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Committee on Economic and Monetary Affairs

2013/0110(COD)

11.12.2013

OPINION

of the Committee on Economic and Monetary 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: Sharon Bowles

PA_Legam

SHORT JUSTIFICATION

The legislative proposal put forward by the Commission revises the recently ratified 2013 Accounting Directive whereby they are seeking to strengthen the existing language in the corporate governance statement regarding the disclosure of non-financial information, relating to at least environmental, social, and employee-related matters, respect of human rights, anti-corruption, bribery and diversity.

Your rapporteur commends the Commission in seeking to improve transparency in the information provided by large companies in the EU, despite it having come after the recent ratification of the Accounting Directive, and suggests further improvements to the Commission's text.

Country-by-country Reporting

In light of Commissioner Barnier's¹ comments and the European Council conclusions in May of this year², this revision of the 2013 Accounting Directive should also include mandatory country-by-country reporting (CBCR) for all large EU companies in order to ensure a level playing field amongst European firms and investors. CBCR should also be defined properly, so as to reduce confusion regarding its meaning and how it should be used. The information provided within it should be audited, as it is in the Capital Requirements Directive (CRDIV) for banks.

Due diligence requirements

Greater transparency in the information that companies compile in their annual accounts leads to better corporate practices and sustainability. Building on the Commission's requirements for EU companies to detail their environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters; EU companies should also have in place robust due-diligence policies for the supply chain in each of these areas so as to mitigate risks not only to the companies themselves but also to the member state or third country in which the company operates. This has become more relevant in light of recent supply chain scandals such as the meat adulteration scandal and the Savar building collapse in Bangladesh - both of which occurred this year.

Tax planning arrangements

Aggressive tax planning has a detrimental effect on the internal market as well as Member State's tax base.

The rapporteur has therefore put forward two proposals in order to mitigate the proliferation of these elaborate tax planning structures. The first is to require greater transparency for investors, by asking large EU companies to disclose their tax planning arrangements and the general substance of tax advice they receive from consultancy firms and the second is to

¹ See Commissioner Barnier's statement on the 12th June 2013 here: http://ec.europa.eu/commission_2010-2014/barnier/headlines/speeches/2013/06/20130612_en.htm

² See here: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137197.pdf

encourage member states to implement General Anti-Avoidance Rules (GAAR) in line with the European Commission's recommendations on the 6th December 2012¹

Scope

The scope of this proposal has been tightened so that all companies which have a balance sheet of €20 Million or turnover of at least €40 Million after tax contributions should provide the required non-financial information, regardless of how many people they employ. The reason for this is that some companies can significantly impact the countries in which they operate, even if they employ a smaller number of people relative to their financial size, and so they should not be exempt.

Existing Frameworks

The proposal references international, European and National frameworks and guidelines that EU companies can use to direct their non-financial disclosures. Your rapporteur would like to see certain frameworks used by companies as a base-line set of guidelines.

There should still be flexibility for companies to go further than the recommended guidelines specify but they should be used where possible as a minimum set of guidelines nonetheless.

Audit requirements

Your rapporteur commends the inclusion by the Commission of the required non-financial reporting policies being part of the management report.

The Country-by-country report should be audited in order to promote greater trust from European investors but also to ensure greater consistency with the CBCR requirements for banks in Capital Requirements Directive (CRDIV).

Special responsibility of Financial Institutions

As this is an ECON opinion, it is important to recognise that the financial system, and the institutions that play an integral part in it, have an all pervasive and unique effect on society as a whole.

Financial institutions, therefore, have a duty of care to ensure that their governance and codes of ethics are in sync with this position and should prepare, and make public, a 'Special Responsibility Report' which includes information on how they recognise their special responsibility in staff training, the systems they may have for regulatory arbitrage and their alert mechanisms.

