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Innovations On Sustainability and the Environment in the Italian Constitution. Non-Financial Information and the Audit of Documents Containing Such Disclosures

Maria Silvia Avi

Full Professor in Business Administration Management Department- Ca'Foscari Venezia S. Giobbe – Cannaregio 873- 30121 Venezia (Italy), ORCID ID: orcid.org/0000-0003-11164-4410

ABSTRACT: In February 2022, the Constitution in Italy was amended by adding articles 9 and 41 to introduce the issue of the environment and sustainability in general into the constitutional law. However, in February 2022, the additions to Articles 9 and 41 made sustainability issues, the environment and animal protection more relevant at the state level.

At the same time, the Italian Association of Auditors, Assirevi, issued a research paper (research paper no. 243 of February 2022) so that the audit on non-financial information would be more comprehensive than what was already established in Assirevi paper no. 127 of 2019.

Only time will tell whether these changes to the Italian Constitution and these documents on the audit and control of non-financial data will lead to an overall improvement in the widespread application of sustainability at each Italian citizen's corporate and personal level.

KEYWORD: sustainability, Italian Constitution, audits, non-financial disclosure documents.

SUSTAINABILITY: FROM TRIPLE BOTTOM LINE TO QUINTUPLE BOTTOM LINE

For several decades, sustainability has been the focus of doctrinal debates and discussions with companies. For many years, it has been emphasised that it must sustain the company's economic development. Environmental, social and governance (ESG) factors are generally referred to when highlighting the need to achieve sustainable goals and act following the principle of sustainability. In the 1990s, an entrepreneur, John Elkington, studied the issue of sustainability and created the so-called triple bottom line, according to which business activities should be carried out in three directions: profit, people and the planet. According to this concept, the protection of workers, the community, and the environment are indispensable elements for a business to conduct ethically correctly. The writer has pointed out that the online triple-bot cannot function if two essential components are missing: ethics and the culture of sustainability spread at a personal level within each community in the various countries. According to this concept, the online triple-bot becomes the Quintuple Bottom Line in which culture and ethics are indispensable elements.

As can be seen, in the Quintuple Bottom Line, culture permeates every element of the Triple Bottom Line. It should note that earlier reference was made to the need for a culture of sustainability to permeate every citizen. This is not the case. The fourth element of the QuintupleLine is the culture tout court. Only an educated population can understand the issues directly or indirectly affect social and environmental sustainability. In the general sense, the absence of culture makes understanding sustainability issues extraordinarily complex and challenging, not to say almost impossible. Culture is generally linked to the schooling of a people. However, culture can be present even in people without educational qualifications who, individually, have studied science, literature, philosophy, history, etc., in-depth.

Culture is wisdom, and it is an understanding of the whole; it is an overview of the various types of study activities carried out by man. However, culture is only widespread if the rate of schooling is high. In the schooling phase of a person's life, it can spread culture to the entire population. However, it should emphasise that this is not always true by definition. It is enough for the so-

called Masters to have an idea of schooling as pure notions that culture no longer appears to be interconnected with the school attendance of children or young people. Culture represents an overall feeling of issues that goes far beyond the notion.

In the Quintuple Bottom Line, culture permeates every constituent element of the Bottom Line. This includes social behaviour, environmental behaviour and the objective of maximising company profitability. But this element is not yet sufficient to achieve a structured goal consisting of profitability social and ecological elements. Ethics are missing. Ethics, like culture, must permeate every individual in the community. Only in this case can corporate sustainability of an income, social and environmental nature be pursued.

Ethics is interconnected with human conduct and the various ways people relate to one another. Each relationship is guided by a set of principles that enable human beings' interrelation. This is not the right place to discuss the concept of ethics, the business ethics problem, and the concept of personal ethics (Torelli R.,(2020). This paper highlights how ethics is an indispensable element for sustainability to be applied in business. The writer is aware that this sentence does not identify the concept of ethics. This is not because this concept has nothing to do with what we are writing about, but rather because the idea of ethics changes over time and geographically. What is ethical in one place may not be moral in another. What is honest in a given time may not be ethical a century before or a century after. For example, in some regions of Africa, it must take in the middle east, Asia, special care m not to give a left hand to people, as it is used for personal hygiene. In other places, crossing one's legs is unethical because the interlocutor can see the soles of the person's shoes in front of him, soles which, by definition, are the dirtiest element a person wears.When we talk about ethics (Drucker, P.f., (1981), we mean values and morals, i.e. a set of human behaviours that living beings put into practice in everyday life. With human evolution, the need to ensure that one's own life does not harm the lives of other living beings has also evolved. Harmonious coexistence has therefore become a fundamental aim of the social life of communities. As Orland points out, it must assume the consensus previously established in every human culture to be essential. According to this author, a person is not born ethical, nor does he or she have a pre-established morality supported by values, judgements and statements. This is proven because the concept of ethics changes over time and has different characteristics depending on the geographical locations we consider. What may be regarded as desirable in one country may be highly damaging in another culture. Ethics does not escape this rule, even if the issues involved are far more complex than what has been stated above and what will be illustrated in this short article.

With human evolution, every subject must evolve as the concepts of market, profit, competitiveness and civil rules of human coexistence evolve. All these issues change as historical periods and geographical locations vary. Therefore, it is difficult to write in a few lines about ethics in financial reporting as this issue is deeply rooted in the rules of life accepted as moral and ethical in the historical period in question.

Ethics is one of the most complex philosophical issues addressed by scholars in the humanities. The aim of this article is in no way to examine the historical evolution of the concept of ethics in the human being as a whole.
This article aims merely to make a few remarks concerning business ethics or to use Drucker's concept, ethics in business. Drucker was one of the first scholars to explore this issue in the field of business. He pointed out that, in his opinion, it would be correct to speak of ethics in business rather than ethics in the business itself.

Some scholars point out that for ethics to work in an organisation, it is essential that there is synergy between vision statements, mission statements, core values, general business principles and code of conduct. Such a code must have several benefits for both the company and third parties. A practical, ethical programme cannot be determined at a certain point and then left to its own devices. Such a programme requires the continuous reinforcement of solid values and the continual review of corporate objectives set as the mission of the whole enterprise. Therefore, business organisations must act in such a way that their employees and, above all, management absorb the codes of ethics and moral values that the organisation feels it is essential to achieve.

The proper ethical climate requires a combination of structural rules and the continuous and constant dissemination of moral values. Only an appropriate mix of these can ensure that, within a given company, one can speak of the existence of ethics in business.

Ethics would therefore not be linked to the business itself but would result from the behaviour of the people working in the various businesses. Ethics, therefore, is the result of human conduct within a business. It is related to how human beings relate to each other in businesses and how they act in businesses when they have to have inter-relationships outside the business

entity. Such relationships, sometimes non-consensual, allow the collectivity to free itself from chaos or from the behaviour of sub-aggregates of subjects that, essentially, a harmonious life of the collectivity itself. In reality, up to now, in the writer's opinion, no founding elements have been reached in terms of universal principles that would allow a precise circumscription of ethical behaviour. In the context of this issue, we should not underestimate the interrelationships that can identify between the subject we are concerned with and the religions that are widespread in the world. Even though there is a large grey area of ethical behaviour, which depends on cultural, religious and human factors, the author believes that it is possible to identify unanimously accepted ethical behaviour. It should emphasise that the grey area is frequently more significant than the area in which behaviour is undoubtedly ethical or unethical.

This article highlights how ESG factors have now become part of the concept of entrepreneurship, at least in terms of study and theory. This article highlights how ESG factors have now become part of the concept of entrepreneurship, at least at the level of research and theory. Two studies carried out by the writer of this article on greenwashing and the perception of sustainability by companies will soon be published. The results are astonishing in that they clearly show that the sustainability explained by scholars is not identified with the attitude of companies. The prevalence of greenwashing and the near-irrelevance of sustainable actions in corporate management are two elements that were highlighted by the two studies mentioned above. When addressing this issue, it is necessary to always keep in mind the differentiation between the theory and studies carried out by academics and the practice implemented in companies.

