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DETERMINING THE CONTENT OF CORPORATE REPORTING ON HUMAN RIGHTS

Business enterprises have to report their activities to stakeholders in order to provide corporate transparency. Non-financial corporate reports provide a comprehensive coverage of environmental, socio-economic, labor, health, and human rights issues. In the paper the author argues that a uniform definition of a sector-specific human rights issue in reporting frameworks, rather than self-identification by enterprises of salient human rights issues, would help to achieve standardization and thus the possibility of sanctions in the event of false or misleading reporting. The author analyzes existing international and regional non-financial reporting instruments regarding the human rights included in it. The main content issues of non-financial reporting are derived and given requirements to improve them. The author further analyzes whether the two main frameworks for human rights reporting (the GRI Standards and the UNGPs Reporting Framework) currently meet the requirements for content defined in the paper and, if not, how they can be changed.

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1. INTRODUCTION

In addition to generating profit, business enterprises also have a social responsibility, which may assist a government in fulfilling welfare state goals (Buhmann 2006, 189). Their operations affect human rights of many stakeholders – from primary stakeholders including employees, shareholders, customers, suppliers, and creditors to secondary stakeholders including the local community, social activists, the media, business groups, etc. Human rights[1] are rights deemed to belong to an individual. It is emphasized that human rights are universal, indivisible, interdependent, and interrelated (World Conference on Human Rights 1993). The International Standard ISO 26000 (International Organization for Standardization 2010, para 6.3.2.1) additionally states that they are both inherent and inalienable.

When the international human rights regime was set up, states were designated as the sole duty-bearers, but now the subjects of international human rights law are also non-state actors, including business enterprises (Economic and Social Council 2006, para 9). It is accepted that business enterprises have an indirect obligation to respect human rights as international law requires states to adopt appropriate legislation ensuring that non-state actors do not violate recognized human rights (Bilchitz 2013; Ruggie 2013), but many authors (Muchlinski 2001; De la Vega, Mehra 2009; Letnar Černič 2011; Čertanec 2019) share the view that they also have a direct obligation to do so. The protection of human rights in business is mostly governed by non-binding policies, ranging from an individual business's internal code of conduct to recommendations issued by international organizations (e.g. the UN Global Compact Principles, the OECD Guidelines for Multinational Enterprises, the International Standard ISO 26000). Until now the most influential non-binding recommendations have been the UN Guiding Principles on Business and Human Rights (GPs),[2] adopted in 2011, which are structured as guidelines, but their language suggests obligation (Čertanec 2019).

1 Throughout this article, the term "human rights" denotes human rights and fundamental freedoms.

2 Human Rights Council (2011).

The UNGPs have assigned to states a duty to protect human rights from abuses by third parties and to business enterprises a responsibility to respect human rights. Both states and business enterprises are responsible for providing victims access to an effective remedy should an abuse occur. Part of the responsibility to respect human rights is conducting human rights due diligence. The process of due diligence includes also communicating how the actual and potential human rights impacts are addressed (GP 17). The most appropriate way to inform stakeholders about business enterprise's operations/activities is reporting.

Reporting can be formal or informal, depending on the addressed stakeholders. Reporting requirements often differ, according to the enterprise's size and sector. Small business enterprises are often exempt from the mandatory reporting, while reporting is especially important in large and public enterprises and enterprises in high-risk industries. It is of vital importance that transparency, credibility, and comparability are guaranteed and therefore there is a tendency to standardize reporting.

Current reporting instruments and frameworks mostly focus on disclosure just for the sake of doing it. The quality of reports is irrelevant, as they do not undergo an audit, since the content of the report is not clearly defined. In this way, a large quantity of reports with no real value is produced and they do not help create organizational change. Using a descriptive method, a method of analysis and comparison, the author argues that a uniform definition of sector-specific human rights issues in reporting frameworks, rather than self-identification by enterprises of material issues or salient human rights issues, would help to achieve standardization and thus create the possibility of sanctions in the event of false or misleading reporting. This would create an environment where all the information is internalized and actual changes are made.

In line with the outline of the paper, the author initially theoretically examines the characteristics of non-financial reporting, particularly corporate human rights reporting. Furthermore, the author addresses the content of corporate human rights reports and analyzes existing international and regional non-financial reporting instruments regarding the human rights included in them. Chapter 4 discusses the main content challenges of non-financial reporting – the unclear definition of human rights issues, a form-over-substance problem and the lack of sanctions for false or missing content. On this basis, the author derives requirements regarding the content – defining the exact human rights issues specific to each sector and the imposition of sanctions for non-reporting of defined issues or incorrect reporting. Finally, the author analyzes whether the two main frameworks for human rights reporting (the GRI Standards and the UN Guiding Principles Reporting Framework) currently meet the requirements for content determined by the author and, if not, how they can be changed. Based on the preceding theoretical and empirical research, the author summarizes the findings, makes several suggestions as to how to address the challenges, and provides recommendations for subsequent regulations. The recommendations in this paper help to enable comparability of human rights reports and offer new solutions for imposing sanctions for false or misleading reporting.

2. NON-FINANCIAL REPORTING

Reporting can be done from financial and non-financial aspects of business activities. Initially, requirements for financial reporting were defined and subsequently requirements for non-financial reporting[3] followed. From predominantly environmental performance reports, they evolved in the direction of providing non-financial information on business's systemic issues such as labor, health and safety, human rights, business ethics, and other socio-economic impacts of business activities (Emeseh, Songi 2014, 139). Shabana, Buchholtz, Carroll (2017, 1117) defines a non-financial report as a "stand-alone document that a firm publishes with the express purpose of communicating its social responsibility activities to the general public and its stakeholders". The World Business Council for Sustainable Development (WBCSD 2002) defines it as a "public report by companies to provide internal and external stakeholders with a picture of the corporate position and activities on economic, environmental, and social dimensions". Reports are mainly drawn on the issues that business enterprises typically refer to as corporate social responsibility (CSR). According to Perrini (2006, 96), the most frequently covered issues in non-financial reports are: safety and quality of products and services, safety of working conditions, innovation and skill development, environmental protection, dialogue with stakeholders, and responsible citizenship.

