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Committee on Foreign Affairs

2013/0110(COD)

28.11.2013

OPINION

of the Committee on Foreign Affairs

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups
(COM(2013)0207 – C7-0103/2013 – 2013/0110(COD))

Rapporteur: Elmar Brok

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SHORT JUSTIFICATION

The Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies coordinates EU Member States' provisions regarding the annual accounts and annual reports of companies with limited liability. The current version of the Fourth Directive is the result of a series of amendments from 1983 to 2006.

The amendments presented in this opinion intend to supplement the information companies provide on the supply chain, and to ensure coherence between the definition given by the Fourth Directive to large companies and the related specific reporting requirements.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report 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, results, and the risks related to those matters.

Amendment

(6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report 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, results, and the risks related to those matters. ***It should also include companies' supply chains and their subcontractors in the case of major actors in these chains.***

Amendment 2

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) 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 78/660/EEC and Directive 83/349/EEC should only apply to certain large undertakings and groups.

Amendment

(10) 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, **welcomed the intention of the Commission to propose ways of exempting micro-enterprises from certain regulations**, 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 78/660/EEC and Directive 83/349/EEC should only apply to certain large undertakings and groups.

Amendment 3

**Proposal for a directive
Recital 11**

Text proposed by the Commission

(11) The scope of these non-financial disclosure requirements should be defined by reference to the average number of employees, total assets and turnover. SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement in the annual report should only apply to those companies whose average number of employees exceeds 500, and exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million.

Amendment

(11) The scope of these non-financial disclosure requirements should be defined by reference to the average number of employees, total assets and turnover. **Micro-enterprises and** SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement in the annual report should only apply to those companies whose average number of employees exceeds 500, and exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million.

Amendment 4

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) When adopting the criteria for determining which bodies are to be covered by the obligation to disclose non-financial information, differences in the levels of economic development in the individual Member States should be taken into account, and, as follows, that in order to achieve the same outcome from economic activity, different countries will require a different average number of employees. Therefore, when selecting criteria for determining which bodies are to be covered by these new reporting requirements, greater emphasis should be placed on the balance-sheet amount or on net turnover.

Amendment 5

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) The obligation to disclose their diversity policies for their administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, educational and professional background should only apply to large listed companies. Therefore small and medium-sized companies that may be exempted from certain accounting obligations under article 27 of Directive 78/660/EEC should not be covered to by this obligation. Disclosure of the diversity policy should be part of the corporate governance statement, as laid down by Article 46a of Directive 78/660/EEC.

(16) The obligation to disclose their diversity policies for their administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, ***disability***, educational and professional background should only apply to large listed companies. Therefore small and medium-sized companies that may be exempted from certain accounting obligations under article 27 of Directive 78/660/EEC should not be covered to by this obligation. Disclosure of the diversity policy should be part of the corporate governance statement, as laid down by Article 46a of Directive

Companies not having a such a diversity policy should not be obliged to put one in place, but they should clearly explain why this is the case.

78/660/EEC. Companies not having a such a diversity policy should not be obliged to put one in place, but they should clearly explain why this is the case.

Amendment 6

Proposal for a directive

Article 1 - point 1 - point a

Directive 78/660/EEC

Article 46 – paragraph 1 – subparagraph 3 – indent iii

Text proposed by the Commission

(iii) the risks related to these matters and how the company manages those risks.

Amendment

(iii) the risks related to these matters, the risks related to the **company's activities, which are likely to cause, or have caused, adverse social, environmental and human rights impacts**, and how the company manages those risks.

Justification

The Guiding Principles on Business and Human Rights state that businesses "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services [...] even if they have not contributed to those impacts". To have an international level playing field and make possible a comparison between companies, a company should always use an EU or international framework instead of a local one.

Amendment 7

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point b – subparagraph 3

Text proposed by the Commission

In providing such information the company may rely on national, EU-based or international frameworks **and, if so, shall specify which frameworks it has relied upon.**

Amendment

In providing such information the company may rely on national, EU-based or international 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, and the Global Reporting Initiative.

This provision shall apply without prejudice to the requirements of this Directive or to other European Union legislation or guidance containing more specific rules for companies' non-financial disclosure.

When providing such non-financial information, the company shall indicate which legal framework it has used.

Amendment 8

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point c

Text proposed by the Commission

To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.

Amendment

To the extent necessary for an understanding of the company's development, performance or position, **and human rights, social and environmental impacts**, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.

Amendment 9

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

The European Commission shall develop guidance on the methodology and use of international standards and non-financial performance indicators in order to assist companies in their reporting.

Amendment 10

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

The Commission shall publish the guidance and report to the European Parliament and Council on the development of guidance, at the latest 18 months after the adoption of the Directive.

