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Reflections on sustainability reporting and stewardship codes

Aidan Horan & Mark Mulreany[1]

Abstract

This article is set against the background of the increasing environmental, social and governance responsibilities and obligations that have arisen for organisations, in both the private and public sectors. It focuses on two related issues. Firstly, the paper considers the development of sustainability reporting standards internationally and how the three main sets of standards are converging. It proceeds to examine the introduction of sustainability reporting in the commercial state-body sector in Ireland and highlights the need to build capacity and capability as sustainability reporting extends to other parts of the public sector. Given the importance of sustainability, the article makes the case for the inclusion of sustainability reporting in the *Code of practice for the governance of state bodies*. Secondly, it examines the growing use of stewardship codes internationally and the responsibilities and obligations associated with them. It proceeds to consider the case for the introduction of a stewardship code in Ireland. After examining the advantages and drawbacks of stewardship codes, it concludes that there is not a sufficient case for the introduction of such a code in Ireland.

Keywords: climate action, codes of governance, environmental, social and governance, stewardship codes, sustainability, sustainability reporting.

[1] Aidan Horan provides consultancy and advisory services across a range of sectors. He previously worked for many years in the Institute of Public Administration. Mark Mulreany is an analyst in an international information technology and artificial intelligence company and previously worked with a leading management consulting firm.

Introduction

The purpose of this article is to consider codes of governance practice from two perspectives. Firstly, we will assess the case for an update of the *Code of practice for the governance of state bodies* (Department of Public Expenditure and Reform, 2016). In this assessment we will focus on the climate action objectives of state bodies and agencies and on the sustainability reporting that would demonstrate how they are delivering on their environmental, social and governance obligations. (The area of sustainability reporting is absent from the current code of practice.) Secondly, we will examine the case for the introduction in Ireland of a stewardship code. Stewardship emphasises the responsibility of boards and leadership teams to act in the interests of the environment and of stakeholders such as local communities, customers and employees. A stewardship code would require institutional investors to take account in their investment decisions of sustainable benefits for the economy, environment and society. In what follows, we will focus on environmental, sustainability and climate action issues within the broader economic, social and governance (ESG) context.

The *Code of practice for the governance of state bodies* is a foundational document in governance in Ireland. The *Code*, which was heavily influenced by the code of the United Kingdom (UK), was published in 2016. Its introduction affirms that:

> Good governance in the public sector encourages better informed and long-term decision-making as well as the efficient use of resources. It strengthens accountability for the stewardship of resources and is characterised by robust scrutiny which places ongoing emphasis on improving public sector performance. (Department of Public Expenditure and Reform, 2016).

Since 2016, updated guidance in relation to the annual financial statements was added to the *Code* in 2017 and additional annexes covering diversity and other topics were published in 2020. There has been no additional guidance in the *Code* in relation to reporting climate action or sustainability reporting. The Sustainability Energy Authority of Ireland has, however, issued guidance, consistent with Ireland's climate action plan, which public bodies are required to implement. However, except for the Sustainability Energy Authority of Ireland's guidance, there has been little or no reference to how state bodies, agencies, central government, local government, education, health service, regulatory and other publicly funded entities are to report on sustainability in accordance with generally accepted standards.

In this article, we begin by considering sustainability reporting. We provide the context in which sustainability reporting has developed and then discuss the three main international standards which exist and how they are converging. We proceed to consider the standards that have recently been introduced for commercial state bodies in Ireland and the implications for the *Code of practice for the governance of state bodies*. The article will then consider the development and impact of stewardship codes, and the responsibilities and obligations associated with them. Then we consider whether such a code should be introduced in Ireland.

Background and context

A succession of important developments has occurred, particularly since 2015, in the form of international commitments, European Union (EU) directives, legislation and climate action.

Overarching goals were set when the United Nations General Assembly, by formal resolution in September 2015, adopted the Sustainable Development Goals (SDGs) as a plan of action for 'people, planet, and prosperity'.