AMENDMENTS

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

⁵See http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf here:

Amendment 1

Proposal for a directive Title 1

Text proposed by the Commission

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
(Text with EEA relevance)

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
amending *Directive 2013/34/EU* as regards
disclosure of *financial*, non-financial and
diversity information by certain large
undertakings and groups
(Text with EEA relevance)

Amendment 2

Proposal for a directive Recital 1

Text proposed by the Commission

(1) In its Communication to the European Parliament, the Council, the 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',⁹ adopted on 13 April 2011, the Commission identifies the need to improve the transparency of the social and environmental information provided by *companies* in all sectors, in order to ensure a level playing field.

⁹ COM(2011) 206 final of 13 April 2011.

Amendment

(1) In its Communication to the European Parliament, the Council, the 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',⁹ adopted on 13 April 2011, the Commission identifies the need to improve the transparency of the social and environmental information provided by *undertakings* in all sectors, in order to ensure a level playing field.

⁹ COM(2011) 206 final of 13 April 2011.

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) The necessity to improve **company** 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 Economic and Social Committee and the Committee of the Regions entitled 'A renewed EU strategy 2011-14 for Corporate Social Responsibility'¹⁰ adopted on 25 October 2011.

¹⁰ COM(2011) 681 final of 25 October 2011.

Amendment

(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"¹⁰ adopted on 25 October 2011.

¹⁰ COM(2011) 681 final of 25 October 2011.

Amendment 4

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Due to their dominant nature of the financial system on the economy and society, financial institutions have a duty of care and special responsibility to the financial system and its effect on society. This special responsibility is analogous to the behavioural special responsibility of a dominant company, even if such dominance is not present in terms of a competition policy analysis. In recognition of this, financial institutions should produce a 'Special Responsibility' report, made available to the public, that specifies the procedures that they have in place to address these considerations.

Amendment 5

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Regarding the activities of large companies increased transparency is essential for ensuring the trust of EU citizens in companies. This in particular regarding name(s) of establishments, nature of activities, geographical location, turnover, number of employees on a full time equivalent basis, profits made, taxes on profit paid and subsidies received. Mandatory reporting in this area can therefore be seen as an important element of the corporate responsibility of companies to investors, stakeholders and society.

Amendment 6

Proposal for a directive Recital 4

Text proposed by the Commission

Amendment

(4) The coordination of national provisions concerning the disclosure of non-financial information in respect of large undertakings with limited liability is of importance for the interests of **companies**, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of these undertakings operate in more than one Member State.

(4) The coordination of national provisions concerning the disclosure of non-financial information in respect of large undertakings with limited liability 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.

Amendment 7

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Evidence is showing that disclosing of non-financial information improves companies' management systems and internal policy, and thereby reducing the negative social, environmental and human rights impacts caused by their activities. Evidence also shows that companies which conduct a proper analyse and disclose of non-financial information increase their competitiveness, benefit from cost savings, easier access to capital, improved performance on financial markets, improves their stability in the market and reduces possibilities of harm.

Amendment 8

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(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 by undertakings across the Union. ***Annual*** reports should give a fair and comprehensive view of an undertaking's policies, results, and risks.

(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 other authorities*** by undertakings across the Union. ***Management*** reports should give a fair and comprehensive view of an undertaking's policies, results, and risks.

Amendment 9

Proposal for a directive Recital 6

Text proposed by the Commission

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

(6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, ***undertakings*** should be required to include

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.

in their **management** report **and annual reports as required**, a non-financial statement containing information relating to at least environmental matters, **gender equality**, social and **employment-related** matters, respect for human rights, anti-corruption and bribery matters. Such statement should **refer to the company's supply chains, subcontractors and business relationships**. The statement **should include** a description of the policies **and results as well as an assessment of all current and potential** the risks related to those matters, **taking into account the companies' complete supply chain**.

Amendment 10

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The disclosure of non-financial information should be on a risk-based due diligence by the company to identify, prevent and mitigate actual and potential adverse impacts, the nature and context of operations and the severity of the risks of adverse impacts as appropriate to the company size. The principles of due diligence have been outlined in the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework to which the Commission committed to abide by.

