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Comparative Analysis Of The Evaluation Indian ESG Disclosure Framework With The New Adopted ESG Reporting Standards In The European Union

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Abstract

The study compares India and the EU's ESG disclosure systems' effectiveness, scope, and international standards. The 2011 National Voluntary Guidelines (NVGs) and SEBI's 2023 Business Responsibility and Sustainability Reporting (BRSR) framework have shaped ESG reporting in India. For the top 1,000 listed corporations, BRSR prioritizes ESG disclosure based on GRI and SDG standards.ESG reporting and sustainable finance laws are driven by the EU. The SFDR, EU Taxonomy Regulation, and CSRD establish comprehensive ESG disclosure criteria for financial market participants and big businesses. ESG data must be transparent and comparable in the EU through reporting, protocols, and enforcement. This comparison examines India and EU ESG disclosure laws, breadth, reporting, standards, and enforcement. GRI and other international standards are implemented, but regulations, enforcement, and reporting vary. The study highlights linking ESG reporting frameworks to global best practises to increase company sustainability transparency, accountability, and stakeholder confidence. India should adopt mandatory disclosure requirements like the EU's CSRD to improve ESG reporting transparency and comparability.

Keywords: Environment, Governance, Social, Disclosure, Framework

Introduction

ESG or Environmental, Social, and Governance considerations are essential to contemporary corporate governance. It promotes long-term value generation, sustainability, and moral behaviour. Incorporation of these ESG principles by companies can improve risk management, draw in ethical investors, strengthen their brand's reputation, and match their business plans with the demands of the community. It fosters purpose-driven, resilient enterprises in the fast-paced world of today. In recent years, global business has prioritized Environmental, Social, and Governance (ESG) factors. Sustainable practices are valued by corporations globally, thus legal frameworks and reporting standards have changed. This has increased interest in comparing and assessing ESG disclosure frameworks to determine their effectiveness and impact on organizations and stakeholders. This comparative analysis evaluates the Indian ESG disclosure system and its conformity with the new EU ESG reporting guidelines. India and the EU have made significant progress in integrating ESG elements into corporate reporting, using different methods. This study compares different frameworks.

Development of ESG In India

In India, the concept of ESG is not regulated by any specific legislation, but there are other legislation such as the Companies Act, 2013, SEBI, 1992 and the SEBI LODR Regulation which look into the matters of ESG. ESG started evolving in 2011 in India, when the National Voluntary Guideline on Social, Environmental and Economic Responsibilities of Business or the NVGs were published by the Ministry of Corporate Affairs in July, 2011[1]. These guidelines provided the companies with the idea of what are the essentials of ethical business behaviour. The National Voluntary Guidelines was a refined version of the Corporate Social Responsibility Voluntary Guidelines 2009[2]. Thereafter a year later, in 2012 the Securities Exchange Board of India (SEBI) introduced the Business Responsibility Report[3] or the BRR requirement, the object of the BRR requirements was that all the responsible business shall disclosure all necessary information under the National Voluntary Guidelines provided by the Ministry of Corporate Affairs. These guidelines were further influenced by the global trends such aa the Sustainable Development Goals(SDG) in 2018, the SDGs were coined in the Paris Agreement in 2015. These new guidelines also known as the 'National Guidelines on Responsible Business Conduct' (NGRBC)[4] were released in 2019 after deliberation with the stakeholders. The goal of the NGRBC is to assist businesses in embracing the idea of ethical behaviour that goes beyond mere regulatory compliance.