[3] It is also known under the names social reporting, value report, corporate reporting, corporate social responsibility reporting (CSRR), sustainability reporting (SR), intellectual capital reporting (ICR), value reporting, economic, social and governance (ESG) reporting, and integrated reporting (IR). This article will consistently use the term "non-financial reporting".

Over the past decade, there has been an increase in the number of non-financial reports, there is also a tendency towards a more comprehensive coverage of issues and attempts to standardize reporting forms (Emeseh, Songi 2014, 138).[4] There were 10,242 non-financial reports in 2017 (Corporate Register n.d.). The majority of reports were from Europe, although trends are showing a notable increase of reports also in Asia Pacific and Latin America (UN Environment Programme *et al.* 2016). Non-financial reports can be found in annual reports as so-called integrated reports, which combine the enterprise's financial report with the non-financial report, with the aim of producing a single document or a stand-alone report. Since they have no prescribed format, they can be compiled by an external organization or the business enterprise itself. Reynolds, Yuthas (2008, 54) claims that every report should consider the principles of sincerity, appropriateness and understandability.

Non-financial reporting provides transparency of the enterprises' policies, risks, and responses to such risks, to enable stakeholders to take informed decisions (Martin-Ortega, Hoekstra 2019, 627). Non-financial reporting has become an integral part of business operations as it demonstrates that business enterprises recognize their obligation to stakeholders and their entitlement to information about issues that are of concern to them (Perrini 2006, 96; Emeseh, Songi 2014, 141). The motivation of business for reporting is derived from external pressures, internal pressures, and the opportunity to share the company's story (Searcy, Buslovich 2014, 154). The reasons for reporting are normally not purely ethical but lie in establishing corporate accountability, increasing stakeholder democracy, understanding the company's sustainability issues, performance, and gathering market information (Hess 2008, 447). At the same time this can be a marketing strategy adopted by business enterprises to enhance their public image with the possible implications for their profitability and ultimate survival (Emeseh, Songi 2014, 142). Reporting helps achieve the management's accountability for negative impacts, thus reducing the risk of reputational damage and improving its ability to attract and retain staff and customers (Buhmann 2018; Sarfaty 2013, 596). Non-financial reporting is an important source of information for potential investors and consumers in assessing social impacts and risks connected to business activities, which allows them to make informed decisions before forming business partnerships (Bratina, Primec 2017). Non-financial reporting is

[4] More on the non-financial report evolution in Hess (2008, 454–5) and Emeseh, Songi (2014, 139).

important for profitable business performance,[5] as operating in a socially responsible way enhances the company's reputation, secures greater employee commitment and productivity, makes it easier to access capital, and leads to better relationships with the government, competitors, the media, suppliers, and the local community, etc. (Commission of the European Communities 2001, §24; Moratis, Cochius 2011). Eventually, this all creates a competitive advantage over business enterprises that do not act in a socially responsible manner. Hess (2008) argues that for the achievement of meaningful reporting it is important that all the following requirements are fulfilled: disclosure of all relevant and material information related to the corporation's social and environmental policies and the actual performance, a dialogue with stakeholders to determine their expectations and their views on the corporate performance in meeting those expectations, and changing corporate behavior in furtherance of the goal of sustainable economic development.

Non-financial reporting can be done in three different ways: completely voluntary, as an enterprise's self-evaluation; corporate reporting can be a requirement for participation in multi-stakeholder initiatives, it can be done by civil society organizations, which offer external evaluative reporting, and finally it can be done as mandatory reporting, required by national governments or even supra-national organizations (Mehra, Blackwell 2016, 277). Opinions on the more effective system of reporting vary: some advocate voluntary, others require mandatory reporting. The most important pros of mandatory reporting are legal certainty, possibility of comparison, and standardization (UN Environment Programme *et al.* 2010, 8). The biggest cons are "one size does not fit all", inflexibility, complexity, and lack of incentive for innovation (UN Environment Programme *et al.* 2010, 8). Currently, non-financial reporting in the European Union (EU) is mostly voluntary, but some European countries (United Kingdom,[6] France,[7]

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[5] Haller, Link, Groß (2017, 407) found that top executives of multinational business enterprises consider "non-financial information" as crucial for a company's long-term performance.

[6] The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 No. 1970.

[7] Art 225 of the Grenelle Act II, 2010.

Sweden,[8] Norway,[9] Denmark,[10] Belgium,[11] the Netherlands,[12] Germany,[13] Spain,[14] Portugal,[15] Italy,[16] Finland[17]) have imposed mandatory non-financial reporting in various sectors, mostly for large and/or public business enterprises

Then EU's Non-Financial Reporting Directive 2014/95/EU[18] followed and introduced a mandatory non-financial statement in management reports for all European countries. The Non-Financial Reporting Directive requires a non-financial statement that contains information required for the understanding of the enterprise's development, performance, position, and impacts of its social, environmental and economic activities. Its stated overall objective is to increase the relevance, consistency, and comparability of information disclosed by business enterprises (Buhmann 2018). The Non-Financial Reporting Directive does not differentiate business enterprises by sector but rather by size. Under Article 19a and Article 29a of the Non-Financial Reporting Directive reporting is mandatory only for large public-interest business enterprises, whose balance sheets showed an average of more than 500 employees during the financial year, whereas it is still voluntary for others. This is justified by the possibility of the cost outweighing the benefits of obliging small and medium-sized enterprises to issue non-financial statements (European Commission 2017, 2). Therefore, many small and medium-sized enterprises are still not issuing non-financial reports and they enact their social responsibility within formal and informal networks, rather than through explicit policies (Matten, Moon 2008, 417). In

8 Annual Accounts Act, 1999 amended 2005; Sustainability goals for State-owned enterprises, 2012.

9 Act amending the Norwegian Accounting Act, 2013; The Norwegian Code of Practice for Corporate Governance, 2014.

10 Act amending the Danish Financial Statement Act (Accounting for CSR in large businesses), 2009.

11 The Social Balance Sheet, 2003, updated in 2008.

12 Dutch Civil Code, 1838, updated in 2004.

13 Bilanzrechtsreformgesetz – Accounting Law Reform Act, 2005.

14 Sustainable Economy Law, 2011.

15 Social Balance Law 7/2009, 2009.

16 Legislative decree No. 32/2007, 2007.

17 Financial Statements Act 2008–2012 (from 2005, including 2008, 2013 and 2015 amendments).

18 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330.