The 17 SDGs and the 169 targets are integrated and indivisible and balance the three dimensions of sustainable development – the economic, social and environmental. In the context of the commitments in relation to the planet, the Assembly asserted that:

> we are determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations. (United Nations, 2015).

Even a cursory review of the SDGs underlines how many of them resonate strongly with the roles of state bodies and agencies delivering a wide range of services such as education, health, infrastructure, as well as social, economic, cultural, recreation/amenity and social inclusion services.

Of direct relevance to the governance of state bodies is SDG 13 (Take urgent action to combat climate change and its impacts). Two of the goal targets which have clear relevance to state and public bodies are firstly to improve education, awareness-raising and human and institutional capacity on climate-change mitigation, adaptation, impact reduction and early warning, and secondly to integrate climate-change measures into national policies, strategies and planning.

The SDGs provide the backdrop to much of the work of state and public bodies. They underlie the preparation and production of strategy statements, corporate plans, business plans and service delivery plans. Indeed, in these and other communications, it is good practice for state and public bodies to make explicit reference to the SDGs, as appropriate, to affirm to stakeholders and the wider public that they are aligned with the SDGs and as such are operating in the public interest and to serve the public good.

EU member states through the Paris Agreement committed, at the twenty-first annual Conference of Parties to the United Nations Framework Convention on Climate Change (COP 21), to reduce greenhouse gas emissions by 40 per cent by 2030. In Ireland, the initial Climate Action and Low Carbon Development Act 2015 recognised the role of public bodies in delivering on the national low-carbon transition objective and, as part of the national adaptation framework, to reduce vulnerability to the negative impacts of climate change and to avail of such positive effects of climate adaptation that may occur.

In the Climate Action and Low Carbon Development (Amendment) Act 2021, Ireland has committed to halving its greenhouse gas emissions by 2030 and reaching net zero by 2050 at the latest. In section 3, the Act states our national climate objective: ‘The State shall, so as to reduce the extent of further global warming, pursue and achieve, by no later than the end of the year 2050, the transition to a climate-resilient, biodiversity rich, environmentally sustainable and climate neutral economy’.

The *Climate action plan 2024* (Government of Ireland, 2023) was prepared in accordance with the Act. It again reaffirms the national targets to halve emissions by 2030 and to reach net zero no later than 2050, obligations which are reflected in EU and international treaties. Among other developments, Ireland’s *Climate action plan 2024* highlights the leadership role of the public sector on climate action through its efforts on buildings, transportation fleets, energy-efficient measures and green public-procurement initiatives. The provision of climate-related training for public- and state-sector staff has also been prioritised.

The plan acknowledges the scale of the challenges for the public, state and private sectors. In terms of public and state investment, the

European Investment Bank is actively supporting Ireland's transition to a low-carbon, energy-efficient and sustainable economy with investments in key sectors. Under current and forthcoming rules for the private and commercial sector, financial institutions are required to examine and support climate-resilient asset investments and to prioritise and incentivise investment in new technologies and infrastructure. This support by financial institutions and the specific investments, impacts and outcomes at the company level is further reenforced through the European Corporate Sustainability Reporting Directive (CSRD), which puts sustainability reporting on the same footing as traditional financial reporting (EU, 2022). Importantly also, the CSRD brings new concepts into play such as double materiality which encapsulates not just financial materiality but also impact materiality. The CSRD was transposed into Irish law through the SI [statutory instrument] European (Corporate Sustainability Reporting) Regulations 2024.

Sustainability reporting provides evidence of progress on ESG issues and gives greater transparency on climate-related financial and non-financial disclosures. A range of entities come within the scope of the new directive and must report in 2025 on activities for the financial year 2024. There is also a planned rollout over the coming years for other entities, including small- and medium-sized enterprises. This directive modernises and strengthens the rules around social and environmental information which companies must report, and in turn this information will be subject to scrutiny by third-party external professional assurance providers.

