for ESG assessment. It also introduces mechanisms that allow the European Commission to evaluate the equivalence of non-EU ESG reporting standards. The standardisation and verifiability of information help reduce the risk of companies presenting a misleading picture of their environmental or social commitments (Directive 2004/109/EC, 2004).

- Audit Directive (2006/43/EC):

The CSRD strengthens the role of auditors by requiring external verification of sustainability information, with a progressive level of assurance (initially limited, then moving toward reasonable assurance). It introduces new mandatory sustainability-related competencies for auditors. Additionally, it allows certain shareholders to request an independent analysis on specific aspects of the sustainability reporting (Directive 2006/43/EC, 2006).

- Audit Regulation (EU No 537/2014):

Complementing the Audit Directive, this regulation sets out specific rules for public interest entities, such as the mandatory rotation of audit firms. (Regulation EU No 537/2014, 2014) The CSRD introduces provisions to ensure the independence and diversity of auditors involved in sustainability reporting (Gilbert-d'Halluin, 2024, pp. 16-20).

4.2. A Guiding principle: Double materiality

A central contribution of the CSRD is the introduction of the concept of double materiality. Unlike the International Financial Reporting Standards (IFRS), which are based on a single materiality approach focused solely on financial relevance, the CSRD introduces the concept of double materiality (Directive (EU) 2022/2464, Recital 29).

This concept serves as the foundation for the sustainability reports that companies are required to produce under the directive. It expands the traditional approach to non-financial performance. The concept is based on two complementary dimensions: On the one hand, the analysis of environmental and social issues that have a significant impact on the company's financial situation (financial materiality). On the other hand, the assessment of the company's impacts on society and the environment (impact materiality).

Unlike an approach focused solely on risks to financial value, double materiality offers a more balanced perspective on the relationship between businesses and natural ecosystems. It prevents companies from limiting themselves to financial indicators or concealing their actual impacts, a practice often at the heart of greenwashing. Double materiality encourages organisations to consider not only the benefits they derive from nature, but also the ecological consequences of their decisions. This requires identifying relevant indicators and scientifically grounded thresholds to accurately report on the condition of natural environments affected by economic activities, a task that still presents significant methodological challenges today. (Boyer and Dumeaux, 2025)

The sustainability information required by the CSRD are essential not only for assessing the financial position of companies, particularly for investors, shareholders, and banks, but also for all stakeholders, including local communities, suppliers, and workers. (Gollier, s.d.)

4.3. A Technical translation of the CSRD: The ESRS

The accounting directive, as revised by the CSRD, now requires large companies, listed SMEs, and parent companies of large groups to include sustainability data in a dedicated section of their management report. The ESRS standards, developed to support the CSRD, provide detailed guidance on the information to be included and, if necessary, the format for presenting the data. These standards are adopted by the European Commission through delegated acts. (Favreau & Bastiège, 2023) The CSRD mandated the European Commission to adopt an initial set of sustainability standards by June 30, 2023. (Directive 2013/34/EU, 2013, Article 29a, para. 1, subparagraph 2)

To develop these standards, the Commission relied on the technical contributions of EFRAG (European Financial Reporting Advisory Group). (Directive 2013/34/UE, 2013, art. 49, §3ter) The European Commission entrusted EFRAG with the task of drafting the proposed standards necessary for implementing the CSRD. In November 2022, EFRAG submitted 12 cross-cutting standards covering all ESG topics. Although the Commission made some modifications, it largely retained the proposals put forward. This first set of standards establishes a common reference framework for the disclosure of sustainability information by all companies. Published in July 2023, the set includes 12 standards: two cross-cutting and ten focused on specific topics, with five addressing environmental issues, four covering social aspects, and one dedicated to governance. (Restout, 2023)

In the coming years, the European Commission will need to continue adopting new delegated acts in order to expand the regulatory framework. The CSRD specifically required it to publish, by June 2024, sector-specific standards, simplified standards tailored to listed SMEs, as well as rules for companies based outside the European Union. (Règlement (EU) 2023/2772, 2023) However, the European Council and Parliament agreed to postpone the deadline by two years, setting it now for June 30, 2026. (Council of the European Union, 2024)

The ESRS standards concretely define the content, format, and methods to be followed when preparing the sustainability report. They clarify, in particular, how the principle of double materiality should be applied and how the entire value chain should be taken into account. Designed to be applied to all companies subject to the CSRD, the ESRS aim to ensure that sustainability information is reliable, relevant, and comparable. These standards seek to enhance the quality of non-financial data so that it becomes comparable to financial data. Their objective is to place sustainability issues on an equal footing with financial performance, thereby encouraging companies to adopt a more holistic approach to their activities and to move beyond a purely financial analysis. In doing so, the European Union aims to elevate sustainability concerns to the same level of importance as economic performance in corporate reporting. (Restout, 2023)

5. Control mechanisms and sanctions for non-compliance

5.1. The internal control

The CSRD does not merely impose transparency obligations; it also regulates the internal processes required to ensure the reliability of the published data. To achieve this objective, a specific control system must be established.

