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Committee on Legal Affairs

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2013/0110(COD)

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# DRAFT REPORT

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))

Committee on Legal Affairs

Rapporteur: Raffaele Baldassarre

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0207),
  - having regard to Article 294(2) and Article 50(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0103/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the opinion of the European Economic and Social Committee of ...<sup>1</sup>,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Women's Rights and Gender Equality (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive**  
**Title**

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<sup>1</sup> OJ L ....

*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

*Amendment*

Proposal for a Directive of the European Parliament and of the Council amending **Directive 2013/34/EU** as regards disclosure of non-financial and diversity information by certain large **undertakings** and groups

Or. en

*Justification*

*Directives 78/660/EEC and 83/349/EEC have been repealed by Directive 2013/34/EU*

**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”’,<sup>9</sup> 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.

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<sup>9</sup> *COM(2011) 206 final* of 13 April 2011.

*Amendment*

(1) In its Communication to the European Parliament, the Council, the **European** Economic and Social Committee and the Committee of the Regions entitled ‘Single Market Act – Twelve levers to boost growth and strengthen confidence – “Working together to create new growth”’,<sup>9</sup> 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.

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<sup>9</sup> *COM(2011)0206* of 13 April 2011.

Or. en

### 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’<sup>10</sup> adopted on 25 October 2011.

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<sup>10</sup> *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’<sup>10</sup>, adopted on 25 October 2011.

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<sup>10</sup> *COM(2011)0681* of 25 October 2011.

Or. en

### Amendment 4

#### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) The European Parliament **has**, in its resolutions of 6 February 2013 on, respectively, ‘Corporate **Social Responsibility**: accountable, transparent and responsible business behaviour and sustainable growth’<sup>11</sup> and ‘Corporate **Social Responsibility**: promoting society's interests and a tour to sustainable and inclusive recovery’<sup>12</sup>, acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and

*Amendment*

(3) The European Parliament, in its resolutions of 6 February 2013 on, respectively, ‘Corporate **social responsibility**: accountable, transparent and responsible business behaviour and sustainable growth’<sup>11</sup> and ‘Corporate **social responsibility**: promoting society's interests and a tour to sustainable and inclusive recovery’<sup>12</sup>, acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and

increasing investor and consumer trust, *and* called the Commission to bring forward a proposal on *non-financial* disclosure *by companies*.

increasing investor and consumer trust. *Accordingly, the European Parliament* called *on* the Commission to bring forward a *legislative* proposal on *the* disclosure of *non-financial information by undertakings allowing for high flexibility of action, in order to take account of the multi-dimensional nature of corporate social responsibility (CSR) and the diversity of the CSR policies implemented by businesses matched by a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on businesses' impact on society*.

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<sup>11</sup> Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI)); Committee on Legal Affairs.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN>

<sup>12</sup> Report on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery (2012/2097(INI)); Committee on Employment and Social Affairs.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN>

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<sup>11</sup> Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI)); Committee on Legal Affairs.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN>

<sup>12</sup> Report on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery (2012/2097(INI)); Committee on Employment and Social Affairs.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN>

Or. en

## Amendment 5

### Proposal for a directive Recital 4



*Text proposed by the Commission*

(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.

*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 **undertakings**, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of these undertakings operate in more than one Member State.

Or. en

**Amendment 6**

**Proposal for a directive**

**Recital 5**

*Text proposed by the Commission*

(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.

*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. **Management** reports should give a fair and comprehensive view of an undertaking's policies, results, and risks.

Or. en

**Amendment 7**

**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**

*Amendment*

(6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union,

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.