In 2022, the New Economy and Recovery Authority (NewERA), published a framework for the commercial semi-state sector to address climate action objectives in the climate action plans of 2019 and 2021 and referred specifically to twenty-two commercial semi-state parties and their subsidiary operations (NewERA, 2022). The number of bodies covered has since risen to twenty-six (NewERA, 2024). The framework has five commitments namely governance of climate action objectives; emissions measurement and targets; emissions in investment appraisal; circular economy and green procurement; and finally, climate-related disclosures. In the case of the latter, commitment to the framework distinguishes between disclosures focusing on climate and broader ESG-focused disclosures. In addition to the five-commitment approach in the NewERA framework, the commercial semi-state sector must also consider climate adaptation approaches as part of the review and enhancement of climate action objectives (Department of the Environment Climate and Communications, 2024).

In another key sector, local government, there is the statutory requirement that each local authority shall prepare a five-year plan specifying the mitigation and adaptation measures to be adopted. A local authority climate action plan needs to be consistent with the most recent approved national climate action plan and with national and sectoral adaptation frameworks. The local authority climate action plan is a reserved function of the elected council.

Developments in the United Kingdom corporate governance code

Given the significance of the overarching goals, it is important to consider how to reflect them in codes such as the *Code of practice for the governance of state bodies* that apply at the national level. In order to discharge and demonstrate their responsibility to sustainability, state and public service organisations need clear guidance and direction on the nature and extent of sustainability and ESG reporting required of them and against which they can be held accountable. Some recent developments in the UK code of governance indicate a possible direction of travel for Ireland.

The 2024 revision of the UK corporate governance code (Financial Reporting Council (FRC), 2024) continues to reflect a principles-based approach rather than a rigid set of rules, and it continues to include the comply-or-explain provision which allows flexibility for consideration of particular circumstances which may account for less than full compliance. Within the section of the code on leadership and company purpose, the key principle is that the board should promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.

There is significant emphasis in the code on the sustainability of a company's business model and the alignment of the company's purpose, values and strategy. As part of corporate governance reporting, it is suggested that a sustainability report or an ESG report should allow for an assessment of the quality of the company's governance arrangements and the board's activities and contribution to sustainability and the SDGs.

The UK corporate governance code guidance makes specific reference to the roles of sustainability committees. These roles include developing, monitoring and reviewing sustainability reporting to incorporate ESG disclosures, targets and key performance indicators. Heretofore, the traditional role in relation to corporate reporting would be undertaken by the audit, or audit and risk, committee which would interact with the external auditor and review changes in accounting policies, disclosures and reporting.

The FRC which sets the UK's corporate governance and stewardship codes conducts reviews of sustainability-related governance practice which are of continuing relevance to those who are interested in governance in Ireland. In 2022, the FRC reported several important findings. For example, it noted the emphasis laid by some companies on engaging suppliers to embed climate-related and sustainability issues in their work practices. Such engagement exemplifies the need to include upstream and downstream activities in the overall approach to addressing climate-related impacts (FRC, 2022). The review also found that increasingly more companies are introducing non-financial and ESG performance targets and metrics into executive pay arrangements and annual bonuses. This aligns with classic principal-agency theory, which extends to considerations of how to incentivise managers and staff to act and behave consistent with the wishes of the principal.

The FRC acknowledges that ESG data is important for external stakeholders and for operational and strategic decision-making. At the strategic level, the delivery of corporate purpose and commitments demonstrates to current and prospective employees the priority attaching to sustainability matters. Investors are keen to see entities reporting against generally accepted sustainability standards and frameworks; providers of capital are looking at the green and sustainability credentials of loans and bonds while customers and other stakeholders are keen to look at supply-chain information, upstream and downstream activities and any certifications or rankings the company has achieved for compliance with environmental and climate-focused activities and initiatives.