Much like the collection of financial data within companies, it is necessary to implement appropriate internal control procedures to ensure the quality of sustainability information. The CSRD requires companies to describe in their management report the "due diligence procedure implemented" to collect and verify the quality of the information (Directive 2013/34/EU, as amended by Directive (EU) 2022/2464, Art. 29b, §2(f)(i)). This due diligence includes, in particular, the identification of stakeholders affected, or potentially affected, by the company's activities, as well as the assessment of the impacts that the company generates on these stakeholders. (Gollier, s. d.) To this end, the CSRD expands the responsibilities of the management and supervisory bodies of companies by making them collectively responsible for the preparation of sustainability reports, in addition to financial reports. These bodies must now ensure the compliance of the reports with the CSRD, the ESRS, and the Taxonomy Regulation. (Autoriteit voor Financiële Diensten en Markten, 2023, p. 4)

The directive also strengthens the competencies of the audit committee, which helps improve the integrity of sustainability information. (Autoriteit voor Financiële Diensten en Markten, 2023, p. 20). The tasks of the audit committee, which previously were limited to the statutory audit of accounts, are now extended to "assurance of sustainability information.". For example, the audit committee will need to explain how it contributed to ensuring the integrity of sustainability information and will be "obliged to inform the governing or supervisory body of the public interest entity of the results of the assurance of sustainability information". Directive (UE) 2022/2464, 2022, considérant 76) The objective is to enhance the quality and reliability of reports by ensuring consistency between financial data and sustainability data. It's a key condition to avoid misleading communications and strengthen the credibility of ESG commitments. (Autoriteit voor Financiële Diensten en Markten, 2023, p. 20)

5.2. The external assurance

Under the NFRD, there was no requirement for external audit of non-financial statements or taxonomy-related disclosures. Auditors were merely required to verify the presence of such information, without certifying its reliability. This stood in contrast to the obligations imposed on financial reporting. (Autoriteit voor Financiële Diensten en Markten, 2023, p. 21)

With the introduction of the CSRD, this approach changes significantly. The new directive mandates verification of compliance with the European Sustainability Reporting Standards (ESRS), creating a new function: "independent assurance of sustainability information." This responsibility will no longer fall solely to traditional auditors or chartered accountants, but will be entrusted to professionals specifically trained in environmental, social, climate-related, human rights, and anti-corruption issues. To regulate this emerging profession, the CSRD amends Directive 2006/43/EC and Regulation No 537/2014, establishing admission criteria and professional standards comparable to those required of statutory auditors, particularly regarding competence and independence. (Gollier, s.d.)

The CSRD now requires mandatory auditing of sustainability data, to be conducted through an "assurance engagement" performed by an independent auditor. The goal is to enhance the credibility and reliability of published information, thereby reducing the risk of greenwashing. Initially, this will involve a "limited assurance" engagement, focusing notably on the proper assessment of sustainability-related materiality and the quality of data collected across the value chain. From 2028 onwards, and following an evaluation by the European Commission, this may transition into a "reasonable assurance" engagement. The Commission will also define the applicable standards for these audits (Autoriteit voor Financiële Diensten en Markten, 2023, p. 21). However, the 2025 Omnibus proposal suggests maintaining the assurance at the limited level, removing the option to upgrade to reasonable assurance (European Commission, 2025). This change could reduce the CSRD's effectiveness in combating greenwashing by keeping audits less thorough.

The assurance process will begin with the entry into force of the new reporting obligations. Companies will need to appoint a qualified auditor as soon as they are sufficiently advanced in their reporting preparation, ensuring the appointment is made well in advance of the finalisation of their first CSRD-compliant management report. It is recommended that companies allow at least one year for the auditor to adequately prepare for the engagement (Gollier, s.d.).

5.3. Sanctions

A key weakness of the CSRD lies in the absence of a harmonised sanctions regime at the European Union level. The directive leaves it to Member States to determine the measures to be applied in cases of non-compliance with sustainability disclosure obligations. These sanctions must be "effective, proportionate and dissuasive", but their exact nature is left to the discretion of national legislatures (Directive (UE) 2022/2464, 2022, art. 3, pt. 20).

This discretion opens the door to two potential risks. On the one hand, some countries may choose to impose only symbolic penalties in order to preserve their economic attractiveness, thereby weakening the directive's incentive effect. On the other hand, significant divergences between national regimes could lead to unequal treatment of European companies, potentially encouraging some to establish themselves in jurisdictions with more lenient requirements. In both cases, the fundamental objective of the CSRD, to ensure reliable, transparent, and verifiable sustainability information, could be undermined.

Although the CSRD introduces stricter reporting obligations and allows Member States to define control mechanisms and sanctions, these measures do not always guarantee full compliance. Several factors may explain non-compliance, including the perceived complexity of sustainability reporting and the associated costs, particularly for medium-sized companies or those with limited internal resources (Eriksson, Fagberg, & Mackintosh,2024).

Moreover, the literature shows that control mechanisms and sanctions are not always effective levers. In the absence of rigorous supervision or when sanctions are too weak, some companies may adopt symbolic compliance strategies—or even engage in greenwashing. In the case of non-financial information, reputational pressure often plays a more decisive role than legal sanctions in driving behavioural change. Therefore, to enhance the effectiveness of the CSRD, it is necessary to combine clearer requirements, stronger supervisory capacity, and positive incentives such as preferential access to sustainable finance or public procurement markets (Delmas & Toffel, 2008).