2020, the European Commission prepared the Revision of the Non-Financial Reporting Directive, called Inception Impact Assessment, to address the problems that arise.

Reporting instruments that transcend national boundaries are suggested for an improved comparability and efficiency of reporting practice (UN Environment Programme *et al.* 2016, 23). The most important international non-financial reporting instruments and frameworks are the following: The Global Reporting Initiative (GRI) Standards, Social Accounting Standards Board (SASB) Standards, International Standard ISO 26000: Guidance on social responsibility and its Chapter 7 on guidance on integrating social responsibility throughout an organization, the OECD MNE Guidelines with its disclosure chapter, and the United Nations Guiding Principles (UNGPs) and its United Nations Guiding Principles Reporting Framework. These global standards are all of a voluntary nature so enterprises decide whether they will report according to them or not.

3. CORPORATE REPORTING ON HUMAN RIGHTS

Business enterprises have to communicate their human rights activities to their stakeholders in order to provide corporate transparency and accountability. One of the communication processes is reporting, which is intended to stimulate organizational changes to avoid future or current adverse impact on human rights (Buhmann 2018). Its purpose is to ensure internal accountability for achieving business objectives and external accountability to shareholders for their performance (UN OHCHR 2012, 57). As enterprises are often unwilling to offer this information or they offer just partial, often bias information, the necessity for regulating this issue emerged. The current foundation of corporate human rights reporting requirements is the UNGPs.

The UNGPs discuss communication as Pillar One and Pillar Two activities. According to Guiding Principle 3 (GP3), states should encourage business enterprises to communicate how they address their human rights impacts and, where appropriate (especially, where the nature of business operations or operating contexts poses a significant risk to human rights), even require it. Communication is an important part of fostering respect for human rights and its form is not prescribed (Human Rights Council 2011). In order to stimulate communication of adequate information, states could legalize self-reporting as a mitigating circumstance in the event of any judicial or administrative proceedings. The commentary to GP3 advises issuing state policies or laws that would clarify what and how business enterprises should communicate and thus help them ensure both accessibility and accuracy of communications (Human Rights Council 2011). Such an adequate communication should take into account variations in business enterprise size and structures, safety and security risks, and legitimate requirements for commercial confidentiality (Human Rights Council 2011).

According to Guiding Principle 21 (GP 21) business enterprises should be prepared to communicate how they address their human rights impacts externally, particularly when concerns are raised by or on behalf of the affected stakeholders. Therefore, it is not necessary that they actually communicate all the information they have collected in a due diligence process, but they should be able to communicate business's human rights impacts when appropriate (UN OHCHR 2012, 57–8). As the form is not prescribed, business enterprises decide the how, the when and the who,[19] but the reports should cover topics and indicators concerning how business enterprises identify and address adverse human right impacts (Human Rights Council 2011, GP 21). The content and credibility can be improved by an independent verification of human rights, and sector-specific indicators can also be very helpful (Human Rights Council 2011, GP 21). Reported information must be accessible to its intended audiences and sufficient, but at the same time it should not pose any risks to the affected stakeholders, personnel, or to legitimate requirements for commercial confidentiality (Human Rights Council 2011, GP 21). Formal public reports are necessary if business operations or operating contexts pose risks of severe human rights impacts or if a business enterprise wants to embed within it the understanding of human rights issues and the importance that respecting human rights holds for the business itself, protects its reputation and builds a wider trust in its efforts to respect human rights (UN OHCHR 2012, 58). By integrating reporting on human rights into its financial reports, business enterprises demonstrate the importance of respecting human rights for business (UN OHCHR 2012, 57).

[19] Precisely the lack of a reporting structure or template is criticized by Wheeler (2015, 768), because it is very difficult to achieve comparability without a published methodology on how to report and inter-firm competition that is essential for the court of public opinion.

4. HUMAN RIGHTS CONTENT OF NON-FINANCIAL REPORTING INSTRUMENTS

Stand-alone human rights reports are not common; they are usually included in non-financial reports. The UN Environment Programme *et al.* (2016, 19) research identified in 2016 that over three fifths (61 percent) of non-financial reporting instruments cover reporting on specific environmental or social topics. The remaining two fifths require or encourage reporting of general sustainability information. The issues included in non-financial reporting instruments are similar. With the exception of the UN Guiding Principles Reporting Framework, which is for human rights issues only, others also include environmental issues, labor issues and anti-corruption. The OECD Guidelines for Multinational Enterprises, ISO 26000, the Non-Financial Reporting Directive and the GRI Sustainability Reporting Standards additionally cover economic and social issues such as organizational governance, fair operating practices, consumer issues and community involvement.

Despite the fact that human rights are included in non-financial reporting instruments, there is a significant difference in their scope. The disclosure chapter of the OECD Guidelines for Multinational Enterprises and the chapter on communication on social responsibility of ISO 26000 (7.5) do not mention explicitly human rights reporting, but both have their own chapters on human rights that are aligned with the UNGPs. Consequently, enterprises communicating under these two reporting instruments should conduct human rights reporting, but the enforceability of this requirement may be questionable. The UN Global Compact Guidelines for Communication on Progress mention human rights but do not clearly define their content. They state that Communication on Progress should include a description of the practical steps that a business enterprise has taken or intends to take to implement the Global Compact principles in the area of human rights. The vague wording again raises the issue of enforceability. On the other hand, the Non-Financial Reporting Directive, the GRI Sustainability Reporting Standards, and the UN Guiding Principles Reporting Framework provide specific guidance on human rights reporting.

