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Nature as a stakeholder: including nature in corporate governance practices to meet the EU corporate sustainability reporting directive

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Abstract: This paper provides one of the first reviews of Nature-inclusive corporate governance models, as implemented in the day-to-day practice of ten identified businesses. Two key drivers of the formation of Nature-inclusive governance are increasingly urgent environmental change and the rise of corporate social responsibility reporting mechanisms and laws, notably the EU Corporate Sustainability Reporting Directive (CSRD). The research consists of qualitative analysis of interviews with representatives of companies that have given Nature a governance role. These interviews were accompanied by legal research in several European jurisdictions (the Netherlands, Belgium, and the United Kingdom) to identify additional legal options for incorporating Nature in corporate governance. It consists of four models: Nature as Inspiration, Nature as Advisor, Nature as Director, and Nature as Shareholder.

Keywords: corporate governance, sustainability, CSRD, social responsibility, nature

JEL: M14, Q50, Q54, Q56

Narava kot deležnik: vključitev narave v prakse korporativnega upravljanja za izpolnjevanje direktive EU o poročanju o trajnostnem razvoju podjetij

Povzetek. Članek predstavlja enega prvih pregledov modelov korporativnega upravljanja, ki vključujejo Naravo, kot se izvaja v vsakodnevni praksi desetih identificiranih podjetij. Dva ključna gonila oblikovanja upravljanja, ki vključuje Naravo sta: vse bolj nujna okoljska sprememba in porast mehanizmov in zakonov za poročanje o družbeni odgovornosti podjetij, zlasti direktiva EU o poročanju o trajnostnem razvoju (CSRD). Raziskava je sestavljena iz kvalitativne analize intervjujev s predstavniki podjetij, ki so Naravo prepustila upravljavski vlogi. Intervjuje je spremljala pravna raziskava v več evropskih jurisdikcijah (Nizozemska, Belgija in Združeno kraljestvo), da bi ugotovili dodatne pravne možnosti za vključitev Narave v upravljanje podjetij. Na podlagi ugotovitev je bil razvit okvir inovativnih modelov upravljanja, ki vključuje Naravo. Sestavljen je iz štirih modelov: Narava kot navdih, Narava kot svetovalec, Narava kot direktor in Narava kot delničar.

Ključne besede: korporativno upravljanje, trajnost, CSRD, družbena odgovornost, narava

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Introduction

This paper analyses the role of Nature as a stakeholder in corporate governance and identifies various ways in which Nature can participate. This topic is relevant and urgent due to the global context of large-scale environmental change which both threatens and stems from business as usual. Private businesses can and are involved in the ongoing societal attempts to address such problems and to remediate their roles. Recognizing Nature as a stakeholder in business is one such method. This paper presents the first framework and analysis of models for recognizing Nature as a stakeholder. To support the analysis, the global context for and the theoretical and philosophical basis of Nature as a stakeholder are first discussed.

As set out in multiple reports, among others, by the Taskforce on Nature-related Financial Disclosures (2023) and the WWF Living Planet Reports (Almond, 2022) (Almond, 2020), corporate activities impact the state of Nature everywhere in the world. The Planetary Boundaries (Richardson, 2023) are a framework developed by the Stockholm Resilience Centre which identifies the 9 biophysical processes that ensure a liveable, stable, and resilient Earth system. Currently, 6 out of the 9 boundaries have been transgressed due to human activity: biosphere, freshwater change, land-system change, climate change, biochemical flows (phosphate and nitrogen), and the introduction of novel entities (chemicals and plastics). Beyond these limits, the Earth systems may not be able to self-regulate in a healthy equilibrium and the risk of large-scale disruptive and irreversible changes becomes significant. The Paris Agreement (2015) and the Global Biodiversity Framework (2022) set 2030 as a critical ‘deadline’ to ensure a liveable Earth.