THE ITALIAN CONSTITUTION INTRODUCE SUSTAINABILITY

Sustainability has been the subject of in-depth theoretical studies by scholars and regulatory interventions aimed at regulating the dissemination and external communication of non-financial information by companies. In Italy, articles of the Constitution, particularly Articles 9 and 41, were amended on 10 February 2022 to ensure explicit references in the Constitution to protect the environment and support sustainability in the broadest sense. Given the majorities achieved in the House and Senate, the changes to the two articles come into force immediately and are not subject to referendum. Before analysing the amendments that introduced the concept of environmental protection and sustainability into the Constitution, it should be noted that, while the amendment itself is to be welcomed, it is not a striking novelty in Europe: Europe is the 22nd member of the European Union to have included one or more references to the environment and sustainability in its Constitution. We are pioneers in this respect, as only four other countries in the world have mentioned this issue in their constitutions. The changes mentioned and which we are about to describe, albeit very briefly, are certainly to be welcomed, except that we hope that the legislative action will be followed by practical action on the part of companies. As previously noted in a study to be published in the coming months, it has been shown that many companies give preference to profit over sustainability. This attitude may be dictated by a kind of selfishness of the companies' shareholders, who prefer to have more profit and me lo costs related to sustainability, or it may be dictated by the company's operational needs related to its survival. In particular, we are witnessing an excessive increase in energy costs in this historical period. Companies have seen the energy cost used in their businesses triple or quadruple, and households have noticed that their electricity and gas bills have more than doubled. It is clear that in such a situation, many companies are forced to reduce all their costs to cope with these indiscriminate increases in the cost of energy, not so much to increase their profits as to survive and not be put into liquidation. Therefore, in this economic context, the fact that sustainability and environmental protection is regulated by the Constitution and many other laws to which we will soon refer is a relevant element that does not prevent the non-application of these rules. Disapplication is not intended to increase corporate profits but is imposed by the disastrous economic conditions many companies have to operate. Therefore, such non-application is not due to the selfish behaviour of shareholders who want to achieve high profits but derives from the very need for the company's economic survival. When certain costs, such as those of energy, increase in an unsustainable way for the company, it is evident that the management tends to reduce the costs, which, in the concise term, do not provide profitability. And among these are indeed the costs related to sustainability. Many scholars have pointed out that acting sustainably leads to increased profitability in the medium term. The problem is that, if the company is about to go bankrupt because of the exorbitant increase in certain negative income components, such as energy costs, the management must act in such a way as to overcome the short term, otherwise in the medium term the company cannot go into liquidation.

Therefore, all the regulatory changes we are going to illustrate, concerning sustainability and the audit/control of non-financial disclosure documents, will have to be put to the test in the context of business activity which, if it succumbs to other costs, will certainly struggle to deal with the issue of sustainability excellently.

Innovations On Sustainability and the Environment in the Italian Constitution. Non-Financial Information and the Audit of Documents Containing Such Disclosures

On 10 February 2022, it makes the following amendments to Articles 9 and 41 of the Italian Constitution (the new parts are in bold and underlined):

Article 9: "The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation**.** It protects the environment, biodiversity, and ecosystems in future generations' interests. The law of the State regulates the ways and forms of protection of animals'.

Article 41: Private economic initiative is free. It may not carry out in conflict with social utility or in such a way as to damage security, freedom, human dignity, health or the environment. The law determines the appropriate programmes and controls so that public and private economic activity can be directed and coordinated for social and environmental purposes.

The above changes have been enthusiastically welcomed by the community, scholars and sustainability experts. For the first time in Italy, the Constitution has imposed the protection of the environment, biodiversity, ecosystems and animals.

Certainly, this is noteworthy. From a moral, ethical and pragmatic point of view, the introduction of such innovative elements must be interpreted as a massive step towards shared sustainability implemented by every subject of the State, be it business or individual. As already pointed out in the previous pages, only history will tell us whether these changes have created a difference between what happened before the introduction of the amendments to the Constitution and what will happen in the future due to these changes. From a purely theoretical and scientific point of view, however, the effort made by our legislator to send out a strong message on the issue of sustainability by intervening directly in the Constitution and not contenting himself with issuing ordinary laws is highly commendable.

It should note that, before the amendments introduced to articles 9 and 41 of the Constitution on 10 February 2022, the legislator had already addressed, at least partially, the issue of sustainability in the Constitution itself.

The first paragraph of Article 9 of the Constitution states that "The Republic shall promote the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the nation". It is clear that this article, introduced in the past, had already opened the door to a more intelligent regulatory intervention on sustainability.
Article 32 of the Constitution is also interconnected with the environment, albeit indirectly. Article 32 states that "The Republic protects health as a fundamental right of the individual and in the interest of the community, and guarantees care for the indigent. No one may be obliged to undergo a given health treatment except by a provision of law. The law may in no case violate the limits imposed by respect for the human person".

This article does not refer specifically to the environment but, according to the prevailing legal doctrine, indirectly implies the protection of the environment itself since, in an unhealthy environment, there can be no health and, therefore, the protection of health, indirectly, required, even before the amendments made to Articles 9 and 41 of the Constitution, the protection of the environment.

In addressing the issue of environmental sustainability, we cannot forget what is stated in Article 117 of the Italian Constitution:
"Legislative power shall be exercised by the State and the Regions to comply with the Constitution and the constraints arising from the Community order and international obligations.

The State shall have exclusive legislation in the following matters.
a) foreign policy and international relations of the State; relations of the State with the European Union; right of asylum and legal status of citizens of States not belonging to the European Union;
b) immigration;
c) relations between the Republic and religious denominations;
d) defence and armed forces; State security; arms, munitions and explosives;
e) money, protection of savings and financial markets; protection of competition; currency system; State taxation and accounting system; harmonisation of public budgets; equalisation of financial resources;
(f) State organs and electoral laws; State referenda; election of the European Parliament;
(g) order and administrative organisation of the State and national public bodies;
(h) public order and security, except for local administrative police;
(i) citizenship, civil status and registers;
j) jurisdiction and procedural rules; civil and criminal law; administrative justice;

(k) determination of the essential levels of the services concerning civil and social rights that must guarantee throughout the national territory
l)general rules on education
(m) social security;
n)electoral legislation, governing bodies and fundamental functions of Municipalities, Provinces and Metropolitan Cities;
o)customs, protection of national borders and international prophylaxis;
p) weights, measures and time determination; statistical and computer coordination of data of the State, regional and local administration; intellectual works
q) protection of the environment, the ecosystem and cultural heritage.

The following are matters of shared legislation (State and regions), international relations and relations with the European Union of the regions; foreign trade; labour protection and safety; education, without prejudice to the autonomy of school institutions and with the exclusion of vocational education and training; professions; scientific and technological research and support for innovation in productive sectors; health protection; food; sports regulations; civil protection; territorial government; civil ports and airports; large transport and navigation networks; communication regulations; national energy production, transportation and distribution; complementary and supplementary pensions; coordination of public finance and the tax system; enhancement of the cultural and environmental heritage and promotion and organisation of cultural activities; savings banks, rural banks, regional credit companies; regional land and agricultural credit institutions. In concurrent legislation, the regions have legislative powers, except for the determination of fundamental principles, which are reserved for State legislation.
The Regions shall have legislative powers concerning any matter not expressly reserved for State legislation.
"The Regions and the Autonomous Provinces of Trento and Bolzano, in the matters falling within their competence, shall participate in decisions aimed at the formation of Community legislative acts and shall see to the implementation and execution of international agreements and European Union acts, in compliance with the rules of procedure laid down by a law of the State, which shall regulate the guidelines for the exercise of substitute power in the event of non-compliance.

Regulatory powers shall be vested in the State in exclusive legislation, subject to delegation to the Regions. Regulatory powers shall be vested in the regions in all other matters. Municipalities, provinces and metropolitan cities have the regulatory authority to regulate the organisation and performance of the assigned functions.

Regional laws shall remove all obstacles preventing the full equality of men and women in social, cultural and economic life and promote equal access for women and men to elected office.

