European Commission Public Consultation on the Revision of the Non-Financial Reporting Directive (2020) - Contribution by Aleydis Nissen, Leiden Law School

INTRODUCTION

BACKGROUND INFORMATION ON THE NON-FINANCIAL REPORTING DIRECTIVE.

The Non-Financial Reporting Directive - NFRD - (Directive 2014/95/EU) amendment to the Accounting Directive (Directive 2013/34/EU). It requires certain large companies to include a non- financial statement as part of their annual public reporting obligations. Companies under the scope of the NFRD had to report according its provisions for the first time in 2018 (for financial year 2017).

The NFRD applies to large Public Interest Entities with more than 500 employees. In practice it includes large listed companies, and large banks and insurance companies (whether listed or not) all providing they have more than 500 employees.

The NFRD identifies four sustainability issues (environment, social and employee issues, human rights, and bribery and corruption) and with respect to those issues it requires companies to disclose information about their business model, policies (including implemented due diligence processes), outcomes, risks and risk management, and KPIs relevant to the business. It does not introduce or require the use of a non-financial reporting standard or framework, nor does it impose detailed disclosure requirements such as lists of indicators per sector.

The NFRD requires companies to disclose information "to the extent necessary for an understanding of the development, performance, position and impact of [the company's] activities." This means companies should disclose not only how sustainability issues may affect the company, but also how the company affects society and the environment. This is the so-called double materiality perspective.

In 2017, as required by the Directive, the Commission published non-binding guidelines for companies on how to report non-financial information. In June 2019, as part of the Sustainable Finance Action Plan, the Commission published additional guidelines on reporting climate-related information, which integrate the recommendations of the Task Force on Climate-related Financial Disclosures.

CURRENT CONTEXT

The non-financial information needs of users, in particular the investment community, are increasing very substantially and very quickly. The demand for better information from investee companies is driven partly by investors needing to better understand financial risks resulting from the sustainability crises we face, and partly by the growth in financial products that actively seek to address environmental and social problems. In addition, some forthcoming EU legislation, including the regulation on sustainability disclosures in the financial services sector (Regulation (EU) 2019/2088), and the regulation on a classification system (taxonomy) of sustainable economic activities, can only fully meet their objectives if more and better non-financial information is available from investee companies. The taxonomy regulation will require companies under the scope of the NFRD to disclose certain indicators of the proportion of their activities that are classified as sustainable according to the taxonomy.

The feedback received in the online public consultation on corporate reporting carried out in 2018 in the context of a fitness check that is currently being finalised by the Commission services, confirms that the non-financial information currently disclosed by companies does not adequately meet the needs of the intended users. The following problems have been identified:

(1) There is inadequate publicly available information about how non-financial issues, and sustainability issues in particular, impact companies, and about how companies themselves impact society and the environment. In particular:

(a) Reported non-financial information is not sufficiently comparable or reliable.
(b) Companies do not report all non-financial information that users think is necessary, and many companies report information that users do not think is relevant.
(c) Some companies from which investors and other users want non-financial information do not report such information.
(d) It is hard for investors and other users to find non-financial information even when it is reported.

(2) Companies incur unnecessary and avoidable costs related to reporting non-financial information. Companies face uncertainty and complexity when deciding what non-financial information to report, and how and where to report such information. In the case of some financial sector companies, this complexity may also arise from different disclosure requirements contained in different pieces of EU legislation. Companies are under pressure to respond to additional demands for non-financial information from sustainability rating agencies, data providers and civil society, irrespective of the information that they publish as a result of the NFRD.

In its resolution on sustainable finance in May 2018, the European Parliament called for the further development of reporting requirements in the framework of the NFRD. In December 2019, in its conclusions on the Capital Markets Union, the Council stressed the importance of reliable, comparable and relevant information on sustainability risks, opportunities and impacts, and called on the Commission to consider the development of a European non-financial reporting standard. In addition, ESMA recently published a report on undue short-term pressure on corporations where it recommends the Commission to amend the NFRD provisions.

In its Communication on the European Green Deal, the Commission committed to review the Non-Financial Reporting Directive in 2020 as part of the strategy to strengthen the foundations for sustainable investment. Meeting the objectives of the European Green Deal will require additional investments across all sectors of the economy, the bulk of which will need to come from the private sector. In this sense review of the NFRD is part of the effort to scale up sustainable finance by improving transparency.

The European Green Deal also stressed that sustainability should be more broadly embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects. As part of the Sustainable Finance Action Plan, work is being undertaken to prepare a possible action in this area.

In addition, to ensure appropriate management of environmental risks and mitigation opportunities, and reduce related transaction costs, the Commission will also support businesses and other stakeholders in developing standardized natural capital accounting practices within the EU and internationally.