In order to finalize the Business Responsibility Reporting formats for both listed and unlisted companies, a Committee on Business Responsibility was established. This committee's report suggested updating BRR to BRSR. SEBI announced the BRSR format based on the NGRBC and the findings of the Committee on Business Responsibility Reporting. For the top 1000 listed businesses in India (by market capitalization), the BRSR framework required disclosures for FY 2022–2023; however, for FY 2021–2022 these disclosures were optional.[5]

Additionally, SEBI has unveiled the "BRSR Lite Framework" for unlisted enterprises, which addresses all of the fundamentals of ESG reporting for all types of companies operating in the nation. It is anticipated that unlisted firms above a certain turnover or paid-up capital threshold may be subject to an extension of the reporting requirement by the Ministry of Corporate Affairs. Additionally, the Committee suggests that smaller unlisted businesses under this threshold may initially choose to voluntarily adopt a Lite version of the format. A new legislative framework called the BRSR Core framework aims to improve the ESG disclosures made by the top 1,000 listed companies in India. It is a part of the larger Business Responsibility and Sustainability Reporting (BRSR) framework that was implemented by the Securities and Exchange Board of India (SEBI) on March 29, 2023. SEBI launched the BRSR framework in May 2021. The requirements for BRSR Core ESG disclosures for value chain, as well as the requirements for assurance, were outlined in the Gazetted notification that was received on July 12, 2023. It has been announced that listed firms must henceforth perform Reasonable Assurance of BRSR Core. Of these, 150 leading corporations will do so in FY 23–24, 250 in FY 24–25, 500 in FY 25–26, and 1000 in FY 26–27.[6]

Ten Point Charter of ESG in India

A Ten Point Charter for Business was proposed in May 2007 by the then-prime minister of India, Shri Manmohan Singh. It covered the following topics: responsible consumption, socially conscious media and advertising, investments in communities, ethical business practices, ethical practices in all business dealings, investments in environmentally friendly practices and technology, and inclusive employment and humane treatment of workers. This was a reaction to revelations in the media and by civil society organizations of high-profile incidents of companies breaking social, environmental, and economic laws, and of the detrimental effects that these violations had on many stakeholders as well as on the economy. Simultaneously,

[1] National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business, Ministry of Corporate Affairs, (Mar. 17,2024) https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf

[2] CSR Voluntary Guidelines, 2009, Ministry of Corporate Affairs,(Mar.17, 2024) https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf

[3] Business Responsibility Reports, Circular August. 2012, Securities and Exchange Board of India

[4] National Guidelines on Responsible Business Conduct (NGRBC), Ministry of Corporate Affairs, Government og India.

[5] Guide to ESG in India, Taxmann, (Mar. 17, 2024) https://www.taxmann.com/post/blog/guide-to-esg-in-india/

[6] Ibid.

businesses have to actively and positively support the national objectives of sustainable development and inclusive growth.[7]

2009 Voluntary Corporate Social Responsibility Guidelines

The optional Corporate Social Responsibility Guidelines, published by the Ministry of Corporate Affairs in 2009, addressed every concern raised in the Ten Points Charter and remained pertinent. The guideline states in its preamble that the 21st century is marked by previously unheard-of opportunities and problems brought about by globalization, such as the need for equitable growth and the urgency of climate change. There are six main components to the guidelines:

- Consider all parties involved.
- Moral business conduct
- Respect for the Welfare and Rights of Workers
- Human rights respect
- Environmental Respect
- Social and Inclusive Development Activities.[8]

The Ministry of Corporate Affairs had the Indian Institute of Corporate Affairs (IICA) 'review and elaborate' the Guidelines based on stakeholder comments for a more complete guideline. The 2009 multi-stakeholder Guidelines Drafting Committee (GDC) has the following mandate:

- To improve business performance, produce a draft framework guideline for corporate social and environmental obligations that firms can voluntary embrace and apply to all sizes of businesses.
- To ensure inclusive growth and sustainability in the frameworks

The GDC reviewed major international and national business responsibility and sustainability resources, including i) the ISO 26000 Corporate Social Responsibility Guideline, which is voluntary, holistic, and certifiable, ii) UN-sponsored voluntary enterprise codes like the Global Compact promote responsible business, iii)State-backed initiatives like the OECD Guidelines for Multinational Enterprises help multinational corporations practice ethical business, iv) Firms use the Global Reporting Initiative for complete voluntary disclosure and reporting, v)The Bureau of Indian Standards (BIS) also issues IS 16000 for household workplaces and vi)lastly, the state-driven Department of Public firms' CSR & (Community Development) Guidelines control public sector firms' community development operations.[9]

2011 National Voluntary Guidelines.(NVGs)

The 2011 NVGs was a refined version of the 2009 Voluntary CSR guidelines. The NVGs consist of nine principles which are interrelated to each other. The NVGs address Environmental, Social and Governance matters.