Regional laws shall ratify the Region's agreements with other regions to improve its functions by identifying common bodies.
In matters within its competence, the Region may conclude agreements with States and understandings with territorial entities within another State, in the cases and with the forms governed by the laws of the State."

From a reading of Article 117 of the Italian Constitution, it can understand that even before February 10, 2022, the Constitution established that the subject matter "protection of the environment, the ecosystem and the cultural heritage" is entrusted exclusively to the Italian State. On the other hand, the "valorisation of the cultural and environmental heritage and the promotion and organisation of cultural activities" is a matter of shared legislation between the State and the Regions. This situation of competition has created various legal problems in the past. Many scholars have highlighted the centralism of the State in the environmental sphere when, in their opinion, it should have created a situation of coordination between the State and the Regions .

This is not the place to go into the rants that have been waged over this competition. What is important to note is that, even before the amendments to articles 9 and 41 of the Constitution, which came about when Parliament approved these additions on February 10 2022, the issue of the environment and sustainability was already present in our Constitution. However, there were no references to animals. And it must welcome the integration approved on February 10 2022, because it cannot separate the concept of sustainability from a human attitude towards animals, which, although not human beings, are living beings with feelings. Therefore, in my opinion, the integration of animal protection should be seen as a massive step towards a more evolved community.

In various rulings before the year 2022, the Constitutional Court has highlighted the need to promote environmental protection. In particular, in sentence no. 210 of 1987, the Constitutional Court states that "the effort underway to give specific recognition

to the protection of the environment as a fundamental right of the individual and fundamental interest of the community and to create legal institutions for its protection must be recognised. It includes the conservation, the rational management and the improvement of natural conditions (air, water, soil and territory in all its components). These are values that the Constitution provides for and guarantees through articles 9 and 32, according to which the audit norms need an increasingly modern interpretation. The community directives commit the State in a relevant way to a coordinated consideration of the environment, to the timely and correct execution of the commitments undertaken and to the provision of appropriate, necessary and indispensable measur.

"In the judgment of the Constitutional Court No 127 of 1990, it is stated that "This implies that, in the final analysis, since - as we have seen - the decree is an implementation of that Directive and, therefore, expressly.

This means that, ultimately, since - as we have seen - the decree, which implements that Directive and is therefore expressly aimed at "protecting health and the environment throughout the national territory", the maximum limit of polluting emissions, taking into account the criteria mentioned above, can never exceed the absolute and indefectible limit of tolerance for the protection of human health and the environment in which man lives: protection entrusted to the fundamental principle of Article 32 of the Constitution, to which Article 41(2) refers.

In its judgment 127/1990, the Constitutional Court further states that: "the Pretore complains, in substance, that Article 2 of Presidential Decree No 203 of 24 May 1988, which

In essence, the Court complains that Article 2 of Presidential Decree No 203 of 24 May 1988, by including, among other definitions, one concerning the 'best available technology, made the containment or reduction of polluting emissions by industrial plants subject to the condition that the application of the measures 'does not entail high costs. In so doing, the law conflicts with the 'absolute subjective right' to environmental health and the citizen's health, which, according to the principle laid down in Article 32(1) of the Constitution, cannot be subject to any limitation whatsoever. However, there is a similar contrast with the principles laid down in the first and second paragraphs of Article 41 of the Constitution, which require private initiative to be subordinate to and aimed at the social benefit: whereas, by allowing entrepreneurs to subordinate anti-pollution measures for emissions to the interests of the company, the very social benefit of the private initiative would be sacrificed by the offence inflicted on a primary and fundamental good such as health".

It is clear from the above that, even before the amendments to Articles 9 and 41 of the Constitution, the environment, sustainability, and all that is directly or indirectly related to these issues were the subject of national interest, particularly of the Constitution itself of the Constitutional Court.

However, concerning the additions to Articles 9 and 41 of the Constitution issued on 10 February 2022, only time will tell whether these changes will have a tangible impact on the issue of sustainability.

Also, concerning the integration of animal protection, whether the actual application of the principle introduced in the Constitution will have a tangible impact on the community and the lives of every citizen will depend on how the rules are applied. Again, only time will tell how this integration has impacted the community's behaviour towards animals and sustainability in general. As long as a principle is enshrined in law, even if it is a constitutional law but is not applied by the community, it does not help the problem it regulates.

3)Sustainability and the documents containing non-financial information: general considerations on the content of such information documents intended for third parties outside the company.

Non-financial information is subject to two regulations, partially different, depending on the type of company it refers to.
The two regulations are:

1) Legislative Decree No. 254 of 30 December 2016, Implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU regarding the disclosure of non-financial and diversity information by certain undertakings and large groups. (17G00002) (OJ General Series No.7 of 10-01-2017);
(2) Article 2428 of the Civil Code governs the management report.

Legislative Decree No. 254 of 30 December 2016, Implementation of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU regarding the disclosure of non-financial and diversity

information certain undertakings and by certain large groups. (17G00002) (OJ General Series No.7 of 10-01-2017) applies to public interest entities. Such entities are defined by Article 16 of Legislative Decree No 3 of 27 January 2010. That decree specifies that public interest entities include:

a) Italian companies issuing securities admitted to trading on regulated
b) Italian companies issuing securities admitted to trading on regulated markets in Italy and the European Union; banks;
c) insurance undertakings referred to in Article 1(1)(u) of the Private Insurance Code;
d) reinsurance undertakings referred to in article 1 (1, cc) of the code of private insurance, with head office in Italy, and the branches in Italy of non-EU reinsurance undertakings referred to in article 1 (1, cc-ter) of the code of private insurance.

It must apply article 2428 of the Civil Code concerning the management report to companies that draw up their financial statements according to the Civil Code rules and are therefore not part of the companies defined as "public interest entities" by the decree as mentioned above.

The content of the information document concerning non-financial information imposed on public interest entities under Legislative Decree 254/2016 is as follows:
"Art. 3 Legislative Decree 254/2016.
Individual declaration of a non-financial character

1) The individual non-financial statement, to the extent necessary to ensure an understanding of the company's activity, its performance, its results and the impact it has produced, shall cover environmental, social, personnel, human rights, and the fight against active and passive corruption issues, which are relevant given the company's activities and characteristics, describing at least:

a) the company's model for managing and organising its activities, including any organisational and management models adopted according to Article 6(1)(a) of Legislative Decree no. 231 of 8 June 2001, also about the management of the issues as mentioned above;
b) the policies practised by the undertaking, including those of due diligence, the results achieved through them and the relevant non-financial key performance indicators;
c) the principal risks, ((including how they are managed)) generated or incurred, related to the above issues and arising from the company's activities, products, services or commercial relationships, including, where relevant, supply chains and subcontracting;

2) Concerning the areas referred to in paragraph 1, the non-financial statement shall at least contain information on

a) the use of energy resources, distinguishing between those from renewable and non-renewable sources, and the use of water resources
b) greenhouse gas emissions and air pollutant emissions;
c) the impact, where possible based on realistic hypotheses or scenarios also in the medium term, on the environment as well as on health and safety, associated with the risk factors referred to in paragraph 1, letter c), or with other relevant environmental and health risk factors;
d) social and personnel management aspects, including actions taken to ensure gender equality, measures aimed at implementing the conventions of international and supranational organizations on the matter, and how to dialogue with the social partners is carried out;
e) respect for human rights, measures taken to prevent violations thereof, as well as actions are taken in order to avoid discriminatory attitudes and actions;
f) the fight against corruption, both active and passive, and the means adopted to that end.

3. The information referred to in paragraphs 1 and 2 shall be provided with a comparison with that provided in previous years, following the methods and principles set out in the reporting standard used as a reference or in the independent reporting methodology used to draw up the declaration and, where appropriate, shall be accompanied by references to the items and amounts contained in the financial statements. The report shall make explicit reference to the reporting standard adopted. The reporting standard used differs from the one referred to in the previous year's statement shall be disclosed in the report.

If the reporting standard used differs from the one referred to in the declaration for the previous financial year, the reasons are explained.

