



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Employment and Social Affairs

2013/0110(COD)

10.12.2013

OPINION

of the Committee on Employment and Social 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: Richard Howitt

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AMENDMENTS

The Committee on Employment and Social 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 3 a (new)

Text proposed by the Commission

Amendment

(3a) In its resolution of 6 February 2013 on corporate social responsibility (2012/2097(INI)), the European Parliament clearly stipulated that in a free society charitable action must never be made compulsory in the context of CSR, since this could reduce people's willingness to give.

Amendment 2

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 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.

(6) In order to enhance consistency, **transparency** and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report, **without prejudice to audit requirements determined by Member States**, a non-financial statement containing information relating to at least environmental matters, **gender balance**, 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 **and the precise purpose of**

social investments.

Amendment 3

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Small and medium-sized enterprises, should under no circumstances be required to deliver non-financial statements regarding their voluntary social activities, since this would incur excessive administrative costs, destroy jobs and undermine rather than promote corporate social engagement.

Amendment 4

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In order to promote equal treatment of workers, Member States should encourage large companies to establish a diversity policy with medium and long term targets.

Amendment 5

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

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(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.

(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, *or on a set of quantifiable, sector-specific social criteria endorsed by the European Union under, for example, a ‘social labelling’ scheme.*

Amendment 6

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The requirement to disclose non-financial information calls for the setting up of EU-approved rating agencies to check, wherever necessary, the accuracy of the information disclosed.

Amendment 7

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Investor access to non-financial information should also help to channel investment into undertakings with high social standards.

Amendment 8

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The disclosure of non-financial information should make it possible to implement a sustainable and inclusive investment strategy that includes a corporate social responsibility clause with concrete guidelines for investors, as well as an efficient assessment methodology for public authorities monitoring the social and environmental impact of the resulting investments.

Amendment 9

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The requirement to disclose non-financial information includes striking a balance between environmental results and social results, in order to ensure that such disclosure is in keeping with CSR principles and is not confined solely to environmental data.

Amendment 10

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In order to maximise shared value, optimise corporate sustainability and

enhance the relevance, consistency and comparability of non-financial information provided by companies, the Commission should, within 12 months after the adoption of this Directive, provide sectoral guidance and horizontal guidance on the use of appropriate key performance indicators, resource measurement methodology and on the international frameworks, in particular as regards the corporate responsibility to respect rights and values protected by norms of international law.

Justification

This will lessen the administrative burden on enterprises and optimise the success of the Directive, by providing more certainty for companies, without being a direct requirement of the legislation

Amendment 11

Proposal for a directive

Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) 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 the provisions of this Directive. To provide a more effective level of protection, natural and legal persons, which have a legitimate interest in ensuring that the provisions of this Directive are complied with, should be empowered to engage in any proceedings which arise.

Justification

Each of the goals that the proposal seeks to meet is undermined by corporate non-compliance. In order to combat this, there needs to be a mechanism by which those with legitimate interests can enforce compliance. The precise details of any such mechanism are most appropriately dealt with at the Member State level. Useful examples of this can be found in EU consumer and anti-discrimination law.

Amendment 12

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

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. 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. ***Those companies should be encouraged to consult the Diversity Charters of the EU.***

Amendment 13

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Non-financial information disclosure could be included among the contract award criteria when the Public Procurement Directive is next revised.

Amendment 14

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point a – subparagraph 1

Text proposed by the Commission

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.

Amendment

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, **demonstrating its due diligence**.

Justification

Due diligence is at the core of the major international frameworks like the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights: this comprises how companies proactively identify, prevent and mitigate the risks and impacts they pose to society.

Amendment 15

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point b

Text proposed by the Commission

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:

Amendment

For **large** 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 **matters which are essential for understanding the company's development, performance or position, including not only** environmental **but also** social, **equality** and employee matters **as well as** respect for human rights, anti-corruption and bribery matters, including:

Amendment 16

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point b – point i

Text proposed by the Commission

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

Amendment

a description of the policy **and a strategy plan for achieving the targets** pursued by the company in relation to these matters;

Amendment 17

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point b – point iii

Text proposed by the Commission

the risks related to **these matters** and how the company manages those risks.

Amendment

the risks related to **the company in relation to its operations, products, services, staff, fixed assets and business relationships** and how the company manages those risks;

Justification

In the wake of the cases where buildings collapsed, it is important that companies are obliged to disclose risks relating to their fixed assets

Amendment 18

Proposal for a directive

Article 1 – – point 1 – point a

Directive 78/660/EEC

Article 46 – paragraph 1 – point b – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) an analysis of resource use,

including at least land use, water use, green house gas emissions and use of minerals;

Justification

The European Commission 2011 Resource Efficiency Roadmap proposed these four key resource indicators to complement the provisional lead indicator of domestic material consumption. The European Parliament overwhelmingly supported their adoption and the Commission proposed them in their consultation on measuring resource use. The European Resource Efficiency Platform, called for use of these indicators to give a clear signal to all economic actors. This proposal provides the framework for this.