<u>Environment</u>

Principles 2 and **6** deal with the environment, where P2 says that the good and services that the provided by a business shall be sustainable throughout their life cycle; and P 6 states that a business shall, protect preserve and respect the environment also the business have to make efforts to restore the environment.

<u>Social</u>

Principles 3,4,5,8 and **9** deals with Social aspect, where P3 states that the company shall respect and promote the well-being of the employees, P4 states that the company shall respect the interests of its stakeholders, P5 states that the company shall always respect, comply and promote human rights, P8 states that the company shall give importance to inclusive growth and equitable developments, and finally P9 states that the company shall be responsible for customer engagement and value creation in a responsible manner.

<u>Governance</u>

Principles 1 and **7** deal with governance, where P 1 deals with how a business shall be ethical, transparent and accountable; and P 7 deals with how a business, while influencing public policy or regulatory policy, shall do it in a responsible manner.

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[7] IANS, Manmohan Singh's 10-point social charter for India Inc, TwoCircles.net, (Mar.17, 2024) https://twocircles.net/2007may24/manmohan-singhs-10-point-social-charter-india-inc.html

[8] *Supra Note 2*

[9] *Supra Note 5*

Business Responsibility Reporting (BRR)

The SEBI in the year 2012 introduced the Business Responsibility Reporting (BRR). The 2012 Annual Reports for India's top 100 listed Companies by market capitalization included Business Responsibility Reports (BRRs). The BRR was influenced by the National Voluntary Guidelines (NVGs) established by the Ministry of Corporate Affairs. The adoption of the 2009 Corporate Voluntary Guidelines and the subsequent ratification of the UN Guiding Principles on Business & Human Rights by India have had a significant impact on shaping Business Responsibility Reporting in the country. The Committee on Business Responsibility Reporting provides two options for disclosure: a comprehensive format and a simplified version that shares a listed company's responsible business practices with all stakeholders. This study is relevant to manufacturing, service, and other companies. The report is of utmost importance as these companies have received public financing, have a public interest, and are required to make extensive disclosures.[10]

Introduction of Companies Act, 2013 repealing the 1956 Act

The Companies Act, 2013 implemented one of the initial ESG disclosure requirements for companies operating in India. According to the new legislation, companies are required to include a report by their Board of Directors on conservation of energy, along with their annual financial statement, as stated in Section 134(m).The requirement is further explained in Rule8(3)(A) of the Companies (Accounts) Rules, 2014, which states that the board must provide information about energy conservation. Also, the board's responsibility towards ESG is implicitly outlined in the provisions of the Companies Act. For example, Section 166(2) mandates that directors act in good faith to promote the company's objectives for the benefit of its members as a whole, and in the best interests of the company, its employees, shareholders, the community, and the environment. Section 166(3) further requires directors to exercise their duties with care, skill, and diligence, and to make independent judgments. The code for independent directors, as outlined in Schedule IV of the Companies

Furthermore, it is a legal requirement for companies to incorporate disclosures regarding opportunities, threats, risks, and concerns in their annual reports, as outlined in Regulation 34(3) of the SEBI (LODR) 2015. However, the disclosure requirements do not inquire about the specific metrics and processes used by companies to identify these opportunities or risks, nor do they require companies to track their progress over time.

Introduction of National Guidelines on Responsible Business Conduct (NGRBC)

The Government of India introduced the National Voluntary Guidelines on Economic, Social, and Environmental Responsibilities of Business in 2007, with subsequent revisions in 2009 and 2011. A new modification was issued as the National Guidelines on Responsible Business Conduct of Business, substituting the previous guidelines.