**undertakings** should be required to include in their **management** 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. ***The non-financial statement should also include, where appropriate, a reference to the due diligence processes implemented by the undertaking in order to identify, prevent and mitigate existing and potential adverse impacts as appropriate to the their size and the nature and context of operations.***

Or. en

## Amendment 8

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) With regard to environmental matters, the statement should contain, where applicable, details on the foreseeable impacts of an undertaking's operations on the environment, health and safety, the use of renewable and non-renewable energy, greenhouse gas emissions and air pollution. As regards social and employee-related matters, the information provided in the statement should concern, in particular, the relationships maintained by the undertaking with its subcontractors, the implementation of fundamental conventions of the International Labour Organisation (ILO), working conditions, social dialogue, health and safety at work and the dialogue with local communities, as well as the actions taken to ensure the***

*protection and the development of those communities. With regard to human rights, anti-corruption and bribery, the non-financial statement should include information on, as a minimum, the prevention of human rights abuses and instruments in place in order to fight corruption and bribery.*

Or. en

## **Amendment 9**

### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) Undertakings should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, products or business relationship.*

Or. en

## **Amendment 10**

### **Proposal for a directive Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

*(6c) The disclosure of information on principal risks, impending developments or matters in the course of negotiation may lead to the disclosure of sensitive*

*business information and, as a consequence, interfere with the business model and, ultimately, distort competition. For this reason, the members of the administrative, management, and supervisory bodies should be given the possibility to decide whether to disclose such information if disclosure would be seriously prejudicial to the interests of the undertaking.*

Or. en

## Amendment 11

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(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 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.*

#### *Amendment*

(7) In providing this information, *undertakings should rely, as a general rule, on 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 and the ILO Tripartite Declaration of principles concerning multinational enterprises and social policy. Undertakings may also rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the International Organisation for Standardisation (ISO) 26000, the Global Reporting Initiative, the Carbon Disclosure Project (CDP) and the Climate Disclosure Standards Board (CDSB).*

Or. en

## Amendment 12

### 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’<sup>13</sup>, 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.

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<sup>13</sup> 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’<sup>13</sup>, 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.

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

Or. en

## Amendment 13

### Proposal for a directive Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) Increased transparency regarding the activities of large undertakings and groups is important in order to protect revenues and ensure that citizens have confidence in the fairness and effectiveness of tax systems and that Union citizens trust large undertakings***

*and groups. Accordingly, in its conclusions of 22 May 2013, the European Council called for rapid progress in the area of tax evasion and tax fraud and decided, inter alia, that the proposal amending the Directives on disclosure of non-financial and diversity information by large undertakings and groups will be examined with a view, in particular, to ensuring country-by-country reporting by large undertakings and groups. To that end, the Commission, when reviewing the reporting regime of Directive 2013/34/EC, should consider whether to introduce an obligation for large undertakings and public-interest entities to publicly disclose, on an annual basis, a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, the profit or loss before tax, the tax on profit or loss and public subsidies received.*

Or. en

## **Amendment 14**

### **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

##### *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 **78/660/EEC and Directive 83/349/EEC** should only apply to certain large undertakings and groups.

under Directive **2013/34/EU** should only apply to certain large undertakings and groups.

Or. en

## Amendment 15

### 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, **balance sheet total and net** turnover. SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement in the **management** report should only apply to those **large undertakings and groups**, whose average number of employees exceeds 500.

Or. en

## Amendment 16

### 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

#### *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

the same content required by this Directive, and is annexed to the *annual* report.

same content *as* required by this Directive, and is annexed to the *management* report.

Or. en

## Amendment 17

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) Many of the undertakings which fall under the scope of Directive **78/660/EEC** are members of groups of undertakings. Consolidated *annual* reports should be drawn up so that the information concerning such groups of undertakings may be conveyed to members and third parties. National law governing consolidated *annual* reports should therefore be coordinated in order to achieve the objectives of comparability and consistency of the information which undertakings should publish within the Union.

#### *Amendment*

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

Or. en

## Amendment 18

### 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*

*deleted*



**Amendment 19****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** facilitates a good understanding of the business organisation and affairs. It enables members of these bodies to exercise a constructive challenge of the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, the ‘group-think’ phenomenon. It contributes thus to effective oversight of the management and a successful governance of the **undertaking**. It would therefore be important to enhance transparency regarding the diversity policy **undertakings** have in place. This would inform the market of corporate governance practices and thus put indirect pressure on **undertakings** to have more diversified boards.