Amendment 11

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Social matters include responsible behaviour on tax planning to ensure that a fair share of tax is paid in the right place and that aggressive tax avoidance is averted.

Amendment 12

Proposal for a directive

Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) In order to increase transparency, the Commission should introduce country-by-country reporting for large undertakings, groups and public interest entities operating cross-border and in all sectors, enhancing the transparency of payments transactions – by requiring disclosure of information such as the nature of the company's activities and its geographical location, turn-over, number of employees on a full-time equivalent basis, profit or loss before tax, tax on profit or loss, and public subsidies received on a country-by-country basis on the trading of a group as a whole – in order to monitor respect for proper transfer pricing rules.

Amendment 13

Proposal for a directive

Recital 6 d (new)

Text proposed by the Commission

Amendment

(6d) Any incidents of note, both at company and supply chain level, during the corresponding reporting period should

be duly disclosed and reported in accordance to verifiable national and European standards.

Amendment 14

Proposal for a directive Recital 6 e (new)

Text proposed by the Commission

Amendment

(6e) References to existing sustainability and reporting framework and continuing emergence of new frameworks, stimulates the shift towards a sustainable growth of the global economy. With the global rise of sustainability in reporting policies, the alignment and harmonisation of frameworks becomes a growing challenge to address given the risk of conflicting, misleading and competing standards. This should ensure a possibility for the investors and society as such, to have a possibility to assess and compare company non-financial information, and to avoid distorting of competition hence to growing conciseness in society of fair trade and sustainable growth.

Amendment 15

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) In providing *this* information, *companies 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

(7) In providing *non-financial* information *on their compliance with rights and values protected by norms of international law companies shall apply* the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework *and the OECD Guidelines for Multinational Enterprises*,

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.

companies may also rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and other international frameworks such as the United Nations (UN) Global Compact, 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. Companies should specify which frameworks they have relied on.

Amendment 16

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) When disclosing non-financial information, undertakings should clearly state which frameworks and/or guidelines were used in the compilation of such information.

Amendment 17

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Member States should ensure that adequate and effective means exist to enforce full, accurate and credible disclosure of non-financial information by companies in compliance with this Directive.

Amendment 18

Proposal for a directive Recital 8

Text proposed by the Commission

(8) Paragraph 47 of the final declaration of the United Nations Rio +20 conference, 'The Future We Want'¹³, recognises the importance of corporate sustainability reporting and encourages **companies**, 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.

¹³ United Nations, 'The Future We Want', Outcome Document of the United Nations Conference on Sustainable Development RIO+20, A/CONF.216/L.1

Amendment

(8) Paragraph 47 of the final declaration of the United Nations RIO +20 conference, 'The Future We Want'¹³, 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.

¹³ United Nations, 'The Future We Want', Outcome Document of the United Nations Conference on Sustainable Development RIO+20, A/CONF.216/L.1

Amendment 19

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In addition to non-financial disclosures encouraged at European level, international efforts to improve transparency in financial reporting have been noted. Country by country reporting has been legislated for in the extractives sector by both the EU and the US, while within the context of the G8 and G20, which includes four EU Member States

and involves the European Commission, the OECD has been asked to draw up a standardised reporting template for multinationals 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 and levels, be they national, pan-European or international in scale and possible risk.

Amendment 20

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 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.

Amendment 21

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) The scope of these non-financial disclosure requirements should be defined

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***. 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.

by reference to the ***turnover of the company***. 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 ***undertakings which*** exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million.

Amendment 22

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The European Council of 22 May 2013 called for the mandatory introduction of country-by-country reporting for all large companies and groups as part of the revision of Directive 2013/34/EU. Therefore, in order to provide for enhanced transparency of payments made to governments, large undertakings and public interest entities should disclose material payments made to governments in the countries in which they operate. Such disclosures should be published, where possible, as an annex to the annual financial statements or to the consolidated financial statements of the undertaking concerned.