Here are nine principles to consider when making performance disclosures:

a) Conduct that is morally upright, open, and responsible
b) Deliver goods and services in a manner that is both environmentally responsible and prioritizes safety.
c) Ensure the welfare of all employees, including those throughout the value chain
d) Uphold the interests of all shareholders
e) Advocate for the protection of human rights
f) Preserve and rehabilitate the environment
g) Open and honest involvement in public policy
h) Promoting fair and balanced development for all
i) Ensure responsible provision of value to their consumers[11]

Undoubtedly, NGRBC offers a comprehensive reporting framework, but its purpose extends beyond that. NGRBC provides a comprehensive framework for businesses to adopt responsible business conduct. The NGRBC can be utilized by businesses of all types, regardless of their ownership, size, sector, structure, or location. All businesses investing or operating in India, including foreign multinational corporations (MNCs), are expected to adhere to these guidelines. Similarly, the NGRBC offers a valuable framework for Indian MNCs to navigate their international operations, while also ensuring compliance with relevant local standards and regulations regarding ethical business practices.

[10] *Supra Note 3*
[11] National Guidelines on Responsible Business Conduct, Ministry of Corporate Affairs, (Mar. 17, 2024) https://www.mca.gov.in/Ministry/pdf/NationalGuildeline_15032019.pdf

Given the current legal landscape, the nine principles of NVGs have undergone a few modifications to reflect important concepts such as sustainability, integrity, and respect in NGRBCs. This emphasizes the dedication of MCA to the progress of RBC. Although the updated NGRBC initially had 48 Core Elements, it has now been revised to include 53 Core Elements.[12]

Introduction of the Business Responsibility and Sustainability Reporting Guidelines

In order to enhance the ESG disclosure regime in India, SEBI made changes to Regulation 34(2)(f) of the LODR Regulations to implement the BRSR framework in May 2021.. This will replace the current Business Responsibility Report ("BRR"). BRSR adheres to nine principles of National Guidelines for Responsible Business Conduct ("NGBRC")[9] and top 1,000 listed companies will be required to disclose ESG-related information on an annual basis starting from the financial year 2022-23.[13]

In addition to implementing a fairly comprehensive disclosure framework, BRSR also encompasses the following elements, with the goal of improving ESG compliant business practices in India: Applying the NGRBC principles to tackle ESG-related concerns; In addition to implementing a fairly comprehensive disclosure framework, BRSR also encompasses the following elements, with the goal of improving ESG compliant business practices in India:
Revealing the sufficient policies and mechanisms that a company implements to maintain ESG compliance. BRSR places significant importance on measurable metrics to ensure consistent comparison across different sectors, companies, and timeframes. Improved transparency regarding climate and social issues; Separation of disclosures into essential and leadership indicators, with the former being a mandatory requirement. The leadership indicators, among other things, highlight the importance of disclosing information about the value chain of eligible entities. BRSR provides an opportunity for organizations that are already publishing sustainability reports under other internationally recognised frameworks to collaborate.

ESG Disclosure in Europe (European Union)

Here we are going to discuss on the ESG disclosure frameworks in the European Union. EU is known to be the leader in implementing Sustainability regulations around the world, and other nations follow the rules laid by the EU. We will be analysing the current approach to sustainability disclosure regulations, also we will be looking into an overview of recent and anticipated future initiatives.

The ESG pathway in EU- SFDR and NFRD to CSRD

The EU's Sustainable Finance Disclosure Regulation (SFDR) has the goal to enhance transparency regarding sustainable investment products, combat greenwashing (greenwashing is a concept where false or misleading claims are made about a product or a service having environmental benefits[14]), and boost investor confidence in sustainability claims made by asset managers, pension funds, and insurance firms, which fall under the broader SFDR definition of financial market participants (FMPs)[15]. It enforces extensive ESG disclosure obligations that encompass a wide array of metrics at both the entity and product level. The primary provisions (referred to as Level 1) of the SFDR have been in effect since March 2021.

An official regulation, which includes detailed standards for the content, methodology, and presentation of sustainability information to be disclosed by FMPs under the SFDR, was published in July 2022 in the Official Journal[16] of the EU after being carefully reviewed by the European Parliament and the European Council[17]. Starting from January 1, 2023, these new regulations will be in effect. As part of their obligations, FMPs that take into account the negative effects of their investment decisions on sustainability factors must disclose this information using a designated reporting template by June 30th annually (with the initial report expected in 2023).