Besides the relevance for ensuring a safe space for humanity, planetary changes such as extinction and ecosystem change can also be considered from the perspective of the wider community of life and the intrinsic value of Nature. The Earth Charter (2000), the EU Habitat and Bird Directives (European Commission, 2014), the Convention on Biological Diversity (1992), and the Kunming-Montreal Global Biodiversity Framework (2022) each emphasise the intrinsic value of flora and fauna. This expands the rationale for actively listening to the voice of Nature to guide our actions from one based on the benefit that this would provide to humans to a moral argument that doing so is ethically consistent with the intrinsic value of all life (Earth Charter, 2000).

Business impacts and is dependent on Nature. This recognition is substantially supported by the evidence that businesses rely heavily on a healthy planet for their own functioning and survival, with 85% of the world’s largest companies depending on Nature in the form of ecosystem services and biodiversity (S&P Global Sustainable, 2023). Furthermore, the World Economic Forum (WEF) has demonstrated, in recent publications, that Nature is the foundation of economic growth and job creation, and the most important stakeholder of this decade (WEF, 2020) (Al-Olaimy, 2020) (TNFD, 2023).

Since 2000, many international standards have been developed to raise awareness of the impact of business on Nature. Corporate Social Responsibility (CSR) standards and guidelines and Environmental, Social, and Governance reporting frameworks (ESG) are regularly used by investors to evaluate non-financial factors when making decisions. Increasingly, these reporting measures require Nature-related disclosures (Taskforce on Nature-related Financial Disclosures, 2023) (CSRD, 2022) (ESRS, 2023). Well-known CSR standards and guidelines are the UN Global Compact (2000), the Global Reporting Initiative Standards (2000, 2022), the OECD Guidelines for Multinational Companies on Responsible Business Conduct (2000, 2011, 2023), the UN Guiding Principles on Business and Human Rights (2011), the Principles for Responsible Investment (2017), the Taskforce on Climate-related Financial Disclosures (2017), and the Taskforce on Nature-related Financial Disclosures (2023).

A key component of CSR is stakeholder engagement by companies. According to Freeman, a stakeholder is “any group or individual who can affect or is affected by the achievement of the firm’s objectives”. Authors such as Starik (1995), Laine (2010), and Heikkurinen and Makinen (2018) have expanded this definition to include non-human entities. The feasibility and importance of Nature’s inclusion in stakeholder theory is indicated by Kujala et al. (2019). Hence, an increasing amount of literature provides a theoretical basis for considering Nature as a stakeholder in business. Stakeholder engagement comprises of organising dialogues with each of the stakeholders to support understanding the adverse impacts of business activities on their interests, incorporating changes to the business model in order to address concerns and avoid future adverse impacts, monitoring the implementation of these measures, and publicly sharing the results thereof to ensure transparency and accountability (OECD, 2023).

Recently, CSR soft law standards have been formalised in legislation. An example of the formal implementation of CSR reporting standards is the EU Corporate Sustainability Reporting Directive (CSRD, 2022), which took force in the national law of all EU Member States at the beginning of 2024. These norms apply to large companies based in the EU and to non-EU companies with an annual turnover above €150 million. These obligations will also increase the transparency of the activities of small and medium enterprises (SMEs) that are a component of large corporation’s value chains. The CSRD requires, in articles 19a and 29a, that companies and groups of companies report on how their “business model and strategy take account of the interests of [their] stakeholders ...”. Companies are obliged to report on the environmental, social and governance (ESG) impacts in their value chains. The accompanying reporting instructions, covered in the EU delegated act, the European Sustainability Reporting Standards (2023), contain many Key Performance Indicators (KPIs). Specifically, ESRS 4 concerns biodiversity and ecosystems KPIs. This mandatory standard requires that companies assess and disclose detailed aspects of both their dependency and their impacts on Nature. In relation to the latter, the assessment and disclosure requirement extends to the ways in which a company: “... affects biodiversity and ecosystems, in terms of material positive and negative, actual and potential impacts, including the extent to which it contributes to the drivers of biodiversity and ecosystem loss and degradation.” This explicit prescription in a widely applicable EU legal framework indicates that Nature is being recognised as a stakeholder in business. Furthermore, it is explicitly mentioned in the ESRS 1 under Application Requirement (AR) 7 Nature may be considered a silent stakeholder.