This consultation is open until 11 June 2020.

Please note: In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-non-financial-reporting@ec.europa.eu.

More information:
on this consultation
on the consultation document
on the protection of personal data regime for this consultation

CONSULTATION QUESTIONS

1. QUALITY AND SCOPE OF NON-FINANCIAL INFORMATION TO BE DISCLOSED

The feedback received from the online public consultation on corporate reporting carried out in 2018 suggests that there are some significant problems regarding the non-financial information currently disclosed by companies pursuant to Directive 2014/95/EU ("the Non-Financial Reporting Directive" or NFRD) Likewise, ESMA's 2018 Activity Report gathers evidence that shows there is significant room for improvement in the disclosure practices under the NFRD.

Question 1. To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting?
Please rate as follows:
1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, or don't know/ no opinion/ not relevant

Please rate the following statements:

- The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem. 5
- The limited reliability of non-financial information reported by companies pursuant to the NFRD is a significant problem. 5
- Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups. 5

Article 19a of the Accounting Directive (which was introduced into the Accounting Directive by the NFRD) currently requires companies to disclose information about four non-financial matters, if deemed material by the particular company:

environment,
social and employee issues,
human rights,
bribery and corruption.

These correspond to the "sustainability factors" defined in Article 2(24) of Regulation (UE) 2019/2088 on sustainability related disclosures in the financial services sector.

Question 2. Do you consider that companies reporting pursuant to the NFRD should be required to disclose information about other non-financial matters in addition to those currently set-out in Article 19a?

'Core labour rights'. Currently, these rights are only implicitly embedded in the non-financial matter 'iii. human rights'.

For each of the four non-financial matters identified in Article 19a of the Accounting Directive, and subject to the company's own materiality assessment, companies are required to disclose information about their business model, policies (including implemented due diligence processes), outcomes, risks and risk management (including risks linked to their business relationships), and key performance indicators (KPIs) relevant to the business.

Question 3. Are there additional categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, (for example, scenario analyses, targets, more forward-looking information, or how the company aims to contribute to society through its business activities) that companies should disclose in order to enable users of their reports to understand the development, performance, position and impacts of the company?

Procedures to identify, analyse and rank risks; alert mechanism that collects information on potential or actual risks, developed in partnership with trade union representatives; and procedures to regularly assess, in accordance with the risk mapping, the situation of corporations it controls directly or indirectly, and subcontractors and suppliers with which it maintains established business relationships. (cf Loi Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'Ordre 2017 inserting art L 225-102-4 and 225-102-5 in Code du Commerce 1807 (FR) (hereafter: 'French Law' (2017)'). Results of the investigations undertaken to assess whether there is reasonable suspicion that products or services involve non-financial risks. (cf Wet van 24 oktober 2019 houdende de Invoering van een Zorgplicht ter Voorkoming van de Levering van Goederen en Diensten die met Behulp van Kinderarbeid tot Stand zijn Gekomen (NL) (hereafter: 'Dutch Law (2019)').

If there is reasonable suspicion that products or services involve a non-financial risk, a plan of action to mitigate risks or prevent serious violations; monitoring scheme to follow up and assess the efficiency of the implemented measures. (cf French Law (2017); Dutch Law (2019)).

Investment in intangible assets currently represents the majority of investment carried out by the private sector in advanced economies. There is a long-standing debate about the need for better reporting of intangible investments in company reports, including in relation to sustainability[1]. Irrespective of the potential future changes to accounting standards, it is likely to remain the case that a significant proportion of intangible assets will fail to meet the definition of an asset or the criteria for recognition as an intangible asset in the financial statements. The Accounting Directive currently makes no explicit reference to intangible assets in the Articles concerning the management report, other than the requirement to report about activities in the field of research and development in Article 19(2)(b).

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[1] The European Financial Reporting Advisory Group (EFRAG) is currently carrying out a research project on this topic. The United Kingdom's Financial Reporting Council issued a consultation document about business reporting of intangibles in 2019.

Question 4 In light of the importance of intangibles in the economy, do you consider that companies should be required to disclose additional nonfinancial information regarding intangible assets or related factors (e.g. intellectual property, software, customer retention, human capital, etc.)?

- Yes
- No
- Don't know / no opinion / not relevant

In addition to the provisions of the NFRD, several other EU legislative acts require disclosures of sustainability-related information for financial sector entities:

The Regulation on prudential requirements for credit institutions requires certain banks to disclose ESG risks as of 28 June 2022.
The Regulation on sustainability related disclosures in the financial services sector requires financial market participants to disclose their policies on the integration of sustainability risks in their investment decision-making process and the adverse impacts of investment decisions on sustainability factors, as of 10 March 2021.
The Regulation establishing a framework to facilitate sustainable investment (the Sustainable Finance Taxonomy) creates new reporting obligations including for companies subject to the NFRD, starting in December 2021.