6. Benefits of the Directive

In addition to its binding obligations, the CSRD represents a strategic opportunity for companies by enhancing transparency, highlighting sustainable performance, and fostering new dynamics of responsible competitiveness. The entry into force of the CSRD encourages companies to further integrate sustainability considerations into their business decisions. According to a study conducted by PwC (PricewaterhouseCoopers), nearly 75% of companies subject to the CSRD, including those headquartered outside the European Union, report that they have strengthened or intend to strengthen the role of sustainability in their decision-making processes.

Far from being limited to regulatory compliance, this shift toward more sustainable governance brings tangible economic advantages. Companies that have embraced this approach report improved environmental performance, more constructive stakeholder engagement, and better anticipation of risks. In addition, the CSRD can serve as a driver of competitiveness. By responding to increasing market expectations in terms of social and environmental responsibility, companies enhance their attractiveness to both investors and customers (PwC, 2024).

7. Limitations and implementation challenges

The implementation of the CSRD represents a significant step toward greater transparency in ESG (environmental, social, and governance) disclosures. While compliance with the CSRD may appear straightforward at first glance, it presents notable challenges for companies.

Many companies have reported various obstacles in the implementation process. Among the most frequently cited difficulties are the lack or inaccessibility of required data, insufficient staff expertise, and the need to allocate additional financial resources for acquiring or adapting technological solutions (PwC, 2024).

One of the main barriers to the effective implementation of the CSRD lies in the availability and quality of the required data. The complexity and breadth of the information to be disclosed represent a considerable challenge for companies, whose teams must now collect, verify, and consolidate a large volume of new data, often absent from central systems. Much of this data is dispersed across the organisation in spreadsheets or original documents (such as invoices), resulting in time-consuming, manual processes prone to error. Without a rigorous data management strategy, these operations risk becoming inefficient.

Another major challenge stems from the CSRD's requirement to include the entire value chain within the scope of reporting. For many companies, this means engaging for the first time with data originating from external stakeholders such as suppliers, clients, or third-party service providers, whose reliability must also be assessed. Even the preliminary steps of mapping and defining the value chain, which are essential for compliance, can be lengthy and complex. This dimension is therefore frequently cited as the second most significant hurdle in applying the directive (PwC, 2024).

Moreover, smaller companies, particularly listed SMEs, often face constraints in terms of human and financial resources when attempting to implement an effective non-financial reporting system. To address these challenges, they may turn to specialised consulting firms or collaborate with other companies in their sector. Integration into professional networks also offers a valuable opportunity to pool expertise, share tools and best practices, and alleviate the burden imposed by this new regulatory requirement (Institute of Sustainability Studies, 2024).

These implementation difficulties may result in delays in publishing sustainability reports, reduce the reliability of disclosed information, and increase the risk of regulatory non-compliance. Inaccurate, incomplete, or poorly verified data can also unintentionally create a misleading image of a company's environmental and social performance — in other words, contribute to forms of involuntary greenwashing, which the CSRD precisely aims to prevent. To address these risks, it is essential for companies to adopt a proactive approach. This involves training teams, strengthening data management systems, and collaborating with sustainability experts. Careful planning, supported by appropriate resources, is crucial to ensuring the successful implementation of the CSRD. It also enables companies to fully capitalise on the benefits the directive offers in terms of transparency, accountability, and environmental and social performance.

Rigorous implementation is therefore not only essential for complying with the directive but also for preventing the risk of greenwashing stemming from incomplete, imprecise, or unverifiable reporting.

8. Conclusion : Towards a new era of transparency and sustainable accountability in Europe

Ultimately, the CSRD represents a decisive step in the creation of a robust European framework for sustainability transparency. The CSRD is a key tool in combating greenwashing by establishing a binding and standardized legal framework for the publication of sustainability information. Unlike previous regulations, it significantly expands its scope and introduces more precise and standardized requirements concerning the nature, format, and verification of the published data. These developments represent a clear break from the more flexible and less structured approach of the NFRD.

By harmonizing reporting obligations between listed and unlisted companies, the CSRD marks a significant progress in terms of transparency and communication of ESG performance. It provides investors and stakeholders with a common evaluation base, based on strict rules for publication, verification, and comparability of data. These requirements rely on European standards (ESRS), which clearly define the information companies must disclose. This improved accessibility to information allows stakeholders, such as investors, clients, or regulators, to more accurately assess companies' commitments and results in terms of sustainability, thereby facilitating their financing or collaboration decisions. This strengthening of transparency represents a significant advance in the fight against greenwashing, making it more difficult for companies to engage in misleading communication regarding their environmental, social, or governance commitments.

However, the effectiveness of the CSRD should not be viewed in isolation. Its impact is reinforced by its integration within a broader European regulatory framework, particularly through its alignment with the SFDR and the Taxonomy Regulation. Together, these instruments form a coherent and complementary system: while the Taxonomy defines what is sustainable, the SFDR governs how sustainability is communicated in financial products, and the CSRD ensures that companies provide transparent and verifiable information on their sustainability performance. This regulatory synergy is essential to comprehensively address the risks of greenwashing across sectors and markets.