4. Where a stand-alone reporting method is used, a clear and detailed description of the method and the reasons for its adoption in the non-financial statement is provided. Similarly, any changes from previous years are described, and their causes are given.

5. For reporting, the performance indicators used, as referred to in paragraph 1, letter b), is envisaged by the reporting standard adopted and represent the various areas, as well as consistent with the activity carried out and the impacts produced by it. If an autonomous reporting methodology is used, or if the performance indicators provided by the adopted are not adequate to consistently represent the activity carried out and the impacts produced by it, the company selects the most suitable indicators for this purpose, providing clearly and articulately the reasons underlying this choice. The choice of performance indicators shall also be made taking into account, where appropriate, the guidelines issued by the European Commission according to the provisions of Directive 2014/95/EU.

6. Public interest entities subject to the obligation to prepare the non-financial statement that does not practice policies concerning one or more of the areas referred to in paragraph 1 shall provide in the same statement, for each of those areas, the reasons for this choice, indicating the reasons clearly and articulately.

7. Responsibility for ensuring that the report is prepared and published following the provisions of this Legislative Decree rests with the directors of the public interest entity. In fulfilling their duties, they shall act professionally and diligently. The control body, within the scope of the functions attributed to it by the law, shall supervise compliance with the provisions of this decree and shall report on it in its annual report to the shareholders' meeting.

8. Without prejudice to the obligations deriving from the admission or the application for admission of securities to trading on a regulated market, upon the reasoned decision of the management body, after consulting the supervisory body, information concerning upcoming developments and transactions in the course of trading may be omitted from the non-financial statement in exceptional cases if their disclosure would seriously jeopardise the undertaking's commercial position.

Where the public interest entity avails itself of this option, it shall disclose it in the non-financial statement with an explicit reference to this subparagraph. However, omission shall not be permitted where it would prejudice a fair and balanced understanding of the undertaking's performance, results and position, and the impact of its activities concerning the matters referred to in paragraph 1.

9. For parties which fulfil the obligations of this Article by presenting a non-financial statement in the management report following article 5, the obligations referred to in the first and second paragraphs of article 2428 of the civil code, in article 41 of legislative decree n. 136 of 18 August 2015, and in article 94 (1-bis) of legislative decree n. 209 of 7 September 2005, limited to the analysis of the non-financial information, shall be considered as fulfilled.

10. The person charged with the statutory audit of financial statements shall verify that the directors have prepared the non-financial statement. The same person, or another person specifically appointed to carry out the legal audit, shall issue, by means of a specific report separate from the report referred to in Article 14 of Legislative Decree No. 39 of 27 January 2010, a statement regarding the conformity of the information provided with the requirements of this legislative decree and with the principles, methodologies and procedures set out in paragraph 3. The conclusions shall be expressed on the basis of the knowledge and understanding that the person in charge of carrying out the control activity on the non-financial statement of the public interest entity, of the adequacy of the systems, processes and procedures used for the purpose of preparing the non-financial statement. In the event that the non-financial statement is contained in the management report pursuant to Article 5 (1) (a), the opinion referred to in Article 14 (2) (e) of Legislative Decree No. 39 of 27 January 2010 shall not include said statement, which shall remain the subject of the certification obligation referred to in this paragraph. The report, dated and signed by the person designated for the purpose, shall be attached to the non-financial statement and published together with it in the manner set out in Article 5. "

The information required by Decree 254/16 is, in substance, the same as that required by the directive from which the decree itself originates. It should note that reading the first paragraph of Article 3; it is clear that the legislator grants the company

considerable discretion. If we read Article 3, it is clear that the reference principle is composed of two elements: necessity and relevance or materiality. This is imposed to ensure that the information provided is helpful to third parties outside the company. Materiality is a concept already commonly used by those who prepare financial information, auditors of financial reports, and users of such information. According to Article 2, 16, of the Financial Reporting Directive 2013/34/EU, the financial information is material when its omission or misstatement could reasonably be expected to influence the decisions made by users on the basis of the company's financial statements. The Assirevi (Italian Association of Auditors) document No. 226/2019 pointed out that " the statement concerning non-financial information must provide information, to the extent necessary to ensure the understanding of the company's activity, its performance, its results and the impact of the same produced, concerning the issues identified by Article 3 of Decree-Law 254/2016. Similar guidance can be found in auditing standards and, in addition to ISAE 3000 Revised (paragraphs 44/A94), in particular in ISA (Italy) 320, where it is stated that "errors, including omissions, are considered material if they could reasonably be expected, individually or in combination, to influence the economic decisions made by users based on the financial statements".

In the non-financial sphere, assessing the materiality of the information to be provided in the DNF presents undoubted peculiarities. It is necessary to consider that the information in question does not always imply the presence of numerical data, and the potential users of the DNF do not necessarily coincide with the potential users of the financial statements.

It can draw helpful hints for assessing the relevance of the information to be included in the DNF from the Communication.
In that document, the European Commission first clarified that, in preparing a DNF, companies (i) "are required to consider the information needs of all interested parties", including, "among others: investors, employees, consumers, suppliers, customers, local communities, public authorities, vulnerable groups, social partners and civil society" and (ii) "should provide relevant and useful information about/on their interactions with/on the way they address the information needs of interested parties" (see p. 9). In particular, it may consider several factors in assessing the relevance of information, including business model, strategy and critical risks, major industry issues, stakeholder interests and expectations, the impact of public activities and policies, and regulatory incentives.

Among the factors mentioned above, in the opinion of the European Commission, the impacts of a company's activities are a particularly significant aspect. As stated in the Communication, "impacts can be positive or negative, and relevant disclosures should address both in a clear and balanced manner" (see p. 5).

In addition, it should be considered that the materiality of the information must be assessed, on the one hand, in light of the specific characteristics of the company to which it refers and, on the other hand, taking into account the sector in which it operates16.

As clarified by the European Commission, in fact, "it is likely that companies.
As clarified by the European Commission, "companies in a given sector are likely to share similar environmental, social and governance challenges, for example under the resources they can rely on to produce goods and services or the impacts they can have on people, society the environment. Accordingly, it may be appropriate to directly compare relevant disclosures of non-financial information by companies in the same sector.

In the light of the above-mentioned peculiarities, the assessment of the relevance of non-financial information to be included in the the non-financial disclosure statement required by Legislative Decree 254/16 (after this DNF) (is undoubtedly complex and susceptible to be influenced by numerous subjective and objective factors.

The assessment in question will have to be reviewed regularly to ensure that the content of the DNF meets the requirements of Legislative Decree 254 / 201617".

To safeguard the company's privacy, the legislator, in point no. 8, provides that it may delete certain sensitive information from the statement to prevent the disclosure of such information from harming the company's management.

Unlike public interest entities, companies that must draw up financial statements following the Civil Code disclose information on the environment and sustainability based on Article 2428 of the Civil Code, which regulates the so-called management report. This document is not part of the financial statements, but its preparation is mandatory. Although the report does not form part of the financial statements, more and more weight is given to this statement, so much so that in various rulings, the

financial statements have been declared null and void due to the nullity of the report even if the latter does not form part of the financial statements.

The management report is divided into two parts:

A)The second part of the report is technical. It requires the disclosure of accounting information regarding the balance sheet data or, indirectly, the information derived from the balance sheet and profit and loss. In particular, in this part of the report, must provide the following information :

1) research and development activities;

2) the relationships with subsidiaries, associates, parent companies and companies subject to the control of these latter companies;

3) the number and nominal value of both the company's shares and the shares or quotas of parent companies held by the company, also through trust companies or intermediaries, with an indication of the corresponding portion of capital

4) the number and nominal value of both the company's shares and the shares or quotas of parent companies acquired or disposed of by the company during the financial year, including through trust companies or intermediaries, with an indication of the corresponding portion of capital, the consideration and the reasons for the purchases and disposals;

5) (.....)