Question 5. To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

In order to ensure that the financial service sector can comply with the new disclosure requirements there might be scope for better aligning the information required to investees and the one financial sector entities need to report themselves, e.g. as regards sustainability impacts.

Question 6. How do you find the interaction between different pieces of legislation?
You can provide as many answers as you want.

- It works well
- There is an overlap
- There are gaps
- There is a need to streamline
- It does not work at all
- Don't know / no opinion / not relevant

Question 7. In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives set out in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

- Yes
- No
- Don't know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 1 to 7:
5000 character(s) maximum

The non-financial reporting obligations contained in the NFRD are so lax that they threaten to undermine its objective, that is, to increase the relevance, comparability and consistency of CSR information disclosed by the targeted companies across the EU. Two points need to be highlighted. First, corporations are free to issue a financial statement or to give an alternative explanation. If they choose to report, they are not required to use an established reporting framework or to exercise supply chain due diligence. Well-defined key performance indicators are also missing. This lack of cohesion of reporting by companies that operate across the EU leads to difficulties in benchmarking. Second, while the European Commission indicated in the accompanying non-binding Guidelines (2017) that acts need to be distinguished from views, that information of both a qualitative and quantitative nature needs to be reported and that misstatements can influence decisions of stakeholders, there are no thorough safeguards to make sure that corporate managers do not report incomplete or inaccurate information. The statutory auditor or audit firm will not verify whether the management report contains any material misstatements and whether it is consistent with the financial statement. Complying with the Directive might therefore simply become a 'tick box' endeavour. Worse, it might serve as a vehicle for corporate managers to publish misleading information, which adds complexity to citizen's consumption decisions and investments, and inflates sustainability indices.

2. STANDARDISATION

Note: in this section, the word "standard" is used for simplicity. This should not be read as a suggestion that all relevant reporting requirements must be specified in a single normative document. Rather, "standard" is merely used as a shorthand that could encompass a consistent and comprehensive set of standards. Reporting standards define what information companies should report and how such information should be prepared and presented.

A requirement that all companies falling within the scope of the NFRD report in accordance with a common non-financial reporting standard may help to address some of the problems identified in section 1 (comparability, reliability and relevance).

Question 8. In your opinion, to what extent would a requirement on companies to apply a common standard for non-financial information resolve the problems identified?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 9. In your opinion, is it necessary that a standard applied by a company under the scope of the Non-Financial Reporting Directive should include sector-specific elements?

- Yes
- No
- Don't know / no opinion / not relevant

A number of non-financial reporting frameworks and standards already exist. Some, including the standards of the Global Reporting Initiative (GRI), the framework of the International Integrated Reporting Council (IIRC), and the standards of the Sustainability Accounting Standards Board (SASB), aim to cover most or all relevant non-financial issues.

Question 10. To what extent would the application of one of the following standards or frameworks, applied on its own, resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the Non-Financial Reporting Directive, taking into account the double-materiality perspective (see section 3)?:

Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Please rate the following standards or frameworks:

- Global Reporting Initiative 3
- Sustainability Accounting Standards Board 2
- International Integrated Reporting Framework 2

Question 10.1 Do you consider that other standard(s) or framework(s), applied on their own, would resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the NFRD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 10.2 Please specify which other standard(s) or framework(s) you consider, applied on their own, would resolve the problems identified while also enabling companies to meet the comprehensively current disclosure requirements of the NFRD, and to what extent:

Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

On 5 December 2019, the Economic and Financial Affairs Council adopted conclusions on deepening the Capital Markets Union, in which it invited the Commission to "consider the development of a European non-financial reporting standard taking into account international initiatives". Most existing frameworks and standards focus on individual or a limited set of non- financial issues. Examples include the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), the UN Guiding Principles Reporting Framework (human rights), the questionnaires of the CDP (formerly the Carbon Disclosure Project), and the standards of the Carbon Disclosure Standards Board (CDSB). Several approaches have also been developed at EU level in the environmental area, including the Organisation Environmental Footprint and reporting under the Eco-Management and Audit Scheme (EMAS).