Thanks to the standardization of non-financial information and the requirement for third-party assurance, the CSRD not only improves the reliability of data but also contributes to establishing a culture of accountability and clarity around sustainability issues. However, recent proposals, such as the 2025 Omnibus package, could affect this ambition by significantly narrowing the directive’s scope—by excluding, for example, medium-sized companies with fewer than 1,000 employees—thus reducing the number of entities subject to CSRD requirements. This may in turn limit the evolution toward reasonable assurance and weaken the directive's overall capacity to detect and deter greenwashing. It thus represents a break from previous, more flexible approaches and establishes itself as a central pillar of the European strategy for a more sustainable, transparent, and responsible economy.

Chapter 3: Preventing greenwashing through the CSRD: Insights from a European–South African legal comparison?

1. Introduction

This chapter aims to assess the extent to which the CSRD constitutes an effective legal response to the growing phenomenon of greenwashing. To deepen this analysis, it is useful to place the European framework, particularly the CSRD, in perspective with earlier regulatory experiences that have sought to govern ESG disclosure and have contributed to combating greenwashing.

In this regard, a comparison is proposed with South Africa, a non-EU country that is nonetheless often regarded as a pioneer in integrated reporting. Integrated reporting refers to a corporate reporting approach that combines financial and non-financial (including ESG) information into a single document. It is broader and more strategic than standalone sustainability reporting. (Solutions Business Intelligence, n.d.). This choice is justified by the existence of a mixed regulatory ecosystem, combining soft law instruments such as the King IV Code and the Integrated Reporting Framework, sector-specific guidelines issued by the Johannesburg Stock Exchange (JSE), and a recent shift toward more binding regulation through the Companies Amendment Bill (2023). South Africa's long-standing experience with integrated reporting offers a valuable benchmark to evaluate the strengths and limitations of the CSRD in fostering credible and transparent sustainability communication.

This chapter will therefore examine these four pillars of the South African framework and compare them with the CSRD, in order to assess their respective effectiveness in regulating sustainability-related disclosures and preventing greenwashing. It will also seek to identify potential contributions from the South African experience that could strengthen the European framework.

2. South African ESG regulatory ecosystem

2.1. The King IV Code on Corporate Governance

The King IV Code, published in 2016 by the Institute of Directors in Southern Africa (IoDSA), stands as a major reference for promoting accountability, transparency, and sustainability in corporate governance practices within South African organizations. Based on the "*apply and* *explain*" principle—distinct from the more commonly used "*comply or explain*" approach in European governance codes—King IV does not merely require companies to comply with formal rules or justify non-compliance. Instead, it expects all principles to be applied and requires companies to explain how they are implemented within their specific context. This approach provides a degree of flexibility while simultaneously demanding a high level of rigor in justifying the practices adopted (Institute of Directors in Southern Africa, 2016, pp. 7–22).

The Code emphasizes key notions such as ethical leadership, integrated thinking, long-term value creation, the importance of sustainability, and the consideration of all stakeholders, not just shareholders.

Integrated thinking refers to the active consideration of the relationships between an organization's various operational and strategic elements—such as its business model, governance, risks, opportunities, and environmental or social context—in the process of decision-making and reporting. It encourages a holistic perspective on value creation over time (IFRS Foundation, 2021).

The Code has played a foundational role in fostering a culture of sustainability among South African companies, particularly those listed on the Johannesburg Stock Exchange (JSE), where adherence to King IV is mandatory (Institute of Directors in Southern Africa, 2016, pp. 3-4).

However, despite these contributions, the soft law nature of King IV limits its actual impact on greenwashing practices. While it is mandatory for companies listed on the JSE to apply the Code, the underlying "*apply and explain*" model relies on voluntary self-regulation rather than binding statutory enforcement. As such, although it holds normative authority, the absence of explicit legal sanctions and robust enforcement mechanisms weakens its deterrent effect (Reynolds, 2023).

Thus, although King IV has undeniably helped to strengthening governance standards and promoting sustainability, it remains a voluntary instrument which is characteristic of soft law approaches. It is a non-binding framework based on self-regulation and voluntary adherence. In the field of sustainability reporting, three types of frameworks are generally distinguished: voluntary frameworks (such as GRI or SASB), characteristic of soft law; frameworks imposed by markets or stock exchanges with a quasi-regulatory scope; and legislative frameworks that are legally binding (SBN Software, 2025). King IV, although integrated into the listing requirements of the Johannesburg Stock Exchange, does not have its own legal force nor stringent enforcement mechanisms. Its effectiveness therefore largely depends on companies' willingness to apply its principles substantively rather than merely adhering to formal compliance. This non-binding nature represents a significant limitation in the fight against greenwashing, as it relies primarily on companies' goodwill and pressure exerted by stakeholders (Institute of Directors in Southern Africa, 2016).