Amendment 23

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) To mitigate aggressive tax planning and avoidance by Union undertakings, Member States should introduce general anti-avoidance rules (GAAR) in line with

*the European Commission
Recommendation on Aggressive Tax
Planning of 12 December 2012 and the
OECD Progress Report to the G20 of 5
September 2013. Furthermore, large
undertakings in the Union should also
make public a report on their aggressive
tax planning systems, including other
relevant information.*

Amendment 24

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Some of the *companies* and groups falling under the scope of Directive *78/660/EEC and Directive 83/349/EEC* already prepare non-financial reports on a voluntary basis. Those *companies* should not be subject to the obligation to provide a non-financial statement in the *annual* report, provided that the report corresponds to the same financial year, covers at least the same content required by this Directive, and is annexed to the *annual* report.

Amendment

(12) Some of the *undertakings* and groups falling under the scope of Directive *2013/34/EU* already prepare non-financial reports on a voluntary basis. Those *undertakings* should not be subject to the obligation to provide a non-financial statement in the *management* report, provided that the report corresponds to the same financial year, covers at least the same content required by this Directive, and is annexed to the *management* report.

Amendment 25

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) As required by Article *51a (e) of Directive 78/660/EEC*, the report of the statutory auditors should also contain an opinion *concerning the consistency or otherwise of the annual* report, including non-financial information contained *in the annual report, with the annual accounts for the same financial year*.

Amendment

(14) As required by Article *28 of Directive 2006/43/EC*, the audit report should also contain an opinion *and a statement concerning the management* report, including *any* non-financial information contained *within it*.

Amendment 26

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Diversity of competences and views of the members of administrative, management and supervisory bodies of **companies** 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 **company**. It would therefore be important to enhance transparency regarding the diversity policy companies have in place. This would inform the market of corporate governance practices and thus put indirect pressure on **companies** to have more diversified boards.

Amendment

(15) Diversity of competences and views of the members of administrative, management and supervisory bodies of **undertakings, including gender diversity**, facilitates a good understanding of the business organisation and affairs. ***It has been acknowledged that gender diversity, especially in top positions, contributes to corporate governance, quality of decision-making and to the company's performance. Moreover, board diversity represents a benefit for the companies as board composition reflects demographic characteristics of key stakeholder groups such as employee, customer and investor. Furthermore,*** 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 **undertakings**. It would therefore be important to enhance transparency regarding the diversity policy **undertakings** have in place. This would inform the market of corporate governance practices and thus put indirect pressure on companies to have more diversified boards.

Amendment 27

Proposal for a directive Recital 15 a (new)

(15a) The supply chain of an undertaking can become disconnected from source and liability and can therefore pose significant risks not only to the undertakings themselves, but also to the wider society as a result of their business operations. It is therefore important that undertakings perform due diligence on their supply chains, including where they use sub-contractors and that these particular policies are disclosed in order to mitigate such risks and inform stakeholders of the assessments they have undertaken.

Amendment 28

Proposal for a directive Recital 16

(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**. **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.**

(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, **language, disability**, educational and professional background should only apply to large listed **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**.

Amendment 29

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order to further enhance transparency, and in line with the conclusions of the European Council of 22 May 2013, the revision of Directive 2013/34/EU should also include an extension of the scope of country-by-country reporting obligations so that they apply to all large undertakings and groups and all public-interest entities.

Amendment 30

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) Since the objective of this Directive, namely to increase the relevance, consistency and comparability of information disclosed by **companies** across the Union, cannot be sufficiently achieved by the Member States, and can therefore 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 the pursued objective.

(17) Since the objective of this Directive, namely to increase the relevance, consistency, **transparency** and comparability of information disclosed by **undertakings** across the Union, cannot be sufficiently achieved by the Member States, and can therefore 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 the pursued objective.

Amendment 31

Proposal for a directive Recital 18

Text proposed by the Commission

(18) 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.

Amendment

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including ***non-discrimination, equality between women and men***, 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.