The tasks for corporate human rights respect, under the Non-Financial Reporting Directive, are set out in the Guidelines on non-financial reporting. Enterprises are expected to disclose material information on the potential and actual impacts of their operations on right-holders (European Commission 2017, 25–6). The Guidelines on non-financial reporting give specific examples of possible disclosed information, such as how accessible their facilities, documents, and websites are to people with disabilities, or the list of operations and suppliers at significant risk of human rights violations (European Commission 2017, 25–6). One of the tasks is also material disclosure on human rights due diligence, and on processes and arrangements implemented to prevent human rights abuses, for instance, how a business contract with supply chain partners deals with human rights issues (European Commission 2017, 25–6). A business enterprise may also describe the role and responsibility of the board or supervisory board regarding human rights policies (European Commission 2017, 17, 18).

The most comprehensive non-financial reporting instruments are the GRI Sustainability Reporting Standards, which have assigned a special standard to human rights, i.e. GRI 412 – Human Rights Assessment (GRI 2018). It is categorized under the social topics of the GRI Standards and provides general requirements for reporting on human rights. The GRI 412 standard includes a management approach to human rights assessment disclosure (explanation of the material topic and its boundary, description of policies, commitments, goals, grievance mechanisms, specific processes or programs, and an evaluation of the effectiveness of that management approach) and a topic-specific disclosure. Some other GRI standards specify corporate reporting requirements related to specific human rights, such as GRI 401: Employment, GRI 403: Occupational Health and Safety, GRI 406: Non-discrimination, GRI 407: Freedom of Association and Collective Bargaining, GRI 408: Child Labor, GRI 409: Forced or Compulsory Labor, GRI 411: Rights of Indigenous Peoples' or GRI 414: Supplier Social Assessment.

In order to provide more detailed guidance to enterprises on how to report on human rights issues in line with their responsibility to respect human rights, under the UNGPs, the UNGPs Reporting Framework, was adopted (Shift and Mazars n.d.). It provides a business enterprise a concise set of questions and a clear and straightforward guidance on how to answer these questions with relevant and meaningful information in order to know and show that it is meeting its responsibility to respect human rights in practice (Shift andMazars n.d.). The Reporting Framework offers implementation guidance to business enterprises that are reporting and assurance guidance for internal auditors and external assurance providers (Shift and Mazars n.d.). According to the UNGPs Reporting Framework (Shift and Mazars 2015, 4), business enterprise should, at a minimum:

- Provide a substantive response to the two overarching issues in Part A: Governance of Respect for Human Rights;
- Meet the four informational requirements under Part B: Defining the Focus of Reporting;
- Provide a substantive response to the six overarching issues in Part C: Management of Salient Human Rights Issues.

5. THE CHALLENGES REGARDING THE CONTENT OF CORPORATE REPORTING ON HUMAN RIGHTS

Human rights reports must provide credible and relevant information. There are three major challenges to the content of corporate human rights reporting: unclear definition of human rights issues, "form-over-substance" issues, and the lack of sanctions for incorrect or missing content.

5.1. Unclear Definition of Human Rights Issues

A problem already arises in the definition of non-financial information. Non-financial reporting instruments do not consistently define the term non-financial information and only provide general guidance on its interpretation. As confirmed by the research findings of Haller, Link, Groß (2017, 407–8), the term "non-financial information" lacks a common meaning and understanding, which leads to the problems that affect the efficiency and effectiveness of corporate communication. The meaning of the term "non-financial information" may be contextually or geographically dependent and used within different reporting approaches and domains, so that different business enterprises may disclose different types of information as "non-financial information" or disclose the same type of information in different ways (Haller, Link, Groß 2017, 411). A new generally accepted definition of non-financial information should therefore be created (Haller, Link, Groß 2017, 407).

Furthermore, it is also not clearly defined what specific human rights must be included in human rights reports. Most reporting instruments do mention human rights but only in broad terms, with a reference to international human rights instruments. With the exception of the GRI Standards, other instruments do not define individual human rights and consequently the reports contain very general information and commitments on human rights issues.

The issue was also recognized by the European Commission in its Revision of the Non-Financial Reporting Directive. Non-detailed reporting requirements leave a great deal of discretion to the reporting enterprises and create unnecessary and avoidable costs, as enterprises consequently face uncertainty and complexity when deciding what non-financial information to report and how and where to report it (European Commission 2020).

As the wording is unclear, Reynolds and Yuthas (2008, 55) warn that it is possible for business enterprises to pick and choose which items to include in the report and which to leave out. It would therefore be possible to have a report that is factually accurate but paints an inaccurate picture of the performance (Reynolds, Yuthas 2008, 55). The European Commission

(2020) has already noted that enterprises often report information that users do not consider relevant and exclude that which is. In spite of the fact that flexibility in reporting requirements is necessary, as enterprises operating in different sectors face different issues and too rigid requirements could lead to enterprises reporting on issues of limited importance to that specific enterprise, at the same time comparability of reports is prevented, which means that the information is less relevant to investors and other stakeholders (Martin-Ortega, Hoekstra 2019). As Hess (2019, 35) points out, "comparable information is important for allowing stakeholders to determine the leaders and laggards in an industry, and then push the laggards to improve their performance."