2.2. The JSE sustainability and climate disclosure guidance

In June 2022, the Johannesburg Stock Exchange (JSE) published two complementary documents: the Sustainability Disclosure Guidance and the Climate Disclosure Guidance. These guidelines aim to assist South African companies in structuring their ESG reports by aligning with international best practices, particularly the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), the Global Reporting Initiative (GRI) standards, and those of the Sustainability Accounting Standards Board (SASB) (Johannesburg Stock Exchange, 2022).

These guides encourage companies to adopt an integrated approach to disclosure, focusing on governance, strategy, risk management, and climate-related performance indicators. They also recommend the application of the double materiality perspective, considering both the impact of ESG factors on the company and the company's impact on society and the environment.

However, these guidelines remain voluntary and are not legally binding. They do not impose mandatory reporting standards or external verification mechanisms such as independent audits. While the JSE encourages companies to ensure the integrity of their reports, the decision to engage in external assurance is left to each company's discretion.

As a result, although these guidelines provide a valuable framework for improving the transparency and quality of ESG reporting, their non-binding nature limits their effectiveness in combating greenwashing. In the absence of legal obligations and external controls, companies may choose not to disclose complete or accurate information, potentially undermining the reliability of published ESG data.

2.3. The Integrated Reporting Framework

The Integrated Reporting Framework (IRF), developed by the International Integrated Reporting Council (IIRC), plays a central role in shaping ESG reporting in South Africa. Adopted as early as 2010, notably under the impetus of the King III Code, it was incorporated into the Johannesburg Stock Exchange (JSE) listing requirements, mandating listed companies to publish integrated reports on an "*apply or explain*" basis (International Integrated Reporting Council, 2013).

The IRF promotes the connection between sustainability and financial performance by encouraging companies to present a holistic view of their value creation through six capitals: financial, manufactured, intellectual, human, social and relationship, and natural. This approach aims to demonstrate how ESG strategies are integrated into the company's overall business model (IFRS Foundation, 2021, pp. 11-13).

However, despite its strengths in strategic storytelling, the IRF remains primarily declarative and qualitative. Studies have shown that the quality of integrated reports varies significantly across companies, and that the absence of standardized quantitative indicators limits both the comparability and verifiability of the disclosed information. Furthermore, the lack of mandatory external assurance increases the risk of greenwashing, as companies can selectively disclose information without independent oversight (Mokabane and Du Toit, 2022).

In summary, although the IRF has helped structure ESG reporting in South Africa by emphasizing long-term value creation, its non-binding nature and the predominance of qualitative information constrain its effectiveness in combating greenwashing.

Complementing these mainly voluntary instruments, a regulatory tightening dynamic has begun to emerge with the Companies Amendment Bill.

2.4. The Companies Amendment Bill

The 2023 Companies Amendment Bill marks a significant step toward more stringent regulation in South Africa. Adopted on 26 July 2024, it introduces several major amendments to the Companies Act of 2008. Among its stated objectives, the bill aims to strengthen corporate transparency and governance, particularly through expanded responsibilities of the Social and Ethics Committee (SEC) and new reporting requirements (Van der Walt and Kharsany, 2024).

More specifically, Clause 13 amends Section 72 of the Companies Act to require the SEC to prepare a report detailing the exercise of its functions, in accordance with modalities and formats that will be established by forthcoming regulations (Department of Trade, Industry and Competition, 2023, clause 13). This report must be publicly presented at the annual general meeting, as also mandated by Clause 12 of the bill, which amends Section 61 (Department of Trade, Industry and Competition, 2023, clause 12).

The SEC, as defined in the 2008 Act and the 2011 regulations, is responsible for monitoring corporate practices in areas such as social and economic development, corporate citizenship, the environment, health and safety, labour relations, and human rights. These areas directly reflect the social and environmental dimensions of corporate activity (Republic of South Africa, 2008, Section 72; Republic of South Africa, 2011, Regulation 43).

By mandating the public presentation of such a report, the 2023 Companies Amendment Bill establishes a regulatory foundation that could indirectly help curb greenwashing practices. However, in the absence of specific ESG disclosure standards, a clear methodological framework, or external verification mechanisms, its current impact in this regard remains limited. Any meaningful progress will depend on the forthcoming implementing regulations, which are expected to define the required content of the SEC's reports.

3. Empirical insights on the South African framework

3.1. Studies on the quality of ESG reporting in South Africa

Since the adoption of integrated reporting as a listing requirement by the Johannesburg Stock Exchange (JSE) in 2010, several empirical studies have assessed the quality of ESG reports in South Africa. The study by Mokabane and Du Toit (2022), conducted on the 100 largest listed South African companies, reveals that integrated reports tend to be better structured in larger firms but are often used more as a tool for legitimacy than as a driver of genuine transformation, thus limiting their effectiveness in combating greenwashingn (Mokabane and Du Toit, 202).