Due to the large volume of information available, there is a need to present a clear and comparable message about which metrics and targets are materially important for managing climate-related risks and opportunities and how these are linked to the associated transition plan to a lower-carbon economy. Increased transparency in companies' statements about the extent of alignment with the Task Force on Climate Related Financial Disclosures framework gives investors better insight into what they can expect to see reported in the future, and the level of ambition of an organisation's transition plan.

Transparency also helps regulators and other stakeholders to identify and address greenwashing concerns.

Frameworks, standards, guidelines and guidance on sustainability reporting

The objective of sustainability reporting is to provide transparency on how an organisation contributes to sustainable development. Such reporting enables an organisation to publicly disclose its most significant impacts on the economy, the environment and people and how it manages these impacts. This in turn increases the organisation's accountability and allows for an assessment of the stewardship of its core business, the community in which it operates and more widely based societal relationships.

There are at least eight sets of sustainability reporting standards. In addition, there are a range of management systems standards, certifications, rankings, guidelines and guidance available that address the complex array of sustainability issues facing societies, economies and individual companies and organisations. These frameworks were developed to provide basic toolkits, resources and explanatory material that can assist with embedding sustainability within organisations and facilitate reporting on achievement. It is clear that this is a crowded regulatory space and that there is a need for coherence and for accepted standard-setting at global and national levels.

The main global standard setters are the Global Reporting Initiative (GRI); the European Financial Reporting Advisory Group (EFRAG), which developed the draft European sustainability reporting standards (ESRS) for consideration by the European Commission; and the International Sustainability Standards Board (ISSB).

The GRI standards (GRI & SASB, 2021) incorporate three levels of standards designed to be used by organisations in any sector. Universal standards support companies and organisations to report in the required manner and provide step-by-step guidance on determining, assessing and reporting on material topics. Sector standards provide further detailed guidance dealing with, for example, agriculture, aquaculture and fishing sectors. Topic standards deal with, for example, procurement, employment, supplier assessment, customer health and safety, diversity and equal opportunity.

ESRS follow a similar categorisation namely cross-cutting standards which set out general requirements and disclosures, topic standards and sector-specific standards.

Table 1 categorises the ESRS requirements both at a general level and more specifically as environmental, social and governance components.

Table 1: European sustainability reporting standards (ESRS) by category

European sustainability reporting standard	*Title*
ESRS 1	General requirements
ESRS 2	General disclosures
Environmental	
ESRS E1	Climate change
ESRS E2	Pollution
ESRS E3	Water and marine resources
ESRS E4	Biodiversity and ecosystems
ESRS E5	Resource use and circular economy
Social	
ESRS S1	Own workforce
ESRS S2	Workers in the value chain
ESRS S3	Affected communities
ESRS S4	Consumers and end users
Governance	
ESRS G1	Business conduct

Source: Commission Delegated Regulation (EU, 2023)

The ISSB issued IFRS Sustainability Disclosure Standards in 2023 to establish a high-quality global baseline of investor-focused sustainability-related disclosures (ISSB, 2023a,b). Its work builds on the previous work of the Task Force on Climate Related Financial Disclosures. In many respects, the GRI, ESRS and IFRS standards are consistent in terms of the disclosures required. For many years, the traditional focus of company and organisational corporate reporting has been on financial transactions, gains and losses. By contrast, the sustainability reporting standards require the consideration of material topics independently from the consideration of financial implications.

The reporting principles within the various standards are fundamental to achieving high-quality sustainability reporting providing credible, relevant and comprehensive information for stakeholders, investors, current and prospective employees, local communities and wider society. Within sustainability reporting, there is also a significant emphasis on due diligence processes. In terms of good practice, it is expected that these processes will align with the *United Nations guiding principles on business and human rights* (2011) and also on the *OECD due diligence guidance for responsible business conduct* (Organisation for Economic Co-operation and Development (OECD), 2018). The general disclosures required, alone, are very helpful in the assessment process. For example, there are five key areas within GRI general disclosures requiring details respectively on: the organisation and its reporting practices; activities and workers; governance; strategy, policies and practices; and stakeholder engagement.

