

# The instrumental value of private regulation: Evidence from the case of corporate non-financial reporting

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## Abstract:

Critics of private regulation argue that voluntary standards often fail to meaningfully improve corporate conduct while simultaneously functioning as a stumbling block that prevents the development of more stringent, mandatory regulation by states. This paper complicates this view by illustrating the *instrumental value* of private regulation—that is, its potential to act as a building block that facilitates the development of new government regulation that serves the public interest. Through a combination of in-depth interviews and analysis of publicly available documents, I examine the impact of voluntary corporate non-financial reporting on public policy over the period 1997–2025. The analysis highlights the critical role that both businesses and civil society organizations have played in (1) *expanding the regulatory space* by developing voluntary standards in policy areas that state officials have been either unwilling or unable to address, (2) *changing expectations* for good corporate behavior by popularizing these standards, and (3) *sharing responsibility* for regulation with public policymakers through interlocking voluntary and mandatory rules. The analysis also demonstrates the importance of institutional complementarity as a scope condition of this three-stage model.

**Keywords:** civil society, corporate non-financial reporting, private regulation, public policy, self-regulation

## 1. Introduction

In the mid-1990s, very few companies publicly disclosed information related to *non-financial* performance. Of the firms that did report on environmental, social, or governance issues, most did so voluntarily and in whatever manner they deemed fit (Mathews 1997). Three decades later, we find a dramatically changed landscape, with thousands of firms around the world reporting according to detailed voluntary standards, as well as, in an increasing number of cases, a range of mandatory reporting requirements established by stock exchanges and public authorities (Chalmers et al. 2023). Regardless of what one makes of corporate non-financial reporting (NFR), it is unquestionably growing in popularity (KPMG 2024). What is more, the sequence of events suggests that firms' voluntary participation in regulatory schemes designed and operated by nonstate actors—a phenomenon Bartley (2007), Bütche (2010a), D. Vogel (2010), and others refer to as private regulation—may have functioned as a building block contributing to the development of new public policy.

The concurrent rise in voluntary and mandatory regulation of NFR is paradoxical according to recent work in political science that depicts voluntary standards as stumbling blocks preventing the development of more stringent, mandatory regulation by states (Malhotra et al. 2019; Druckman and Valdes 2019; Kolcava et al. 2021). According to this view, managers agree to comply with private regulations in order to send a signal to public policymakers that state regulation, which by contrast may be viewed as more costly and/or less effective, is unnecessary (Karnani 2011; Lenox 2006; Reinhardt 1999). If private regulation acts only or mostly as a stumbling block, then its use to society is limited to the direct impact it has on firm performance. We know from prior research on greenwashing (van der Ven 2019) and decoupling (Bartley and Egels-Zandén 2016) that voluntary programs often fail to have the positive impact on society

envisioned by their advocates. However, if private regulation can also act as a building block, it can be useful to society in an *instrumental* way, by facilitating the development of new government regulation that serves the public interest. Is this what we observe in the case of NFR? If so, what can this case tell us about how and under what conditions private regulation is likely to act as a building block?

To answer these questions, I trace the development of corporate NFR regulation, both public and private, over the period 1997–2025. NFR is the reporting of information related to a company’s social and environmental impact; it is also referred to as corporate social responsibility (CSR) reporting; environmental, social, and governance (ESG) reporting; or sustainability reporting (Fortuna et al. 2020). NFR advocates argue that disclosures of this kind make firms more accountable by reducing information asymmetries with investors, analysts, employees, and other stakeholders (Hess 2007). Recent studies have examined the impact of mandatory NFR on corporate irresponsibility (Jackson et al. 2020) as well as the challenges of upward regulatory harmonization in Europe (Kinderman 2020), but so far the impact of voluntary NFR on mandatory rules has not been fully explored. This paper uses the case of NFR to add to a growing literature focusing on the interaction between private regulation and public policy (Cashore et al. 2021; Knudsen and Moon 2022; Marx et al. 2024) and the “co-construction” of CSR (van den Broek 2022; Elliott et al. 2024).

The analysis focuses on three countries—France, Sweden, and the United Kingdom—where high levels of voluntary corporate NFR preceded legislation making such practices mandatory for particular types of firms, and one country—the United States—where public authorities have intervened in a more limited way despite comparable levels of voluntary reporting. The objective of the paper is to provide an initial test of the “building block” hypothesis—i.e., that

private regulation can facilitate the development of state regulation—by looking for complementary interactions among business, government, and civil society that help explain the rise in both voluntary and mandatory NFR and can serve as a basis for future research. Most of the evidence comes from semi-structured interviews conducted with NFR practitioners in Europe and the United States. These interviews took place in several waves beginning in May 2011 and ending in March 2025—a period characterized by the continued development and uptake of private NFR regulations, the enactment of two European Union directives mandating NFR for large, publicly traded companies (Directive 2014/95/EU and Directive 2022/2464), as well as a public backlash against ESG in the United States (Glazer 2024) and a push for deregulation in Brussels (Avril 2025).

The primary contribution of this paper is to demonstrate the instrumental value of private regulation by showing how it can function as a building block, facilitating the development of more stringent state regulation. In doing so, the paper draws attention to the critical role played by both firms and civil society organizations (CSOs) in generating institutional change.

The paper proceeds as follows. Section 2 examines the interactions among business, government, and civil society that are likely to determine the impact of private regulation on public policy. Section 3 details the research methodology and data used in the empirical analysis. Section 4 examines the early development of corporate non-financial reporting regulation, highlighting the critical role that both firms and CSOs played in (1) *expanding the regulatory space* by developing voluntary standards in policy areas that state officials have been either unwilling or unable to address; (2) *changing expectations* for good corporate behavior by popularizing these standards; and (3) *sharing responsibility* for NFR regulation with public policymakers through interlocking voluntary and mandatory rules. Section 5 examines the role of private regulation in more recent

developments. Section 6 discusses institutional complementarity as a scope condition of the three-stage model. Section 7 summarizes the main findings and discusses subjects for future research in this area.

## **2. Private regulation and its impact on public policy**

Although nonstate actors have been working to regulate business through voluntary standards for decades, political scientists largely remain skeptical of the efficacy of such programs. Why should companies choose to self-regulate in any meaningful way, one could ask, given their profit motive? What is often missing from these debates is an acknowledgment of the connection between the rise of private regulation and the broader crisis of regulation that leads many nonstate actors to focus on voluntary corporate engagement in the first place.

### **2.1. A crisis of regulation**

Many researchers have expressed concern over what they view as the dismantling of the state through deregulation, privatization, and the implementation of other “neo-liberal” policies beginning in the 1980s and continuing through the 2000s (Gamble 2001; Mudge 2008; Schmidt and Thatcher 2013; Brandtner and Bromley 2022). This trend is demonstrated most vividly in the United States and the United Kingdom, where Ronald Reagan and Margaret Thatcher reacted to the economic decline of the late 1970s by reorienting society away from government and toward market institutions.

Adding to the alarm of some critics, regulation by nonstate actors has also been on the rise since the 1980s. This delegation of regulatory authority to the private and nonprofit sectors is

viewed by some as a continuation of neo-liberal policy reforms, the outsourcing of regulation itself (O'Rourke 2003).

Although the neo-liberal label may apply to private regulation in some circumstances, other scholars take a perspective on private regulation that falls outside the scope of a neo-liberal critique. For instance, Büthe emphasizes a *sharing* of regulatory authority between state and nonstate actors that is not necessarily combative. As he argues, private regulation involves nongovernmental actors “playing a major role—at one or more stages beyond implementation or compliance—in what might be called the ‘regulatory process’ (Abbott and Snidal 2009) or the ‘governance sequence’ (Büthe 2010b): agenda-setting, rule-making, implementation, monitoring, adjudication, and enforcement” (Büthe 2010a, 1). Viewed in this way, private regulation is not an alternative to government regulation; rather, both types of regulation are part of a larger regulatory process that takes place within the context of a market-oriented society.

This perspective is also reflected in the concept of regulatory capitalism, which Levi-Faur (2005) uses to describe the shift toward regulation as part of a new political, social, and economic order in which both public and private actors play a role. A prominent example is global or transnational regulation, such as that used in financial accounting, in which no single state has the authority to act (Büthe and Mattli 2011). Another example is private regulation in policy domains in which the state is largely absent, such as the social and environmental areas that are typically targeted by CSR initiatives. In these cases, institutional entrepreneurs may use market-based private regulation to incentivize companies to self-regulate in areas not yet covered by state regulation. Lacking coercive power, private regulators often appeal to firms’ financial interests, offering excludable reputational benefits in exchange for self-regulation (Cashore 2002; Prakash and Potoski 2006).

There is considerable overlap between the concepts of private regulation and CSR. McWilliams and Siegel (2001, 117) define CSR as “actions that appear to further some social good, beyond the interests of the firm and that which is required by law.” Management scholars such as Porter and Kramer (2011) claim that CSR is good for business, so in theory, firms may be motivated to pursue CSR for that reason. However, the so-called “business case” for CSR is not always inherently obvious to managers. In many cases, firms that engage in self-regulation do so only after coming under pressure from one or more of their stakeholders, including consumers (Smith 2003), current and prospective employees (Mirvis 2012), anticorporate activists (Soule 2009), nongovernmental organizations (Doh and Guay 2006), large institutional investors (Cox et al. 2004; Chen et al. 2020), and even public authorities (Knudsen and Moon 2017). Stakeholder demand for CSR has increased over time, in large part because the globalization and liberalization of markets has weakened the regulatory power of states (Scherer and Palazzo 2011). Companies receive such pressure to provide public goods because they are perceived as having deep pockets and because doing so may earn them a “license to operate” in both foreign and domestic markets.