Matemane et al. (2024) further show that while companies increasingly include ESG data in their reports, this information remains heterogeneous and weakly correlated with financial performance. This discrepancy, often stemming from a lack of standardization and external assurance, may indicate that ESG disclosures are not always rooted in substantive operational changes, but rather serve symbolic purposes—thus heightening the risk of greenwashing (Matemane, Ntim, & Chijoke-Mgbame, 2024).
Similarly, Sonko and Sonko (2023) suggest a positive correlation between ESG disclosures and overall performance. However, they note the absence of any sanction mechanisms in cases of non-compliance, which may undermine the credibility of these disclosures and allow companies to benefit reputationally from ESG narratives without facing consequences if their claims are misleading (Sonko & Sonko, 2023).

In summary, although the adoption of integrated reporting has enhanced corporate transparency in South Africa, empirical studies reveal mixed results regarding the effectiveness of ESG disclosures in driving genuine accountability. The weak link with operational or financial outcomes, combined with the lack of sanctions, suggests that ESG reporting may still be used as a tool of impression management, rather than a reliable mechanism to prevent greenwashing.

3.2. Identified limitations in practice

Despite regulatory progress in South Africa, several limitations persist in the implementation of ESG reporting.

First, many companies continue to produce vague statements, often referred to as "*boilerplate disclosures*". These generic disclosures lack specificity and quantitative data, which hinders both the comparability and verifiability of the information provided. This practice is particularly widespread among medium-sized companies and in sectors less exposed to regulatory pressure. According to the JSE's report on sustainability disclosure guidance, although guidance is provided, its application remains voluntary, which limits its overall effectiveness (Johannesburg Stock Exchange, 2022).

Second, investor pressure has proven effective in encouraging large companies, particularly those listed on the JSE, to improve the quality of their ESG reporting. However, this influence is less pronounced among small and medium-sized enterprises, where resources and expertise to meet investor expectations on sustainability are often limited. The KPMG report highlights that although stakeholders increasingly demand greater transparency, companies' ability to respond to these demands varies significantly (KPMG South Africa, 2024).

Finally, the absence of robust enforcement mechanisms constitutes a major limitation in the fight against greenwashing. At present, companies can omit or embellish ESG information without facing significant legal consequences. The Norton Rose Fulbright report notes that while disclosure requirements exist, their enforcement and oversight remain weak, allowing some companies to portray a misleading image of their sustainability performance (Norton Rose Fulbright, 2023).

These limitations highlight the difficulty of effectively combating greenwashing within a framework that relies primarily on voluntary instruments, without strengthened monitoring and sanction mechanisms. Moreover, while South Africa is often cited as a pioneer in integrated reporting, empirical research presents mixed results regarding its actual impact. Some studies suggest an improvement in the quality of reports and investor engagement, particularly among listed companies (Barth et al., 2017). However, other works, including a recent study on small and mid-cap companies listed on the JSE (Brookes, Burnham, van Zijl, & Maroun, 2025), highlight persistent challenges such as the production of unspecific information, a lack of dedicated resources, and a limited understanding of integrated reporting requirements. These findings echo earlier criticisms regarding the limited substantive changes within smaller companies. Such divergences underscore the need not only to improve guidance, but also to strengthen institutional enforcement in order to ensure that integrated reports translate into tangible sustainable development outcomes.

4. Comparative analysis: CSRD vs South African framework

The European CSRD framework and the South African ESG regulatory system pursue similar objectives, namely, enhancing transparency and preventing communicative misconduct such as greenwashing, but differ significantly in their design, scope, and implementation. This section offers a comparative analysis based on five key criteria, aimed at assessing their respective capacities to effectively regulate sustainability disclosures.

4.1. Legal nature of the framework

The CSRD is a legally binding directive, transposed into the national laws of EU Member States, and accompanied by clear obligations, implementation deadlines, and potential sanctions in case of non-compliance. In comparison, the South African framework has historically relied on soft law instruments, such as the King IV Code and the Integrated Reporting Framework, which operate on an "*apply and explain*" basis without direct legal enforceability (Institute of Directors in Southern Africa, 2016).

However, the 2023 Companies Amendment Bill signals a shift by introducing more stringent reporting obligations for certain companies. While this bill could ultimately strengthen the binding nature of the South African framework, its actual impact remains limited as long as the implementing regulations have not been published (Department of Trade, Industry and Competition, 2023).

4.2. Standardization of reporting

The CSRD is characterized by the introduction of the ESRS, detailed technical standards designed to harmonize the content, format, and methodology of ESG reporting across the European Union. This enhances comparability, a key factor in the fight against greenwashing (European Commission, 2023).

In contrast, South Africa still relies heavily on narrative frameworks such as the Integrated Reporting Framework, which emphasizes a qualitative and strategic approach to reporting. While this model supports the internal coherence of a company's narrative, it is less prescriptive and limits comparability between companies.

4.3. Auditability and oversight

The CSRD gradually introduces a requirement for limited external assurance, which may evolve into reasonable assurance over time. This requirement aims to ensure the authenticity of the disclosed data and to reduce the risk of manipulated statements intended for greenwashing purposes (Directive (EU) 2022/2464, 2022).

In comparison, the current South African system does not mandate any external audit, including for reports produced under King IV or the Integrated Reporting Framework. The absence of independent verification is a major weakness in ensuring the credibility of ESG information (Institute of Directors in Southern Africa, 2016).