6) the foreseeable development of operations;

6-bis) concerning the company's use of financial instruments and if relevant to the assessment of the financial position and results of operations for the year:

(a) the company's financial risk management objectives and policies, including its policy for hedging each significant type of forecasted transaction;

(b) the company's exposure to price, credit, liquidity, and cash flow risks.

7(...)

8)The report must also include a list of the company's branches.

B) the first part of Article 2428 of the Italian Civil Code requires a general indication of the following issues: "The financial statements must be accompanied by a report by the directors containing an accurate, balanced and comprehensive analysis of the company's situation and the trend and results of operations, as a whole and in the various sectors in which it has operated, including through subsidiaries, with particular regard to costs, revenues and investments, as well as a description of the principal risks and uncertainties to which the company is exposed.

The analysis referred to in the first subparagraph shall be consistent with the size and complexity of the company's business and shall contain, to the extent necessary for an understanding of the company's position and of the development and performance of its business, financial and, where appropriate, non-financial performance indicators relevant to the particular industry of the company, including information relating to environmental and employee matters. The analysis shall, where applicable, include references to and additional explanations of amounts reported in the financial statements."

As can be seen, the first part of the annual report requires, but leaves a great deal of freedom to the preparer, the disclosure of information concerning sustainability in the broad sense and environmental and personnel protection. However, the phrase "if appropriate...." introduces excessive discretion to the report's editor. This phrase can be interpreted either extensively or restrictively by the person drafting the management report, with the result that, when reading the reports of many companies, there is a tendency to provide minor and succinct non-financial information about the company.

The integration of Articles 9 and 41 of the Constitution will perhaps give impetus to the disclosure of non-financial information by companies not subject to Legislative Decree 254/2016. But only time will tell.

THE CONTROL AND AUDIT OF NON-FINANCIAL INFORMATION.

The audit of financial reporting and, consequently, of financial and income information has become part of every nation's accounting practice. The audit of financial and economic data is governed by auditing standards issued by the competent bodies that regulate such control of the data disclosed by companies in a particularly analytical manner. The audit varies depending on whether companies are listed or unlisted. Still, the basic principle remains that auditing the accounts is a fundamental step in ensuring that the information disclosed by companies is true and fair.

Non-financial information is also subject to audit. In particular, Article 3 of Legislative Decree 254/16, as already highlighted in the previous pages, specifies that "The person in charge of the statutory audit of the financial statements shall verify that the

directors have prepared the non-financial statement. The same person, or another person authorised to carry out the legal audit specifically designated, expresses, through a special report separate from the report referred to in Article 14 of Legislative Decree No. 39 of 27 January 2010, a statement regarding the conformity of the information provided concerning the requirements of this Legislative Decree and for the principles, methodologies and methods outlined in paragraph 3. It shall express the conclusions based on the knowledge and understanding that the entity in charge of carrying out the control activity on the non-financial statement has of the public interest entity, of the adequacy of the systems, processes and procedures used to prepare the non-financial statement. The report, dated and signed by the person designated for this purpose, is attached to the non-financial statement and published together with it in the manner outlined in Article 5. If the non-financial statement is contained in the management report under Article 5 (1) (a), the opinion referred to in Article 14 (2) (e) of Legislative Decree No. 39 of 27 January 2010 shall not include said statement, which shall remain the subject of the attestation obligation referred to in this paragraph.

In addition to this, also Regulation (EU) 18.6.2020 no. 852 (. EU 22.6.2020 no. L 198)Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework in favour of sustainable investments and amending Regulation (EU) 2019/2088, Art. 8 - Transparency of undertakings in non-financial statements, states that :

"Any undertaking required to disclose non-financial information following Article 19a or Article 29a of Directive 2013/34/EU shall include, in its non-financial statement or consolidated non-financial statement, information on how and to what extent the undertaking's activities are associated with economic activities that are considered environmentally sustainable following Articles 3 and 9 of this Regulation.
2. In particular, non-financial undertakings shall disclose the following
(a) the share of their turnover derived from products or services associated with economic activities considered as environmentally sustainable under Articles 3 and 9; and
(a) the share of their turnover from products or services associated with economic activities considered as environmentally sustainable by Articles 3 and 9; and (b) the percentage of their capital expenditure and the percentage of their operating cost related to assets or processes associated with economic activities considered as environmentally sustainable following Articles 3 and 9.
3. Where an undertaking publishes non-financial information within the meaning of Article 19a of Article 29a of Directive 2013/34/EU in a separate report following Article 19a(4) or Article 29a(4) of that Directive, the information referred to in paragraphs 1 and 2 of this Article shall be published in the separate report.
The Commission shall adopt a delegated act by Article 23 to supplement paragraphs 1 and 2 of this Article to specify the content and presentation of the information to be disclosed following those paragraphs, including the methodology to be used to comply with them, taking into account the specificities of financial and non-financial undertakings and the criteria for technical screening established under this Regulation. The Commission shall adopt that delegated act no later than 1 June 2021."

The issues analysed here are supplemented by the related EU Delegated Regulations 2021/2178 and 2021/2139.
However, the regulations mentioned above do not go into the details of the audit, limiting themselves to providing general principles of conduct.

On 4 February 2022, the Italian Association of Auditors ASSIREVI issued research paper no. 243, where various issues regarding the audit of non-financial information are addressed, in a particularly analytical manner, through integrations to document no. 226 of 2019, which concerned the auditor's report on the non-financial statement prepared according to Legislative Decree 254/2016 and Article 5 of the Consob Regulation adopted by resolution no. 20267 of January 2018, which states: "Article 5 (Report on the non-financial statement) 1. The appointed auditor shall issue a special report, addressed to the administrative body, which: (a) indicates the regulatory prerequisite under which the report is issued; (b) identifies the non-financial statement approved by the administrative body and audited; (c) indicates the methodologies and principles set out in the reporting standard used as a reference or in the stand-alone reporting methodology used by the administrative body in preparing the non-financial statement; (d) it shall contain a description of the scope of work performed and of the verification procedures put in place for the purpose of issuing the attestation; (e) it shall indicate the international standard, recognised by professional bodies and associations, used for the performance of the attestation engagement f) it contains a statement on the compliance with the principles on independence and other ethical principles established by the international codes recognised by professional bodies and associations, used for the performance of the attestation engagement; g) it expresses an attestation that, on the basis of

the work carried out, no elements have come to the attention of the designated auditor that would suggest that the non-financial statement has not been prepared, in all significant aspects, in accordance with the requirements of Articles 3 and 4 of the decree and with the reporting standard or self-reporting methodology used. 2. As an alternative to the provisions of paragraph 1 (g), the administrative body preparing the non-financial statement may request the appointed auditor to certify that, in the auditor's opinion, the non-financial statement or certain specific information contained therein has been prepared, in all material respects, following the requirements of Articles 3 and 4 of the decree and the reporting standard or self-reporting methodology used. 3. If the appointed auditor issues a qualified opinion, an adverse opinion or a statement of inability to issue an opinion, the report shall set out in detail the reasons for the conclusions".

"Regarding the principles to which the auditor must refer for the audit of non-financial information provided for by Decree 254/2016, the Assirevi document no. 226/2019 establishes that the audit of non-financial information must first take into account the standards of external Communication of non-financial information. In this regard, Assirevi document 226/2019 highlights that "II Legislative Decree 254/2016 provides that the DNF may be prepared using:

(i) "reporting standards", which are defined as "standards and guidelines issued by authoritative supranational, international or national bodies, of a public or private nature, functional, in whole or in part, to fulfil the non-financial reporting obligations provided for by this legislative decree and Directive 2014/95/EU" (art. 1, letter f), or
(ii) an "autonomous reporting methodology", defined as "the composite set, consisting of one or more reporting standards, as defined in/a letter f), and the additional principles, criteria and performance indicators, independently identified and supplementary to those provided for by the adopted reporting standards, which is functional to fulfil the non-financial reporting obligations provided for by this legislative decree and Directive 2014/95/EU of/the European Parliament and of/the Council of/ 22 October 2014" (Art. 1(g)).