Amendment 32

**Proposal for a directive
Recital 18 a (new)**

Text proposed by the Commission

Amendment

(18a) Should the supply chain of a large undertaking in third countries become disconnected from source and liability, significant risks may be posed not only to the undertaking itself, but also to the wider society in third countries, in particular in developing countries and emerging economies, as a result of its business operations. It is therefore important that large undertakings perform due diligence on their supply chains, in particular where they use subcontractors in developing countries and emerging economies. The particular policies should be disclosed in order to mitigate such risks, and stakeholders should be informed about the assessments they have undertaken.

Amendment 33

**Proposal for a directive
Recital 19**

Text proposed by the Commission

Amendment

(19) **Directives 78/660/EEC and 83/349/EEC** should therefore be amended accordingly,

(19) **Directive 2013/34/EU** should therefore be amended accordingly,

Amendment 34

Proposal for a directive Article 1 – title

Text proposed by the Commission

Amendment

Amendments to Directive **78/660/EEC**

Amendments to Directive **2013/34/EU**

Amendment 35

Proposal for a directive Article 1 – introductory part

Text proposed by the Commission

Amendment

Directive **78/660/EEC** is amended as follows:

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

Amendment 36

Proposal for a directive Article 1 – point 1

Text proposed by the Commission

Amendment

(1) **Article 46 is amended as follows:**

deleted

(a) **Paragraph 1 is replaced by the following:**

'1. (a) The annual report shall include a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the

development and performance of the company's business and of its position, consistent with the size and complexity of the business.

(b) For companies whose average number of employees during the financial year exceeds 500 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:

(i) a description of the policy pursued by the company in relation to these matters;

(ii) the results of these policies;

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

Where a company does not pursue policies in relation to one or more of these matters, it shall provide an explanation for not doing so.

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.

(c) 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.

(d) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.'

(b) Paragraph 4 is replaced by the following:

'4. Where a company prepares a

comprehensive report corresponding to the same financial year relying on national, EU-based or international frameworks and which covers the information provided for in paragraph 1(b), it shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(b), provided that such report is part of the annual report.'

(c) The following paragraph 5 is added:

'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.'

Amendment 37

Proposal for a directive Article 1 – point 2

Text proposed by the Commission

Amendment

(2) Article 46a is amended as follows: **deleted**

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

'(g) 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. '

(b) The following paragraph 4 is added:

'4. Point (g) of paragraph 1 does not apply to companies within the meaning of Article 27. '

Amendment 38

Proposal for a directive Article 1 – point 3

Text proposed by the Commission

Amendment

(3) Article 53a is replaced by the following:

deleted

'Article 53a

Member States shall not make available the exemptions set out in Article 1a, 11, Article 27, points (7a) and (7b) of Article 43(1), Article 46(3), Article 47 and Article 51 of this Directive in the case of companies whose securities are admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC.'

Amendment 39

Proposal for a directive Article 1 – point 3 a (new) Directive 2013/34/EU Article 2 – point 16a (new)

Text proposed by the Commission

Amendment

(3a) In Article 2, the following point is added:

“(16a) "Country-by-country report" means the following financial information, to be provided by an undertaking as defined in Article 2, paragraph 1(a), (b), and (c) and Article

3(4) for each Member State and third country in which it operates:

a) name(s), nature of activities and geographical location;

b) turnover;

c) number of employees on a full time equivalent basis;

d) profit or loss before tax;

e) tax on profit or loss;

f) public subsidies received.”

Amendment 40

Proposal for a directive

Article 1 – point 3 b (new)

Directive 2013/34/EU

Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(3b) In Article 18, the following paragraph is inserted:

‘2a. Member States shall require large undertakings and all public-interest entities to publicly disclose annually a country-by-country report on a consolidated basis for the financial year.

These obligations shall not apply to any undertaking governed by the law of a Member State which is a subsidiary or parent undertaking, where both of the following conditions are fulfilled

(a) the parent undertaking is subject to the laws of a Member State; and

(b) the country-by-country report made by the undertaking are included in the consolidated report on payment to governments drawn up by that parent undertaking in accordance with Article 39.

