

DIRECTIVE 2014/.../UE
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**amending *Directive 2013/34/EU* as regards disclosure of non-financial and diversity
information by certain large *undertakings* and groups**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C 327, 12.11.2013, p. 47.

- (1) In its Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Single Market Act Twelve levers to boost growth and strengthen confidence “Working together to create new growth”’¹, adopted on 13 April 2011, the Commission identifies the need to *raise to a similarly high level* the transparency of the social and environmental information provided by *undertakings* in all sectors, *across all Member States. This is fully consistent with the possibility for Member States to require, as appropriate, further improvements of undertakings’ transparency of non-financial information, which is by its own nature a continuous endeavour.*
- (2) The necessity to improve *undertakings’* disclosure of social and environmental information, by presenting a legislative proposal in this field, was reiterated in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’² adopted on 25 October 2011.

¹ COM(2011)206 final of 13 April 2011.

² COM(2011)681 final of 25 October 2011.

- (3) The European Parliament **■**, in its resolutions of 6 February 2013 on, respectively, ‘Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth’¹ and ‘Corporate Social Responsibility: promoting society’s interests and a *route* to sustainable and inclusive recovery’², acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust **■**. ***Indeed, non-financial reporting is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection. In this context, non-financial reporting helps measuring, monitoring and managing undertakings' performance and their impact on society. Thus, the European Parliament called on the Commission to bring forward a legislative proposal on the disclosure of non-financial information by undertakings allowing for high flexibility of action, in order to take account of the multi-dimensional nature of corporate social responsibility (CSR) and the diversity of the CSR policies implemented by businesses matched by a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on businesses' impact on society.***

¹ Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI)); Committee on Legal Affairs. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN>

² Report on Corporate Social Responsibility: promoting society’s interests and a route to sustainable and inclusive recovery (2012/2097(INI)); Committee on Employment and Social Affairs. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN>

- (4) The coordination of national provisions concerning the disclosure of non-financial information in respect of *certain* large undertakings ■ is of importance for the interests of *undertakings*, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of these undertakings operate in more than one Member State.
- (5) It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public *and authorities* by undertakings across the Union. *The* undertakings *subject to this Directive* should give a fair and comprehensive view of *their* policies, *outcomes*, and risks.

- (6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, *certain large undertakings* should *prepare* a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should include a description of the policies, *outcomes*, and the risks related to those matters *and should be included in the undertaking's management report. The non-financial statement should also include information on the due diligence processes implemented by the undertaking, also regarding where relevant and proportionate the undertakings' supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts. It should be possible for Member States to exempt undertakings from the obligation to prepare a non-financial statement when a separate report corresponding to the same financial year and covering the same content is provided.*

- (7) *Where undertakings are required to prepare a non financial statement, with regard to environmental matters, the statement should contain details of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution. As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation (ILO), working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities. With regard to human rights, anti-corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and/or instruments in place in order to fight corruption and bribery.*

- (8) *Undertakings should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and where relevant and proportionate its products, services and business relationships, including its supply and subcontracting chains. This should not lead to undue additional administrative burdens for small and medium size companies.*
- (9) In providing this information, *large undertakings covered by this Directive* may rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN ‘Protect, Respect and Remedy’ Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, **■** the Global Reporting Initiative, *or other recognised international frameworks.*

(10) *Member States should ensure that adequate and effective means exist to guarantee disclosure of non-financial information by undertakings in compliance with the provisions of this Directive. To that end, Member States should ensure that effective national procedures are in place to enforce compliance with the obligations of this Directive, and that those procedures are available for all persons and legal entities having a legitimate interest, in accordance with national law, in ensuring that the provisions of this Directive are respected.*

(11) Paragraph 47 of the final declaration of the United Nations RIO+20 conference, ‘The Future We Want’¹, recognises the importance of corporate sustainability reporting and encourages *undertakings*, where appropriate, to consider integrating sustainability information into their reporting cycle. It also encourages industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice, and facilitate action for the integration of financial and non-financial information, taking into account experiences from already existing frameworks.