Directive 2014/95/EU, in Recital 9, provides a (non-exhaustive) list of standards that can be used: "ii Eco-Management and Audit Scheme (EMAS), "ii World Compact (Global Compact) of/the United Nations, the Guiding Principles on Business and Human Rights of/the United Nations in implementation of/the "Protect, Respect and Remedy" Framework, the OECD Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000 standard, the International Labour Organisation's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Global Reporting Initiative or other recognised international standards.

The Communication reiterated what is stated in Recital 9 of the Directive, pointing out that some standards cover various sectors and thematic issues (horizontal standards); others are sectoral or specific to a thematic issue. Some focus exclusively on disclosing non-financial information, while others refer to transparency in a broader context.

In this regard, it should note that the only standards that can use independently to prepare the DNF are the so-called "reporting standards" (the main one being the Global Reporting Initiative), which are the only ones able to meet the non-financial disclosure requirements expressed by the Decree. Process standards (e.g. ISO 26000) or reference frameworks (e.g. Integrated Reporting Framework - IIRC) can only be used in addition to reporting standards.

In light of the above, the reference should be, alternatively
to the "Global Reporting Initiative Sustainability Reporting Standards" defined in 2016 by GRI - Global Reporting Initiative (after this "GRI Standards");

in the case of a GRI Referenced approach to the "Global Reporting Initiative Sustainability Reporting Standards" as defined in 2016 by GRI - Global Reporting Initiative ("GRI Standards");
to any other reporting standards or the stand-alone reporting methodology indicated in the "Methodological Note" paragraph of the DNF.

Consequently, in cases where an EIPR includes the DNF in a document prepared according to the IIRC framework, it is necessary to comply with the requirements of the Decree:
"- however, report the information required by Article 3 of the decree according to one of the reporting standards as the IIRC Framework is not a reporting standard;

- in the case of an integrated report included in the management report, provide disclosure of the information that constitutes the DNF (having through the expositive technique of incorporation by reference in the terms described by the Consob

Consultation Document of 21 July 2017) to make clear to the users of the DNF the data on which the auditor expresses the attestation required by Article 3, paragraph 10, of the Decree." To implement an excellent and complete non-financial data audit, Assirevi's document 226/2019 also highlights that "According to Article 3, paragraph 7, Legislative Decree 254/2016, "The responsibility for ensuring that the report is prepared and published following the provisions of this legislative decree lies with the directors of the public interest entity. In the performance of their duties, they shall act professionally and diligently".
As Assonime also pointed out in its Circular no. 13 of 12 June 2017, in the light of this provision, it is clear that the DNF 'is an act that falls within the exclusive competence of the directors who assume the paternity and responsibility for its' (see p. 37).
Consequently, it is also the task of the directors to define organisational structures suitable for achieving the strategic objectives pursued by the company in the socio-environmental field and to structure an internal control system that enables the effective identification and management of the risks that are important for the company, as well as the collection of non-financial information intended to be included in the DNF".
The Assirevi document cited above goes on to point out that " Art. 3, paragraph 7, Legislative Decree 254/2016, then provides that "the control body, as part of the performance of/functions assigned to it by the system, monitors compliance with the provisions set out in this decree and reports on it in the annual report to the shareholders' meeting".
It follows from this provision that the control tasks entrusted to the Board of Statutory Auditors on non-financial information fall within the scope of the supervisory functions assigned to it based on general principles (Article 2403 of the Italian Civil Code and Article 149 of the TUIF for companies with shares listed on Italian or European regulated markets). These supervisory functions, as we know, focus on:

1) Compliance with the law and the articles of association.
2) Compliance with the principles of proper administration.
3) The adequacy of the organisational, administrative and accounting system.

In light of the above, concerning non-financial information, the supervision of the board of statutory auditors should concern, in particular, the adequacy of (i) the organisational structures defined by the directors for the pursuit of the strategic objectives identified by the company in the social and environmental field, as well as (ii) the internal control system and the procedures implemented by the directors for risk management and for the collection of data to be included in the DNF .

In any case, as also clarified in Assonime Circular No. 13/2017, the supervisory body is required "to perform a supervisory role of a synthetic type on systems and processes, which also include non-financial reporting systems and processes, which does not have the objective of monitoring the company's financial position.

The purpose of this role is not to verify the correctness of the non-financial statement but rather to ensure compliance with the rules of proper administration introduced into administrative action by the laws under review.

The Assirevi, as mentioned above document concludes by pointing out that "the auditor of the financial statements or "any other specifically designated auditor" must express "a statement regarding the conformity of the information provided concerning the requirements of this legislative decree and for the principles, methods and procedures provided for in paragraph 3". This attestation is contained in a "specific report separate from that referred to in Article 14 of Legislative Decree No 39 of 27 January 2010".

This verification is carried out according to the procedures described in paragraph 6 below and concludes with the issue of a specific report.

"It is worth noting that the conclusions expressed by the auditor refer to the compliance of the information provided in the DNF with what is required by the regulations and the reporting standard chosen by the EIPR. The auditor's assessment is called to perform does not concern the company's behaviour concerning the issues covered by the DNF.

The control activity delegated to Consob by Legislative Decree 254/2016 is also oriented in this direction.
In the Explanatory Report to the Regulation, it specified that the Authority "is not entrusted with the task of sanctioning, in the continuous adversarial debate between companies and stakeholders, a generic 'corporate social responsibility, but rather with the task of verifying the completeness and consistency of non-financial information provided to the market".

Innovations On Sustainability and the Environment in the Italian Constitution. Non-Financial Information and the Audit of Documents Containing Such Disclosures

The Legislative Decree no. 254/2016 does not contain any audit regarding the timing of the DNF verifications requested to the auditor linked to the subject in charge of the compliance verification provided for by art. 3, paragraph 10, Legislative Decree no. 254/2016.

Concerning the verification requested of the independent auditor concerning the preparation of the DNF by the directors, since the independent auditor is called upon to acknowledge the results of the assurances of the DNF, the independent auditor is called upon to acknowledge the results of the verifications of the DNF.
The auditor is called upon to acknowledge the results of said verification in the audit opinion; the same must be
The auditor is called upon to acknowledge the verification results in the audit opinion, and it must complete the verification within the deadline for issuing the audit report.

Concerning the verification of compliance, it should first note that, according to art. 5 Legislative Decree 254/2016, the DNF may:
(i) be contained in the management report of which it constitutes a specific section as such marked.
(ii) constitute a separate report, without prejudice to the obligation to be marked in any case by a similar wording.

The Legislative Decree 254/2016 does not expressly provide for the passage of the DNF to the shareholders' meeting. However, from the interpretative indication contained in the Consob Consultation Document it can deduce that the DNF is, in any case, the subject of the pre-meeting information related to the resolution for the approval of the financial statements even if the shareholders do not have the power to vote on it.
In the case of DNF contained in the management report, the DNF will obviously follow the regime of making available to the board of statutory auditors and the auditor and the regime of publication of the management report provided by art. 154-ter TUIF for listed issuers and by art. 2429 cod. Civ. for other companies not falling within the category of listed issuers.

In the case of a DNF constituting a separate report, the publication regime is clarified by art. 2 of the DNF.
explained by Article 2 of the Regulation, according to which:

(i) listed issuers shall publish the separate report "together with the annual financial report according to Article 154-ter" of the Consolidated Law on Finance;
(ii) listed issuers shall "file the separate report at the company's registered office together with the management report within the terms provided for by Article 2429, paragraph 3, of the Italian Civil Code";
(iii) unlisted and non-listed entities shall "file a separate report at the registered office together with the management report within the time limits outlined in Article 2429, paragraph 3, of the Italian Civil Code".

According to Article 5, paragraph 1, of Legislative Decree 254/2016, the DNF constituting a separate report "shall be made available to the contracting body and to the person in charge of performing the tasks referred to in Article 3, paragraph 10 within the same terms provided for the submission of the draft financial statements".

"In addition to what has been highlighted above, it is recalled that Article 3, paragraph 10, Legislative Decree 254/2016 provides that the report issued by the entity in charge of the DNF compliance verification "shall be attached to the non-financial statement and published together with it".