Or. en

**Amendment 20****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

*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, **integration of**

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.

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

Or. en

## Amendment 21

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(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.

#### *Amendment*

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

Or. en

## **Amendment 22**

### **Proposal for a directive Recital 19**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 23**

### **Proposal for a directive Article 1 – title**

*Text proposed by the Commission*

Amendments to Directive *78/660/EEC*

*Amendment*

Amendments to Directive *2013/34/EU*

Or. en

## **Amendment 24**

### **Proposal for a directive Article 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 25**

### **Proposal for a directive Article 1 – point 1 Directive 78/660/EEC Article 46**

**(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.'*

*See amendment to Article 19 of Directive 2013/34/EU.*

Or. en

## **Amendment 26**

### **Proposal for a directive Article 1 – point 2**

Directive 78/660/EEC  
Article 46a

*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. '**

*See amendment to Article 20 of Directive 2013/34/EU.*

Or. en

## **Amendment 27**

### **Proposal for a directive**

#### **Article 1 – point 3**

Directive 78/660/EEC

Article 53a

*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.'*

Or. en

## **Amendment 28**

### **Proposal for a directive**

#### **Article 1 – point 3 a (new) – introductory wording**

Directive 2013/34/EU

Article 19

*Text proposed by the Commission*

*Amendment*

*(3a) Article 19 is amended as follows:*

Or. en

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – point 3 a (new) – point a**

Directive 2013/34/EU

Article 19 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

*(a) The third subparagraph of paragraph 1 is deleted;*

Or. en

## **Amendment 30**

### **Proposal for a directive**

#### **Article 1 – point 3 a (new) – point b**

*Text proposed by the Commission*

*Amendment*

***(b) The following paragraphs are inserted:***

***'1a. For large undertakings whose average number of employees during the financial year exceeds 500, the review shall also include a non-financial statement containing information relating to, as a minimum, environmental, social and employee matters, respect for human rights, and the fight against corruption and bribery, including:***

***(a) the policies pursued by the undertaking in relation to these matters, including, where appropriate, a reference to implemented due diligence processes;***

***(b) the results of those policies;***

***(c) the principal risks related to matters linked to the undertaking's activities, operations, products or business relationships which are likely to cause severe adverse impacts in these areas and the way in which the undertaking manages those risks.***

***Where the undertaking does not pursue policies in relation to one or more of these matters, the review shall provide an explanation for not doing so.***

***The information relating to risks as referred in point (c) of the first subparagraph, impending developments or matters in the course of negotiation need not be disclosed where the disclosure of such information would, in the opinion of the members of the administrative, management, and supervisory bodies, be seriously prejudicial to the interests of the undertaking.***

***In providing the information required by the first subparagraph, the undertaking may rely on national, Union-based or***



*international frameworks, and if so, the undertaking shall specify which frameworks it has relied upon.*

*1b. To the extent necessary for an understanding of the undertaking's development, performance or position and for the transparency and comparability of the review, the analysis referred to in paragraph 1 shall include both financial and non-financial key performance indicators relevant to the particular business.*

*1c. 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.';*

Or. en

## **Amendment 31**

### **Proposal for a directive**

**Article 1 – point 3 a (new) – 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 which relies on national, Union-based or international frameworks and covers the information provided for in paragraph 1a, the undertaking shall be exempted from the obligation to prepare the non-financial statement provided for in paragraph 1a, provided that such comprehensive report forms part of the management report.'*

## **Amendment 32**

### **Proposal for a directive**

#### **Article 1 – point 3 a (new) – point d (new)**

Directive 2013/34/EU

Article 19 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(d) The following paragraph 4 a is added:***

***‘4a. An undertaking, which is a subsidiary undertaking, shall be exempted from the obligations laid down 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.’***