The information referred to in paragraph 1 shall be audited in accordance with

Directive 2006/43/EC and shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the company concerned.'

Amendment 41

Proposal for a directive

Article 1 – point 3 c – point a (new)

Directive 2013/34/EU

Article 19 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

(3c) Article 19 is amended as follows:

(a) In paragraph 1, the third subparagraph is replaced by the following:

'To the extent necessary for an understanding of the undertaking's development, performance or position, the analysis referred to in paragraph 1 shall include both financial and non-financial key performance indicators relevant to the particular business. In providing the analysis referred to in paragraph 1, the management report shall, where appropriate, include references to and additional explanations of amounts reported in the annual financial statements.'

Amendment 42

Proposal for a directive

Article 1 – point 3 c – point b (new)

Directive 2013/34/EU

Article 19 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(b) The following paragraph is inserted:

‘1a. For undertakings whose average number of employees during the financial year exceeds 250 and who, 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 integrate a non-financial statement regarding companies' activity and impact on society, relating to at least environmental, social, gender and employee matters, respect for human rights, anti-corruption and bribery matters. The review shall also make reference to the companies' complete supply chains, subcontractors and business relationships, including:

(a) a description of the policy pursued by the undertaking in relation to these matters;

(b) the results of these policies;

(c) the risks related to these matters and how the company manages those risks;

(d) a description of the company's due diligence policy for its administrative, management and supervisory bodies with regard to its supply chains and subcontractors at least in the areas relating to environmental, social and employee matters, respect for human rights, anti-corruption and bribery. The description shall also include the objectives of this due diligence policy, how it has been implemented and the results in the reporting period.’

In providing such information, the undertaking shall rely on national, EU-based or international frameworks such as the Guiding Principles on Business and Human Rights implementing the United Nations "Protect, Respect and Remedy" Framework and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.’

Amendment 43

Proposal for a directive

Article 1 – point 3 c – point c (new)

Directive 2013/34/EU

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

(c) Paragraph 4 is replaced by the following:

‘4. Where an undertaking prepares a comprehensive report corresponding to the same financial year relying on national, EU-based or international frameworks and covering the information provided for in paragraph 1(a), the undertaking shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(a), provided that such comprehensive report is part of the management report.’

Amendment 44

Proposal for a directive

Article 1 – point 3 c – point d (new)

Directive 2013/34/EU

Article 19 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(d) The following paragraph is added:

‘4a. An undertaking which is a subsidiary undertaking shall be exempted from the obligations set out in paragraph 1a if the undertaking and its subsidiary undertakings are included in the consolidated financial statements and consolidated management report of another undertaking and that consolidated management report is drawn up in accordance with Article 29.’

Amendment 45

Proposal for a directive

Article 1 – point 3 d –point a (new)

Directive 2013/34/EU

Article 20 – paragraph 1 point f a (new)

Text proposed by the Commission

Amendment

(3d) Article 20 is amended as follows:

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

‘(fa) a description of the undertaking's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical 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 undertaking has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case.’

Amendment 46

Proposal for a directive

Article 1 – point 3 d –point b (new)

Directive 2013/34/EU

Article 20 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(b) The following paragraph is inserted:

‘1a. Undertakings referred to in points (1)(b) and (c) and (14)(a) and (b) of Article 2 shall produce, and make public, a Special Responsibility Report which shall include:

(a) procedures which take account of their special responsibility including their recognition in staff training, appraisals and alert mechanisms;

(b) systems of regulatory arbitrage and regulatory trades procedures used for the purpose of reduction of capital or other prudential requirements;

Where there are perceived conflicts between the stability of an institution and the financial system this shall be reported to the competent authority.'

Amendment 47

Proposal for a directive

Article 1 – point 3 d –point c (new)

Directive 2013/34/EU

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

(c) 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), (ca) 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 and paragraph 1a of this Article has been provided.'