Throughout the disclosures there is an emphasis on the role and responsibility of the highest governing body and senior executive management within organisations and what they are expected to demonstrate such as for example in adhering to sustainable development and reporting both on achievements and on areas for improvement. For the board and the highest governing body, there is a requirement to disclose their role in overseeing the due diligence and other processes to identify and manage impacts on the environment, the economy and people. Similarly, the highest governing body is responsible for reviewing and approving reported information in accordance with sustainability reporting standards.

Convergence and interoperability

Not surprisingly, in light of the number of sets of standards, there has for many years been a recognised need to achieve greater consistency. In recognition of this fact, there have been moves toward a convergence of standards and frameworks.

In 2023, the EFRAG and the GRI issued a joint statement on interoperability between the ESRS and the GRI standards. The statement noted that existing organisations and companies who use the GRI will be well-prepared to report under the ESRS due to the alignment of both sets of standards.

Similarly, EFRAG and ISSB also issued a statement in 2023 which confirmed that work was underway to enhance the interoperability between the requirements of ISSB sustainability disclosure standards (IFRS S1 and IFRS S2) and the related requirements of the ESRS.

Convergence also helps address investor concerns by providing high-quality and globally comparable information on sustainability related risks and opportunities. Consolidation of the fragmented landscape of professional, industry, voluntary and accredited frameworks reduces complexity, cost and uncertainty for reporting organisations. Even allowing for this, there remains a substantial increase in reporting requirements and governance actions and an accompanying need to build capacity and capability to meet these requirements.

The primacy of principles

In a rapidly moving area such as sustainability reporting, which is overseen by an array of professional bodies, it is necessary to revert to the principles of reporting for reassurance both that the principles are reflected in practice and are a unifying force between different providers and across different types of reporting. Table 2 sets out descriptors of the reporting principles that underpin corporate reporting for *both* financial and sustainability reporting.

Table 2: Comparison of descriptors of reporting principles

FRC	*FRS 102*	*ESRS*	*GRI*
Accurate	Relevant	Relevant	Accurate
Connected and consistent	Faithful presentation	Faithful presentation	Balanced
Complete	Comparable	Comparable	Comparable
On-time	Timely	Verifiable	Timely
Unbiased	Verifiable	Understandable	Verifiable
Navigable	Understandable	–	Completeness
Transparent	–	–	Clarity
–	–	–	Sustainability context

Abbreviations: ESRS = European sustainability reporting standards, FRC = Financial Reporting Council, FRS = financial reporting standard, GRI = Global Reporting Initiative.

The table demonstrates that there is significant consistency and a growing convergence which will facilitate the availability of credible, timely, relevant and understandable financial and sustainability and ESG information to contribute to improved accountability and better decision-making.

Before moving to the next section, we briefly mention in summary at this point that the substantial requirements of sustainability reporting have taken root in the commercial state-body sector and will extend further into the public sector in years to come. This in turn creates the need to build expertise in order to comply with the requirements. Also, as we will argue in the conclusion, there is a strong case that guidance on sustainability reporting be included in the *Code of practice for the governance of state bodies*.

Stewardship and stewardship codes

Sustainability reporting is currently a focus of attention for policy-makers and practitioners concerned with the stewardship of resources. Since 2010, the area of stewardship codes has also drawn attention. In that year, the FRC published *The UK stewardship code 2010* for institutional investors and asset managers. This was subsequently revised in 2018 and in 2020 (FRC, 2010, 2018, 2020).

The FRC defines stewardship as 'the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society' (FRC, 2020).