Or. en

## **Amendment 33**

### **Proposal for a directive**

#### **Article 1 – point 3 b (new) – introductory wording**

Directive 2013/34/EU

Article 20

*Text proposed by the Commission*

*Amendment*

***(3b) Article 20 is amended as follows:***

Or. en

## **Amendment 34**

### **Proposal for a directive**

#### **Article 1 – point 3 b (new) – point a**

Directive 2013/34/EU  
Article 20 – paragraph 1 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(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, integration of people with disabilities, educational and professional background, the objectives of the diversity policy, the way in which it has been implemented and the results in the reporting period. If the undertaking has no such policy, the statement shall contain an explanation as to why this is the case.'***

Or. en

## **Amendment 35**

**Proposal for a directive**  
**Article 1 – point 3 b (new) – point b**  
Directive 2013/34/EU  
Article 20 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## **Amendment 36**

### **Proposal for a directive**

#### **Article 1 – point 3 b (new) – point c**

Directive 2013/34/EU

Article 20 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(c) The following paragraph is added:*

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

Or. en

## **Amendment 37**

### **Proposal for a directive**

#### **Article 1 – point 3 c (new) – introductory wording**

Directive 2013/34/EU

Article 29

*Text proposed by the Commission*

*Amendment*

*(3c) Article 29 is amended as follows:*

Or. en

## **Amendment 38**

### **Proposal for a directive**

#### **Article 1 – point 3 c (new) – point a**

Directive 2013/34/EU

Article 29 – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

*(a) The following paragraph is inserted:*

***'1a. For the purposes of paragraph 1 of this Article, the review of parent undertakings of a large group whose average number of employees during the financial year exceeds 500 shall, to the extent necessary for an understanding of the development, performance or position of the undertaking, also include a non-financial statement containing information relating to, as a minimum, environmental, social and employee matters, respect for human rights and the fight against corruption and bribery matters, including:***

***(a) the policies pursued by the group in relation to these matters, including, where appropriate, a reference to implemented due diligence processes;***

***(b) the results of those policies;***

***(c) the risks related to these matters linked to the undertaking's activities, operations, products or business relationships which are likely to cause severe adverse impacts in these areas and how the group manages those risks.***

***Where the group does not pursue policies in relation to one or more of these matters, the review shall provide an explanation for not doing so.***

***The information relating to risks as referred in point (c) of the first subparagraph, impending developments or matters in the course of negotiation need not be disclosed where the disclosure of such information would, in the opinion of the members of the administrative, management, and supervisory bodies, be seriously prejudicial to the interests of the undertaking.'***

Or. en

## **Amendment 39**

### **Proposal for a directive**

#### **Article 1 – point 3 c (new) – point b**

Directive 2013/34/EU

Article 29 – paragraphs 3a and 3b (new)

*Text proposed by the Commission*

*Amendment*

***(b) The following paragraphs are added:***

***‘3a. 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, Union-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 provided for in paragraph 1a, provided that such comprehensive report forms part of the consolidated management report.***

***3b. For the purposes of paragraph 1 of this Article, a parent undertaking which is also a subsidiary undertaking shall be exempt from the obligations laid down in paragraph 1a if the exempted undertaking and its subsidiaries 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 this Article.’;***

Or. en

## **Amendment 40**

### **Proposal for a directive**

#### **Article 1 – point 3 d (new)**

Directive 2013/34/EU

Article 48 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) In Article 48, the following paragraph is inserted:***

***'The report shall consider the introduction of an obligation for large undertakings and all public-interest entities to publicly disclose, on an annual basis, a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.'***

Or. en

## **Amendment 41**

### **Proposal for a directive**

#### **Article 2**

Directive 83/349/EEC

Article 36

*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. '*

*See amendments to Article 29 of Directive 2013/34/EU.*

Or. en

## EXPLANATORY STATEMENT

### 1. Introduction.

#### 1.1 What is the added value of the disclosure of non-financial and diversity information?

The growing recognition of the ‘socially responsible’ role that can be played by business may be interpreted in various ways. On the one hand, the emergence of ‘global’ markets is encouraging the development of social and environmental standards by undertakings; on the other, an increasingly attentive and informed civil society is calling for more responsible behaviour from undertakings. This twin driving force behind the development of CSR is a reflection of the community of interests between business and society as a whole.