Question 11. If there were to be a common European non-financial reporting standard applied by companies under the scope of the NFRD, to what extent do you think it would be important that such a standard should incorporate the principles and content of the following existing standards and frameworks?
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following standards or frameworks:
- Global Reporting Initiative 4
- Sustainability Accounting Standards Board 3
- International Integrated Reporting Framework 3
- Task Force on Climate-related Financial Disclosures (TCFD) 4
- UN Guiding Principles Reporting Framework (human rights) 4
- CDP 4
- Carbon Disclosure Standards Board (CDSB) 4
- Organisation Environmental Footprint (OEF) 4
- Eco-Management and Audit Scheme (EMAS) 4

Question 11.1 Do you consider that the principles and content of other existing standard(s) or framework(s) should be incorporated in a potential common European non-financial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

Question 11.2 Please specify the existing standard(s) or framework(s), whose principles and content should be incorporated in a potential common European non-financial reporting standard, and to what extent:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.
Provide name and please rate of other standards or frameworks:
Child Labour Guidance Tool for Business jointly created by the ILO and the International Organisation of Employers (2015) 4
OECD Guidance on Due Diligence for Responsible Business Conduct (2018) 4
International Integrated Reporting Council (IIRC); EU Eco-Management and Audit Scheme (EMAS) 4

Question 12. If your organisation *fully* applies any non-financial reporting standard or framework when reporting under the provisions of the NFRD, please indicate the recurring annual cost of applying that standard or framework (including costs of retrieving, analysing and reporting the information):

Provide name of standard or framework including estimated costs:
- N/A

Small and Medium-Sized Enterprises (SMEs) often do not have the technical expertise nor resources necessary to prepare reports in accordance with state-of-the-art, sophisticated standards. This may imply that requiring SMEs to apply the same standards as large companies may be a disproportionate burden for SMEs. At the same time, many SMEs are under increasing pressure to provide certain non-financial information to other businesses, in particular if they are suppliers of large companies. In addition, financial institutions are increasingly likely to request certain non-financial information from companies to whom they provide capital, including SMEs. In this respect, SMEs that do not provide non-financial information may experience a negative impact on their commercial opportunities as suppliers of larger companies or on their access to capital, and may not be able to benefit from new sustainable investment opportunities.

Question 13. In your opinion, would it be useful for there to be a simplified standard and/or reporting format for SMEs?

- ○ Yes
- ○ No
- ○ Don't know / no opinion / not relevant

Question 14. To what extent do you think that a simplified standard for SMEs would be an effective means of limiting the burden on SMEs arising from information demands they may receive from other companies, including financial institutions?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 15. If the EU were to develop a simplified standard for SMEs, do you think that the use of such a simplified standard by SMEs should be mandatory or voluntary?

- Mandatory
- Voluntary
- Don't know / no opinion / not relevant

In the responses to the Commission's public consultation on public corporate reporting carried out in 2018, just over half of the respondents believed that integrated reporting could contribute to a more efficient allocation of capital and agreed that the EU should encourage integrated reporting.

Question 16. In light of these responses, to what extent do you agree that the body responsible for developing a European non-financial reporting standard should also have expertise in the field of financial reporting in order to ensure "connectivity" or integration between financial and non- financial information?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 17. The key stakeholder groups with an interest in and contributing to the elaboration of financial reporting standards have historically been investors, preparers of financial reports (companies) and auditors/ accountants.

To what extent to do you think that these groups should also be involved in the process of developing a European non-financial reporting standard?

Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following groups:

- Investors 3
- Preparers 3
- Auditors/accountants 3

Question 18. In addition to the stakeholders referred to in the previous question, to what extent to do you consider that the following stakeholders should be involved in the process of developing a European non-financial reporting standard?

Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following groups:

- Civil society representatives/NGOs 3
- Academics 3

Question 18.1 Do you consider that other stakeholder(s) should be involved in the process of developing a European non-financial reporting standard?

- ○ Yes
- ○ No
- ○ Don’t know / no opinion / not relevant

Question 18.2 Please specify which other stakeholder(s) you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.
Please provide the name and the other stakeholder(s):
Those who have drafted and refined existing non-financial reporting standards or frameworks (see question 11) 4.

Question 19. To what extent should the following European public bodies or authorities be involved in the process of developing a European nonfinancial reporting standard?
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following European public bodies or authorities:
- European Securities Markets Authority (ESMA) 3
- European Banking Authority (EBA) 3
- European Insurance and Occupational 2
- Pensions Authority (EIOPA) 3
- European Central Bank (ECB) 3
- European Environment Agency (EEA) 4
- Platform on Sustainable Finance N/A

Question 19.1 Do you consider that other European public bodies or authorities should be involved in the process of developing a European non-financial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

Question 19.2 Please specify which other European public bodies or authorities you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please provide the name and the other stakeholder(s):
Trade unions

Question 20. To what extent should the following national authorities or bodies be involved in the process of developing a European non-financial reporting standard?
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following European public bodies or authorities:
- National accounting standards-setters 3
- Environmental authorities 3

Question 20.1 Do you consider that other national authorities or bodies should be involved in the process of developing a European non-financial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