The continued rise of CSR over the past half-century is, on the one hand, a testament to the entrenchment of liberal values and policies around the world. CSR is a decidedly market-oriented approach to improving social and environmental outcomes that is bolstered by neo-liberal policies of privatization and deregulation. For this reason, it is often described solely in terms of its benefit to corporate interests, as a continuation of neo-liberalism and a distraction from meaningful regulation. However, CSR is not only a feature of a market-oriented society but also a reaction to it. The inability (e.g., owing to lack of expertise) or unwillingness (e.g., owing to lack of support) of policymakers to address corporate wrongdoing motivated corporate watchdogs and other nonstate actors to intervene in the most effective way possible, and a market-oriented approach

was borne out of necessity. Therefore, the continued rise of CSR is, on the other hand, a testament to the efforts of private regulators who have gone to great lengths—sometimes with the help of government—to name and shame companies that have acted inappropriately. The persistence of such groups presents a real threat to would-be corporate wrongdoers, as they effectively put their own brand reputation on the line when they disregard social and environmental norms.

Regardless of whether CSR has a substantial effect when applied at the firm level, perhaps the more salient question is whether such efforts can also be part of a larger process that leads to more important regulatory change at the societal level.

## **2.2. Building block or stumbling block?**

This paper uses the terms “building block” and “stumbling block” to refer to the impact of private regulation on state regulation. When private regulation obstructs the path toward more stringent state regulation, it acts as a stumbling block. When private regulation facilitates the development of more stringent state regulation, it acts as a building block. As Judge-Lord et al. (2020) explain, stringency itself is a function of scope (i.e., issues covered), prescriptiveness (i.e., degree of flexibility offered), and policy settings (i.e., performance levels required). It should be noted that firms are likely to have different perceptions of regulatory stringency based on their own practices and performance. In addition, comparing regulations holistically in this way can be challenging, as one set of regulations may be more stringent than another in one area (e.g., requiring higher levels of performance on a particular issue) while simultaneously being less stringent in a different area (e.g., offering more flexibility in how those levels are reached). The issue of regulatory stringency remains an important topic in the debate over private regulation and its impact on public policy.

There is a growing literature supporting the view that private regulation functions as a stumbling block. Some scholars claim that this role ties back to the origins of CSR. Kinderman (2012, 30), for example, shows in his analysis of Business in the Community—a leading advocate for CSR in the United Kingdom—that CSR emerged alongside neo-liberal reforms as a “quid pro quo for a lighter regulatory touch.” Likewise, Kaplan (2015) argues that CSR was conceived in the United States specifically as a means to preempt government regulation. Other scholars suggest that the strategy of preemption remains viable today, as companies attempt to crowd out support for mandatory rules by appeasing activists with displays of modest self-regulation (Baron 2014; Fooks et al. 2013; Werner 2012). This view is echoed in some ways by Héritier and Eckert (2008), Börzel and Risse (2010), and others who argue that the “shadow of hierarchy”—that is, the threat of state intervention—prompts companies to self-regulate and therefore plays a critical role in private governance schemes. In some cases, the drive to preempt state regulation may lead companies to support CSOs that share their interests in order to take control of private regulations and marginalize more radical CSOs (Kourula and Delalieux 2016).

Although strategy does not guarantee outcome, several recent studies find that private regulation may in fact reduce support for state regulation. An influential survey experiment by Malhotra et al. (2019) examines voluntary environmental programs in the United States, showing that even relatively superficial efforts to self-regulate can stave off support for mandatory rules, so long as corporate participation in these programs is high. They find that voters, activists, and government officials are all less likely to support state regulation under these circumstances. Kolcava et al. (2021) conduct a similar study, showing that corporate self-regulation in Switzerland decreases public support for state intervention in the behavior of Swiss companies operating abroad. They find that this effect is particularly strong when companies that are at high risk of

violating standards are involved and when third-party oversight is included (see also Burgoon and Fransen 2018). Private politics of this nature can create the impression that help is not needed, while also making it more difficult for policymakers to claim credit for any improvements made (Druckman and Valdes 2019).

Though private regulation may reduce support for state regulation in some cases, there are countervailing forces that must be considered as well. In other words, there are ways in which private regulation may function as a building block. Tzankova (2021) shows, for example, how companies can end up working alongside CSOs in “Baptist-bootlegger” coalitions to support new state regulation when private regulation fails to deliver the outcomes they desire. Similarly, Moon (2002) and Steurer (2010) each argue that while some public policymakers may view voluntary standards as a substitute for state regulation (see also Jackson and Apostolakou 2010), others support them in order to complement or legitimize what government is already doing or wants to do (see also Campbell 2007; Gjølborg 2009; Midttun et al. 2006). In addition, as Vogel (1996) shows, public policymakers have responded to calls for deregulation by finding new ways of maintaining their authority. While this does not necessarily mean that policymakers prefer that voluntary standards eventually become mandatory, it does suggest that they are sometimes using these private initiatives strategically in ways that may work against companies’ supposed desire to avoid costly compliance with more stringent regulations. This view is consistent with more recent studies finding that private regulators often lobby for public policy changes (Renckens 2020b) and that the interaction between private and public regulators can have the effect of ratcheting up regulatory stringency (Schmid et al. 2021).

While public policymakers may have their reasons for viewing voluntary standards as a building block, there is still a tension between the business-driven conception of private regulation,

which emphasizes voluntary engagement, and the civil society or multi-stakeholder conception, which points more in the direction of binding rules (Brammer et al. 2012; Hiss 2009). As Fairbrass (2011) explains, policymakers in Europe have been divided over whether private regulation should remain voluntary or morph into state regulation. Kinderman (2013) argues that this ambiguity forces the European Union to vacillate between the role of a “neo-liberal cheerleader” and that of a “social-liberal standard-setter.”

CSOs may also have reasons to view private regulation as a building block. Kourula et al. (2019) note that CSOs have redefined their role over time, transitioning from social critics and gap fillers in the 1970s and 1980s, to private regulators in the 1990s and 2000s, and now to important actors in public-private partnerships. As CSOs have taken on more responsibility for tackling thorny social and environmental problems—a trend synonymous with the rise of private regulation and so-called “political CSR” (Scherer and Palazzo 2011)—more hybrid forms of governance have emerged, involving a mix of voluntary and mandatory standards (Steurer 2013). As Matten and Moon (2008, 2020) argue, CSOs play an important role in institutionalizing social norms and articulating these norms to policymakers. Looking at private regulation through an institutional lens, as suggested by Brammer et al. (2012), CSOs are in a prime position to shape expectations about what constitutes responsible business conduct through the creation and administration of voluntary standards, which, in turn, are likely to have an impact on the development of public policy.

### **2.3. Complementary interactions among business, government, and civil society**

To understand the impact of private regulation on public policy, it is important to take stock of the different actors involved, their interests, and the ways in which they interact with one another as part of a regulatory system (Eberlein et al. 2014; Cashore et al. 2021).

### FIGURE 1 HERE

Figure 1 illustrates the complementary interactions among business, government, and civil society that allow private regulation to function as a building block for state regulation. This figure shows the impact of different groups of actors on standards. Private regulation itself is made up of two components: self-regulation and civil regulation.

The causal chain begins with self-regulation, whereby companies set standards for their own behavior (Haufler 2001). In its purest form, self-regulation consists of firms functioning as both rule-makers and rule-takers, with “the responsibility to set constraining rules and enforce those rules on themselves” (Medzini and Levi-Faur 2023, 325).

In Figure 1, the solid line pointing toward self-regulation represents the task of CSOs, which is to convince firms that it is in their self-interest to comply with a more stringent, voluntary standard. CSOs have often turned to the development of voluntary, market-based regulations to achieve their social and environmental objectives (Cashore 2002; Prakash and Potoski 2006). These civil regulations—which Steurer (2013, 396) defines as “formal standard-setting” and/or “comparatively informal pressuring” by CSOs—exceed both legal requirements and what companies are likely to do on their own or in collaboration with industry associations (Lister 2011).

The separation of self-regulation and civil regulation in the figure is key, as it illustrates the voluntary nature of private regulation. While some companies believe that such regulation is

voluntary in name only—that is, there is such a strong expectation that firms will engage in private regulation that they have virtually no choice but to comply—a distinction must still be made between the pressure that CSOs can bring to bear on companies and the coercive power of the state.

Referring again to Figure 1, the three solid lines pointing toward state regulation represent some of the ways in which private regulation can function as a building block, spurring the development of public policy. First, firms may attempt to impact policy directly, perhaps by using self-regulation to show their support for voluntary standards (Andrews 1998; Vormedal and Meckling 2024). Strategically, firms that have already made costly investments in self-regulation may advocate for new mandatory rules in order to force these costs onto their competitors. Second, CSOs may attempt to impact public policy directly by offering their expertise or their work product—that is, the civil regulations themselves (Green and Auld 2017; Renckens 2020a). Finally, there may be an interaction effect in which the message from CSOs to policymakers is amplified by the number or type of firms that have agreed to improve their performance above and beyond what is legally required (Elliott et al. 2024).

The dashed lines in Figure 1 represent the feedback effects that may be observed in this governance sphere. Feedback in this case refers to the ways in which existing standards shape the preferences and strategies of different actors (Béland and Schlager 2019).