In light of the regulatory framework illustrated above, it is nt1ene that the verification of compliance provided for by Article 3, paragraph 10, of Legislative Decree 254/2016 must be completed within the timeframe provided for the publication of the management report or the separate report, i.e. 21 days before the shareholders' meeting called to approve the annual financial report in the case of listed companies or 15 days before the same meeting in the case of unlisted companies.

Notwithstanding the above, it is, however, deemed appropriate that the statutory auditor and the entity in charge of the compliance audit receive, from the company, before issuing their respective reports, information on the results of the audit activities carried out by each of them concerning aspects that may affect their conclusions. Specific certification in this regard is issued in the letter attached under 3 and 4.

Consequently, it is deemed that also the dates of issuance of the audit report on the financial statements and the report of the entity in charge of the compliance assessment should be concurrent or, at least, close to each other".

Concerning the professional standards of reference for the development of the audit of non-financial information provided for by Decree 254/2016, Assirevi points out that the basic principle to which it is necessary to refer is the International Standard Assurance Engagement ISAE 3000 Revised, Assurance, Engagement Other than Audits or Reviewers of Historical Financial Information issued by IAASB (Internationa Auditing and Assurance Standard Board, ISAE 3000.

ISAE 3000 provides for two forms of assurance (reasonable assurance and limited assurance), from which two different conclusions are derived:

(i) in the case of a reasonable assurance engagement, a statement as follows: "In our opinion, the information has been prepared, in all material respects, following....";
(ii) in the case of a limited assurance engagement, a statement is as follows: "Based on our work, nothing has come to the attention that causes us to believe that the disclosure has not been prepared in all material respects following...".

The main difference between the two approaches is identifiable both in the type of checks that are carried out (e.g. understanding and verification of processes, analysis of the internal control system, detailed checks, etc.), and in the extension and depth of such procedures and the breadth of such verification activities (less in the limited assurance form than in the reasonable one), with consequent differences in the time required to carry out the checks in the two cases (less in the limited one).
Article 5 of the Regulation defines the contents of the audit report in line with the provisions of the ISAE as mentioned above 3000.

In particular, paragraph 1 of Article 5 of the Regulation states that the audit report shall conclude with "an attestation that, based on the work performed, no elements have come to the attention of the designated auditor that would suggest that the non-financial statement has not been prepared, in all significant aspects, under the requirements of Articles 3 and 4 of the Decree and the reporting standard or the independent reporting methodology used" ("limited assurance").

In any case, to allow for the broadest possible range of possibilities regarding the verification of the DNF, Article 5(2) of the RegulationRegulation provides that the administrative body of the EIPR may "request the appointed auditor to certify that, in the auditor's opinion, the non-financial statement or certain specific information contained therein has been prepared, in all material respects, following the requirements of Articles 3 and 4 of the Decree and with the reporting standard or autonomous reporting methodology used".

Reporting standard or the stand-alone reporting methodology used'. Therefore, if the companies so request, the auditor's conclusions may also be expressed in the form of a reasonable assurance on the DNF as a whole or in a "mixed" form, so to speak (limited assurance on the DNF as a whole and reasonable assurance on some information contained therein).
Consob, in its Explanatory Report to the RegulationRegulation, has specified that the flexible model for the DNF report provided for in Article 5 is part of the "measures aimed at allowing market operators to gradually approach the new obligations and to gain the necessary experience over time so that the systems put in place by companies and external controls can evolve towards possibly more complex forms".

It should note that, to date, the most common form of assurance for sustainability reports/CSR Reports in international practice is limited assurance.
Moreover, it should considere that the level of assurance that the professional provides with the performance of a "limited" audit is in any case adequate to increase in a not insignificant way the confidence of potential users in the information being audited".

In February 2022, Assirevi supplemented its 2019 research paper 226 above, highlighting a number of additions to ensure that audit certification complied with Article 3 of Legislative Decree 254/16 and new regulations issued by the EU. In particular, the Assirevi research paper No. 243 of February 2022 was issued to introduce in the auditor's report of non-financial information what is provided by Art. 8 of Regulation (EU) 2020/852 of 18 June 2020 (c. so-called "Taxonomy Regulation") and the Delegated Regulations (EU) 2021/2178 (the "Delegated Regulation ex art. 8") and (EU) 2021/2139 (the "Delegated Regulation ex art. 0 and 11" and together with the Delegated Regulation ex art. 8, the "Taxonomy Delegated Regulations").

Innovations On Sustainability and the Environment in the Italian Constitution. Non-Financial Information and the Audit of Documents Containing Such Disclosures

The new Assirevi document No. 243 of 2022 sets out, in essence, examples of additions to be made to the auditor's report of the Statement of Non-Financial Information. In addition, the document indicated some suggested additions to the text of the attestation letter issued by the directors of the audited company.

It should emphasise that, apart from the additions highlighted in Assirevi Document No. 243, every indication in Document No. 226 of 2019 remains valid.

In the Assirevi document no. 243/2022, it is stated that "The Taxonomy Regulation issued on 18 June 2020 is one of the initiatives adopted within the EU to facilitate the transition towards sustainable finance.
The objective of the European RegulationRegulation is the implementation of a taxonomy aimed at
to define the conditions under which economic activities can be considered environmentally sustainable and stimulate the extension of the mandatory disclosure requirements for the preparation of the DNF.

According to Art. 8 of the Taxonomy Regulation, any company required to publish a DNF must include in this document, as of 1 January 2022 (i.e. concerning the information relating to the 2021 reporting period), specific information on how and to what extent the company's activities are associated with economic activities considered "environmentally sustainable" following articles 33 and 94 of the same RegulationRegulation.

In this regard, Article 10 of the Delegated Regulation ex-art. 8 provides that, concerning the reporting period 2021, the obliged companies shall report only the proportion of eligible and non-eligible economic activities to the EU taxonomy ("Eligible Activity")" According to Article 1 of the EU Regulation 852 of 2020, an aligned activity is defined as an economic activity that meets the requirements of Article 3 of the Regulation which is reproduced on the following page. While the same Article 1 defines an eligible activity as an economic activity described in the delegated acts adopted according to Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852, regardless of whether such economic activity meets any or all of the technical screening criteria set out in those delegated acts.

Conversely, the activity is ineligible when the economic activity is not described in the delegated acts adopted according to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2) and Article 15(2) of Regulation (EU) 2020/852".

After that, as of the reporting period 2022, non-financial corporations (and, as of the reporting period 2023, financial corporations) will have to report activities aligned with the EU taxonomy ("Aligned Activity")."

It is recalled that, according to Art. 3 of the EU Regulation 2020/ 852, it is possible to define an eco-friendly economic activity only when the activity simultaneously meets the following requirements:
Article 9 of the Regulation as mentioned above identifies the following environmental objectives:
(v) Climate change mitigation
(vi) Climate change adaptation
(vii) Sustainable use and protection of water and marine resources
(viii) Transition towards a circular economy
(ix) Pollution prevention and control
(x) Protection and restoration of biodiversity and ecosystems.
The technical screening criteria to define whether an activity contributes to an environmental objective does not cause significant damage to it are left to specific delegated acts adopted by the EU Commission. The delegated act relates to the first two objectives and the Delegated Regulation ex art. 10 and 11 on climate aspects.

The Assirevi document 243 of 2022, continuing the analysis of the integrations to be made to the document 127 issued in 2019 underlines that "Article 8 of the Taxonomy Regulation, as mentioned above, requires the inclusion in the DNF of specific information on the company's activities associated with economic activities considered "environmentally sustainable" according to Articles 3 and 9 of the same Regulation, but does not provide for the assurance by a statutory auditor of such information.

"As is well known, on the one hand, Directive (EU) 2013/34 (the "Accounting Directive") provides that "The Member States shall ensure that statutory auditors or audit firms canvass/report the submission of the non-financial statement" (see para. 5, Art. 19-bis).