Amendment 48

Proposal for a directive

Article 1 – point 3 d –point d (new)

Directive 2013/34/EU

Article 20 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(d) the following paragraph is added:

'4a. Notwithstanding Article 40, point (g) of paragraph 1 shall not apply to small and medium-sized undertakings.'

Amendment 49

Proposal for a directive

Article 1 – point 3 d – point e (new)

Directive 2013/34/EU

Article 20 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

(e) The following paragraph is added:

‘4b. To counteract aggressive tax planning practices, Member States shall adopt a general anti-abuse rule (GAAR), as defined in the European Commission Recommendation on Aggressive Tax Planning of 12 December 2012, ignoring all artificial arrangements or artificial series of arrangements which have been put in place for essential purpose of avoiding taxation and are adapted to domestic and cross-border situations confined to the Union and situation involving third countries.’

Amendment 50

Proposal for a directive

Article 1 – point 3 e – point a (new)

Directive 2013/34/EU

Article 29 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3e) Article 29 is amended as follows:

(a) the following paragraph is added:

‘(3a) The review shall also include a non-financial statement containing information relating to matters which are material for an understanding of the company's development, performance or position. This shall cover environmental, social and employee matters, respect for

human rights, anti-corruption and bribery matters, including:

(a) a description of the policy pursued by the group in relation to these matters;

(b) the results of these policies;

(c) the risks related to these matters and how the group manages those risks;

(d) a description of the group's due diligence policy for its administrative, management and supervisory bodies with regard to its supply chains and sub-contractors at least in the areas relating to environmental, social and employee matters, respect for human rights, anti-corruption and bribery. The description should also include the objectives of this due diligence policy, how it has been implemented and the results in the reporting period.

Where the undertakings included in the consolidation taken as a whole do not report on one or more of these matters, the company shall provide an explanation for not doing so.

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

Amendment 51

Proposal for a directive

Article 1 – point 3 e – point b (new)

Directive 2013/34/EU

Article 29 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

(b) the following paragraph is added:

'3b. For the purposes of paragraph 1 of this Article, where a parent undertaking prepares a comprehensive report corresponding to the same financial year,

and referring to the whole group, relying on national, EU-based or international frameworks and covering the information provided for in paragraph 1a, the parent undertaking shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1a, provided that the comprehensive report is part of the consolidated management report.'

Amendment 52

Proposal for a directive

Article 1 – point 3 e – point c (new)

Directive 2013/34/EU

Article 29 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

(c) the following paragraph is added:

'3c. For the purposes of paragraph 1 of this Article, a parent undertaking which is also a subsidiary undertaking shall be exempt from the obligations set out in paragraph 1a if the exempted undertaking, and its subsidiaries, are included in the consolidated financial statements and the consolidated management report of another undertaking, and that consolidated management report is drawn up in accordance with this Article.'

Amendment 53

Proposal for a directive

Article 1 – point 3 f (new)

Directive 2013/34/EU

Article 41 – point 5 a (new)

Text proposed by the Commission

Amendment

(3f) In Article 41, the following point is added:

‘(5a) "Country-by-country report" means the following financial information, to be provided by an undertaking as defined in Article 2, paragraph 1(a), (b), and (c) and Article 3, paragraph 4 for each Member State and third country in which it operates:

a) name(s), nature of activities and geographical location;

b) turnover;

c) number of employees on a full time equivalent basis;

d) profit or loss before tax;

e) tax on profit or loss;

f) public subsidies received.’

Amendment 54

Proposal for a directive

Article 1 – point 3 g (new)

Directive 2013/34/EU

Article 42 – paragraph 1

Text proposed by the Commission

Amendment

(3g) In Article 42, paragraph 1 is replaced by the following:

'1. Member States shall require large undertakings and all public-interest entities to prepare and make public a report on payments made to governments on an annual basis.'