The first set of feedback effects outlined in Figure 1 occurs when CSOs introduce new voluntary standards. Given that CSOs lack the coercive power of the state and must therefore incentivize businesses to exceed existing regulatory requirements on a voluntary basis, we see how the extent to which firms agree to take part is likely to impact the development of civil regulation. If CSOs fail to convince a sufficient number of firms that adhering to civil regulation is in their

best interest, they may consider reducing the burden of their regulations to attract more participants. Conversely, if CSOs succeed in getting a large number of firms to participate, they may consider ratcheting these standards up to improve their efficacy. This is the “conundrum” identified by Cashore et al. (2007, 162) in the case of forest certification:

“...the prescriptive rules must be adequate in ameliorating the environmental problem, but cannot be so costly that they put members at a competitive disadvantage. Put another way, if the requirements are too high, they will be ineffective as few firms will join. If the requirements are too low, they will be ineffective because their requirements will not be enough to solve enduring environment problems.”

In addition, based on the policy feedback literature, we know that there are likely to be lock-in effects promoting incremental change—given the cost that companies face in complying with standards and therefore the cost of disruption that would be caused by any radical change in standards (Pierson 2004).

The second set of feedback effects occurs when there is a change in public policy. As Marques and Eberlein (2021) show, government may decide to either endorse or mandate private regulations, depending on resources and strategic fit. Firms and CSOs, in turn, may welcome such action, since the coercive power of the state can be used to address deficiencies in private regulation (Tzankova 2021). That said, should policymakers decide to transform voluntary civil regulation into mandatory state regulation, CSOs are likely to respond by developing new voluntary guidelines that push the boundaries of the regulatory space even further, for the sake of

their mission and institutional survival (Renckens 2021). Similarly, firms that were once exceeding existing legal requirements may no longer be doing so with the introduction of new mandatory standards, and they will have to decide whether to ratchet up their own self-regulatory practices or to be content with simply complying with existing state regulations.

As alluded to above, there is a temporal sequencing to the way that these events unfold. Bernstein and Cashore (2007) make a similar observation in examining the legitimacy of private regulation, noting that public legitimacy comes only after an initial phase in which CSOs strategically enlist firms to adhere to new standards as well as a subsequent phase in which CSOs broaden their base of support. Throughout the process we see that complementary interactions among business, government, and civil society are supported by a “compatibility of capacities and goals” (Wood et al. 2019). Public authorities, for instance, have coercive power and a mandate to serve the public interest. Firms, on the other hand, have resources, market incentives, and the power to decide how they want to behave (including which consequences they are willing to accept for their actions). This is all potentially useful for civil society organizations bringing forward novel ideas for improving corporate performance—ideas that they probably cannot bring to fruition on their own.

Of course, it is not guaranteed that these groups will act in complementary ways. As Cashore et al. (2021) explain, they can also compete with one another (e.g., firms using private regulation to preempt state regulation or CSOs opposing state intervention in their governance sphere), or simply co-exist (e.g., firms, CSOs, and governments pursuing similar agendas without either supporting or interfering with one another). Furthermore, what at first appears complementary may belie substantial rifts and more subtle forms of contestation beneath the surface (Schleifer and Fransen 2024).

Finally, national-level institutions are likely to moderate interactions between these three groups of actors in ways that either enable or constrain their ability to use private regulation as a building block. As described in the comparative capitalism literature (Aoki 2001; Whitley 1999), countries have developed different configurations of formal and informal institutions over time that influence behavior in path dependent ways. In the varieties of capitalism framework, for example, Hall and Soskice (2001) focus on how institutions shape the way firms respond to coordination problems; in particular, they distinguish *liberal market economies*, where the institutional arrangement incentivizes firms to solve problems primarily through market competition and formal contracting (e.g., the United States and United Kingdom), from *coordinated market economies*, where firms rely more on nonmarket relationships (e.g., Germany and Sweden). Schmidt (2003) adds a third variety, *state-led market economies*, where the state takes a more interventionist role, mediating inter-firm relations (e.g., France). Such “historically entrenched institutions” help determine the means by which companies secure legitimacy in society (Matten and Moon 2008, 406) as well as how different actors view the role of government vis-à-vis private regulation (Gond et al. 2011). As a result, while the liberalization of the 1980s spurred the development of private regulation, such regulation is perhaps more likely to serve as a building block in countries with stronger historical legacies of stakeholder engagement and cross-sector collaboration (Matten and Moon 2020).

### **3. Methods and data**

The objective of the remainder of the paper is to provide a test of the building block hypothesis using data gathered from the case of NFR. Do we observe private regulation facilitating

the development of more stringent state regulation in this case? If so, what can this case tell us about how and under what conditions private regulation is likely to act as a building block?

In the analysis below, I focus first on three countries—France, Sweden, and the United Kingdom—where high levels of voluntary corporate NFR preceded legislation making such practices mandatory for particular types of firms. These are pathway cases, chosen to test a hypothesis by searching for causal mechanisms (George and Bennett 2005; Gerring 2007; Levy 2008). As shown in the previous section, prior research on complementary public-private interactions illustrates various ways in which private regulation may function as a building block (e.g., Tzankova 2021). I look for evidence of these (and other) mechanisms in these three cases.

Next, I focus on one country—the United States—where public authorities have intervened in a more limited way despite comparable levels of voluntary reporting. Adding the USA to this comparative case study provides variation on the dependent variable while holding the key independent variable constant. This allows for the identification of scope conditions—that is, the contextual factors that determine whether the building block argument applies to a particular case. In this instance, I look to see, as suggested by Leitheiser (2021), whether the effects of private regulation at the national level are enabled (or constrained) by aspects of the institutional environment.

The analysis draws on 71 semi-structured interviews with NFR practitioners in Europe and the United States over the period 2011–2025 (see Table 1 for a list of interviews conducted). This includes 47 interviews with large, listed companies headquartered in France, Sweden, the UK, and the USA. Company interviews were conducted with the manager directly responsible for NFR and focused on questions from two broad categories. First, managers were asked to detail the extent to which their company discloses non-financial information and to explain the *rationale* for this

decision. Second, managers were asked to describe the *process* by which non-financial information is collected and disseminated. Managers were also asked to provide an assessment of the company's NFR practices, as well as their own views on the regulation of NFR, both public and private. Most corporate NFR managers were identified using the company's website or non-financial report. Where this was not possible, respondents were identified after a general inquiry to the company. The interviews were conducted either in person at the corporate headquarters (for companies based in France, Sweden, and the UK) or by videoconferencing (for companies based in the USA) and lasted about an hour.

#### TABLE 1 HERE

In addition to company interviews, 24 interviews were conducted with government and multilateral organizations, CSOs, and for-profit NFR specialists. This includes interviews with key figures working within the NFR organizations and initiatives that came up most frequently in the company interviews—in particular, the Carbon Disclosure Project, Global Reporting Initiative, and United Nations Global Compact. Whereas company interviews provided critical insight into how and why firms disclose non-financial information, these additional interviews provided another perspective on firm behavior while also shedding light on the strategies employed by public authorities and CSOs operating within the NFR regulatory space. In all cases, the analysis of interview data is supplemented with research based on publicly available documents, including public- and private-sector reports on NFR regulation, as well as the non-financial reports published by individual firms.

Interviews were recorded or not depending on the preferences of the respondent. Field notes were written immediately after each interview, adding to whatever information was recorded during the interview itself, and then a memo was generated for each respondent. These memos were analyzed using qualitative data analysis software (MAXQDA) to identify causal process observations and establish common themes. Similar to the approach to QDA advocated by Deterding and Waters (2021), my approach involved a mixture of inductive coding (i.e., trying to understand NFR from the perspective of each respondent in a way reminiscent of grounded theory) and theory-based coding (i.e., using my interview questions, which were largely planned in advance, to structure my analysis of the data). Though I was looking for “smoking gun” evidence indicating that voluntary NFR had helped set the stage for mandatory rules, I was also searching for corroboration of alternative theories, such as NFR managers discussing private regulation as a stumbling block or CSO officials discussing a desire to keep government out of NFR regulation (i.e., business, government, and civil society actors competing with one another or simply co-existing as described by Cashore et al. 2021). This work was conducted under the assumption that the relationship between voluntary and mandatory NFR could be better understood by examining how different actors, primarily companies and CSOs, formed their preferences toward NFR regulation (Martin and Swank 2012), especially in the context of their interactions with one another (Eberlein et al. 2014).

Based on this methodology, what follows is a qualitative analysis of corporate NFR regulation that focuses on the complementary interactions among business, government, and civil society.

#### **4. Three stages in the development of NFR regulation**

Over the past three decades, we have witnessed increased demand for information related to corporate social and environmental performance across a wide range of stakeholders, including investors, consumers, business partners, employees, communities, and governments (KPMG 2024). From the stakeholder’s point of view, corporate NFR helps to reduce information asymmetries, providing the data needed to integrate social and environmental preferences into various decision-making processes—for example, deciding which firms to invest in, work for, purchase goods and services from, or do business with. From the firm’s point of view, such disclosures bring with them the possibility of attracting new capital, better workers, and more business.

As demand for this kind of information has increased, so too has the demand for rules and frameworks with the following goals: to harmonize firms’ disclosure practices, so that information can be compared across firms and over time; to monitor and enforce compliance with quality-assurance standards, so that disclosures are truthful and of material interest to stakeholders; and to simply increase the number of firms reporting (see Table 2 for a list of NFR initiatives discussed in this paper). In several cases, the rise in private regulation was followed by the enactment of new legislation making these practices mandatory. This includes legislation in France in 2001 and 2010, the United Kingdom in 2006, Sweden in 2007, Denmark in 2008, Spain in 2011, and the EU in 2014 and 2022. The sequencing of these events provides some initial empirical support for the hypothesis that private NFR regulation functioned as a building block contributing to the development of new mandatory rules.