Amendment 19

Proposal for a directive

Article 1 – point 1 – point a

Directive 78 / 660/CEE

article 46 – paragraph 1 – point b– point iii b (new)

Text proposed by the Commission

Amendment

(iiib) the precise purpose of its social investments.

Amendment 20

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

Amendment

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.

In providing such information the company may rely on national, EU-based or international frameworks ***or on a set of quantifiable, sector-specific social criteria endorsed by the European Union under, for example, a ‘social labelling’ scheme*** and, if so, shall specify which frameworks it has relied upon.

Amendment 21

Proposal for a directive

Article 1 – point 1 – point a

Directive 78/660/EEC

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

Text proposed by the Commission

Amendment

(ba) Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are put in place, made known and available to all persons, including legal entities, who have in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with.

Amendment 22

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

Amendment

(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.

(c) To the extent necessary for an understanding of the company's development, performance or position, **and employment rights as well as social rights**, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.

Amendment 23

Proposal for a directive

Article 1 – point 1 – point a a (new)

Directive 78/660/EEC

Article 46 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is inserted:

"1a. Country by Country Reporting:

In the notes to the financial statements, large undertaking and public-interest entities shall disclose, specifying by Member State and by third country in which it has an establishment, the following information on a consolidated basis for the financial year:

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

(b) turnover;

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

(d) sales and purchases;

(e) profit or loss before tax;

(f) tax on profit or loss;

(g) public subsidies received."

Amendment 24

Proposal for a directive

Article 1 – point 1 – point a b (new)

Directive 78/660/EEC

Article 46 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(ab) The following paragraph is inserted:

"1b. The Commission in cooperation with the European Parliament and Council shall, within 12 months after the adoption of this Directive, and with priorities based on an overall risk assessment, provide sectoral guidance and guidance on the methodology and use of international standards and non-financial performance indicators as referred to in Article 46.1 in order to assist companies in their

reporting."

Justification

Such guidance is of such importance that the legislators should be involved

Amendment 25

Proposal for a directive

Article 1 – point 1 – point a c (new)

Directive 78/660/EEC

Article 46 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

(ac) The following paragraph is inserted:

"1c. Member States shall ensure that adequate and effective means exist to monitor and enforce full, accurate and credible disclosure of non-financial information by companies in compliance with the provisions of this Directive.

Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons, including legal entities, who have in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with."

Justification

Each of the goals that the proposal seeks to meet is undermined by corporate non-compliance. In order to combat this, there needs to be a mechanism by which those with legitimate interests can enforce compliance. The precise details of any such mechanism are most appropriately dealt with at the Member State level. Useful examples of this can be found in EU consumer and anti-discrimination law.

Amendment 26

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

(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.

Amendment

(g) a description of the company's diversity policy for ***all its bodies, in particular*** its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, ***disability, racial or ethnic origin,*** educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period ***and the strategy to obtain the targets in the diversity policy.*** If the company has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case.

Amendment 27

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, ***without prejudice to audit requirements being determined by Member States,*** containing information relating to ***matters which are material for understanding the company's development, performance or position, which can include not only*** environmental ***but also*** social, ***equality*** and employee matters ***as well as*** respect for human rights, anti-corruption and bribery matters,

including the following:

Amendment 28

Proposal for a directive

Article 2 – point 1 – point a

Directive 83/349/CEE

Article 36 – paragraph 1 – subparagraph 3 – point iii a(new)

Text proposed by the Commission

Amendment

(iiia) the precise purpose of its social investments.

Amendment 29

Proposal for a directive

Article 2 – point 1 – point b

Directive 83/349/EEC

Article 36 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. In accordance with Article 19(4) of Directive 2013/34/EU Member States may exempt small and medium-sized undertakings from the obligation to include non- financial information in their management report.

Justification

The Commission proposal seems to mean that the Article 19 (4) of the Directive 2013/34/EU adopted on 26 June 2013 would be abolished, which should not happen. It is important that it is maintained. This paragraph refers to non-financial KPI's and not to non-financial statement. If this paragraph 4 is deleted it would cause SME's the obligation to provide non-financial key performance indicators. This would cause unwanted administrative burden for small and medium sized companies. Member states would not be able to exempt these companies from this obligation.

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	EMPL 21.5.2013
Rapporteur Date appointed	Richard Howitt 22.5.2013
Discussed in committee	17.10.2013 25.11.2013
Date adopted	9.12.2013
Result of final vote	+: 33 -: 5 0: 4
Members present for the final vote	Regina Bastos, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, Alejandro Cercas, Ole Christensen, Emer Costello, Frédéric Daerden, Sari Essayah, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Siiri Oviir, Konstantinos Poupakis, Sylvana Rapti, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu, Inês Cristina Zuber
Substitute(s) present for the final vote	Georges Bach, Philippe De Backer, Sergio Gutiérrez Prieto, Richard Howitt, Anthea McIntyre, Ria Oomen-Ruijten, Evelyn Regner, Tatjana Ždanoka, Gabriele Zimmer