Furthermore, the OECD Guidelines (2023) state that, as part of their due diligence, companies should meaningfully engage with stakeholders and their legitimate representatives, especially with respect to activities that may significantly impact them, as specified by the Guidelines. They provide an outline of what meaningful stakeholder engagement entails and the environmental impact of business is explicitly covered. Therein, the concept of ‘Nature as Stakeholder’ is an emergent theme; where “nature is [deemed] essential for business and other organisations as it gives resources, affects other stakeholders, and has a moral right to be included in organisational decision-making”. Compliance with these Guidelines is a requirement to obtain governmental subsidies for innovation and transition in the Netherlands through the Enterprise Agency, export credit insurance through the Atradius Dutch State Business, and to participate in public tenders.

Recognizing Nature as a stakeholder provides an opportunity to make effective and efficient Nature positive decisions and to facilitate a company’s CSR and reporting obligations. Specifically, Nature governance may help with meeting the EU CSRD and the OECD guidelines, along with other similar CSR standards and guidelines. A Nature-inclusive governance model provides a tool and framework for streamlining sustainability practices, such as the development and implementation of a sound biodiversity strategy. The research

question which will be addressed in this paper is: How can Nature be given a voice in corporate governance structures to represent the interests of the environment in the corporate decision-making processes? This paper presents four models (Nature as Inspiration, Nature as Advisor, Nature as Director, and Nature as Shareholder), identified through theoretical legal research and the analysis of qualitative interviews with ten case study companies.

1 Methodology

Mixed methods were employed to study the research question: How can Nature be given a voice in corporate governance structures to represent the interests of the environment in the corporate decision-making processes? Legal studies in several European jurisdictions (the Netherlands, Belgium and the United Kingdom) were conducted to identify legal options under corporate law and contract law to give Nature a voice in corporate governance. Additionally, by conducting qualitative research, through analysis of company websites and reports as well as semi-structured interviews, the team explored and categorised best practices by companies in said jurisdictions that have structurally included Nature as a stakeholder in their governance structures and/or decision-making processes. Ten progressive companies were identified and a representative was interviewed about how and why the organisation has included Nature, how they define Nature, how representation is determined and mandated, and any dilemmas, barriers, and successes they have encountered concerning Nature in their governance. The organisations interviewed were: Hub Culture, Willicroft, Faith in Nature, the Zoöconomic Foundation, Tony's Choclonely, Palais de Tokyo, Corporate ReGeneration, Blyde, and Patagonia. All interviews were conducted in accordance with the ethical protocol developed in coordination with and approved by Nyenrode Business University in the Netherlands.

Based on the findings of both studies, a framework for innovative Nature-inclusive governance models was developed. This framework is supported by a toolkit for other companies that intend to give Nature a voice as a stakeholder. The 'Onboarding Nature Toolkit' (Pimor et al, 2024) includes ethical, organisational and legal information, options, and recommendations aimed at supporting companies and other organisations to embark on including Nature as a stakeholder in their governance structures.

2 Results

The findings from the case studies concerning progressive companies that have onboarded Nature in their organisation reveal four methods of involving Nature as a stakeholder. Based on the case studies, a framework was developed comprising the following four main models: (i) Nature as Inspiration; (ii) Nature as Advisor; (iii) Nature as Director; and (iv) Nature as Shareholder. Each of the case study companies is categorised under one of these four models. The analysis of the four Nature-governance models which were implemented by the interviewed case study companies was paired with theoretical legal research. The legal research affirmed the case studies' approaches and it identified and clarified the various concrete legal ways to include Nature in a company's corporate governance structure. Also, it added possible approaches not yet implemented by the assessed companies. Additionally, desk research provided the researchers with other examples of organisations that have Nature included as a stakeholder in their governance (these organisations were not among the interviewee-case study companies), which were added for illustration purposes. The results of the case studies, desk research, and legal research are found in Table 1, where both implemented models and theoretical models are presented. It is worth noting that, because company law differs slightly across jurisdictions, the implementation of Nature-governance models must be modified to the specific national jurisdiction under which a company has been incorporated. To narrow the focus of this study and to present the results

in a tangible manner, Table 1 grounds the Nature-governance models in Dutch company law. However, the research results show that similar options are available in other EU jurisdictions as well as in the jurisdictions of the UK and the US, although the specifics of these are beyond the scope of what is discussed here.