TABLE 2 HERE

In retracing the development of corporate NFR regulation through its early period, three distinct stages emerge, each defined by complementary interactions among business, government, and civil society. The first stage is an expansion of the regulatory space. Not satisfied with the quantity and quality of available information on the non-financial performance of firms or with the extent of government action in this area, CSOs worked in conjunction with sympathetic companies to produce a variety of voluntary standards by the end of the 1990s. In the second stage, perceptions of NFR began to change as new coalitions gathered behind these initiatives and the number of companies participating increased rapidly. In the third stage, the growing popularity of these new civil regulations, coupled with increasing frustration over their implementation, reached a tipping point as public authorities began to work in earnest with private regulators to develop complementary policies.

#### **4.1. Expanding the regulatory space**

While CSR has flourished in Europe in recent years, its origins lie in the United States. The 1970s marked the peak of command-and-control regulation in the USA, a so-called “golden age” of social and environmental protection in which the state set and enforced specific targets for corporate performance through new government agencies such as the Environmental Protection Agency and the Occupational Safety and Health Administration. For Allen White, who would go on to co-found the Global Reporting Initiative (GRI) in 1997, these new rules represented significant political victories, won in large part through a public-interest movement that convinced policymakers that citizens have a right to know what is going on inside corporations (personal communication, 2011). In the immediate aftermath of these victories, many in the “right to know” movement focused their attention on legal compliance, creating a contentious political climate that

contrasted with the more cooperative business-government relations observed in Europe at the time (Wilson 1985; D. Vogel 1986; Lundquist 1980).

Not surprisingly, the political mobilization of business interests improved in response to these legislative victories, leading to greater opposition to protective regulation in the United States (D. Vogel 2012). Activists who were once determined to push for reform within formal political institutions increasingly decided to pursue alternative strategies. Operating without the coercive power of the state, many of these individuals viewed investment capital as a key source of leverage over the large corporations they hoped to influence (Schueth 2003). Although socially responsible investing (SRI) had existed in some form throughout the country's history, driven mostly by religious groups that wanted to avoid investing in trades such as gambling or firearms, it took on renewed purpose in the 1960s and 1970s. Whether in response to civil rights, gender equality, or labor concerns, SRI showed how activists, empowered with information, could attempt to pressure companies without the threat of government enforcement. These efforts gained perhaps their highest degree of public attention in the 1980s with the movement to divest from firms with dealings in South Africa, in hopes of bringing an end to the Apartheid system (Seidman 2003). The demand for corporate non-financial information continued to rise in the 1990s with the emergence of several influential organizations and initiatives, including the GRI in 1997, the United Nations Global Compact (UNGC) in 1999, and the Carbon Disclosure Project (CDP) in 2000.

The GRI originally formed in Boston through collaboration between Allen White of the Tellus Institute and Bob Massie of the Coalition for Environmentally Responsible Economies, an organization founded by SRI pioneer Joan Bavaria in 1989. As a nonprofit organization designed to create and promulgate a new global standard for NFR, GRI faced the challenge, in Massie's

words, of being both “bold and visionary” and “practical and incrementalist” (Massie 2011). As Sandra Waddock reports, White described GRI’s strategy in similar terms:

“The challenge of GRI and, I would argue, similar initiatives in innovative global governance, is to mobilise people with seemingly disparate interests around a public good. The key challenge is to adhere to a policy of inclusiveness and to find a place for each and every person who seeks to, or should, contribute. This is the path to both legitimacy as well as innovation. It is the power of the collective mind of diverse individuals that was, and remains, the soul of GRI.” (Waddock 2007, 41)

This emphasis on multi-stakeholder coalition-building helped deflect criticism from those in the private sector who looked warily upon GRI’s ties to government. Indeed, the GRI official who was interviewed for this project was quick to point out that GRI is not an intergovernmental organization, despite having received early institutional support from the United Nations Environment Programme: “Governments are still outside of the official governance structure” (interview, 2012). As this official explained, GRI provides stakeholders with a “space for information exchange. They don’t have that [without GRI]. We are the only ones providing that forum” (interview, 2012). The GRI standard evolved into the most comprehensive NFR standard available to companies, an influential civil regulation that several managers interviewed for this project referred to as the “gold standard.”

In contrast with GRI, the CDP formed squarely with the needs of investors in mind. Rather than encouraging companies to produce non-financial reports, CDP requests the information it believes to be relevant directly from firms via a detailed questionnaire—covering greenhouse gas

emissions, energy use, and other activities related to climate change. CDP then relays this information to large institutional investors with whom it has partnered. An official at CDP explained the organization's approach:

“[CDP] was founded explicitly because the founders saw the problem with climate change and they saw governments not acting.... It is an initiative that was created in the absence of government, on the assumption that government is not present, and is really about using private sector levers to get reporting, to get action, to get emissions reductions. Those are very powerful levers. It uses the power of shareholders. It uses the power of customers. It uses public exposure and the desire of firms to be seen as better than each other. All very powerful levers for changing firms' behavior.” (interview, 2012)

Formed in London by two concerned individuals—SRI advocate Tessa Tennant and businessman Paul Dickinson—CDP emerged from the same context of deregulation and privatization that Kinderman (2012) describes in his analysis of Business in the Community (BITC). Indeed, around the time that CDP was getting off the ground, BITC was working on its own questionnaire, which it used to create its Corporate Responsibility Index starting in 2002. According to one official involved in the index, BITC formed in 1982 “to fill the gap left by a neo-liberal government” (BITC, interview, 2013).

The CDP and BITC questionnaires were not designed to function as reporting standards per se, but they can still have that effect, as companies who respond use that experience both to learn what kinds of non-financial information stakeholders want to see and to collect information

that can be used in future disclosures. Other prominent questionnaires that function this way and emerged around the same time include those used by the Dow Jones Sustainability Indices and FTSE4Good. Still, of all these organizations, CDP is the most prominent based on the interviews conducted for this project, generating significant pressure on companies to ratchet up their self-regulation.

While GRI and CDP are focused on standard-setting and relaying material information to stakeholders, the UNGC formed to facilitate discussion around best practices, imposing only a modest reporting requirement on its members. Unlike GRI and CDP, the UNGC is a state-led initiative that facilitates state-firm interactions with little involvement from civil society (Abbott and Snidal 2009). According to one UNGC official, while GRI concentrated on having a “huge number of quantitative indicators,” the UNGC “focused on the strategic level... how to report on current strategies and policies” (interview, 2013). This person also noted that UNGC and GRI have “supplemented each other well from the beginning” (interview, 2013).

The UNGC also did not set out to function as a standard-setting organization, but interviews with NFR managers indicate that its principles and reporting requirement are often taken as a starting point for companies new to non-financial disclosure. This point was echoed by one NFR specialist, who commented that the UNGC is a “starting point or way in for companies that haven’t reported before” (interview, 2012). And like both GRI and CDP, the UNGC was designed to address issues that were at the time beyond the scope of most government regulation. As United Nations secretary-general Kofi Annan, who founded the UNGC, explained to businesses, “You do not need to wait for government to pass new laws.... You can and should act now, in your own self-interest” (Ruggie 2002, 27). As an initiative of an intergovernmental organization, the UNGC blurs the lines between state regulation, civil regulation, and self-

regulation (D. Vogel 2008)—though it could be understood at a practical level as a state endorsement of the general practice of voluntary NFR.

The introduction of new civil regulations such as GRI and CDP marked a significant expansion of the regulatory space. Many of the firms that decided to participate in these programs in the early 2000s found themselves doing something they had not done before—namely, collecting and reporting information on non-financial performance. In doing so, they were basing their decisions on rules and norms that were still in a nascent stage of development. Though the social actors driving these changes were motivated at least in part by the lack of effective public policy in this area, governments did play a supporting role through organizations such as the United Nations and the Organisation for Economic Co-operation and Development (OECD).

In the words of one NFR specialist, voluntary standards such as these provided “a template for regulation” that could be useful to policymakers (interview, 2012). At the same time, interviews with GRI and CDP insiders reveal a strong desire for their organizations to be viewed as independent entities, free from the control of any government or intergovernmental organization. These CSOs demonstrate a keen awareness of the policy terrain in which they are operating. In the early years of NFR, they typically viewed themselves as pioneers in a new regulatory space, carefully developing standards targeted at the world’s largest and most recognizable companies with the hope that other companies would soon follow suit.

#### **4.2. Changing expectations**

The voluntary nature of private regulation presents a challenge for CSOs, as they must design standards and frameworks with enough of a regulatory bite to make a difference while also convincing companies that it is in their own best interest to comply—the conundrum identified by

Cashore et al. (2007). The process of developing private regulations is therefore just as much about changing minds and building coalitions as it is about making rules.

Several managers interviewed for this project viewed the development of voluntary NFR standards with suspicion. One French manager commented that “companies have no legitimacy” when it comes to CSR, but they are “perceived as having deep pockets” and are therefore “dragged into this area” (interview, 2013). A Swedish manager seemed to agree, noting that voluntary standards exist because “government lacks the political will..., [regulation] doesn’t get them votes” (interview, 2013). This individual spoke positively about the intentions of organizations such as GRI and CDP but criticized how civil regulations were designed and implemented. In his view, GRI presents an “intellectual framework” that is “not realistic” for large companies, referring to the GRI reporting standard as “a wish list for NGOs.” While this manager considered himself a “big supporter of CDP,” he complained about the length of CDP’s questionnaire: “enough is enough; investors don’t use 95% of it.” Such sentiments suggest that civil regulation has gone too far and needs to be ratcheted down in order to gain more traction.

At the same time, other critiques of voluntary standards seemingly left the door open to state intervention. For instance, this same manager felt that the UNGC allowed “too many companies to get a free ride,” noting that the initiative suffered from a “lack of consequences.” Another French manager commented on the sheer number of voluntary standards available: “there are loads of them out there.... Actually, it is frustrating because you can only keep up with so much” (interview, 2013). These statements shed light on the role that public authorities could play in harmonizing standards and enforcing compliance.