Question 20.2 Please specify which other national authorities or bodies you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please provide the name and the other stakeholder(s):
National competent authorities 4

Please provide any comments or explanations to justify your answers to
questions 8 to 20:
5000 character(s) maximum

Question 11
While it would be interesting to integrate existing standards or frameworks in a common European non-financial reporting standard, it is equally important to ensure that the reported information is presented in comparable and user-friendly ways, in order to avoid 'poverty of attention' and accessibility issues. In my field of expertise, business and human rights, I think that it is a priority that nuanced, accessible and reliable information on all core labour rights needs to be made available (without impoverishing democratic principles, such as freedom of speech). This includes those core labour rights for which public attention and reputational costs are low, such as the freedom of association and the effective recognition of the right to collective bargaining.

3. APPLICATION OF THE PRINCIPLE OF MATERIALITY

The NFRD requires companies to disclose information "to the extent necessary for an understanding of the development, performance, position and impact of [the company's] activities." This materiality principle implies that companies reporting pursuant to the NFRD must disclose (i) how sustainability issues may affect the development, performance and position of the company; and (ii) how the company impacts society and the environment. This is the double- materiality perspective (see also the Commission's non-binding guidelines on reporting climate- related). The two "directions" of materiality are distinct although there can information, section 2.2, page 4 be feedbacks from one to the other. For example, a company that with severe impacts on the environment or society may incur reputational or legal risks that undermine its financial performance.

'Material' information is defined in Article 2(16) of the Accounting Directive as "the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items." This definition is geared towards financial reporting, which is principally intended to serve the needs of investors and other creditors. By contrast, non-financial information serves the needs of a broader set of stakeholders,
as it relates not only to the increasing impact of non-financial matters on the financial performance of the company, but also to its impacts on society and the environment. This may imply the need to provide an alternative definition of materiality for application in the context of non-financial reporting, or at least additional guidance on this issue.

Question 21. Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's development, performance and position?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent

- Don’t know / no opinion / not relevant

Question 22. Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company’s impacts on society and the environment?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 23. Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company’s development, performance and position?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 23.1 If you do think there is a need to clarify the concept of ‘material’ non-financial information, how would you suggest to do so?

5000 character(s) maximum

In 2019, the Commission published additional guidelines on reporting climate-related information, which integrate the recommendations of the Task Force on Climate-related Financial Disclosures. In these guidelines, the Commission makes some good points about 'materiality'. It notes, amongst others, "Information should be reported if it is necessary for an understanding of the external impacts of the company." and "When assessing the materiality of non-financial information, companies should consider a longer-term time horizon than is traditionally the case for financial information."

Question 24. Should companies reporting under the NFRD be required to disclose their materiality assessment process?

- Yes
- No
- Don’t know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 21 to 24:

5000 character(s) maximum

Questions 23 and 28

My answers assume that corporations remain responsible for deciding upon the materiality assessment process. However, I do, actually, not think that corporations should be responsible for this because I do not think that companies will voluntarily consider 'a longer-term time horizon'. There are two reasons for this. First, the benefits related to non-financial disclosure are often perceived as long-term and uncertain by corporations, while short-term costs are relatively high and easily measurable. Second, business organisational behaviour is resistant to change. My research indicates that corporations in the EU fear compliance costs, liability risks, practical difficulties in educating suppliers, disclosure of sensitive company information (including information on levels of turnover, pricing, costs and profit structure) and loss of business opportunities (not qualifying as contract partners and being bypassed by clients who seize the opportunity to source directly from the disclosed sources).

4. ASSURANCE

The NFRD requires that the statutory auditor or audit firm checks whether the non-financial statement has been provided if a firm falls within the scope of the Directive.

Article 34 of the Accounting Directive requires that the financial statements are audited, and that the statutory auditor or audit firm express an opinion whether the management report (i) is consistent with the financial statements for the same financial year; and (ii) has been prepared in accordance with the applicable legal requirements. Article 34 of the Accounting Directive also requires the statutory auditor or audit firm to state whether it has identified material misstatements in the management report and to give an indication of the nature of such material misstatements. However, the non-financial statement published pursuant to the NFRD - whether contained in the management report or a separate report - is explicitly excluded from the scope of Article 34 of the Accounting Directive. Consequently, the NFRD does not require any assurance of the content of the non-financial statement.

Question 25. Given that non-financial information is increasingly important to investors and other users, are the current differences in the assurance requirements between financial and non- financial information justifiable and appropriate?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 26. Should EU law impose stronger assurance requirements for non-financial information reported by companies falling within the scope of the NFRD?