Table 1. The Four Identified Models of Nature as Stakeholder

Models	Subcategories	Explanation	Examples emerged from the case studies and desk research
<p>Nature as Inspiration</p> <p>Nature as Inspiration can be expressed in a strong form in which the interests of Nature are the main purpose of the organisation or in a light form as a declaration of intent.</p>	<p>Option 1:</p> <p>Nature as purpose. (legal)</p>	<p>Stated in the organisation's purpose statement as included in the Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws.</p>	<p>Examples include:</p> <p>The Land Life Company's restoration mission</p> <p>The purpose of the foundation Pluto Naturfonden, incorporated under Danish law, is: 'to ensure the preservation of a good and safe climate, endangered animal species and nature in general'.</p> <p>The purpose of the foundation Commonland Foundation, incorporated under Dutch law, is to restore ecosystems.</p> <p>The purpose of the foundation IUCN NL, incorporated under Dutch law, and a part of the IUCN International network, is: "Our vision is a just world in which nature is valued and protected."</p> <p>The purpose of the foundation WWF-NL, incorporated under Dutch law, is to preserve Nature.</p>
	<p>Option 2:</p> <p>Nature as Inspiration is a policy-based commitment to consider the voice and interests of Nature within the governance of the company. (non-legal)</p>	<p>This approach is a light touch, a cultural entrenchment of Nature in the organisation, focusing on the voice rather than creating a legal position for Nature as a stakeholder in the company's governance.</p> <p>It is a purpose-driven and mission-driven declaration of intent that is a first step onto the journey of bringing Nature as a Stakeholder.</p>	<p>An example of Nature as Inspiration is the campaign for 'Mother Nature as CEO' (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)). This campaign has been initiated by the B Corp certified companies Willicroft and Blyde, and this model has now been adopted by 12 companies.</p>

<p>Nature as Advisor</p> <p>Nature as Advisor can be organised by setting up an advisory council or committee in the legal corporate structure, or through a contractual and/or certification method, or via a non-legal arrangement.</p>	<p>Option 1:</p> <p>Nature as a stakeholder embodied in an Advisory Council or Advisory Committee. (legal)</p>	<p>The Advisory Council or Advisory Committee has a legal mandate to advise the Board of Directors concerning decisions that matter to Nature. This mandate is included in the organisation's Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws.</p>	<p>The research did not identify any specific examples of this model.</p>
	<p>Option 2:</p> <p>Nature represented by an Advisor to the Board of Directors via a contractual and/or certification arrangement. (legal)</p>	<p>The room created for the Advisor is a conversational space where key topics are discussed, and recommendations submitted to the Board of Directors.</p>	<p>An example of an individual advisory role, embedded in a contract, was developed by the Zoöconomic Institute model. The 'Speaker for the Living' has an 'Observer to the Board' role in organisations certified as 'Zoöps'. The Observer is advising the Board of Directors concerning the implementation of the 'Zoöconomic Annual Cycle' and the 'Zoö Model'. This mandate is included in contractual arrangements and certification instructions (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)).</p>
	<p>Option 3:</p> <p>Nature represented by an Advisor to the Board of Directors in a non-legal manner. (non-legal)</p>	<p>The room created for the Advisor is a conversational space where key topics are discussed, and recommendations submitted to the Board of Directors.</p>	<p>An example of an advisory role via a policy-based, non-legal, external/satellite committee framework was developed by Corporate ReGeneration (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)). Companies that have adopted this Nature-governance model include: Copain ('Impact board'); Realco ('Vision Board'); NGroup ('Impact Board'), Danone BeLux ('Stakeholder meeting').</p>
<p>Nature as Director</p> <p>Nature as Director is a legal commitment to entrench the voice, the vote, and the interests of Nature in the constitutional, strategic and operational governance of the company. Nature is given protection and a voice (rights), through both a revision of the articles of association, including an upgrade of the objects clause of a company, and an amendment to the organisational governance policy framework.</p>	<p>Option 1:</p> <p>Nature represented by a Managing Director in a 2-tier board or as an Executive Director in a 1-tier Board. (legal).</p>	<p>The creation of a directorship role entrenches Nature's input in the decision-making of the company, through a range of rights: voting, access to information, reporting review, etc. A specific Nature Board Member has equal rights and duties as the other company Directors.</p> <p>As Boards have collective responsibility for the day-to-day management in the interest of the company and its stakeholders, a specific Nature Board Member can bring the perspective of Nature to the table.</p>	<p>An example is:</p> <p>N.V. PWN Waterleidingbedrijf Noord-Holland (PWN). PWN is the drinking water company of the Dutch Province of Noord Holland and manager of the natural area of the dunes in this area. The shareholders are the local municipalities. One member of the Executive Board ('directie') has the mandate to guard Nature (Board Regulation Articles 2.2 and 4.1). However, PWN's Articles of Association do not provide for this in an explicit way.</p>