The EU Taxonomy Regulation, which came into effect in January 2022, establishes a comprehensive classification system across the European Union. Its purpose is to offer businesses and investors a shared framework to assess the environmental sustainability of economic activities.[18] If an investment product falls under Article 8 (referred to as 'light green' funds) or Article 9 ('dark green' funds - please refer to Key Concepts

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[12] *Supra Note 5*
[13] SEBI Circular: SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122
[14] What is Greenwashing?, NRDC, (Mar.19, 2024) https://www.nrdc.org/stories/what-greenwashing#:~:text=What%20does%20greenwashing%20mean%3F,of%20a%20product%20or%20practice.
[15] REGULATION (EU) 2019/2088 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
[16] REGULATION (EU) 2022/1288 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
[17] Lewis Davison & al., ESG: EU Regulatory Change and its implications, Harvard Law School Forum on Corporate Governace, (Mar.19, 2024) https://corpgov.law.harvard.edu/2023/02/18/esg-eu-regulatory-change-and-its-implications/#2
[18] REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

for more information) of SFDR, the FMP is required to disclose the level of alignment between the investments in this product and the EU Taxonomy Regulation. This information should be presented graphically in the SFDR RTS disclosure templates. Starting January 1, 2023, there will be an inclusion of the first two (of six) EU Taxonomy environmental objectives. The remaining four objectives will be implemented at a later date.

In addition to regulations focused on FMPs, the EU Commission is broadening its ESG initiatives to encompass corporations. An important initiative is the Corporate Sustainability Reporting Directive (CSRD), which was introduced with the aim to amend the existing Non-Financial Reporting Directive (NFRD) and ensure that relevant entities provide consistent and comparable sustainability information[19]. The final text of CSRD has been approved by both the European Council and European Parliament, and it is expected to be published in the Official Journal of the EU soon. The implementation will occur in multiple stages, specifically on January 1 of the years 2024, 2025, 2026, and 2028. The timing of each stage will depend on various factors, such as whether companies are already under the scope of the NFRD, if they are large EU undertakings not currently subject to the NFRD, if they are listed SMEs or small and non-complex credit institutions and captive insurance undertakings, or if they are non-EU companies operating within the EU. The initial reports, which pertain to the fiscal year 2024, are expected to be submitted in 2025.

It remains a difficult task for FMPs to provide accurate information in accordance with SFDR and the EU Taxonomy Regulation due to the lack of access to trustworthy corporate sustainability data. It is evident that the updates to MiFID II, which pertain to ESG (Environmental, Social, and Governance) considerations, have posed difficulties for asset managers and other firms. These challenges arise when clients express sustainability preferences that cannot be met due to the lack of suitable sustainable products available.[5] It is expected that the data provided by companies under CSRD will greatly assist in addressing this reporting issue, allowing FMPs to fulfil their responsibilities under the SFDR, the EU Taxonomy Regulation, and other applicable laws. This will ultimately improve the movement of funds towards sustainable activities.

Importance of GRI regulation in the EU

The EU's Global Reporting Initiative (GRI) regulation is a key step toward corporate reporting sustainability and openness in member nations. The GRI framework provides detailed recommendations and requirements for firms to disclose their ESG performance. Companies should publish key sustainability indicators and metrics under EU GRI rule. These indicators span greenhouse gas emissions, energy use, waste management, human rights, labor practices, diversity, and anti-corruption. Investors, consumers, and regulators can efficiently assess and compare organizations' sustainability initiatives using this standardized reporting method. The EU GRI regulation's strict adherence to international best practices and standards ensures ESG disclosures are consistent and comparable across countries. This connection clarifies and simplifies sustainability considerations in investment and corporate strategy.