Other managers spoke more positively about voluntary standards. One appreciated the wide variety of standards available, saying that they “help us understand what expectations there

are” (interview, 2013). Another referred to GRI as “the basic measure we are shooting for,” adding that she views GRI as “the most promising set of metrics or reporting standards” (interview, 2013). A French manager said that she was told by the CEO to “get us back into the DJSI,” explaining how the Dow Jones Sustainability Index questionnaire then became the “primary strategic framework” for the company’s CSR and reporting activities (interview, 2013). Another French manager said that while his company references GRI in its reporting, in his view voluntary standards are “more important for companies that are less advanced on these issues” (interview, 2013). This kind of feedback from companies would incentivize private regulators to continue their work, perhaps even ratcheting standards up to improve their efficacy.

Several individuals also noted how expectations around NFR had changed over time. One Swedish manager addressed the issue of greenwashing, for example, indicating that “you used to be able to just say things” and that “you can’t just say things anymore” (interview, 2013). A British manager agreed, adding that “the more transparent you are, the more you fall into the spotlight” (interview, 2013). This observation is consistent with the overall upward trend in the number of companies reporting. Whereas 35% of the world’s 250 largest companies disclosed non-financial data in some form in 1999, that percentage jumped to 64% by 2005, and to 95% by 2011 (KPMG 2024). Although somewhat lagging behind this trend, the percentage of large companies providing third-party assurance of their reporting also increased: 30% in 2005, 46% in 2011, and 69% in 2024.

Many of the managers who were interviewed aimed their disclosures at investors, non-financial analysts, and to a lesser degree, current or prospective employees. As one said, “investors expect us to do it. [They] have the money, so there you go. We’re running a business after all” (interview, 2013). From the perspective of NFR organizations and initiatives such as CDP and

UNGC, this was good news. For example, a UNGC official commented that while mandatory reporting requirements would “engage more companies..., that engagement can be more real if companies see it in their own interest” (interview, 2013). This process of “mainstreaming” NFR through voluntary engagement does not happen without complaints being made along the way, however, as noted by a CDP official:

“There are weaknesses in voluntary reporting.... They’ve always been there. It’s not a new thing.... Now we’re saying, we need to step up to the next level. And that actually is a testament to what voluntary [reporting] has done in really making this mainstream and normal and raising expectations. And now people have high expectations.” (interview, 2012)

Still, private regulators must be careful not to ratchet up standards too quickly. One French manager expressed concern, for example, about changes made to the fourth iteration of the GRI standard, referred to as G4: “The reaction of most companies was quite negative.... [It] requires a lot more to be disclosed” (interview, 2013). He said that some companies threatened to abandon GRI if it went ahead with G4 as planned, noting that “G4 could undermine the existence of the organization.” In this case, GRI took a chance and forged ahead, releasing its G4 standard the following month. While GRI survived as an organization, the incident illustrates the risk that CSOs take when developing more stringent standards.

Despite the argument, common among political scientists, that firms seek out private regulation as a way of keeping state regulation away, few managers discussed any such rationale. Some firms were anticipating additional government regulation to surface in the near future and

wanted to position themselves ahead of the curve. But in most cases, government regulation did not factor into the decision-making process in any significant way. Much more common was the argument that NFR was voluntary in name only. Managers spoke, for example, about the need to perform well in CSR rankings, which in turn required the collection and disclosure of non-financial information. Others were interested primarily in keeping up with competitors—some went so far as to ask for my own opinion about what they should be doing based on my experience interviewing other reporting managers. Finally, some managers had come to believe in the value of NFR so much themselves, and had become so experienced in their own reporting, that they hardly saw the need for voluntary standards in their own activities.

### **4.3. Sharing responsibility**

In several European countries, the rise of voluntary NFR was quickly followed by efforts to make the practice of NFR mandatory, at least for certain types of firms. Interestingly, while we find complementary interactions among business, government, and civil society during this period in France, Sweden, and the United Kingdom, we also observe key differences across these cases that broadly map onto the varieties of capitalism framework (Hall and Soskice 2001; Schmidt 2003).

France, with its state-led market economy, was first to mandate NFR, passing Article 116 of the New Economic Regulations in 2001. While these regulations were neither detailed nor strictly enforced—one NFR specialist referred to them as a “toothless tiger” (interview 2012)—they did provide French companies with “a useful incentive” to learn more about NFR (interview, 2013). Importantly, these regulations built upon the work of Vigeo (formerly Arese), France’s leading CSR rating agency, which had been training the country’s largest companies, known as

the CAC 40, in non-financial disclosure since its founding in 1997 (Crifo et al. 2019; Giamporcaro and Gond 2016). Officials commented that France's first-mover status makes sense given the government's "more interventionist" approach (interview, 2012) and the fact that politicians in France had come under pressure from accountants and consultants, including those at Vigeo, who wanted to see mandatory reporting legislation because it would give them more business (interview, 2014). One former Vigeo official agreed, noting that "France's standards are Vigeo's" (interview, 2014).

France's adoption of the New Economic Regulations spurred several Nordic countries, known for their neocorporatist coordinated market economies, to begin work on mandatory NFR legislation. Rather than seeking new legislation that would apply broadly to the country's largest companies, the Swedish government opted to mandate NFR for state-owned companies only (Swedish Ministry of Finance 2007). This new law, passed in 2007, required all companies in which the government has an ownership stake to produce a non-financial report in accordance with the GRI standard. Denmark passed a more comprehensive requirement the following year that applied to large companies as well as state-owned companies (Danish Commerce and Companies Agency et al. 2010). One NFR specialist commented that institutional investors in Scandinavia had played a particularly important role in driving CSR through pension schemes and that this has had a large impact on both firm performance and public policy (interview, 2012).

Sweden's slower move toward mandatory NFR also corresponds to what one CSO official described as the country's "consensus culture" (interview, 2011). As this individual noted, "Swedes don't like conflict" and Swedish companies prefer dialogue and a "soft way of doing things." Another CSO official commented that the practice of explicit CSR is out of sync with the view, common in coordinated market economies, that people should do good things without

bragging about them (interview, 2012). That said, companies are also afraid of bad publicity, and policymakers in Scandinavia tend to view CSR as a way to enhance international competitiveness (Knudsen and Brown 2015). With these dynamics in mind, the Swedish government's NFR mandate for state-owned enterprises can be implicitly seen as an endorsement of GRI, which had already gained some popularity, as a tool to be used more broadly across all companies (Borglund and Windell 2010).

The climate for new state regulation on NFR was markedly different in the United Kingdom, a liberal market economy that in many ways straddled the divide between the shareholder-driven model of the United States, where there was no state-mandated NFR, and the stakeholder-oriented model of Continental Europe (Aguilera et al. 2006). Accordingly, policymakers in the UK tended to view NFR as both a means by which companies regulate themselves and an important aspect of business that government could facilitate to boost national competitiveness (Gond et al. 2011). The complicated dynamics of this "third way" were on display in 2003 when officials began drafting the UK's own version of mandatory NFR (Radcliffe et al. 2004). The proposed requirement, referred to as the Operating and Financial Review (OFR), slowly received support among the business community before suddenly being scrapped in 2005 in favor of a more limited, narrative reporting requirement, which the government adopted in 2006 (Accounting Standards Board 2006; Owen et al. 2005). As one British manager commented, it was "one of those strange acts when politicians suddenly decide they need to be business-friendly" (interview, 2012). Another observer agreed, noting that the transition away from OFR was "a bit of a mess up" and that the choice to drop it was less about corporate resistance than Gordon Brown, then Chancellor of the Exchequer, "wanting to give something to business" (interview, 2012).

Although this turn of events was surprising at the time, given how close the OFR came to becoming law, one NFR practitioner commented that it was consistent with the national regulatory approach of an “increasingly pro-business” UK government that historically “stands back from regulation” (interview, 2012). It also demonstrates the challenge for policymakers of crafting regulation that supports and encourages businesses without being “overly prescriptive” (interview, 2012). Like the USA, another liberal market economy, the UK was a country with a shareholder-driven model of corporate governance. However, the dominant institutional investors in the UK were pension funds and insurance companies, as opposed to mutual funds in the USA, and they tended to take a more long-term perspective on financial risk, with greater attention paid to corporate social and environmental performance (Williams and Conley 2005). The UK was also influenced by the “unique economic culture of London,” which was simultaneously the “predominant center of international finance” and the “perceived center of gravity of the CSR movement” (Williams and Conley 2005, 548). This put the UK in an interesting middle ground. As Aaronson (2003, 329) explained at the time, “British companies have led in CSR for so long, they appear to be comfortable with a government role. Nonetheless, British executives have made it quite clear they don’t want global CSR mandated.”

While government mandates were generally welcomed by private regulators, officials working within CSOs also expressed some common reservations. On the one hand, they saw a direct connection between the spread of voluntary reporting and the subsequent development of mandatory reporting. According to one official, for instance, Denmark’s legislation would not have been possible without first having a “critical mass” of Danish firms already reporting on a voluntary basis (interview, 2013). On the other hand, CSOs were wary of any efforts that “reinvent

the wheel” rather than “tie into existing frameworks” (interview, 2013). A CDP official discussed the importance of leveraging the best attributes of both private and public regulation:

“We actually want governments to act and to not be absent and to kind of make what we’re doing happen. But there are also challenges in how government should best do that. There are things that voluntary organizations can do that governments cannot do. The most obvious point being that we are a global organization. Governments almost universally ask firms to report on things that are happening in their jurisdiction. So that’s a huge difference.... And over time you do get a patchwork of different government requirements...governments are currently extremely bad at working with each other, so those patchworks don’t add up.... We’d love to see globalized regulation that’s government driven, similar to what we do now.” (interview, 2012)

Thus, while private regulators were pleased to see governments take an interest in NFR, they did not want to see policymakers start from scratch. As a result, coordination among voluntary standard-setters increased along with government interest in NFR. For example, a UNGC official commenting on the 2010 Memorandum of Understanding signed by the GRI and UNGC noted that the two initiatives are “more linked than ever before” (interview, 2013). GRI went on to sign similar agreements with other organizations operating in the NFR regulatory space, including the OECD (2010), International Accounting Standards Board (2013), and International Integrated Reporting Council (2013). GRI also published guidance explaining to reporting managers how its standards align with those of CDP and ISO 26000, an international CSR standard created by the

International Organization for Standardization in 2010. ISO 26000 itself represents an important step in the harmonization of CSR, as its formation involved more than 400 experts from nearly 150 standard-setting organizations and government bodies (Helms et al. 2012).