For this reason, human rights benchmarks have been developed and their importance is increasing as they enable greater corporate transparency. One such benchmark is the Corporate Human Rights Benchmark (CHRB), which uses publicly available information to assess the human rights performance of 230 global companies in five sectors that have a high risk of negative human rights impacts (agricultural products, apparel, extractives, ICT manufacturing and automotive manufacturing) (World Benchmarking Alliance n.d.). Unified sector-specific indicators help achieve comparability and merit-based auditing, which builds stakeholder confidence. As Emeseh and Songi assert (2014, 139–40), standardizing performance indicators and issuing general guidelines for reporting will improve the consistency of reports. In this way, the reports would be easier for investors and decision-makers to analyze and understand (Tschopp, Nastanski 2014).

5.2. A Form-Over-Substance Issue

Currently, there is too much of the so-called "paper compliance", where enterprises demonstrate only formal compliance with procedures, rather than providing objective information on whether the business enterprise has been, or is at risk of being, involved in human rights abuses (Jägers 2013, 320). Enterprises are simply not motivated to make public their human rights impact because of the negative publicity that may follow. Consequently, they report the data that is easiest to collect (i.e. policies and procedures) as opposed to the most important ones (i.e. performance outcomes) (Hess 2019, 33). The reporting process does not lead to an organizational change as the focus is on disclosing what the enterprise has already done without focusing on how it will improve (Hess 2019, 38). Reports focus on managing the public's impression of the enterprise and reducing exposure to criticism and social or economic accountability, rather than providing meaningful information and transparency (Buhmann 2018; Hess 2019). An enterprise may choose not to fully disclose its social performance because it may disclose favorable and hide unfavorable information, fail to put disclosed information in context, or simply provide false information (Hess 2008, 462). Even if the non-financial information is accurate, enterprises may fail to provide information about the actual implementation or effectiveness of that information (Hess 2008, 462).

Reporting instruments still place too much emphasis on ex-post compliance (i.e. disclosure) rather than ex-ante organizational change measures and proactive human rights due diligence (Buhmann 2018). The GRI Standards, which are the most widely used reporting framework, are intended only for corporate performance disclosure. Although the Non-Financial Reporting Directive requires due diligence, its focus is still on disclosure. Its audit requirements are only intended to check whether a non-financial statement has been made, not whether the information disclosed is accurate (Buhmann 2018). Only the UN Guiding Principles Reporting Framework places a stronger emphasis on proactively addressing human rights issues. In addition to using the information for disclosure, a due diligence approach also encourages its use to improve corporate social performance. Under the UNGPs, formal public reporting has an ex-post perspective on the action performed or the impact caused, but it is also part of the human rights due diligence process and has an ex-ante focus, which helps identify, prevent or, if necessary, mitigate an adverse impact before it occurs or grows (Buhmann 2018).

Jägers (2013, 320) sees a solution in mandatory reporting, which could address this problem if it provides clear standards on what to report and how, and ensures that the information is verifiable. Enterprises have to be required to make public their human rights impacts otherwise they will not do it. Contrarily, Martin-Ortega and Hoekstra (2019) argue that mandatory reporting laws are not sufficient and special due diligence laws should be adopted, requiring further action from the enterprise preventing and remedying critical human rights risks. The experience with modern slavery reporting laws (e.g. California Transparency in Supply Chains Act and Australia's Modern Slavery Act) confirms this, as mandatory reporting laws are often not enforced. As Buhmann (2018) argues, the information collected should be used internally to understand society's expectations and change one's practices accordingly. Reporting should be a learning process for an organizational change (Buhmann 2018), it should inform stakeholders and lead to a dialog. Reports should not be seen as an end result but only as a tool to start, improve, and own a healthy due diligence process that enables an organization to know the risks and change practices to prevent the risks, establish a proper process, minimize, and remedy the consequences (Martin-Ortega 2019, 115). Hess (2019, 48) recommends two governmental measures, in addition to mandatory disclosures and due diligence: direct support for stakeholder initiatives that allow users of information to act as surrogate regulators; requiring and enforcing disclosures that help external stakeholders monitor outcomes but are not directly linked to an enterprise's performance. Hess (2019, 43) recommends that governments move away from general transparency programs (such as the GRI standards) and toward mandating more targeted social transparency, focusing on a specific stakeholder group, issue and/or sector.

An excellent example is the OECD Due Diligence Guidance for Responsible Business Conduct, which "provides practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises by providing plain language explanations of its due diligence recommendations and associated provisions" (OECD n.d.). The OECD has developed sectoral guidelines to help enterprises identify and address risks to people, the environment and society associated with business operations, products or services in specific sectors (financial sector, extractive sector, apparel and footwear sector, agriculture sector, and minerals from conflict-affected and high-risk areas sector) (OECD n.d.).

5.3. The Lack of Sanctions for False or Missing Content

A (mandatory) reporting system can only be effective if a business enterprise is sanctioned for not reporting or for providing false and misleading information. Emeseh and Songi (2014, 138) argue that business enterprises should be held liable for inaccurate statements made knowingly or negligently in their non-financial reports. Currently, sanctions are only available in the form of a fine for non-compliance with the reporting requirement under national regulations. There is no sanction for false or misleading statements, as the auditor only verifies the formal accuracy of the report.

The voluntary nature of the majority of non-financial reporting instruments is the main reason why there are no sanctions for non-reporting or misreporting. There is no binding international reporting instrument to impose sanctions at the international level. Without such an instrument, sanctions are country or region dependent. Under the EU Non-Financial Reporting Directive, there are only a reporting requirement and sanctions that can be imposed by governments for non-compliance with the reporting requirement. A fine would be possible under the Non-Financial Reporting Directive if a business enterprise made a non-financial statement that did not mention human rights issues. The extent and quality of the information disclosed are not relevant; an auditor or audit firm only verifies that the non-financial statement has been made (Art. 19a, para. 5, Art. 34, para. 3). The Member States may require that the information in the non-financial statement is verified by an independent provider of audit services (Art. 19a, point 6). The collective responsibility for ensuring that a non-financial statement is drawn up and published in accordance with the requirements of the Directive lies with the members of the administrative, management, and supervisory bodies of a business enterprise (Article 33(1)). However, for fear of affecting the business competitiveness, most Member States have chosen not to include it in their legislation.