The meaning of stewardship is further explored by Chiu (2013), Davis, Schoorman and Donaldson (1997) and Caldwell et al. (2008, 2010). The general advantages and disadvantages of soft laws are assessed by Abbott and Snidal (2000) and Klabbers (1996, 1998). Here we focus on stewardship codes as a form of soft law. Stewardship codes go beyond the conventional and widely adopted corporate governance codes and have been developed to set out principles of best practice for institutional investors. These are specialist organisations that invest money on behalf of clients such as pension funds, insurance companies and mutual funds. Institutional investors have delegated authority to build investment portfolios and a principal-agent problem can exist where the beneficiaries, whose funds are being invested, do not exert sufficient control over those who are investing money on their behalf. In the case of sustainability and ESG issues, a principal-agent problem would exist if institutional investors did not act in line with shareholders should the majority of the latter decide on responsible investment strategies.

A sense of the importance of institutional investing can be gained from OECD data which show that in 2019 the total financial assets and liabilities of insurance corporations in Ireland as a percentage of gross domestic product was 90 per cent (OECD, 2020). The total financial assets of pension funds in Ireland as a percentage of gross domestic product was 23 per cent in 2023 (OECD, 2024). Clearly the investment of funds of this magnitude can have important impacts on the environment.

The 2020 revision of the UK stewardship code marks a major departure. For signatory institutions there are requirements to explain purpose, beliefs, strategy and culture, and to show how governance, resources and incentives support stewardship. There is an emphasis on the need to assess not just policies but outcomes and demonstrated effectiveness.

The direction of travel in the code to a wider conception of stewardship is particularly clear in the case of principle 7 of the code where the importance of integrating ESG and climate-change issues into investment decisions is explicitly noted. This is consistent with the movement we noted earlier in the article towards giving non-financial reporting a similar standing to financial reporting. The emphasis is not just on financial performance but also on the impact on the wider economy and society, and the need to promote sustainable success through responsible investment and improved governance.

A company which wants to become a signatory to the code must publish an annual stewardship report outlining how it has applied the code's principles over the previous twelve months, describing the activities undertaken and the outcomes achieved. The principles in the code are 'apply and explain' principles. Previously, the requirement to 'comply' was accompanied by a *default* of 'explain'. Now the requirement to 'apply' is accompanied by the *requirement* to 'explain' and therefore the obligations on companies covered by the code are correspondingly higher.

Since 2010 over twenty countries have developed such codes. These include the United States, which in 2018 adopted a stewardship code influenced by the UK stewardship code (Klettner, 2021). In Ireland, there were some discussions between departments about a stewardship code but such a code has not materialised (Leahy, 2017). In updating its *Principles of corporate governance* (OECD, 1999), the OECD took note of the uptake by countries of stewardship codes and incorporated elements of stewardship into the OECD principles which in 2015 were endorsed by the Group of 20 Leaders' Summit (OECD, 2015). We might also note that in recent years the OECD *Principles of corporate governance* have been further updated and now include a principle in relation to sustainability (OECD, 2023).

Stewardship and performance

Institutional investors and asset managers are intrinsically interested in maintaining or improving fund performance. Where performance is judged in light of ESG issues and with a long-term perspective, then the importance of environmentally responsible investment grows.

In this context, it is important to note that there is some evidence that in certain circumstances it is possible for investors to 'do well by doing good' or in other words to behave in an ESG-sensitive manner and so improve financial performance. Friede, Busch and Bassen (2015) analysed some 2,200 studies over more than 50 years and found that 63 per cent reported a positive relationship between the adoption of ESG criteria and financial performance. The existence of studies stretching back to the 1970s draws attention to the fact that socially responsible investment existed prior to the formalisation of stewardship codes.

Other studies have also found evidence linking responsible ESG-related investment to improved financial performance (Khan, Serafeim & Yoon, 2015; Bruno, Esakia & Goltz, 2021; Barko, Cremers & Renneboog, 2022). In the context of performance, we should note that responsible investment looks to long-term risk-adjusted returns based on better risk analysis of portfolios and improved risk management. High ESG-rated companies which by their nature are highly sensitive to environmental and social risks are less susceptible to certain systemic risks and this can improve not only non-financial performance but also long-term financial performance.