It must be noted that while the overall trajectory of NFR regulation had already been established by the time of the global financial crisis of 2007–2008, the crisis accelerated these developments dramatically (Monciardini 2016). As one NFR specialist commented, governments wanted to be viewed as responsive for both populist and practical reasons (interview, 2012). Neo-liberalism had reached its high-water mark, with governments starting their move back toward a more interventionist approach with a renewed mandate. Even though many in the business community continued to believe firmly that NFR should remain voluntary, policymakers increasingly viewed disclosure as a convenient way to hold companies accountable. France ratcheted up its standards significantly with the Grenelle II regulations in 2010. That same year, Michel Barnier took over as EU Commissioner for Internal Market and Services.

These developments led to a shift in the EU’s view of CSR, which up until that point had emphasized its voluntary nature. Through a series of discussions—which included leaders from CSOs such as GRI—EU policymakers developed the Non-Financial Reporting Directive (NFRD), which would drastically increase NFR participation by requiring large, listed companies across the EU to report non-financial information. As one EU official was quick to point out, it was not just CSOs driving these developments. The NFRD was supported by a broad coalition of individuals and organizations from the public, private, and nonprofit sectors (interview, 2014). A CSO official commented that “transparency is low-hanging fruit” and that it became difficult for policymakers to ignore NFR once business-backed organizations such as CSR Europe showed that they were open to it (interview, 2014). That said, not all policymakers viewed NFRD the same way. Officials

in France strongly backed the directive while those in the UK forced a revision that reduced the number of companies in scope by 35% (from 18,000 companies to 11,700) (Kinderman 2020).

It is difficult to imagine these events taking place in the absence of well-developed voluntary standards. As described above, both business and civil society played critical roles in expanding the regulatory space and changing expectations. In many cases, they were also willing participants in efforts to both harmonize NFR standards and make these practices mandatory for companies. GRI was particularly active in this respect. GRI officials helped shape the NFRD, which recommends use of voluntary standards such as GRI, UNGC, ISO 26000, and the OECD's Guidelines for Multinational Enterprises. GRI also helped to negotiate a section of the UN's Rio+20 outcome document in 2012 that encouraged governments to promote corporate NFR in their countries. GRI subsequently joined an initiative—the Group of Friends of Paragraph 47—led by the governments of Brazil, Denmark, France, and South Africa to continue these efforts.

While these developments meant that NFR was no longer a strictly voluntary activity, debate continued over how to strike the right balance between private and state regulation. One manager, for instance, stated that “as a former lobbyist, I can say that self-regulation and leadership by example is far more powerful than binding law” (interview, 2013). As she argued, voluntary standards work because they are dynamic where the law is static. But while competition among private regulators can lead to innovation, it can also lead to fragmentation, making it harder for companies just getting started with NFR to know where to begin. In many cases, CSOs like GRI and CDP found themselves caught in the middle between the companies they had been working with for years—and whose support was needed for the survival of the organization—and the public policymakers who possessed the coercive power necessary to reach the goals they had set out to achieve. Nonetheless, voluntary NFR standards played an enormous role in these developments.

As one British manager noted, “What is voluntary becomes expected; what is expected can become mandatory” (interview, 2013).

## **5. Another wave of NFR regulation**

While the NFRD marked an important shift in the development of NFR regulation, with an explicit sharing of responsibility between state and nonstate actors, it was also criticized for giving companies too much flexibility in deciding how to report non-financial information. According to the European Parliamentary Research Service (2021), deficiencies in the comparability, reliability, and relevance of non-financial reporting in the years following NFRD created demand for a common standard with stricter audit requirements. In many ways, the dynamics described above were on display again in the run up to the EU’s Corporate Sustainability Reporting Directive (CSRD), its second attempt at comprehensive corporate NFR regulation passed in 2022. One NFR specialist commented:

“These things come in cycles and we’re in a similar wave now. The NFRD ended up being quite weak due to lobbying mainly, by companies or trade associations. And effectively they’ve done the same thing all over again, but made it a lot stronger and called it CSRD. So, this is the next wave of that cycle.” (interview, 2023)

Just as the global financial crisis had created favorable political conditions for the NFRD, two key events shaped the context in which the CSRD emerged, creating opportunities for change that were seized by both public and private regulators. The first shift in context came as a result of the Paris

Agreement in 2015. As more and more companies announced plans to reach net zero emissions by 2050 in the years leading up to and following the agreement, media outlets and CSOs assumed the responsibility of scrutinizing these statements, creating an additional reputational risk for companies (interview, 2023). The second shift came around the same time with the creation of the Task Force on Climate-related Financial Disclosures (TCFD). As a project of the Financial Stability Board, the TCFD looked at NFR from the perspective of a risk-focused financial regulator and, in the words of one NFR specialist, “was never going to sit around in the voluntary space for too long” (interview, 2023). This sentiment was echoed by an American manager: “We all sat back and we said, there’s TCFD. It’s this voluntary reporting standard. One day, it’s going to be law” (interview, 2024).

In 2020, New Zealand became the first country to make the TCFD guidelines mandatory, followed shortly by the UK. In 2024, responsibility for the TCFD was officially transferred to the IFRS Foundation, which also oversees the International Sustainability Standards Board (ISSB), a body created to set an international regulatory standard for NFR. Combined with general dissatisfaction with the NFRD, the aftermath of the Paris Agreement and the momentum behind TCFD created pressure for the EU to ratchet up its own standard and contribute to an ongoing debate about NFR materiality that dated back to the origins of CDP and GRI:

“The birth of the NFRD was in a sort of general corporate social responsibility agenda, which is also where GRI springs from ... for GRI it was not all about the shareholders. It was about a whole set of stakeholders and treating those sort of broadly equally ... So there was always that different conception of what’s in scope or what’s important, what’s material. And that’s always been the difference

between GRI and CDP ... So a broad materiality lens was baked into the EU's approach from the very start ... And then the TCFD has always had business materiality baked into it, because it comes from a financial risk agenda, which is inherently about the bottom line. And ISSB is also from the IFRS perspective, which again is about ... the financial materiality lens." (interview, 2023)

In this way, we see private regulation continuing to impact international regulatory standards, as those standards develop according to different conceptions of NFR. In the case of the CSRD, the European Financial Reporting Advisory Group (EFRAG) was tasked with writing the European Sustainability Reporting Standards (ESRS) that companies falling under the scope of CSRD must follow. As one EFRAG official commented, "Having mandates like ESRS or the international standards doesn't make the life of [GRI and CDP] easier, because their profile decreases ... but the fact is, they are important" (interview, 2023). This official further explained the relationship between voluntary and mandatory rules:

"When I look at the issue of sustainability reporting, I see a cake with many layers. Because [sustainability reporting standards] are about what's in the report, they are the icing of the cake, but inside the cake needs a lot more standards, a lot more layers, and it's layer after layer after layer, and some of those layers need to be regulated. At least, if people want comparability. Voluntary initiatives can help ... particularly if they are able to normalize behavior ... and provide incentives as well as punishment for companies ... it is kind of the soft way ... companies kind of go with the game ... but it's not a full substitute for formal rules." (interview, 2023)

While state regulation of NFR does put pressure on private regulators to ratchet up standards in order to remain relevant, this is a role they are accustomed to playing. Again, it seems unlikely that we would be witnessing the development of mandatory NFR regulation today without the voluntary rules that came before:

“[GRI and CDP] have acted in the context of an absence of government action, and they have 100% informed and made possible the regulation that’s happened and very much shaped the regulation that’s happened in a quite literal sense. If you can imagine an alternate universe in which they hadn’t existed but there had been some form of regulation, the regulation might not have looked the same because it’s been very, very influenced by what has already existed in the voluntary space ... It’s kind of hard to imagine that world, because part of the reason that voluntary non-financial reporting sprung up was because ... sustainability reporting has always been highly political and difficult for governments and regulators to do because you are talking about challenging some of the status and power of things in the current system in a way that just wasn’t in the political norm.” (interview, 2023)

Still, it is hard to say exactly what the role of civil regulation will be in the NFR governance sphere going forward. CSRD itself was depicted in the Draghi report (2024) as a threat to the competitiveness of EU firms and has since been drastically ‘simplified’ through a controversial Omnibus package (Alemanno 2025) that reduced the number of companies covered by around 90% and the number of data points disclosed by around 70% (Council of the European Union

2025; European Parliament 2025; Mohin 2025; Rasche et al. 2025). With this change, there are fewer companies in scope under CSRD than there were under NFRD. However, it should be noted that despite Draghi calling for the promotion of voluntary sustainability standards, CDP and GRI publicly opposed efforts to reduce the scope of CSRD. As CDP’s CEO Sherry Madera stated, “True competitiveness means spotting and capitalising opportunities early, and you can’t do that without robust data on sustainable business practices” (CDP 2025). In a similar tone, Robin Hodess, CEO of GRI, argued that “...the EU risks misjudging the interests and needs of business, which is to pivot toward sustainability as a source of resilience and competitive advantage” (Global Reporting Initiative 2025). Whereas CSRD initially appeared to put these CSOs at risk of becoming superfluous—with one manager going so far as to say that GRI in particular is “fighting for relevance right now” (interview, 2024)—the subsequent deregulation we have seen in the EU suggests that these organizations may continue to play an important role as both private regulators and public advocates for mandatory NFR in the years ahead.