- Yes
- No
- Don't know / no opinion / not relevant

There are two types of assurance engagement a practitioner can perform:
Reasonable assurance reduces the risk of the engagement to an acceptably low level in the given circumstances. The conclusion is usually provided in a positive form of expression and states an opinion on the measurement of the subject matter against previously defined criteria.
Limited assurance engagements provide a lower level of assurance than the reasonable assurance engagements. The conclusion is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated.

Question 27. If EU law were to require assurance of non-financial information published pursuant to the NFRD, do you think that it should require a reasonable or limited assurance engagement on the non-financial information published?

- Reasonable
- Limited
- Don't know / no opinion / not relevant

Question 28. If EU law were to require assurance of non-financial information published pursuant to the NFRD, should the assurance provider assess the reporting company's materiality assessment process?

- Yes
- No
- Don't know / no opinion / not relevant

Question 29. If assurance of non-financial information was required by EU law, should the assurance provider be required to identify and publish the key engagement risks, their response to these risks and any related key observations (if applicable)?

- Yes
- No
- Don't know / no opinion / not relevant

Question 30. If assurance of non-financial information was required by EU law, do you think that assurance engagements should be performed based on a common assurance standard?

- Yes
- No
- Don't know / no opinion / not relevant

Question 30.1 If you answered yes in reply to the previous question, please explain whether there is an existing assurance standard that could be used for this purpose or whether a new standard would need to be developed:
5000 character(s) maximum
The EU can try to put the development of an accounting standard on the agenda of the International Accounting Standards Board.

Question 31. Do you think that an assurance requirement for non-financial information is dependent on companies reporting against a specific nonfinancial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

Question 32. Do you publish non-financial information that is assured?

- Yes
- No
- Don't know / no opinion / not relevant

Question 32.1 If you do publish non-financial information and that information is assured, please indicate the annual costs of such assurance:
5000 character(s) maximum
N/A

Question 32.2 If you provided an answer to the previous question, please describe the scope of the assurance services provided (issues covered, reasonable/limited, etc.):
5000 character(s) maximum
N/A
Please provide any comments or explanations to justify your answers to questions 25 to 32:
5000 character(s) maximum
N/A

5. DIGITISATION

The EU has introduced a structured data standard, the European Single Electronic Format (ESEF) under the Transparency Directive. With effect from 1 January 2020 listed companies in the EU shall report their annual financial reports in XHTML (audited financial statements, management report and issuer's responsibility statements). Additionally, if the consolidated financial statements are prepared in IFRS, the XHTML document should also be tagged using iXBRL elements specified in the ESEF taxonomy. This allows the information to be machine-readable. This is expected to produce a number of benefits, including cost saving for users of annual financial reports, greater speed, reliability and accuracy of data handling, improved analysis, and better quality of information and decision-making.
Additionally, the Commission is exploring opportunities to establish a single access point for public corporate information. In this respect, the Commission expects the High-level Forum on CMU to examine this topic and formulate recommendations from the Capital Markets angle in the coming months.

Question 33. To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information?

Please rate as follows:

1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don't know/ no opinion/ not relevant

Please rate the following statements:

- It would be useful to require the tagging of reports containing non-financial information to make them machine-readable. 4
- The tagging of non-financial information would only be possible if reporting is done against standards. 2
- All reports containing nonfinancial information should be available through a single access point. 5

Question 34. Do you think that the costs of introducing tagging of non-financial information would be proportionate to the benefits this would produce?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 35 Please provide any other comments you may have regarding the digitalisation of sustainability information:

5000 character(s) maximum

N/A

Please provide any comments or explanations to justify your answers to s 33 to 35:

5000 character(s) maximum

N/A

6. STRUCTURE AND LOCATION OF NON-FINANCIAL INFORMATION

The default requirement of the NFRD is that companies under scope shall include their non- financial statement in their annual management report. However, the NFRD also allows Member States to allow companies to disclose the required non-financial information in a separate report under certain conditions, and most Member States took up that option when transposing the Directive. Companies can be allowed by national legislation to publish such a report up to six months after the balance sheet date. The publication of non-financial information in a separate report has a number of consequences, including:

separate reports that include non-financial information are out of the legal mandate of the national competent authorities, whose mandate over periodic reports is limited to the annual and semi-annual financial reports (which include the management report).

separate reports that include non-financial information are not required to be filed in the Officially Appointed Mechanisms (OAMs) designated by Member States pursuant to Article 21(2) of the Transparency Directive.

Question 36. Other consequences may arise from the publication of the non-financial statement as part of a separate report. To what extent do you agree with the following statements:

Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent, N.A.