¹ United Nations, ‘The Future We Want’, Outcome Document of the United Nations Conference on Sustainable Development RIO+20, A/CONF.216/L.1

- (12) Investors' access to non-financial information is a step towards reaching the milestone of having in place by 2020 market and policy incentives rewarding business investments in efficiency under the Roadmap to a Resource Efficient Europe¹.
- (13) The European Council of 24 and 25 March 2011 called for the overall regulatory burden, in particular for small and medium-sized enterprises ('SMEs'), to be reduced at both European and national levels, and suggested measures to increase productivity while the Europe 2020 Strategy for smart, sustainable and inclusive growth aims to improve the business environment for SMEs and to promote their internationalisation. Thus, according to the 'think small first' principle, the disclosure requirements under Directive **2013/34/EU** should only apply to certain large undertakings and groups.

¹ COM(2011) 571 final of 20 September 2011.

(14) The scope of these non-financial disclosure requirements should be defined by reference to the average number of employees, *balance sheet* total and *net* turnover. SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement should only apply to those *large undertakings which are public interest entities and to those public interest entities which are parent undertakings of a large group*, whose average number of employees *in both cases* exceeds 500. *This should not prevent Member States from requiring disclosure of non-financial information on undertakings and groups other than undertakings which are large public-interest entities, and public-interest entities which are parent undertakings of a large group.*

(15) Many of the undertakings which fall under the scope of Directive 2013/34/EU are members of groups of undertakings. Consolidated *management* reports should be drawn up so that the information concerning such groups of undertakings may be conveyed to members and third parties. National law governing consolidated *management* reports should therefore be coordinated in order to achieve the objectives of comparability and consistency of the information which undertakings should publish within the Union.

- (16) *Statutory auditors and audit firms should only check that the non-financial statement or the separate report has been provided. In addition, it should be possible for Member States to require that the information included in the non-financial statement or in the separate report is verified by an independent assurance services provider.*
- (17) *With a view to facilitating the disclosure of non-financial information by European undertakings, the Commission should prepare non-binding guidelines, including general and sectoral non-financial key performance indicators. The Commission should take into account current best practices, international developments and the results of related Union initiatives. The Commission should carry out appropriate consultations including with relevant stakeholders. When referring to environmental aspects, the Commission should cover at least land use, water use, greenhouse gas emissions and the use of materials.*

- (18) Diversity of competences and views of the members of administrative, management and supervisory bodies of *undertakings* facilitates a good understanding of the business organisation and affairs. It enables members of these bodies to exercise a constructive challenge of the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, the ‘group-think’ phenomenon. It contributes thus to effective oversight of the management and a successful governance of the *undertaking*. It would therefore be important to enhance transparency regarding the diversity policy *applied*. This would inform the market of corporate governance practices and thus put indirect pressure on *undertakings* to have more diversified boards.
- (19) The obligation to disclose their diversity policies for the administrative, management and supervisory bodies with regard to aspects such as, *for instance*, age, gender, ■ educational and professional background should only apply to *certain large undertakings*.
■ Disclosure of the diversity policy should be part of the corporate governance statement, as laid down by Article 20 of Directive 2013/34/EU. *If no* diversity policy *is applied there* should not be *any obligation* to put one in place, but *the corporate governance statement* should *include a clear explanation* why this is the case.

(20) *Initiatives at Union level, including country-by-country reporting for several sectors, as well as the references by the European Council to country-by-country reporting by large companies and groups on 22 May 2013 and 20 December 2013, and similar provisions in Directive 2013/36/EU of the European Parliament and of the Council¹, and international efforts to improve transparency in financial reporting have been noted. Within the context of the G8 and the G20, the OECD has been asked to draw up a standardised reporting template for multi-national undertakings to report to tax authorities where they make their profits and pay taxes around the world. Such developments complement the proposals contained in this Directive, as appropriate measures for their respective purposes.*

¹ *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013 ,p. 338).*

- (21) Since the objective of this Directive, namely to increase the relevance, consistency and comparability of information disclosed by *undertakings* across the Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of its effect be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (22) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the freedom to conduct a business, respect for private life and the protection of personal data. This Directive has to be implemented in accordance with these rights and principles.
- (23) *Directive 2013/34/EU* should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive *2013/34/EU*