On the other hand, Recital 16 of Directive 2014/95/EU, which supplemented the Accounting Directive, introduces the possibility (and not the obligation) for the Member States to subject the non-financial information referred to in Articles 19-bis and 29-bis to assurance by a statutory auditor. Consequently, when it transposed the Accounting Directive in Italy, Article 3, paragraph 10 of Legislative Decree no. 254/2016 was introduced, which requires the person in charge of the statutory audit of the financial statements to verify that the DNF has been prepared-In addition, with the same provision, the Italian legislator decided to include the audit in the national regulatory framework, left to the discretion of the Member States, of non-financial information according to Articles 19-bis and 29-bis to be audited by the statutory auditor. In this regard, Article 3, paragraph 10 of Legislative Decree 254/2016 provides that the person in charge of the statutory audit of the financial statements (or another person authorised to carry out the statutory audit designated explicitly for this task) expresses an attestation as to the conformity of the non-financial information provided concerning the rules of Legislative Decree 254/2016 itself and concerning the methodologies and principles provided by the reporting standards used7. The tasks of the auditor and the content of the report on the non-financial statement issued by the auditor are also more the auditor's duties and the report's content on the non-financial statement issued by the auditor are further detailed in Articles 4 and 5 of the Consob Regulation.

From the framework described above, it emerges that, at present, European legislation provides that the auditor of the financial statements is only obliged to verify the existence of the DNF. On the other hand, the European and national regulatory context now the auditor's assurance on the DNF is an activity required exclusively by the Italian On the contrary, the European and national regulatory context illustrated above leads us to note that the auditor's assurance on the DNF is an activity required only by the Italian legislator and does not derive from the European regulatory framework of reference currently in force, where there is no obligation for the auditor to perform in this sense.

The same issues are expressly addressed by the European Commission's Q&A clarifying certain interpretative aspects related to Article 8 of the Taxonomy Regulation published in December 2021 (the "EU Commission FAQs"). In particular, the EU Commission's FAQ no. 7 specifies, in response to the question: "Should Taxonomy eligibility reporting as part of the Disclosures Delegated Act be externally assured?", che l'Art. 8 del Regolamento Tassonomia "clarifies that 'any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable [...)'. The non-financial statements are subject to an existence check by the statutory auditor in accordance with the Non-Financial Reporting Directive (NFRD) (EU) 2014/95. There is no requirement in Union Law to verify the content of the disclosures".

Therefore, it emerges from the above that the auditor's assurance activity on the DNF is required only by the national legislation and not by the European legislation. Therefore it cannot extend it to the disclosure according to Article 8 of the Taxonomy Regulation, which, as explained above, comes from a Community act that does not expressly provide for any related obligation of the auditor.

As also pointed out by Assonime in its Circular n. As Assonime also pointed out in Circular no. 1 of 9 January 2022, the European regulation on the taxonomy of eco-sustainable activities: disclosure obligations for companies, in fact, "the introduction of a compliance check is a discretionary choice of the national legislator of an exceptional nature, it appears difficult to be susceptible to an extensive interpretation that goes beyond the literal fact since the directive does not expressly require it nor is it logically indispensable that any compliance check necessarily includes all the information in the declaration of non-financial information, (DNF)". It also follows that an extension of the perimeter of the information subject to the auditor's assurance activity would require a specific audit coming from an adequate primary or delegated regulatory source.

In conclusion, in light of the above, and the absence of changes to the national regulatory framework of reference, found in Legislative Decree 254/2016 and in the related regulatory provisions of the Supervisory Authority, the information that Article 8 of the Taxonomy Regulation requires to be included in the DNF starting from January 2022 would be excluded from the auditor's verification pursuant to Article 3, paragraph 10, of Legislative Decree 254/2016 and Article 5 of the Consob Regulation.

Given that, as indicated in paragraph 3 of this document, assurance requirements are not considered applicable to the information required by Article 8 of the Taxonomy Regulation, their inclusion in the DNF requires the auditor to treat

them as "other information" as defined by ISAE 3000R. To this end, the auditor shall use their diligence and obtain an understanding of the DNF and the company's business to identify any significant inconsistencies of the information according to Article 8 of the Taxonomy Regulation with the data reported in the DNF based on the requirements of the Taxonomy Regulation reported in the DNF according to the requirements of Legislative Decree 254/2016.

In this regard, the guidance provided by paragraph 62 of the standard is considered relevant:
- the professional must read such other information to identify any significant inconsistencies with/to the subject information
- must identify a significant inconsistency between the other information and the subject matter information or the assurance report; or
- he becomes aware of a significant misrepresentation of facts in the other information not related to matters in the subject matter information or the assurance report, he shall discuss the issue with the appropriate party, or parties, taking further action as appropriate."

To identify the information required by art. 8 of the Taxonomy Regulation in the context of the DNF and to allow users to understand the data on which the DNF is based, the DNF should be based on the information required by the DNF.
To identify the information required by art. 8 of the Taxonomy Regulation in the DNF and to allow users to understand the data on which the auditor expresses assurance under art. 3, paragraph 10, of the Decree, it is essential that the information in question is clearly distinguished from other information in the DNF. Therefore, the auditor must ensure that the data is reported in a specific paragraph of the DNF.

Considering the above and following the indications in the ISA 3000 R guidance, the auditor's report must be separate from the other information present in the DNF.
The auditor's report will have to integrate with the specification that the clarification that the assurance activity carried out has excluded the information presented by the directors in the DNF report under art. 8 of the Taxonomy Regulation. In particular, assuming, as mentioned above, that the data is clearly and separately identifiable, the opening paragraph of the auditor's report and the one relating to the conclusions should be integrated as follows:

"Integration suggested by Assirevi:
According to article 3, paragraph 10, of/ Legislative Decree no. 254 of 30 December 2016 (in the future the "Decree") and article 5 of/ CONSOB Regulation no. 20267/2018, we have been engaged to carry out a limited assurance engagement of the [non-financial consolidated] statement of ABC S.p.A. [, and on control,/ate (in the future the "Group")] for the year ended [day month year] prepared according to article 4 of the Decree. [and on control/ate (starting now ii "Group")I for the year ended [day month year) prepared according to art. 4 of the Decree, [if applicable: presented in the specific section of/the Report on Operations and approved by the Board of Directors on (day month year of the statement of non-financial information.")

Concerning the letter of attestation, Assirevi, with document 243 of 2022, indicates the following additions as appropriate:
The purpose of the assignment given to you is to issue a report on the conformity of the
The assignment's purpose is to issue a report on the conformity of the information provided concerning what is required by the Decree and for the principles, methods and procedures provided for in paragraph 3 of the Decree. We are aware that the information under Article 8 of Regulation (EU) 2020/852 of 18 June 2020 (the "Taxonomy Regulation") is excluded from the scope of your activity and is therefore not subject to your limited review. It is our responsibility to prepare the DNF under the requirements of articles 3 and 4 of the Decree and to [adapt in the specific circumstances by inserting the reporting standard or autonomous reporting methodology indicated in the paragraph "Methodological note" of the DNF] identified by us as [reporting standard/independent reporting methodology] according to the Decree. We also confirm that we are responsible for the inclusion in the DNF of the information required by art. 8 of the Taxonomy Regulation its compliance with art requirements. 8 of the Taxonomy Regulation and the Delegated Regulations (EU) 2021/2178 (ii "Delegated Regulation ex art. 8") and (EU) 2021/2139 (ii "Delegated Regulation ex art. 10 and 11" and together with the Delegated Regulation ex art. 8, the "Taxonomy Delegated Regulations") as well as their consistency with the other information included in the DNF ."

At the end of this analysis, it must remembere that Assirevi's research documents, although not constituting laws of the Italian State, are of great scientific and operational relevance. Therefore, all Italian auditors should align themselves with the suggestions offered in the research papers issued by this association.

Innovations On Sustainability and the Environment in the Italian Constitution. Non-Financial Information and the Audit of Documents Containing Such Disclosures

Since the audit of non-financial data concerns all countries, the writer believes that it is also helpful for scholars from countries other than Italy to read the suggestions on the audit of non-financial information provided by Assirevi as they apply to non-Italian countries.

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