Please rate the following statements:

- The option to publish the non-financial statement as part of a separate report creates a significant problem because the non-financial information reported by companies is hard to find (e.g. it may increase search costs for investors, analysts, ratings agencies and data aggregators). 4
- The publication of financial and non-financial information in different reports creates the perception that the information reported in the separate report is of secondary importance and does not necessarily have implications in the performance of the company. 4

Question 37. Do you believe that companies should be required to disclose all necessary non- financial information in the management report?

- Yes
- No
- Don’t know / no opinion / not relevant

Question 38. If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?

Please rate as follows:

1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don’t know/ no opinion/ not relevant

Please rate the following approaches:

- Legislation should be amended to ensure proper supervision of information published in separate reports. 5
- Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs). 5
- Legislation should be amended to ensure the same publication date for management report and the separate report. 5

Question 38.1 Please provide any comments regarding the location of reported non-financial information:

5000 character(s) maximum

N/A

Question 39. Do you consider that the current segregation of non-financial information in separate non-financial and corporate governance statements within the management report provides for effective communication with users of company reports?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 36 to 39:
5000 character(s) maximum

1) The NFRD fits in with the European Commission's agenda to develop a strategy on sustainable finance. This became a priority for the European Commission in the aftermath of the worsening financial crisis following the 2007 meltdown, which had a profound impact on the Eurozone. By failing to account for material non-financial issues, institutional investors and asset managers have in many cases supported corporate managers' excessive short-term risk-taking leading to market volatility and systemic risk.

2) There is a need to develop initiatives to empower citizens in their consumption of non-financial information in the contemporary age of 'information disorder'.

7. PERSONAL SCOPE (WHICH COMPANIES SHOULD DISCLOSE)

The NFRD currently applies to large Public-Interest Entities (PIEs) with more than 500 employees. In practice this means large companies with securities listed in EU regulated markets, large banks (whether listed or not) and large insurance companies (whether listed or not) - all provided that they have more than 500 employees.
The Accounting Directive defines large undertakings as those that exceed at least two of the three following criteria:
balance sheet total: EUR 20 000 000;
net turnover: EUR 40 000 000;
average number of employees during the financial year: 250.
Some Member States have extended the personal scope of the NFRD by lowering the threshold to 250 employees, in effect capturing all large PIEs.
Companies that are a subsidiary of another company are exempt from the reporting requirements of the NFRD if their parent company publishes the necessary non-financial information at consolidated level in accordance with the NFRD.
There are a number of potential arguments to support the extension of the personal scope of the NFRD:
Changes in the legislative framework: following the adoption of the Regulation on sustainability-related disclosure in the financial services sector and of the Taxonomy Regulation, investors may require non-financial information from a broader range of investees in order to comply with their own sustainability-related reporting requirements.
Large unlisted companies can have significant impacts on society and the environment. There may therefore be no a priori reason to differentiate between listed and non-listed companies in this respect. In addition, the difference in treatment between listed and non- listed companies in this regard may serve as a disincentive for companies to become listed, and therefore undermine the attractiveness of capital markets.
Exempting PIEs that are subsidiaries limits the information about impacts on society and the environment, thus undermining the ability of stakeholders of such exempted subsidiaries to hold them accountable for their impacts on society and the environment, especially at local and national level.

Question 40. If the scope of the NFRD were to be broadened to other categories of PIEs, to what extent would you agree with the following approaches?
Please rate as follows:
1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don't know/ no opinion/ not relevant

Please rate the following approaches:
- Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size. N/A
- Expand scope to include all large public interest entities (aligning the size criteria with the definition of large undertakings set out in the Accounting Directive: 250 instead of 500 employee threshold). N/A
- Expand scope to include all public interest entities, regardless of their size. N/A

Question 41. If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?
Please rate as follows:
1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don't know/ no opinion/ not relevant

Please rate the following approaches:
- Expand the scope to include large non-listed companies. 5
- Remove the exemption for companies that are subsidiaries of a parent company that reports nonfinancial information at group level in accordance with the NFRD. N/A
- Expand the scope to include large companies established in the EU but listed outside the EU. 5
- Expand the scope to include large companies not established in the EU that are listed in EU regulated markets. 5
- Expand scope to include all limited liability companies regardless of their size. N/A

Question 42. If companies were required to disclose non-listed non-financial information, do you consider that there should be a specific competent authority in charge of supervising their compliance with that obligation?