Amendment 55

Proposal for a directive

Article 1 – point 3 h (new)

Directive 2013/34/EU

Article 44 – paragraph 1

Text proposed by the Commission

Amendment

(3h) In Article 44, paragraph 1 is replaced by the following:

'1. A Member State shall require any large undertaking or any public-interest entity governed by its national law to draw up a consolidated report on payments to governments in accordance with Articles 42 and 43 if that parent undertaking is under the obligation to prepare consolidated financial statements as laid down in Article 22(1) to (6).'

Amendment 56

Proposal for a directive

Article 1 – point 3 I (new)

Directive 2013/34/EC

Article 49 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(3i) Article 49 is replaced by the following:

“Article 49

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 46 (ca) shall be conferred on the Commission for a period of four years from(4)*. The Commission shall draw up a report in respect of the delegation of power not later than six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of

each period.

3. The delegation of power referred to in Article 46 (ca) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 46 (ca) enters into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.”

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 3 j

Directive 2013/34/EC

Article 53 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(3j) In Article 53, the following paragraph is inserted:

“1a. Member States shall ensure that effective national procedures are in place

to ensure compliance with the obligations of this Directive. These procedures shall be accessible to all persons and legal entities having a legitimate interest in ensuring the full and accurate disclosure of non-financial information.”

Amendment 58

Proposal for a directive Article 2

Text proposed by the Commission

Amendment

Article 2

deleted

Amendments to Directive 83/349/EEC

Directive 83/349/EEC is amended as follows:

(1) Article 36 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. The consolidated annual report shall include a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall analyse in a balanced manner the development and performance of the business and the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business.

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:

- (i) a description of the policy pursued by the company in relation to these matters;*
- (ii) the results of these policies;*
- (iii) the risks related to these matters and how the company manages those risks.*

Where the undertakings included in the consolidation taken as a whole do not pursue policies in relation to one or more of these matters, the company shall provide an explanation for not doing so.

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

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

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts. '

(b) The following paragraphs 4 and 5 are added:

'4. Where a parent undertaking prepares a comprehensive report corresponding to the same financial year, referring to the whole group of consolidated undertakings, relying on national, EU-based or international frameworks and covering the information provided for in the third subparagraph of paragraph 1, the parent undertaking shall be exempt from the obligation to prepare the non-

financial statement set out in the third subparagraph of paragraph 1, provided that such comprehensive report is part of the consolidated annual report.

5. A parent undertaking which is also a subsidiary undertaking shall be exempt from the obligations set out in the third subparagraph of paragraph 1, if the exempted undertaking and its subsidiaries are consolidated in the financial statements and annual report of another undertaking, and that consolidated annual report is drawn up in accordance with the third subparagraph of paragraph 1. '

Amendment 59

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure effective means in order to monitor and enforce full and accurate disclosure of non-financial information by companies in compliance with the provisions of this Directive.

Amendment 60

Proposal for a directive

Article 4 – title

Text proposed by the Commission

Amendment

Entry into force

Entry into force *and consolidation*

Amendment 61

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. ***It shall be consolidated with the Directive which it amends within three months of its entry into force.***

Justification

The consolidated versions of the amended directives should be made available and published promptly.

PROCEDURE

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|---|--|
| 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 | ECON 21.5.2013 |
| Rapporteur Date appointed | Sharon Bowles 21.5.2013 |
| Discussed in committee | 17.10.2013 25.11.2013 |
| Date adopted | 9.12.2013 |
| Result of final vote | +: 19 -: 7 0: 9 |
| Members present for the final vote | Burkhard Balz, Jean-Paul Basset, Sharon Bowles, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Elisa Ferreira, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Syed Kamall, Othmar Karas, Wolf Klinz, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Ivana Maletić, Hans-Peter Martin, Arlene McCarthy, Marlene Mizzi, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Theodor Dumitru Stolojan, Ivo Strejček, Kay Swinburne, Marianne Thyssen, Ramon Tremosa i Balcells |
| Substitute(s) under Rule 187(2) present for the final vote | Biljana Borzan, Evelyne Gebhardt |