However, there is a tension between long-term environmentally responsible investment and the short-term demands from those shareholders who want more immediate profitability and return on investment. In an important paper, Cheffins (2010) points to the costs in aligning with stewardship code requirements which, of course, can affect profitability. It is notable that one of the largest investment companies in the world, Blackrock, which has been an important advocate for sustainable investment (Fink, 2021) appears to be stepping back from such advocacy toward a more financially driven investment strategy (Masters, 2024).

Assessing the need for a stewardship code

In 2017, the Taoiseach's Office sent a document to the Minister for Justice and the Minister for Enterprise, Trade and Employment about the need for a code of stewardship or an oversight system for institutional investors (Leahy, 2017). However, apart from that, there seems little political or policy impetus for the introduction of a stewardship code.

A judgement on whether Ireland should introduce such a code depends on weighing up the advantages and drawbacks.

Advantages

There are advantages in the use of stewardship codes. We must acknowledge that institutional investors are a powerful presence in economic life. The existence of a code to which they sign-up for ESG stewardship purposes signals the virtue of moving from being seen as part of the problem to being part of the solution, and shows mindfulness of the scale, particularly, of environmental problems.

In addition, in their design and content, codes offer the possibility of gaining the advantages of soft law such as flexibility and ease of amendment. This comes into focus when we contrast codes with the more rules-based hard law approach in EU directives. A code offers the possibility of gaining the advantages of joined-up thinking and communication. A code may also promote the achievement of the performance benefits associated with stewardship. Indeed, beyond the financial performance metric, institutional investors and asset managers may take an opportunity of showing leadership in such an important set of issues.

Drawbacks

In Ireland, many of the ESG issues are treated in either existing or planned EU directives and in Irish legislation. The stewardship code idea has to some extent been crowded-out.

The main ESG-related regulations include:

- the EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 as amended, which transposed into Irish law;
- the Non-Financial Reporting Directive (Directive 2014/95/EU);
- the Low Carbon Benchmark Regulation (Regulation (EU) 2019/2089);

- the Taxonomy Regulation (Regulation (EU) 2020/852), which identified a range of activities judged to be environmentally sustainable and thereby facilitates investment choices;
- the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088);
- the Corporate Sustainability Directive (Regulation (EU) 2022/2464) and the associated ESRS.

To take one example, the aforementioned EU Directive on the Disclosure of Non-Financial and Diversity Information (Directive 2014/95) has been transposed to Irish law in SI no. 360/2017. This requires that certain large undertakings or groups produce for each financial year a non-financial statement. The statement must, in line with section 5(2), contain information on environmental; social and employee matters; human rights; and bribery and corruption so as to provide an understanding of the development, performance and impact of its activity in these areas. Large, traded companies must also disclose information on the diversity of their boards.

In addition, there is a range of legal instruments and judgements relating to ESG issues in Ireland. Oversight of Statutory Instruments rests with the Corporate Enforcement Authority, formerly the Office of the Director of Corporate Enforcement, which works to ensure compliance with the Companies Act and has powers of sanctions through fines and imprisonment. These sanctions illustrate the operations of a more hard law, rules-based system.

When considering transposition into Irish law, we should also note that the Shareholder's Rights Directive (Directive (EU) 2017/828), which lays an emphasis on long-term shareholder engagement, was incorporated in the Companies Act in 2020. Irish contract law and tort law provide protections with regard to misleading, or materially false, ESG disclosures or representations made in investor reports or prospectuses. The Companies Act 2014, section 1349, allows for liability for damage or loss arising from misinformation in prospectuses. Other legislation such as the Protected Disclosures Act 2014 also relates to ESG issues, by protecting people who report possible wrongdoing in the workplace, including damaging the environment or endangering health and safety.

We might also note that the courts through their judgements exert an important influence. In 2020, for example, the Friends of the Irish Environment brought a case against the Government of Ireland and the Attorney General (Ryall, 2020). The Supreme Court concluded that the government's national mitigation plan to address climate change 'fell well short of the levels of specificity required' to comply with the 2015 Climate Action and Low Carbon Development Act, which sought to enable Ireland to transition to a low-carbon economy.