The other reason is that measuring human rights is not an easy task, as indicators risk producing invalid results (misleading images of corporate performance) and non-emancipatory effects (i.e. disempowerment of human rights victims) (De Felice 2015). Business and human rights indicators should estimate past or projected human rights performance, with results conveyed by a verbal or numerical expression, such as a number, a percentage, or a verb (De Felice 2015). In order to measure business and human rights compliance, De Felice (2015) asserts that three categories of business and human rights indicators need to be established: policy, process, and impact indicators.

5.4. Recommendation

Based on these challenges, the author formulates the following recommendation for current reporting instruments, reporting frameworks and governments to enable meaningful and relevant corporate human rights reporting:

(a) precise definition of a sector-specific human rights issue and

(b) sanctions for non-reporting on defined issues or false reporting.

Only the clear definition of human rights issues, specific for each sector, would standardization of report content be possible. A system of credible and comparable reports would be made possible by the standardization of the report content and an independent external assurance of the report. Auditors would be able to verify not only the disclosure of information but also the credibility of information. On this basis sanctions for non-reporting on defined issues or misreporting can be adopted and used to address inadequacies. All of this would lead to a change in organizational behavior and the adoption of proactive measures aimed at preventing adverse human rights impacts.

5.4.1. Precise Definition of a Sector-Specific Human Rights Issue

- Reporting frameworks should clearly define human rights issues, specific for each sector and based on a thorough examination of which human rights are most frequently abused in the given sector. Reporting frameworks should include sufficient explanations and illustrative examples so that business enterprises can report on the basis of them, in a standardized manner. Other human rights that are not sector-specific, but are relevant to the reporting enterprise, must be reported separately as a result of mandatory corporate human rights due diligence.

The first part of the task is assigned to reporting frameworks, which should conduct appropriate analyses of the relevant human rights issues in each sector. The current initiatives have singled out sectors such as agricultural products, apparel, extractives, ICT manufacturing and automotive manufacturing, as they have a high risk of human rights impacts. According to the author, all sectors need to be included as the UNGPs do not exclude any sector. The author recommends using the sectors used by the ILO: Agriculture, plantations and other rural sectors; Basic metal production; Chemical industry; Commerce; Construction; Education; Financial and professional services; Food, beverages, tobacco; Forestry, wood, pulp and paper; Health services; Hotels, tourism and catering; Mining; Mechanical and electrical engineering; Media and culture; Oil and gas production; Postal and telecommunications services; Public service; Shipping, ports and fishing; Textiles, clothing and footwear; Transport; Transport equipment manufacturing; Utilities (water; gas; electricity) (ILO n.d.). If the need arises to look at a particular sector in more detail, new sections can be added.

When looking for relevant human rights issues, reporting frameworks can use an example from the Corporate Human Rights Benchmark methodology in which they have identified which human rights are most relevant for each sector. In the agricultural products sector, ten human rights were identified, including living wages, prohibition of child labor, freedom of association and collective bargaining, health and safety, etc. (CHRB 2020). Reporting frameworks need to include enough examples so that enterprises know exactly what to report on and are not confused. The UN Guiding Principles Reporting Framework and its implementation guidelines are a good example of this.

The second part of the task falls to the enterprise, which must find out through human rights due diligence whether there are any other human rights issues that are specific to the enterprise. Human rights due diligence should be required by law and the disclosure part of it should provide the public with the relevant information. Enterprise can use *The Corporate*

Responsibility to Respect: An Interpretive Guide (Office of the UN High Commissioner for Human Rights), the UN Guiding Principles Reporting Framework, or the OECD *Due Diligence Guidance for Responsible Business Conduct* to identify human, environmental and social risks associated with business operations, products or services in specific sectors.

5.4.2. Sanctions for Non-Reporting on Defined Issues or False Reporting

- Reporting instruments should require sanctions for failure to report or misreport on certain human rights issues. They should also require the designation of a person with knowledge of human rights due diligence to undertake corporate reporting on human rights issues.

The solution to improving the quality of human rights reporting lies in emulating the financial reporting model, where misreporting is sanctioned. Non-financial information has to be audited in the same way as financial information, using unified sector-specific indicators. Since countries are not willing to adopt this voluntarily, this has to be made mandatory. Reporting instruments (e.g. the Non-Financial Reporting Directive) should require governments to implement this requirement and have in place assurance guidance for internal auditors and external assurance providers. The ultimate goal is the adoption of a binding international reporting instrument that would impose sanctions.

To improve the quality of human rights reporting, human rights reporting should be entrusted to a person with knowledge of human rights due diligence. Human rights reporting cannot be outsourced to PR firms as they try to portray the enterprise in the best possible way instead of making an honest assessment of the situation. The system should be similar to that for the protection of personal data, where a person within the enterprise is designated as data protection officer.[20]

6. ANALYSIS OF THE CURRENT HUMAN RIGHTS REQUIREMENTS FOR CONTENT IN REPORTING FRAMEWORKS

The author analyzes whether the two most commonly used frameworks for voluntary non-financial reporting – the GRI Standards and the UN Guiding Principles Reporting Framework – currently meet the requirements

[20] See Articles 37, 38 and 39 of the General Data Protection Regulation.

for content determined by the author, and if either of these frameworks were incorporated into a mandatory corporate human rights reporting instrument and if not, how they could be changed.

6.1. GRI Standards[21]

Standard GRI 412 – Human Rights Assessment requires the enterprise to report on the number and percentage of operations that have undergone a human rights review or impact assessment (reporting requirement 412–1), the number and percentage of employee trainings on human rights policies or procedures (reporting requirement 412–2), and the number and percentage of significant investment agreements, and contracts that include human rights clauses or that have undergone a human rights review (reporting requirement 412–3). The GRI Standards on a specific human rights issue (i.e. GRI 406: Non– Discrimination) require an enterprise to report on various matters, most frequently on the number of incidents and their status, or the naming of operations and suppliers that pose a risk of incidents and measures taken.