- Yes
- No
- Don't know / no opinion / not relevant

Question 42.1 If you consider that there should be a specific competent authority in charge of supervising non-listed companies' compliance with the obligation of disclosing non-financial information, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other...) and how:
5000 character(s) maximum
National competent authorities or courts

Due to the nature of their activities, credit institutions and insurance undertakings have larger balance sheets than non-financial corporations. Hence, the vast majority of such institutions will exceed the balance sheet threshold in the definition of large undertakings set-out in the Accounting Directive. Moreover, the application of some public disclosure requirement of EU prudential regulation for credit institutions and insurance undertakings is defined based on various size thresholds.
For example:
the includes in Regulation on prudential requirements for credit institutions and investment firms its definition of large credit institutions those with a total value of assets equal to or greater than EUR 30 billion;
the same Regulation defines small and non-complex institutions as those that have EUR 5 billion or less total assets;
the consultation paper published by EIOPA in October 2019 proposes to revise article 4 thresholds of Solvency II (below which entities are excluded from the scope of Solvency II), doubling the thresholds related to the technical provisions (from EUR 25M provisions to

EUR 50M) and allowing Member States to set the threshold referring to premium income between the current EUR 5M and until a maximum of EUR 25M.

Question 43. To what extent do you agree with the following statements relating to possible changes of the personal scope of the NFRD for financial institutions?
Please rate as follows:
1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don't know/ no opinion/ not relevant

Please rate the following statements:
- The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates. 2
- The threshold criteria for determining which insurance undertakings have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates. 2

Please provide any comments or explanations to justify your answers to questions 40 to 43:
5000 character(s) maximum
Question 40
Size criteria were introduced in NFRD in the aftermath of the financial crisis, with the objective of removing 'red tape' measures to enhance the competitiveness of small and medium-sized enterprises. As noted in the Commission's Inception Impact Assessment (Ares(2020)580716 - 30/01/2020), failure to provide non-financial information may impact their economic viability and their commercial opportunities as suppliers of larger companies.

Question 41
I am strongly opposed against the policy option to 'excluding certain categories of company that are currently covered' set out in the Commission's Inception Impact Assessment.

Question 41 "Expand the scope to include large non-listed companies."
The second argument 'Large unlisted companies (...) of capital markets' (mentioned in the introduction of Title 7) has been important in the discussions on the country-by-country reporting rules in articles 42-44 Directive 2013/34/EU.

Question 41 "Expand the scope to include large companies not established in the EU that are listed in EU regulated markets."
Argument against expanding
This would raise the cost of listing in EU-regulated markets, one of the factors that determines where a corporation will be listed Extra regulation might make it more difficult to list (or stay listed) in the EEA. This might, in turn, be an incentive for investors to move their money outside the EEA.

Argument in favour of expanding:
It is in the interest of all EEA Member States to create a level playing which enforces the same standards across EEA corporations and non-EEA corporations. Therefore, the Commission initially proposed to include certain non-EEA corporations that have a link with the EU in the proposal for the current NFRD. While this argument has not been followed in the current NRFD, it has been decisive in the country-by-country reporting rules (mentioned above). All corporations listed in the EEA, regardless of where they are incorporated, would have to comply with these rules.

7. SIMPLIFICATION & REDUCATION OF ADMINISTRATIVE BURDENS FOR COMPANIES
Question 44. Does your company publish non-financial information pursuant to the NFRD?

- o Yes
- o No
- o Don't know / no opinion / not relevant

Question 44.1 If your company publishes non-financial information pursuant to the NFRD, please state how much time the employees of your company spend per year carrying out this task, including time of retrieving, analyzing and reporting the information?

Please provide your answer in terms of full-time-equivalents (FTEs, 1 FTE = 1 employee working 40h a week during 250 working days per year). Please provide your answer for reports published in 2019, covering financial year 2018.

5000 character(s) maximum
N/A

Question 44.2 Please state the total cost per year of any external services, excluding the cost of any assurance or audit services, that you contracted to assist your company to comply with the requirements of the Non-Financial Reporting Directive. Please provide your answer for reports published in 2019, covering financial year 2018.
5000 character(s) maximum
N/A

The majority of Member States have transposed the NFRD requirements into national legislation making very few changes to the wording of the legal provisions. Therefore, in the majority of the national legal frameworks, companies are required to comply with national legislation that is quite high level, not very prescriptive and do not require the use of any particular reporting standard.

Question 45 To what extent do you agree with the following statements?
Please rate as follows:
1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree, Don't know/ no opinion/ not relevant

Please rate the following statements:

- Companies reporting pursuant to the NFRD face uncertainty and complexity when deciding what nonfinancial information to report, and how and where to report such information. 5
- Companies are under pressure to respond to individual demands for nonfinancial information from sustainability rating agencies, data providers and civil society, irrespective of the information that they publish as a result of the NFRD. 2
- Companies reporting pursuant to the NFRD have difficulty in getting the information they need from business partners, including suppliers, in order to meet their disclosure requirements. 4

Please provide any comments or explanations to justify your answers to questions 44 to 45:
5000 character(s) maximum
Question 45 "Companies are under pressure to (...) the NFRD." Only corporations that are in the public eye are under such pressure.