4.4. Greenwashing prevention

The CSRD combines standards, controls, and sanctions, which gives it a genuine deterrent effect. It seeks to align ESG communication with verifiable data through the imposition of double materiality, the accountability of governance bodies, and the standardization of indicators (Directive (EU) 2022/2464, 2022, art. 29b, 29c and 34).

In contrast, the South African system, despite its strong cultural foundation in sustainability practices, suffers from a lack of enforcement. As discussed earlier (Section 4.2), "*boilerplate disclosures*" (vague and generic statements) remain common. Without formal obligations or oversight, companies can selectively disclose information, which limits the effectiveness of greenwashing prevention (Wild and Van Staden, 2013).

However, the voluntary nature of ESG reporting as promoted by King IV may foster greater sincerity on the part of companies. Firms that choose to include ESG elements in their reporting may do so because they are genuinely committed to these practices, rather than simply complying with regulatory "box-ticking." From this perspective, a voluntary framework could reduce the risk of strategic greenwashing, in which a company overemphasizes ESG initiatives solely for compliance purposes. Nonetheless, this approach does not protect against opportunism, especially in sectors highly exposed to reputational risks (Reynolds, 2023).

4.5. Scope of application

The CSRD applies to approximately 50,000 companies across the European Union, including subsidiaries of foreign groups. It therefore reflects a systemic ambition aimed at achieving broad transparency across European markets (Directive (EU) 2022/2464, 2022.)

The South African framework, by contrast, primarily targets companies listed on the Johannesburg Stock Exchange (JSE), which limits its overall reach. However, this sectoral focus is offset by a distinctive governance culture in South Africa, which places strong emphasis on ethical leadership, stakeholder inclusivity, and long-term value creation. This culture is largely shaped by the principles of the King IV Code, which promotes integrated thinking and encourages companies to go beyond compliance in embedding sustainability into corporate strategy (Institute of Directors in Southern Africa, 2016). These features contribute to a more value-driven approach to governance among large South African firms.

4.6. Critical Analysis

The CSRD is legally more robust, as it imposes obligations, sets standards, and provides for sanctions. It enables strong verification of ESG commitments, which is essential for effectively combating greenwashing. However, as its implementation is still recent, its actual impact on reducing greenwashing will need to be confirmed by empirical studies.

The South African framework, although less binding, is marked by a more mature cultural approach to sustainable governance. The King IV Code and the Integrated Reporting Framework have helped disseminate principles of long-term thinking and integrated value creation. Nevertheless, the lack of enforcement and sanctions significantly weakens its preventive effectiveness.

4.7. Potential contributions to the CSRD

Although the European framework is more legally binding, certain qualitative elements from the South African model could usefully enhance the CSRD. Three main avenues can be identified:

- The integrated thinking approach, central to the King IV Code, could be further emphasized within the European context. It offers a comprehensive strategic vision that links sustainability issues with long-term value creation, thereby strengthening the narrative coherence of the reports required under the CSRD.
- The explicit involvement of stakeholders in the reporting process, as encouraged in South Africa, could be reinforced as a cross-cutting analytical dimension. This would help better connect issues of governance, transparency, and sustainability within European reports.

- The "*apply and explain*" logic, although stemming from a soft law framework, could inspire mechanisms for sectoral flexibility in the implementation of the ESRS. Targeted contextual adaptation, while maintaining a common normative foundation, would allow companies to more meaningfully explain how they apply the requirements, based on their size or industry.

These sources of inspiration, drawn from a different yet mature ecosystem, could help refine the CSRD's effectiveness in addressing greenwashing, by reinforcing its strategic dimension and its grounding in companies' operational realities.

4.8. Conclusion

This chapter has compared the European CSRD directive with the South African regulatory framework for ESG reporting, in order to assess their respective capacities to prevent greenwashing. The analysis shows that the CSRD represents a structured and legally binding response, based on standardized norms, oversight mechanisms, and clearly defined transparency obligations. As such, it offers a more robust framework for regulating sustainability practices and limiting misleading disclosures.

At the same time, the South African experience, though rooted in soft law instruments, provides valuable complementary insights. The King IV Code and the Integrated Reporting Framework emphasize an integrated governance approach grounded in long-term value creation, executive accountability, and stakeholder engagement.

These findings suggest that a hybrid regulatory model—combining the normative rigor of the CSRD with the strategic sustainability culture of the South African approach—could represent a promising path toward a more credible, coherent, and resilient ESG reporting framework. Such a model would be better equipped to resist greenwashing while fostering meaningful, long-term corporate responsibility.

Conclusion

This thesis has analyzed the extent to which the Corporate Sustainability Reporting Directive (CSRD) constitutes a credible legal response to greenwashing, focusing on the role of sustainability reporting in ensuring transparency regarding companies' environmental, social, and governance (ESG) commitments. As sustainability requirements increasingly shape corporate strategy, there is a very real risk that some companies may exploit these demands to enhance their image without making substantive changes to their practices. Regulation must therefore be capable of preventing misleading statements and ensuring the reliability of disclosed information.