The analysis shows that the GRI standards do not meet the requirements for content determined by the author. They define eight different human rights topics and have a common standard for human rights (GRI 412 Human Rights Assessment), but have no sector-specific standards. In this way, they exclude many important human rights issues (e.g. freedom of thought, conscience and religion; right to privacy; right of an adequate standard of living, etc.). The UNGPs clearly state that all human rights must be respected and therefore all have to be taken into consideration. Furthermore, the GRI standards provide guidance but not enough illustrative examples, so

[21] The paper was written before the GRI published the revised Universal Standards in 2021 (GRI 1: Foundation 2021, GRI 2: General Disclosures 2021 and GRI 3: Material Topics 2021) that will be in effect for reporting, starting 1 January 2023. The Universal Standards have been revised to incorporate reporting on human rights and environmental due diligence for organizations to manage their sustainability impacts, including on human rights, as set forth in intergovernmental instruments by the UN and OECD (GRI 2021a). In development are also new Sector Standards that will enable more consistent reporting on sector-specific impacts by helping to identify a sector's most significant impacts (GRI 2021a). GRI is also running Topic Standard Project for Human Rights that is focused on updating GRI human rights-specific Topic Standards and developing Standards for human rights issues not yet covered in the GRI Standards (GRI 2021b). With the revision and the new development of GRI Standards, many of the recommendation of the paper will be considered.

enterprises do not know exactly how to report on them, which leads to confusion. The guidelines need to be specific enough to allow standardization of reporting content.

To meet the content requirements determined by the author, the first option is to amend GRI Standard 412 to include an additional requirement, 412–4, that would identify different sectors of the economy (e.g. the apparel sector) and their relevant human rights issues (e.g. living wage, prohibition on child labor, rights to physical integrity, right to privacy, etc.). It should be mandatory to report a number of incidents of each relevant human rights abuse and its status or identify operations, the suppliers that pose a risk to the relevant human right, and the measures taken. The second option would be to accept new standards for each human right, reporting the number of incidents of each relevant human rights abuse and their status or naming operations, the suppliers that pose a risk to the relevant human right, and the measures taken. Reporting instruments would then have the task of defining human rights issues, specific to each sector. In both cases, illustrative examples should be given to show enterprises how to report on them. One of the best practices in this area is the UN Guiding Principles Reporting Framework.

This approach is better, as current because the UNGPs explicitly state that all human rights can be abused. Selecting only eight human rights gives the impression that other human rights are not as important. With clearly defined human rights issues, specific to each sector, and clear guidance, the uncertainty of enterprises as to what to report would be expelled.

6.2. The UN Guiding Principles Reporting Framework

The UN Guiding Principles Reporting Framework is based on demonstrating continuous improvement, focusing on respect for human rights as opposed to philanthropic activities, addressing the most severe human rights impacts, providing balanced examples from relevant areas and explaining any omission of important information (Shift and Mazars 2015, 4–5). Part A consists of a set of questions regarding the governance of respect for human rights – policy commitment and embedding respect for human rights. Part B defines the focus of reporting – explanation and identification of salient human rights issues associated with the enterprise's activities and business relationships, with possible focus on specific areas. Additional severe impacts need to be identified and an explanation provided as to how they have been addressed. Part C addresses the management of salient human rights issues, such as specific policies, stakeholder engagement, assessing impacts, integrating results, and taking action, tracking performance, and remediation. The final decision on what to report is in the hands of the individual enterprise, but it should work towards answering the supporting questions and improving the quality of its responses to all questions over time (Shift and Mazars 2015, 4).

The analysis shows that the UN Guiding Principles Reporting Framework provides relevant indicators and enough practical examples so that enterprises know exactly how to report on them when they choose their human rights issues. However, the content requirements determined by the author are not met – because the guidelines are too broad. Only human rights in general are mentioned, but no specific human right is addressed. There are no sector-specific issues, as it is up to each enterprise to identify salient human rights issues. Furthermore, enterprises choose which questions to answer and therefore comparison is not possible. All this creates uncertainty for an enterprise and prevents standardization.

To meet the content requirements determined by the author, the UN Guiding Principles Reporting Framework should be amended to specify which are the salient human rights issues for each sector and enterprises should report on them according to the sector in which they operate. In the apparel sector, for example, the framework would specify relevant human rights issues (e.g. living wage, freedom of association and collective bargaining, prohibition on child labor, right to safe and healthy working conditions, rights to physical integrity, right to privacy, etc.) and not defer this to the enterprise itself. The enterprises would add to their reports the human rights issues that are relevant only to them. They would not be allowed to pick and choose questions, but all should be included unless they provide a valid explanation.

This approach is better than the existing one, as it allows comparability of reports and facilitates the identification of human rights issues from an enterprise's perspective.

7. A WAY FORWARD

The European Commission (2020) identified three possible ways of addressing issues with the content of non-financial reporting in its Inception Impact Assessment: revising the general non-binding guidelines and/or issuing additional guidelines on specific topics; exploring the use of existing or possible future standards on non-financial reporting, and; revising and strengthening the provisions of the Non-financial Reporting Directive. Such a revision could include, inter alia, specifying in more detail what non-financial information enterprises should report, and requiring enterprises to use a standard for non-financial reporting (European Commission 2020).

In the author's view, Non-Financial Reporting Directive should also require sanctions for not reporting or misreporting certain human rights issues. It should also require the designation of a person with knowledge of human rights due diligence to undertake corporate reporting on human rights issues.

Tschopp, Nastanski (2014, 147–8) found that the GRI standards have the full potential to be a globally agreed upon standard[22] and serve as a benchmark for improving performance.[23] Freyman (2011, 55) opposes this as she believes that the GRI standards do not offer enough to effectively compare the performance among the participating business enterprises. Cragg (2010, 772) recommends a solution in the form where the GRI standards are only suggested, rather than the necessary standards, in order to ease the tension created by a one-size-fits-all approach.