Directive *2013/34/EU* is amended as follows:

- (1) The following Article is inserted:

‘Article 19a

Non-financial statement

1. ***Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of average number of employees during the financial year of 500 shall*** **■** ***include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:***

- (a) *a brief description of the undertaking's business model;*
- (b) a description of the policy pursued by the *undertaking* in relation to these matters, *including due diligence processes implemented;*
- (c) the *outcome* of these policies;
- (d) the *principal* risks related to these matters *linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas*, and how the *undertaking* manages those risks;
- (e) non-financial key performance indicators relevant to the particular business.

Where *the undertaking* does not pursue policies in relation to one or more of these matters, *the non-financial statement* shall provide *a clear and reasoned* explanation for not doing so.

The non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management, and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for it, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

In providing *the* information *required by the first subparagraph*, *Member States shall provide that undertakings* may rely on national, EU-based or international frameworks, and if so, *undertakings* shall specify which frameworks *they have* relied upon.

■

2. *The undertakings fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation related to the analysis on non-financial information set out in the third subparagraph of Article 19(1).*
3. *An undertaking*, which is a subsidiary *undertaking*, shall be *exempted* from the obligation set out in *paragraph 1*, if the *undertaking* and its *subsidiary undertakings are included in the consolidated management report or the separate report* of another *undertaking*, drawn up in accordance with *Article 29 and this Article*.

4. Where *an undertaking* prepares a *separate* report corresponding to the same financial year *whether or not* relying on national, EU-based or international frameworks and *covering* the information *of the non-financial statement* provided for in paragraph 1, *Member States may* exempt *that undertaking* from the obligation to prepare the non-financial statement set out in *paragraph 1*, provided that such *separate* report **■** :

- (a) *is published together with the management report in accordance with Article 30; or*
- (b) *is made publicly available within a reasonable period of time, which shall not exceed 6 months after the balance sheet date, on the undertaking's website, to which reference is made in the management report.*

5. *Member States shall ensure that the statutory auditor or audit firm checks whether the non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 has been provided.*
6. *Member States may require that the information in the non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 is verified by an independent assurance services provider.*
7. *Member States may exempt small and medium-sized undertakings from the obligation set out in paragraph 1 in so far as it relates to non- financial information.'*

(2) Article 20 is amended as follows:

(a) In paragraph 1, the following point ■ is added:

‘(g) a description of the ■ diversity policy *applied for the undertaking’s* administrative, management and supervisory bodies with regard to aspects such as, *for instance*, age, gender, ■ educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period. If ■ no such policy *is applied*, the statement shall contain *an* explanation as to why this is the case.’

(b) *Paragraph 3 is replaced by the following:*

‘3. The statutory auditor or audit firm shall express an opinion in accordance with the second subparagraph of Article 34(1) regarding information prepared under points (c) and (d) of paragraph 1 of this Article and shall check that the information referred to in points (a), (b), (e), (f) and (g) of paragraph 1 of this Article has been provided.’

(c) *Paragraph 4 is replaced by the following:*

‘4. Member States *may exempt undertakings referred to in paragraph 1 which have only issued securities other than shares* admitted to trading on a regulated market, within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC, *from the application of points (a), (b), (e), (f) and (g) of paragraph 1 of this Article, unless such undertakings have issued shares which are traded in a multilateral trading facility, within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.*’

(d) The following paragraph is added:

‘5. *Notwithstanding Article 40, point (g) of paragraph 1 shall not apply to small and medium-sized undertakings.*’

(3) The following Article is inserted:

'Article 29a

Consolidated non-financial statement

- 1. Public-interest entities which are parent undertakings of a large group exceeding on its balance sheet dates on a consolidated basis the criterion of average number of employees during the financial year of 500 shall include in the consolidated management report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:***

- (a) *a brief description of the group's business model;*
- (b) a description of the policy pursued by the **group** in relation to these matters, *including due diligence processes implemented;*
- (c) the *outcome* of these policies;
- (d) the *principal* risks related to these matters *linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas,* and how the **group** manages those risks;
- (e) non-financial key performance indicators relevant to the particular business.