In addition, the EU GRI rule stresses accountability and responsible business practices. It pushes corporations to prioritize material ESG issues and demonstrate their commitment to sustainable development. The EU GRI rule promotes sustainability and beneficial social and environmental impacts by promoting openness and responsibility.[20]

Corporate Sustainability Reporting Directive

The EU Corporate Sustainability Reporting Directive (CSRD) represents a significant milestone in the realm of sustainability reporting and business transparency. The CSRD was introduced by the EU on the 5th of January, 2023[21]. It enhances the quality, comparability, and reliability of sustainability disclosures by EU corporations through the expansion of the Non-Financial Reporting Directive (NFRD). The CSRD requires large and publicly traded companies to disclose information on sustainability, including social and governance factors in addition to environmental concerns. Ensure consistent reporting, enhance data precision, and empower stakeholders to make informed decisions based on comprehensive ESG (Environmental, Social, and

[19] Desislava Yosifova & Magdalena Petrova-Kirova, The New EU Corporate Sustainability Reporting Framework in the Context of GRI Standards, 89 Economic and Social Development, International Scientific Conference on Economic and Social Development 85 (2022).

[20] The GRI Standards (Mar, 20 2024) https://www.globalreporting.org/media/wmxlklns/about-gri-brochure-2022.pdf

[21] Corporate Sustainability reporting, European Commission, (Mar, 20 2024) https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#:~:text=On%205%20January%202023%2C%20the,that%20companies%20have%20to%20report.

Governance) information through this requirement. The CSRD aims to foster sustainable business practices, build investor confidence, and enhance corporate responsibility towards social and environmental concerns through the implementation of more comprehensive and standardized sustainability reporting.[22]

Comparison between the ESG framework of India and EU

ESG (Environmental, Social, and Governance) disclosure rules aim to enhance transparency and accountability in corporate practices related to sustainability and ethical considerations. Both India and the European Union (EU) have implemented regulations and guidelines regarding ESG disclosures, albeit with some differences in scope and specifics. Here's a comparison between the ESG disclosure rules in India and the EU:

1. Regulatory Framework:
   SEBI requires listed firms in India to report ESG using the Business Responsibility and Sustainability Report (BRSR) framework. Companies must publish environmental, social, and governance information under the BRSR. The EU's Non-Financial Reporting Directive (NFRD) compels major firms and organizations to disclose non-financial information, including ESG aspects, in management reports. Additionally, the EU Taxonomy Regulation classifies sustainable economic activities.
2. Scope and Applicability:
   The BRSR covers the top 1,000 listed firms and those worth INR 1,000 crore or more. It discloses nine principles, including governance, stakeholder participation, and environmental effect. NFRD applies to large public-interest entities above 500 employees. These entities must disclose environmental, social, employment, human rights, anti-corruption, and bribery policies, risks, and outcomes.
3. Reporting Requirements:
   Companies under the BRSR framework in India must provide ESG measures and indicators. Energy consumption, emissions, social effect evaluation, diversity, and governance are included. The EU NFRD requires corporations to report on ESG problems such environmental performance, social and employee issues, human rights, anti-corruption, and bribery. EU Taxonomy Regulation expands standards for environmentally sustainable activities.
4. Standards and Frameworks:
   In India India's BRSR framework is based on the Global Reporting Initiative (GRI) Standards and the Sustainable Development Goals (SDGs) framework, and the EU's NFRD follows the GRI Standards and the Task Force on Climate-related Financial Disclosures' (TCFD) recommendations.
5. Enforcement and Compliance: SEBI monitors Indian listed businesses' BRSR compliance. Noncompliance might lead to fines or regulations. National competent authorities in EU member states monitor and enforce NFRD compliance. Companies failing to comply may attract penalties or sanctions.

Conclusion

In conclusion, both India and the EU have established ESG disclosure rules to promote transparency and accountability among companies regarding their environmental, social, and governance practices. While there are similarities in terms of using international frameworks and standards, there are also differences in scope, applicability, and specific reporting requirements between the two regulatory regimes; there are certain rules that are laid down in the CSRD by the EU that make information disclosure compulsory. India shall adopt such rules to enhance transparency.

[22] Corporate Sustainability Reporting Directive (CSDR), explained, Normative(Mar, 20, 2024) https://normative.io/insight/csrd-explained/