Corporate social responsibility is thus a key factor in competitiveness. This does not mean that all CSR measures will automatically make a business more competitive. It means that measures that create shared value for a business, its stakeholders and society at large can make that business stronger.

In this regard, greater transparency on non-financial aspects can help undertakings better to manage risks and become more competitive. At the same time, a more informed civil society is better able to assess and, accordingly, support, the business operations, products and services offered by an undertaking. Equally, potential investors can better determine the sustainability, and thus long-term profitability, of their investments.

Likewise, increased transparency and disclosure of diversity information can make it easier to forecast risks and increase the competitiveness of a business. As indicated by a solid body of research, more heterogeneous company boards have a positive impact on the business activities of an undertaking and on the far-sightedness of its policies.

#### 1.2 The current situation and the need for clearer rules.

The disclosure of non-financial information by undertakings has, up to now, been regulated by the so-called Accounting Directives, which were recently recast into a single directive. Nationally, some Member States have adopted more stringent legislation, while several non-member states have introduced legislative provisions which, albeit to varying extents, lay down non-financial reporting requirements.

The proposal under consideration is, therefore, in line with international regulatory developments and with the ever-increasing need for greater transparency as regards non-financial information. Indeed, as highlighted in the assessment carried out by the Commission, only around 2 500 out of a total of 42 000 EU large companies formally disclose non-financial information on a yearly basis.

Obviously, the current situation does not meet the needs of internal and external business stakeholders. That is why a clearer, uniform set of rules is needed at EU level, to introduce requirements – restricted to a number of key issues – aiming to improve the quantity, quality and comparability of information.

#### 1.3 The Commission proposal.

The proposal makes some changes to the Accounting Directive, requiring large undertakings and groups to provide a specific analysis relating to non-financial information. Such a statement, annexed to the management report, must contain key information relating to at least environmental, social and employee matters, respect for human rights and the fight

against corruption. In addition, large listed companies will have to provide information on their diversity policy, including aspects concerning the age, gender, geographical diversity and educational and professional background of their staff.

The regulatory principle chosen is that of 'comply or explain'. Accordingly, where a company does not pursue policies in relation to one or more of these matters, it will have to provide an explanation for not doing so.

## 2. The rapporteur's view

### 2.1 Preliminary remarks

Broadly speaking, your rapporteur agrees with the Commission's regulatory approach. This approach responds to the request of Parliament, which came out in favour of the adoption of a legislative proposal on non-financial reporting that would allow 'high flexibility of action, in order to take account of CSR's multi-dimensional nature and the diversity of the CSR policies implemented by businesses' and that, at the same time, would provide 'a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on businesses' impact on society'. In view of these considerations, which identify two key principles for your rapporteur's amendments, such as 'flexibility' and 'comparability', your rapporteur considers it necessary to clarify the value of the 'comply or explain' principle, in order to avoid any misunderstanding as to the binding nature of the provisions. This principle does not leave undertakings free to choose whether to disclose the information required by the legislation or to refrain from doing so. On the contrary, the proposal introduces a dual requirement for undertakings: on the one hand, they have to report on certain aspects ('comply'), while, on the other, they have to provide an explanation should they fail to implement policies regarding one or more aspects ('explain').

### 2.2 Key changes made

Having made a series of technical amendments, to bring the text of the proposal into line with the substance of the new Accounting Directive, your rapporteur considers it appropriate to clarify some of the aspects of the legislation, in order to avoid any legal uncertainty and ensure that the provisions are interpreted in as uniform a manner as possible.