	<p>Option 2:</p> <p>Nature represented by a Supervisory Director in a 2-tier board or as a Non-Executive Director in a 1-tier Board. (legal)</p>	<p>The creation of a supervisory or non-executive directorship role entrenches Nature’s input in the decision-making of the company, through a range of rights: voting, access to information, reporting review, etc. Nature as Supervisory Director or Non-Executive Director also has equal rights and duties as the other Supervisory and Non-Executive Directors.</p> <p>As Supervisory and Non-Executive boards have a collective responsibility for advising and supervising in the interest of the company and its stakeholders, a specific Nature Supervisory or Non-Executive Board Member can bring the perspective of Nature to the table.</p>	<p>An example is:</p> <p>Faith in Nature (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)).</p> <p>The company’s website states: “The objects of the Company are to promote the success of the Company, a. for the benefit of its members; and b. while delivering, through its business and operations, using its best endeavours to: (i) have a positive impact on Nature as a whole and to (ii) minimise the prospect of any harmful impact of the business and operations on Nature, in a manner commensurate with the size and resources of the Company, taken as a whole.”</p> <p>And:</p> <p>“We appointed Nature as a Non-Executive Director on our board of directors and created the ability to delegate the powers to a wider committee. We did this by amending our Articles of Association to entrench the position and used a terms of reference document to outline the duties and responsibilities of the human who acts as the voice of Nature.”</p>
<p>Nature as Shareholder</p> <p>Nature as Shareholder is generally based on the steward-ownership model, which is a legal structure that puts an emphasis on purpose over profits; self-governance, and long-term goals (legacy). As a guardian of the company’s Nature-driven mission, Nature as Shareholder can be integrated through different forms: a shareholder foundation; a perpetual purpose trust; impact shares; a golden shareholder; and/or neutralised capital.</p>	<p>Option 1 (steward ownership):</p> <p>Nature is represented by the shareholder (e.g. via a foundation). (legal)</p> <p>Steward ownership refers to the situation in which the purpose or mission of the company has been translated into its ownership model.</p>	<p>Nature as Shareholder is a legal commitment to entrench the voice, the vote, and the interests of Nature, through the ownership structure and governance of the company.</p> <p>The shareholder acts on behalf of Nature when exercising its right to vote and receiving dividends.</p> <p>This approach is an embedment of Nature through an alternative ownership model that shifts or expands the scope of decision-making and economic value to a wider pool of stakeholders.</p>	<p>An example is:</p> <p>Patagonia is a certified B Corp and a California Benefit Corporation. The incorporator of the company established 2 foundations (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)). He transferred 100% of the company’s voting stock to the Patagonia Purpose Trust, created to protect the company’s values, including to minimise the business activities’ adverse impact on Nature (equal to 2% of the outstanding stock of the company). Also, he transferred 100% of the non-voting stock to the Holdfast Collective, a non-profit dedicated to fighting the environmental crisis and defending nature (equal to 98% of the outstanding stock of the company). The funding for the activities comes from the Patagonia company: Each year, after reinvesting part of the profits in the company’s business, the remainder of the profits is distributed as a dividend to the Holdfast Collective.</p>