Amendment 11

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point c c (new)

Text proposed by the Commission

Amendment

The Commission shall establish an internal Non Financial Disclosure Guidance Board to support the implementation of non-financial reporting requirements and to involve

stakeholders for the development of guidance on the methodology and use of international standards and non-financial performance indicators in a balanced and open way.

Amendment 12

Proposal for a directive

Article 1 - point 1 - point c

Directive 78/660/EEC

Article 46 - paragraph 5 (new)

Text proposed by the Commission

Amendment

'5. A company which is a subsidiary company shall be exempt from the obligations set out in paragraph 1(b), if the company and its subsidiaries are consolidated in the financial statements and annual report of another company and that consolidated annual report is drawn up in accordance with Article 36(1) of Directive 83/349/EEC.

deleted

Justification

A large company often consists of multiple companies; if a risk exists within the large company it should be clear in which subsidiary company this risk exists. An exclusion of the subsidiary companies from the obligations set out in paragraph 1(b) would diminish the necessary clarity.

Amendment 13

Proposal for a directive

Article 1 – point 2 – point a

Directive 78/660/EEC

Article 46a – paragraph 1 – point g

Text proposed by the Commission

Amendment

a description of the company's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical

a description of the company's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical

diversity, educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period. If the company has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case.

diversity, **disability**, educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period. If the company has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case.

Amendment 14

Proposal for a directive

Article 2 – point 1 – point a

Directive 83/349/EEC

Article 36 – paragraph 1 – subparagraph 3

Text proposed by the Commission

For parent undertakings of undertakings to be consolidated that together exceed an average number of 500 employees during the financial year, and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including the following:

Amendment

For parent undertakings of undertakings to be consolidated that together exceed an average number of 500 employees during the financial year, and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, **taking into account the company's complete supply chain**, including the following:

Amendment 15

Proposal for a directive

Article 2 – point 1 – point a

Directive 83/349/EEC

Article 36 – paragraph 1 – subparagraph 3 – indent iii

Text proposed by the Commission

the risks related to these matters and how

Amendment

the risks related to these matters **linked to the company's activities, which are likely**

the company manages those risks.

to cause, or have caused, adverse social, environmental and human rights impacts, and how the company manages those risks.

Amendment 16

Proposal for a directive

Article 2 – point 1 – point a

Directive 83/349/EEC

Article 36 – paragraph 1

Text proposed by the Commission

In providing such information the company may rely on national, EU-based or international frameworks ***and, if so, shall specify which frameworks it has relied upon.***

Amendment

In providing such information the company may rely on national, EU-based or international 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, and the Global Reporting Initiative.***

This provision shall apply without prejudice to the requirements of this Directive or to other European Union legislation or guidance containing more specific rules for companies' non-financial disclosure.

When providing such non-financial information, the company shall indicate which legal framework it has used.

Amendment 17

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

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

No later than [three years after adoption of this Directive], the Commission shall review the provisions in Article 46 and report to the European Parliament and Council accompanied by legislative proposals if appropriate, regarding:

- non-financial information disclosed in practice, including the coverage of the supply chain, whether this is effective, whether adequate guidance and methods are provided;

- progress with non-financial reporting across the world;

- the implementation of the UN “Protect, Respect and Remedy” Framework and its Guiding Principles as well as of the OECD Guidelines for Multinational Enterprises;

PROCEDURE

Title	Disclosure of non-financial and diversity information by certain large companies and groups	
References	COM(2013)0207 – C7-0103/2013 – 2013/0110(COD)	
Committee responsible Date announced in plenary	JURI 21.5.2013	
Opinion by Date announced in plenary	AFET 12.9.2013	
Rapporteur Date appointed	Elmar Brok 27.11.2013	
Previous rapporteur	Thijs Berman	
Discussed in committee	26.9.2013	11.11.2013
Date adopted	26.11.2013	
Result of final vote	+: 25	–: 10
	0: 0	
Members present for the final vote	Pino Arlacchi, Elmar Brok, Jerzy Buzek, Mark Demesmaeker, Andrzej Grzyb, Richard Howitt, Anna Ibrisagic, Liisa Jaakonsaari, Jelko Kacin, Nicole Kiil-Nielsen, Andrey Kovatchev, Paweł Robert Kowal, Eduard Kukan, Vytautas Landsbergis, Krzysztof Lisek, Marusya Lyubcheva, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Pier Antonio Panzeri, Bernd Posselt, Hans-Gert Pöttering, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Werner Schulz, Davor Ivo Stier, Charles Tannock, Eleni Theoharous, Inese Vaidere, Nikola Vuljanić	
Substitute(s) present for the final vote	Kinga Gál, Marietje Schaake	
Substitute(s) under Rule 187(2) present for the final vote	Maria Badia i Cutchet, Hiltrud Breyer, António Fernando Correia de Campos	