The analysis has shown that both examined reporting frameworks have their weaknesses and strengths regarding human rights reporting. There are multiple possible ways of going forward:

- both frameworks are preserved and amended by sector-specific human rights issues and linked by defining exactly what content each framework covers.
- both frameworks are preserved and amended by sector-specific human rights issues; the choice of the framework is left to each sector.
- both frameworks are preserved and amended by sector-specific human rights issues; the choice of the framework is left to each country.
- both frameworks are preserved and amended by sector-specific human rights issues; the choice of framework depends on the size of the enterprise: a more complex human right reporting system (UN Guiding Principles Reporting Framework) is prescribed to large enterprises, a less complex one (GRI Standards) to SMEs.

The most promising idea is that both frameworks be preserved and amended by sector-specific human rights issues; the choice of framework would be left to each country. Governments should introduce mandatory reporting requirements under the chosen framework, at least for the largest

[22] Alan Knight from AccountAbility (AA1000 Series) objects to a unified global standard as he believes there is no need for one single international CSR reporting standard but for a system that brings legitimacy and mutual recognition to a number of standards (Tschopp, Nastanski 2014, 155).

[23] Cragg (2010, 769–71) agrees with Tschopp, Nastanski as she believes that a streamlined set of requirements would allow greater stability and predictability.

enterprises. For SMEs, it can be voluntary[24] but with a system of incentives – if they adopt reporting requirements. In due course, the same regime is recommended, as the aim is to achieve comparability of reports.

Human rights respect is in "the best interest of society as a whole" (Čertanec 2020) so no government should be afraid to extend the mandatory reporting requirements above the minimum standards of the reporting instruments (e.g. Non-Financial Reporting Directive). Governments should:

- adopt mandatory reporting requirements for the content of the report under the chosen framework so that concerned enterprises know what to report on and how to report,
- require the designation of a person with knowledge of human rights due diligence to undertake human rights reporting,
- require mandatory auditing of human rights reporting so that the information collected can be properly assessed, and
- impose legislation that would sanction not only non-reporting but also misreporting.

Since reporting requirements involve substantial costs,[25] it would be necessary for governments to provide appropriate incentives for proactive measures in order to change business behavior in accordance with the non-financial information collected and to measure the progress of the enterprise. In addition, governments should organize workshops for enterprises to raise awareness that the information collected is also used to achieve organizational change and that disclosure is not the ultimate goal.

8. CONCLUSION

Human rights reporting represents an important form of communicating human rights impacts to stakeholders. As Buhmann (2018) states non-financial reporting has the potential to drive the change of business conduct if undertaken as an explicit organizational learning strategy.

24 Positive discrimination of small and medium-sized enterprises is acceptable (Korže, 2019).

25 The European Commission (2013) expects the financial burden on the concerned enterprises under the Non-Financial Reporting Directive to be between €600 and €4,300 per year. If more extensive reporting is implemented, it can be even between €155,000 and €604,000.

Business enterprises have to perceive reporting as a helpful tool and not as an unnecessary evil, as they perceive it at the moment. The procedure of reporting should be facilitated and not seen as an additional burden.

The solution lies in copying the model of financial reporting, where false statements are sanctioned. The standardization of report content would be made possible through the clear definition of human rights issues, specific for each sector. Standardization of report content and independent external assurance of the report would provide a system of credible and comparable reports. Auditors would be able to verify not only the disclosure of information, but also its credibility. Sanctions for non-reporting of the defined issues or misreporting can be adopted on this basis and used to address inadequacies. All this would lead to a change in organizational behavior and the adoption of proactive measures to prevent adverse human rights impacts.

To achieve this goal, the following requirements for content should be adopted:

- Reporting frameworks should clearly define human rights issues, specific for each sector and based on a thorough examination of which human rights are most frequently abused in the given sector. Reporting frameworks should include sufficient explanations and illustrative examples so that business enterprises can report on the basis of them in a standardized manner. Other human rights that are not sector-specific but are relevant to the reporting enterprise must be reported separately, as a result of mandatory corporate human rights due diligence.
- Reporting instruments should require sanctions for failure to report or misreport on certain human rights issues. They should also require the designation of a person with knowledge of human rights due diligence to undertake corporate reporting on human rights issues.

The analysis of the GRI standards and the UN Guiding Principles Reporting Framework shows that they do not meet the content requirements determined by author. Human rights issues are too broad, and there is no differentiation between the enterprise sectors. The advantage of the UN Guiding Principles Reporting Framework is that it provides relevant indicators and enough practical examples so that enterprises know exactly how to report on them when they choose their human rights issue, whereas the GRI standards do not.

To meet the content requirements determined by the author, the GRI 412 standard and the UN Guiding Principles Reporting Framework should be amended so that the frameworks specify which human rights issues to report on for each sector. The enterprises would add to their report the human rights issues that are relevant only to them. They would not be allowed to select issues, but all should be included unless they provide a valid explanation.

The most promising idea is for both reporting frameworks to be preserved and amended by sector-specific human rights issues; the choice of the framework would be left to each country. Governments should introduce mandatory reporting requirements under the chosen framework – at least for the largest enterprises. For SMEs, it can be voluntary, but with a system of incentives – if they adopt reporting requirements. If the reporting requirements were crystal clear, then auditors could also review the content of the information collected, and the governments could enact laws that sanction not only non-reporting but also misreporting. Governments should additionally organize workshops for enterprises, to give them instructions on how to collect and report on the necessary information and stipulate an organizational change. Over time, the same regime is recommended for all countries, in order to provide comparability of human rights reports at the international level. The ultimate goal is the adoption of a binding international reporting instrument that would impose sanctions for failure to report or misreport on certain human rights issues.

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