In this context, the CSRD represents a major step forward. It significantly broadens the scope of non-financial reporting, imposes harmonized publication standards at the European level, and introduces a requirement for external assurance. These developments help to strengthen the comparability, clarity, and verifiability of published information, thereby laying a solid foundation for limiting the use of unfounded or vague claims.

However, this response is not without its limitations. The fact that the framework remains partially flexible, as well as the technical burden that compliance imposes on certain companies, are points of concern. Furthermore, recent developments—notably the 2025 Omnibus proposal aimed at restricting the scope of the directive—raise uncertainties regarding the initial ambition of the text. These factors serve as a reminder that the effectiveness of a legal framework depends as much on the standard itself as on the concrete conditions of its implementation.

This is precisely what the comparison with the South African case highlights. South Africa has been a pioneer in integrating sustainability into governance practices, particularly with the adoption of the King IV Code and the widespread adoption of integrated reporting. This framework relies mainly on soft law mechanisms, where expectations regarding transparency are high. While this approach has enabled certain advances, particularly in raising awareness and structuring ESG reporting, empirical studies show that it reaches its limits when monitoring and enforcement mechanisms are weak or absent.

The comparison thus highlights two models: one that is more voluntary and incentive-based, and another that is more normative and structured. The South African case reveals the importance of a formally regulated requirement, capable of ensuring a minimum level of transparency, without which the effects remain unevenly distributed. Conversely, the European approach, although more binding, demonstrates that without harmonized monitoring mechanisms and operational support for companies, effectiveness can also be compromised.

Ultimately, the CSRD represents a crucial step forward in the fight against greenwashing, but its success will depend on its ability to reconcile normative ambition, operational feasibility, and credible enforcement mechanisms. This thesis therefore calls for strengthening the support mechanisms for the implementation of the directive, ensuring consistent and fair application across the Union, and drawing on the contributions of hybrid models such as that of South Africa.

Robust and verifiable ESG information is not only a safeguard against greenwashing; it also plays a key role in guiding investments, holding companies accountable, and supporting Europe’s ambitions for ecological transition.

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Regulating Greenwashing: The Effectiveness of EU Legal Instruments in Ensuring Sustainability

This thesis addresses the issue of greenwashing in corporate sustainability communication and analyzes the effectiveness of the European Union's legal instruments, particularly the CSRD. Greenwashing refers to misleading communication by a company about its practices or products, falsely presented as environmentally friendly, which undermines the credibility of commitments and stakeholder trust. To tackle this, the EU has gradually established several instruments aimed at enhancing the transparency and reliability of sustainability reporting.

The analysis begins with a study of existing European instruments such as the Directive on Unfair Commercial Practices, the Non-Financial Reporting Directive (NFRD), the SFDR regulation on sustainable finance, and the Taxonomy Regulation. The second chapter focuses on the new CSRD directive, which expands non-financial reporting obligations, introduces the principle of double materiality, imposes common standards (ESRS), and strengthens verification and sanctions, aiming to make reports more credible and limit greenwashing.

The third chapter assesses the legal effectiveness of the CSRD against greenwashing by comparing it with the South African experience, a pioneer in integrated reporting. The analysis of the South African framework, combining soft law and recent legislative developments, highlights its strengths and weaknesses in terms of oversight, standardization, and implementation, offering insights to strengthen the CSRD.

The study highlights that, for the CSRD to be fully effective against greenwashing, major challenges must be addressed, particularly European harmonization, strengthening companies' capacities, and establishing robust and coherent control mechanisms.

Cette thèse aborde la question du greenwashing dans la communication sur la durabilité des entreprises et analyse l'efficacité des instruments juridiques de l'Union européenne, en particulier la CSRD. Le greenwashing désigne une communication trompeuse d'une entreprise sur ses pratiques ou ses produits, présentés à tort comme respectueux de l'environnement, ce qui nuit à la crédibilité des engagements et à la confiance des parties prenantes. Pour y remédier, l'UE a progressivement mis en place plusieurs instruments visant à renforcer la transparence et la fiabilité du reporting en matière de durabilité.

L'analyse débute par l'étude des instruments européens existants tels que la Directive sur les pratiques commerciales déloyales, la Directive sur la publication d'informations non financières (NFRD), le règlement SFDR sur la finance durable et le règlement sur la taxonomie. Le deuxième chapitre se concentre sur la nouvelle directive CSRD, qui élargit les obligations de reporting non financier, introduit le principe de double matérialité, impose des normes communes (ESRS) et renforce la vérification ainsi que les sanctions, dans le but de rendre les rapports plus crédibles et de limiter le greenwashing.

Le troisième chapitre évalue l'efficacité juridique de la CSRD face au greenwashing en la comparant à l'expérience sud-africaine, pionnière du reporting intégré. L'analyse du cadre sud-africain, qui combine soft law et évolutions législatives récentes, met en lumière ses points forts et ses faiblesses en matière de supervision, de normalisation et de mise en œuvre, offrant ainsi des pistes pour renforcer la CSRD.

L'étude souligne que, pour que la CSRD soit pleinement efficace contre le greenwashing, d'importants défis doivent être relevés, notamment l'harmonisation européenne, le renforcement des capacités des entreprises et la mise en place de mécanismes de contrôle robustes et cohérents.

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