Moving on from the area of directives and legislation outlined above which relate to stewardship, there is a prospective difficulty of who would take charge of a stewardship code. Even if a stewardship code were to be contemplated for Ireland, there is a crowded institutional landscape of relevant bodies with no clear candidate to take the oversight role.

There are important state actors in the climate area. At the level of government, successive programmes for government and climate action plans set out policy which is implemented through a range of departments and state agencies. The Department of the Environment, Climate and Communication plays a central role and is supported by state bodies such as the Environmental Protection Agency.

The Department of Finance takes a lead on sustainable finance through the *Ireland for finance action plan 2022*. The Department of Enterprise, Trade and Employment takes the lead on non-financial reporting and has a number of associated regulatory and supervisory and enforcement bodies, including the aforementioned Corporate Enforcement Authority. The Irish Auditing and Accountability Supervisory Authority supervises how the prescribed accounting bodies regulate their members, and monitors financial reporting by certain entities whose securities have been admitted to trading on a regulated market in the EU.

The main financial regulator is the Central Bank of Ireland which in the climate area works to promote the incorporation of climate-related risks into risk-management and investment practices and also to ensure that sustainable financial products are clearly defined and identifiable to investors. There are also private and industry bodies with a stake in this area. The major body representing investment managers is the Irish Association of Investment Managers.

Of the foregoing, it is not clear which would emerge as the oversight body for a stewardship code, though there would likely be resistance to self-regulation by the industry itself. The drawbacks we have just mentioned are very substantial and, on balance, make it difficult to establish a case for, or to envisage momentum toward, introducing a stewardship code in Ireland.

Conclusion

In this article, we considered the increasing ESG responsibilities and obligations that have arisen for organisations and focused on two related issues: the establishment of sustainability reporting in a wider governance framework and the need for a stewardship code.

It is clear that sustainability reporting has already taken hold in the private sector in Ireland. In the public sector, it is coming into prominence in the commercial state-body sector and will in time become a feature in other state bodies and the wider public sector. There is a growing need to build awareness both of the responsibilities and obligations involved and the capacity and expertise required to meet these responsibilities and obligations. A welcome development is that there is momentum toward convergence and interoperability among the several reporting standards that exist.

There is a clear association between both the principles and the practical concerns underlying sustainability reporting and those underlying the governance of state bodies in their environment and sustainability operations. With this unity of purpose and against the background of convergence of standards among international standards-setting bodies it seems appropriate that consideration be given to updating the *Code of practice for the governance of state bodies* to provide direction on sustainability reporting. Such codification would formally integrate sustainability governance into the operations of state bodies and agencies and establish the requirement to comply with sustainability reporting standards so they can demonstrate and be accountable for how they are delivering on their environmental, social and governance obligations.

In the final analysis, the issue of sustainability reporting must be seen in light of the enormity of the socio-economic challenges we confront and the pressing nature of the climate crisis. The inclusion of sustainability reporting within the code of practice would demonstrate leadership and provide impetus in an area of urgent importance.

On the issue of stewardship codes, we have drawn a different conclusion. Weighing up both the advantages and drawbacks, there does not appear to be a convincing case to introduce a stewardship code in Ireland. The current position in Ireland is that the principles of stewardship are being realised through EU directives and Irish legislation. Furthermore, when considering such a serious set of challenges involved in ESG issues and the climate crisis, there are obvious drawbacks in deploying what is in effect a voluntary code.

One feature of the UK stewardship code, though, is worth considering more closely, namely the more widespread use of an 'apply *and* explain' requirement in place of the weaker 'comply *or* explain' requirement found in general governance codes. The stronger requirement is worth considering in light of the scale of the ESG challenges. However, the weaker 'comply or explain' arrangement has flexibility to allow for cases where special circumstances apply. The lack of such flexibility under an 'apply and explain' arrangement would make it difficult to implement.

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