Where the group does not pursue policies in relation to one or more of these matters, *the consolidated non-financial statement* shall provide *a clear and reasoned* explanation for not doing so.

The consolidated non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the consolidated financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management, and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for it, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity.

In providing *the* information *required by the first subparagraph*, *Member States shall provide-that the parent undertaking* may rely on national, EU-based or international frameworks, and if so, *the parent undertaking* shall specify which frameworks *they have* relied upon.

■

2. *The parent undertakings fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation related to the analysis on non-financial information set out in the third subparagraph of Article 19(1) and Article 29.*
3. A parent undertaking which is also a subsidiary undertaking shall be *exempted* from the obligation set out in ■ paragraph 1, if the exempted *parent* undertaking and its subsidiaries are *included in the consolidated management report or the separate report of another undertaking* drawn up in accordance with *Article 29 and this Article*.

4. ■ Where a parent undertaking prepares a *separate* report corresponding to the same financial year and referring to the whole group, *whether or not* relying on national, EU-based or international frameworks and covering the information *of the consolidated non-financial statement* provided for in ■ paragraph 1, *Member States may exempt that* parent undertaking ■ from the obligation to prepare the *consolidated* non-financial statement set out in ■ paragraph 1, provided that such *separate report*:
- (a) *is published together with the consolidated management report in accordance with in Article 30; or*
 - (b) *is made publicly available within a reasonable period of time, which shall not exceed 6 months after the balance sheet date, on the parent undertaking's website, to which reference is made in the consolidated management report.*
5. *Member States shall ensure that the statutory auditor or audit firm checks whether the consolidated non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 has been provided.*

6. *Member States may require that the information in the consolidated non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 is verified by an independent assurance services provider.*
7. *Member States may exempt small and medium-sized undertakings from the obligation set out in paragraph 1 in so far as it relates to non- financial information.'*

(4) *In Article 33, paragraph 1 is replaced by the following:*

- '1. *Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that:*

- (a) *the annual financial statements, the management report, the corporate governance statement when provided separately and the report referred to in Article 19a(4); and*
- (b) *the consolidated financial statements, the consolidated management reports, the consolidated corporate governance statement when provided separately and the report referred to in Article 29a(4),*

are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.'

(5) *In Article 34, the following paragraph is added:*

- '3. *This Article shall not apply to the non-financial statement referred to in Article 19a(1) and the consolidated non-financial statement referred to in Article 29a(1) or to the separate reports referred to in Articles 19a(4) and 29a(4).'*

(6) *In Article 48, the following paragraph is inserted before the last paragraph:*

'The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis, a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.'

Article 2

Guidance on reporting

The Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectorial, with a view to facilitate relevant, useful and comparable disclosure of non-financial information by Union undertakings. In doing so, the Commission shall consult relevant stakeholders.

The Commission shall publish the guidelines no later than 24 months after the entry into force of this Directive.

Article 3

Review of the Directive

The Commission shall submit a report to the European Parliament and the Council on the implementation of this Directive, including, among other aspects, its scope, particularly as regards large non-listed undertakings, effectiveness and the level of guidance and methods provided. The report shall be published at the latest 4 years after the entry into force of this Directive, and will be accompanied, if appropriate, by legislative proposals.

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] ¹ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

¹ Two years after entry into force.

Member States *shall* provide that the provisions referred to in the first subparagraph
 apply to all undertakings within the scope of Article 1 for the financial year starting
 on 1 January 201¹ *or during the calendar year 201²*.

When Member States adopt those provisions, they shall contain a reference to this
 Directive or be accompanied by such a reference on the occasion of their official
 publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of
 national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the
 Official Journal of the European Union.

¹ *First* year after the transposition deadline.

² *First* year after the transposition deadline.

Article 6
Addressees

This Directive is addressed to the Member States.

Done at [...],

For the European Parliament

For the Council

The President

The President