As regards matters relating to reporting, a new recital sets out the main issues to be reported on. Environmental information, for instance, will have to include greenhouse gas emissions, air pollution and the use of renewable energy. With reference to social and staff-related matters, the information should concern, amongst other things, the implementation of fundamental International Labour Organization (ILO) conventions, working conditions and social dialogue. Information relating to human rights and the fight against corruption, however, will have to include at least data concerning the prevention of human rights infringements and explanations as to the tools used by the undertaking to combat corruption and bribery.

In keeping with the goal of clarifying the rules, some of the proposed amendments clarify the concept of 'risk'. In this regard, your rapporteur would propose linking that concept to the activities, operations, products or business relationships of undertakings, which are more likely to have adverse effects on the matters included in the reporting.

Your rapporteur is concerned about the adverse impact that risk reporting might have on the

business and future development of an undertaking. Since such information is particularly sensitive, its disclosure could undermine the undertaking's business strategies and have a negative impact on competition dynamics. For this reason, your rapporteur proposes limiting the disclosure of information only to risks that are deemed to be 'principal', whilst giving the decision-making or supervisory bodies of an undertaking the option not to disclose information relating to risks or to negotiations under way, where such disclosure would seriously jeopardise the interests of the undertaking.

Your rapporteur is against any extension of reporting requirements to the supply and sub-contracting chain, or to the entire value chain. The proposal under consideration is, in fact, a first step towards greater constraints on undertakings as far as CSR is concerned, and as such, it should restrict itself to introducing primary obligations, which can be developed, if necessary, at a later stage once a prior analysis has been made of the impact of the new provisions.

Your rapporteur considers it possible and advisable, however, to extend the scope of the provisions to so-called due diligence processes, where these have been implemented by an undertaking in relation to disclosure-related matters. To that end, the draft report introduces an amendment, on the basis of which, as part of the description of the policy pursued in relation to the issues for which reporting is required, undertakings may refer to the due diligence processes they have implemented, where these exist.

Lastly, your rapporteur agrees with the Commission's decision to allow national, EU and international standards to be used flexibly in order to provide the information requested. That said, your rapporteur is of the view that in order to ensure greater comparability of information, as a general rule, the use of certain institutionally-recognised standards needs to be promoted.

### 3. Conclusions.

On 22 May 2013, in the context of the fight against tax evasion and tax fraud, the European Council, in its conclusions, called for rapid progress on 'the proposal amending the Directives on disclosure of non-financial and diversity information by large companies and groups, with a view to ensuring country-by-country reporting by large companies and groups'.

Your rapporteur agrees with the need highlighted by heads of state and government to implement more stringent policies to combat tax evasion, especially because of the transfer of capital to third countries, or so-called tax havens. Greater transparency in such matters could also increase consumer confidence in the operations of large undertakings and multinationals. Equally, investors would have more information available in order to analyse the economic, political or reputation-related risks of undertakings, or to understand how solid a business is and whether it has a geographically diversified company portfolio so that it is better able to react to any economic shocks.

That said, your rapporteur is of the view that any legislative measures regarding such matters should take account of the diversity of sectors and legislations in which undertakings operate. In some legal systems, for example, certain information might fall under the definition of 'state secret' or 'trade secret', resulting in legal uncertainty for European undertakings operating in those countries. Equally, the disclosure of certain information that is commercially and economically sensitive (strategic information on contracts, levels of profitability, results, management, etc.) could put undertakings at a competitive disadvantage, or could call into question agreements or contracts drawn up with the tax authorities of third countries.

In the light of these considerations, your rapporteur undertakes to deal with the issue of country-by-country reporting in this legislative proposal by taking a sensible and meticulous approach to the matter, so that its benefits can be multiplied and its risks neutralised. Your rapporteur therefore proposes an amendment to Article 48 of Accounting Directive 2013/34, requiring the Commission to consider, when reviewing the provisions relating to payments to governments, introducing an obligation for large undertakings and public-interest entities to publish an annual country-by-country report for each Member State and third country in which they operate, containing information on profits made, taxes paid on profits and public subsidies received.