## **6. Institutional complementarity**

Even when looking only at the cases in which government decided to make NFR mandatory in some way, we observe significant variation that maps onto cross-national differences described in the comparative capitalism literature. Consistent with the findings of Leitheiser (2021), we see that managers often viewed voluntary NFR through the prism of domestic institutions. At the same time, we can also observe how the work of nonstate actors pushed up against established traditions—by expanding the regulatory space, changing expectations, and sharing responsibility with public policymakers—leading to institutional change (Amable 2016; Jackson and Deeg 2019).

In France, managers were accustomed to government intervention and thus largely expected the state to play a leading role in regulating NFR, and yet the private sector, through the work of Vigeo, had a key part in putting NFR onto the agenda of public policymakers. Managers in Sweden were somewhat wary of the turn to explicit CSR but nonetheless recognized and accepted policymakers' efforts to position Swedish companies to succeed in international markets through NFR regulation. In the UK, managers had a much more market-oriented perspective of NFR that emphasized the benefits of voluntary engagement. That said, many business leaders who recognized both the strengths and the weaknesses of voluntary standards still supported some form of mandatory NFR to complement what was happening in the private sector. These complementary interactions took place within institutional arrangements that, broadly speaking, incentivized various actors to take a more encompassing view of the firm and its role in society. As Williams and Conley (2005, 510) argued in the early days of NFR regulation, "countries with the most expansive national disclosure regulations are also countries where a stakeholder concept of the firm predominates."

Domestic institutions and preferences also featured prominently in the development of EU regulations. As Kinderman (2020) shows, the state regulation that emerged in each of these countries affected the adjustment costs imposed on companies by NFRD, which in turn impacted government support or opposition to EU regulation: France, first to make NFR mandatory at the national level, was the biggest supporter of NFRD, whereas both the UK and Sweden expressed reservations, and Germany, with its large number of small- and medium-sized enterprises, strongly opposed it. Similar dynamics have been on display with respect to CSRD. In September 2024, for instance, the European Commission took action against Germany and other EU member states that had failed to transpose CSRD into national law as required. France, by contrast, was the first to

transpose CSRD in December 2023, with Sweden following in July 2024. (The UK, having left the EU, is not bound by CSRD and has developed its own requirement, the UK Sustainability Reporting Standards.)

The role of institutional complementarity as a scope condition of the three-stage model described above becomes even more clear when looking at the case of NFR in the United States in recent years. Under the Biden administration, the Securities and Exchange Commission proposed rules that would require climate reporting aligned with TCFD. Those rules were weakened by corporate lobbying and delayed by legal challenges before being scrapped altogether with Trump’s return to the White House in 2025. Though California successfully passed its own climate disclosure laws, these rules have also been held up in court (Hudson 2025). In short, nothing as comprehensive as CSRD appears to be on the horizon in the USA at the state or federal level. This is good news according to some managers interviewed for this project, who were concerned about the financial impact of compliance—with one manager saying the “burden is enormous” and another calling CSRD “over-regulation” (interviews, 2024). It is also consistent with the more short-term perspective of large institutional investors in the USA (Williams and Conley 2005).

Despite the recent public backlash we have seen unfold in the USA around ESG-related topics, interviews for this project indicate that overall demand for non-financial information from companies’ stakeholders remains strong. That said, some managers did comment that NFR has “unfortunately become politicized” and that many people have grown “timid around ESG reporting” (interviews, 2024). This has become particularly true with respect to diversity, equity, and inclusion (DEI) activities following the U.S. Supreme Court’s historic ruling on affirmative action in 2023. Still, not all managers viewed these events in the same way:

“So I think the anti-ESG backlash is actually, to be honest, like a positive, because I think that people who love ESG and choose to work in it can be very impact oriented. They're doing it because they want to fight climate change, and they are very committed to DEI and that sort of thing. And so ESG was lacking a much more financial corporate governance lens in how it's built, which the anti-ESG movement pressured to make those professionals within ESG much stronger at.” (interview, 2024)

Again, such sentiment suggests that NFR advocates have perhaps gone too far in pushing the boundaries of the regulatory space. But it also shows how difficult it can be to change expectations when the shareholder view of the firm is so deeply rooted and complemented by existing institutions. The “roadblocks” that obstruct the path toward mandatory NFR in the USA (interview, 2024) are historical as well as political, and they are difficult to overcome.

Indeed, some American managers expressed beliefs in underlying differences between Europe and the USA that precede the recent ESG backlash. One manager, for instance, noted that there are “differences in attitude...Europe is more advanced in its thinking and activities...Europe is more stringent, [and] the population is more accepting of this...California tends to be more European...[The rest of the USA is] some years behind” (interview, 2024). Another manager seemed to agree, adding that the culture in Europe tends to be less risk-averse with respect to NFR, whereas practitioners in the USA are more cautious (interview, 2024). When comparing NFR regulation in the USA with that in the EU, one manager summed up the difference as follows:

“In my mind, the cause of the difference is in the economic systems. In the US, the economic system is driven by free-market fundamentals, right? It is driven by what stakeholders, specifically shareholders, consider material for business valuation...[Europe has] a different kind of marketplace which consists of many different economies. The unifying idea is, let’s try to bring everyone at the same level through certain regulations. I think it is the piece of information driven by regulations versus driven by free-market forces.” (interview, 2025)

Thus, despite high levels of corporate engagement with voluntary standards, we find essentially no mandatory NFR regulation in the USA. And yet what might be viewed as a limitation of the three-stage model—a failure of private regulation to develop into state regulation thus far—can be put within an even larger context. One NFR expert, while acknowledging the “disjointed political landscape” in the USA, made the following observation:

“In some ways it’s becoming less relevant what the US does because the largest companies, international companies, have to align their reporting practices with their international peers. Sometimes they are required to do so by the countries where they operate. And sometimes they have to do it just for the sake of meeting stakeholder requirements.” (interview, 2024)

Despite the lack of state regulation in the USA, many of the American managers I interviewed were preparing to comply with CSRD at the time of our conversation, because it was either legally required (given the extent of business dealings in Europe) or demanded by stakeholders (e.g.,

business-to-business customers). Though American interests appear to have played a role in the EU's Omnibus deregulation effort (Khan and Hudson 2025), it seems likely that developments in the EU will continue to drive NFR practices for American companies in the future (Bradford 2020).

## **7. Discussion and conclusion**

Although NFR has become a common practice among the world's largest corporations, it is still in a relatively nascent stage of development—especially when compared with financial reporting. As a result, its precise purpose and the framework proposed for its implementation are constantly evolving through cooperation and contestation among public and private actors from all corners of the global economy (Kinderman 2020; Eberlein 2019; Monciardini and Conaldi 2019). Movement toward mandatory reporting in Europe, recent setbacks notwithstanding, has hastened the process of institutionalization. As policymakers at both the national and EU level look to CSOs for expertise and legitimacy in the crafting of new government regulation, collaboration among state and nonstate actors has increased. The result is a growing coalescence of support behind newly established rules and frameworks that is likely to influence the behavior of companies, governments, and other organizations across the world.

Critics of private regulation have argued that voluntary standards fail to substantively improve outcomes while simultaneously functioning as a stumbling block that obstructs the path toward more stringent, mandatory regulation by states. While both claims might be true in some cases, this paper paints a somewhat more optimistic and broader picture by highlighting the complementary interactions among business, government, and civil society in the case of NFR. Many of the causal mechanisms underpinning the building block argument—described in Section 2 and illustrated in Figure 1—are empirically supported by the interviews conducted for this

project. Evidence includes CSOs developing new civil regulations with the help of sympathetic companies; CSOs ratcheting up standards when possible; business managers showing support for civil regulation while simultaneously drawing attention to problems that could be addressed by state regulation; CSOs welcoming state regulation and participating in its development; public authorities building on the work of CSOs once companies demonstrate sufficient support for voluntary standards; and finally, both CSOs and companies reevaluating their own preferences and strategies in the wake of state regulation. In short, when we examine NFR regulation in France, Sweden, and the UK, we find businesses and CSOs using voluntary standards to expand the regulatory space, change expectations, and share responsibility for regulation with public authorities.

Not all the evidence uncovered lends itself to optimism. The empirical analysis also reveals instances in which state and nonstate actors appear to compete with one another, such as CSOs expressing concern about governments reinventing the wheel or businesses lobbying government to prevent or reduce the stringency of mandatory NFR. Furthermore, while this research shows that private regulation *can* lead to the development of new public policy, this does not mean that it *will*. The case of NFR in the USA demonstrates how difficult it can be to change expectations and share responsibility, especially when such tasks involve challenging the kind of deeply rooted informal institutions (e.g., the taken-for-granted belief in the USA that government regulation interferes with “free markets”) that North (1990) and others have described as highly path dependent. NFR has the potential to radically alter market dynamics by addressing information asymmetries and thus shifting power away from historically dominant stakeholders (i.e., shareholders) and toward those who have been marginalized or exploited (e.g., employees, customers, communities, and the natural world). We should not be surprised to find resistance. As

exemplified by both the NFRD and CSRD, NFR regulation often fails to realize its potential, even when the state intervenes. Recent events in both the USA and EU show how “sharing responsibility” requires actors to hash out their differences, including concerns about over-regulation on the one hand and giving companies too much flexibility on the other. While the recent changes to CSRD are clearly disappointing for some NFR advocates, they may also represent part of the typical “push and pull” between actors with both overlapping and competing interests that produces incremental change.