	<p>Option 2 (golden share):</p> <p>Nature is represented by a golden shareholder that holds a percentage of the shares (the golden shareholder can be a foundation).</p> <p>(legal)</p>	<p>A golden share is a type of share with special voting rights. Often, its holder can exercise veto power over changes to the company's charter (e.g. its mission as stated in the constitutional purpose clause) and regarding other important decisions such as the appointment and discharge of directors.</p> <p>Guarding Nature can be included as (part of) its mandate.</p>	<p>An example is:</p> <p>Tony's Chocolonely Mission Foundation holds special legal rights (including specific voting rights) and must exercise them to uphold and protect Tony's Chocolonely B.V.'s (detailed) mission and the 5 Sourcing Principles (which include that the company considers the interest of Nature in its decision-making (see Chapter 2 of the Onboarding Nature Toolkit (Pimor et al, 2024)).</p>
	<p>Option 3 (impact shares):</p> <p>Creation of 2 or more categories of shares (i.e. common shares and impact shares). The impact shares are held by shareholders committed to guarding the interest of Nature.</p> <p>(legal)</p>	<p>The impact shareholders must use their voting rights to guard Nature. The common shares can vote in their own way.</p> <p>Alternatively, the common shares are entitled to dividend but have no voting rights, whereas the impact shares do have voting rights which they must use to guard the interests of Nature. The impact shares can hold dividend rights or not hold those.</p>	<p>The research did not identify any specific examples of this model. An interesting form could be the Luxembourg legal model developed for social enterprises: the Societal Impact Company (SIS), which has impact shares and common shares.</p>
	<p>Option 4 (neutralised capital):</p> <p>Nature is represented by a foundation that holds the legal title to the shares, including voting rights. The foundation issues 'certificates of shares' (comparable with administrative depositary rights in the US legal system) to 'certificate holders' who are entitled to the economic rights of the shares.</p> <p>(legal)</p>	<p>A foundation (under Dutch law: Stichting Administratiekantoor, abbreviated as Stak) includes in its Constitutional documents/Articles of Incorporation/Articles of Association/Bylaws that (one of) its task(s) is to ensure guardianship of Nature. In exercising its rights as a shareholder, the Stak must fulfil that task.</p> <p>The holders of the certificates of shares are entitled to the dividends, which will be paid out to them by the foundation.</p>	<p>The research did not identify any specific examples of this model.</p>

3 Discussion

The EU Corporate Sustainability Reporting Directive (CSRD) and the World Economic Forum (WEF) indicate that Nature is a central stakeholder, and companies stand to benefit from efforts to begin conversations with Nature to better understand how their operations impact Earth's natural systems and the Planetary Boundaries. Business has the potential to be a significant driver of change, in large part because of its inherent agility and potential for innovation, and it is therefore crucial to engage business in solutions which address environmental crises.

Consequently, this paper posed the question: How can Nature be given a voice in corporate governance structures to represent the interests of the environment in the corporate decision-making processes? To that end, ten progressive companies were identified that have embedded an explicit voice for Nature. In analysing these case study companies, four potential models for onboarding Nature into corporate decision-making processes were distilled. By acknowledging Nature as a stakeholder, companies may receive several potential benefits. Importantly, onboarding Nature offers a method of streamlining and formalising Nature-related decision-making, positioning companies to: (1) be better prepared to effectively conduct due diligence assessments into their value chains; (2) fulfil their duty to engage with stakeholders; (3) to identify problems and their corresponding solutions in a timely and adequate manner; and (4) to improve knowledge and create transparency surrounding their operations. These four possible results will help businesses to meet regulations, such as the CSRD, or guidelines, such as those from the OECD, and fulfil ESG commitments.

Because Nature-inclusive governance models are an emergent corporate practice, further research will be necessary to analyse the types of impacts the models have, the degree to which these models are effective and meaningful ways to recognise Nature as a stakeholder, and the potential risks of greenwashing and how to avoid them. Additionally, there is the opportunity for further research into the theory and philosophies behind Nature governance and the potential for developing additional legal models, in multiple jurisdictions. Based on the results of this study, comparative analysis of the models effectivity, benefits, and rigour would benefit interested parties in deciding between which ones to implement.

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