If private regulation does indeed have instrumental value by facilitating the development of state regulation that serves the public interest, what should this state regulation look like, and what makes it better than the voluntary standards that came before it? Here we can look to the promising work of Medzini (2022), Medzini and Levi-Faur (2023), and others who show how independent third-party intermediaries can enhance companies’ self-regulation by increasing the credibility of their commitments. One of the central differences between NFRD and its successor CSRD remains that the latter requires companies to obtain third-party assurance for their disclosures, positioning auditors as key regulatory intermediaries (Fransen and LeBaron 2019). In the language of Lishinsky-Fischer and Levi-Faur (2024), NFR regulation evolved from pure self-regulation to enforced (i.e., government-mandated) self-regulation and then to enhanced (i.e., intermediated) self-regulation. While improving the credibility of NFR through mandatory third-party assurance may be critical to these regulations actually making a difference with respect to social and environmental outcomes, recent work shows how bias can creep into the work of independent auditors as well, compromising their contribution to regulatory governance (Auld and Renckens 2025).

Still, there is much to be gained by focusing on the roles played by different actors, whether it be the role of the regulator/rule-maker, target/rule-taker, or intermediary (Abbott et al. 2017; Kourula, Paukku, et al. 2019). The so-called “CSR industry” comprises many individuals and organizations—including consultants (Owen 2021), rating agencies (Smoleńska and Levi-Faur 2025), beneficiaries (Monciardini and Conaldi 2019), as well as corporate sustainability managers (Wickert and de Bakker 2018)—and we need a way of organizing our thinking about how these groups interact and to what end. At the same time, we must not lose sight of the fundamental differences between state regulation, civil regulation, and self-regulation. As the interviews for this project demonstrate, government is set apart from civil society by its coercive power (e.g., the ability to mandate NFR, with or without a requirement for third-party assurance). In addition, business managers ultimately decide how they want to behave and therefore have the final say in some sense. In between, we find CSO officials with the potential to work pragmatically alongside like-minded business leaders and public policymakers to push for institutional change. To the extent that private regulation does function as a building block, these actors are key change agents, and the ideas they have today may well shape the direction of public policy tomorrow.

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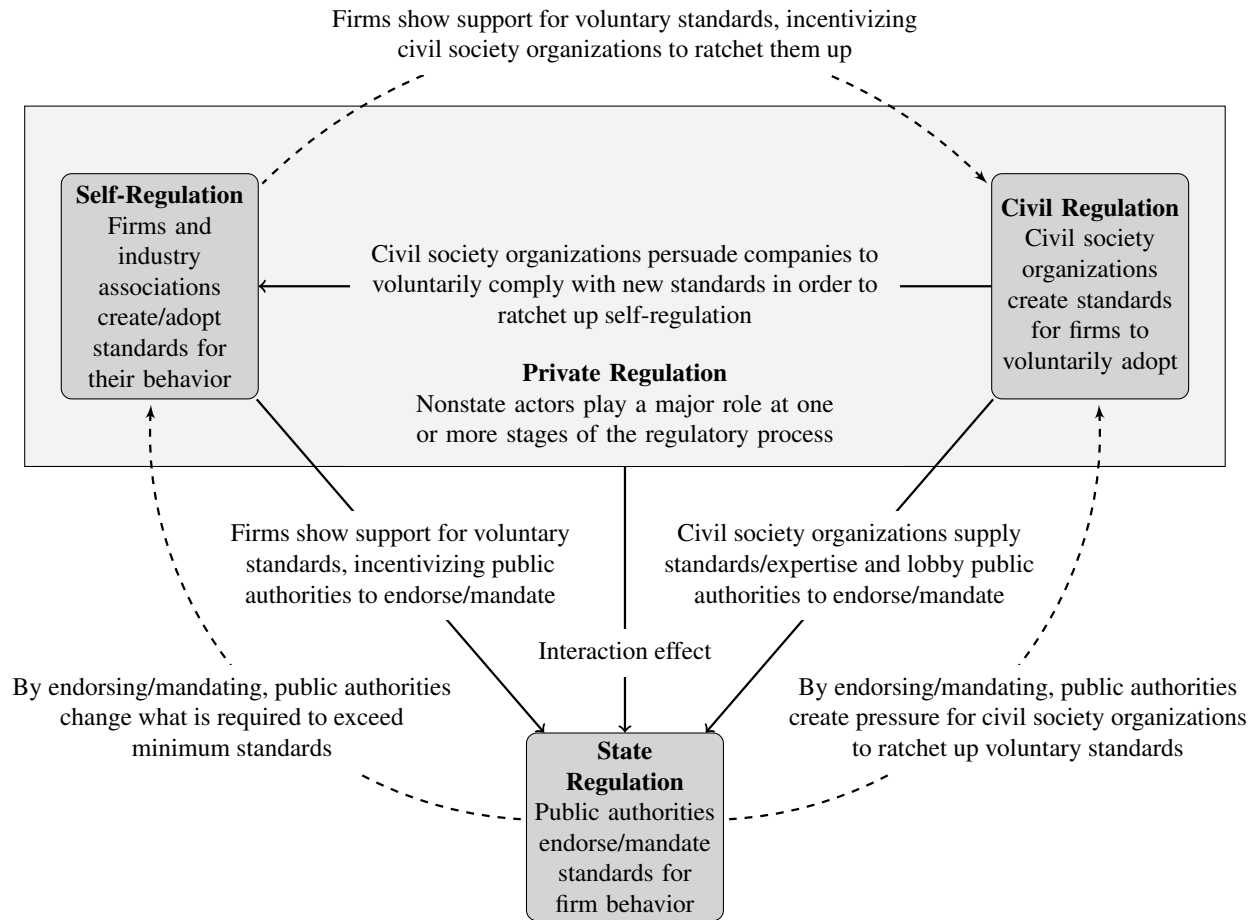
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**Figure 1:** Complementary interactions among business, government, and civil society



**Table 1:** Interviews conducted

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<b>Government &amp; Multilateral Organizations (3)</b> European Commission (11/28/14); United Nations Global Compact (5/31/13); United Nations Principles for Responsible Investment (5/18/12).
<b>Civil Society Organizations (17)</b> Business in the Community (3/14/13); Carbon Disclosure Project (5/11/12); CSR Greenland (6/16/11); CSR International (5/23/11); E3G (8/8/23); European Coalition for Corporate Justice (12/3/14); European Financial Reporting Advisory Group (8/15/23); European Trade Union Confederation (12/5/14); Fair Trade Center (6/22/11); Forest Stewardship Council (12/18/15); Global e-Sustainability Initiative (4/26/13); Global Reporting Initiative (5/4/12); Initiative for Responsible Investment (10/1/12); LobbyControl (12/9/15); Swedwatch (6/20/11); Tellus Institute (3/12/11); Transparency International (11/26/14).
<b>For-Profit NFR Specialists (4)</b> BSR (8/15/24); EIRIS (5/21/12); FTSE Group (5/21/12); Vigeo (11/26/14).
<b>Companies – France (14)</b> ADP (4/15/13); Alcatel-Lucent (4/24/13); BNP Paribas (4/23/13); BPCE (4/29/13); Credit Agricole (4/18/13); GDF Suez (5/27/11); Lafarge (5/31/11); Pernod Ricard (4/2/13); Sanofi (6/28/11); Schneider Electric (5/31/13); SNCF (4/3/13); Suez Environment (4/3/13; 8/3/23); Total (4/18/13); Veolia Environment (4/11/13).
<b>Companies – Sweden (10)</b> Atlas Copco (6/20/11); Boliden (6/23/11); Lantmannen (5/28/13); Nordea Bank (6/29/11); SEB (6/29/11); Securitas (5/17/13); Skanska (5/23/13); Sony Mobile Communications (6/27/11); SSAB (6/21/11); Swedbank (5/23/13).
<b>Companies – United Kingdom (7)</b> Anglo-American (3/19/13); Cadbury (4/25/12); Daily Mail & General Trust (3/18/13); The Go-Ahead Group (3/7/13); Marks & Spencer (5/9/12); National Grid (2/27/13); Trinity Mirror (3/18/13).
<b>Companies – United States (16)</b> Albemarle (8/14/24); Avangrid (7/23/24); BNP Paribas USA (4/17/13); Brixmor Property Group (8/5/24); Cadence Design Systems (8/22/24); Fifth Third Bancorp (3/13/25); Hewlett Packard (6/25/24); HNI (7/29/24); Huntington Bancshares (7/18/24); Illumina (7/19/24); Intel (7/9/24); Jabil (8/14/24); Otis Worldwide (3/3/25); ServiceNow (2/21/25); Unum (8/13/24); Zoetis (1/30/25).

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**Table 2:** Non-financial reporting initiatives

<b>Acronym</b>	<b>Definition</b>
BITC	Business in the Community
CDP	Carbon Disclosure Project
CSRD	Corporate Sustainability Reporting Directive
DJSI	Dow Jones Sustainability Index
EFRAG	European Financial Reporting Advisory Group
ESRS	European Sustainability Reporting Standards
GRI	Global Reporting Initiative
IFRS	International Financial Reporting Standards
ISO	International Organization for Standardization
ISSB	International Sustainability Standards Board
NFRD	Non-Financial Reporting Directive
OECD	Organisation for Economic Co-operation and Development
OFR	Operating and Financial Review
SRI	Socially responsible investing
TCFD	Task Force on Climate-related Financial Disclosures
UNGC	United Nations Global Compact