



# ESG AND LAW

## EU Commission Consultation on the Revision of the CSR Directive – What Follows now: The next Step or “Quo Vadis Non-Financial Reporting”?

Last week (calendar week 37 in 2020) the EU Commission published a summary of the results of the consultation on the revision of the so-called CSR Directive 2014/95/EU (Non-Financial Reporting Directive, “NFRD”).

### 1. INITIAL SITUATION

In the Green Deal, the Commission already announced that the disclosure of non-financial information by companies and financial institutions would be enhanced. For this purpose, the Commission is committed to revise the NFRD in 2020 as part of the strategy to strengthen the basis for sustainable investment and is expected to adopt a proposal on the NFRD in the first quarter of 2021. The necessary prior public consultation is part of the general consultation strategy to gather the views of the relevant interested parties. The consultation was held from 20 February 2020 to 11 June 2020.

### 2. KEY RESULTS OF THE CONSULTATION

According to the Commission, the major results of the consultation include the following:

#### 2.1 APPLICABILITY OF THE REPORTING MECHANISM

The strongest support is provided for extending the scope of the NFRD to

- large companies not established in the EU but listed on EU regulated markets;
- large listed companies established in the EU but listed outside the EU;
- all EU listed companies, irrespective of their size;
- all large companies of public interest (lowering the current threshold of 500 employees).

#### 2.2 CONTENT OF THE SUSTAINABILITY REPORT

- The majority of respondents consulted consider the non-financial information reported by companies to be deficient in terms of comparability, reliability and relevance.

- A majority of the compilers consulted indicated that additional requests for non-financial information, e.g. from rating agencies or NGOs, posed a significant problem.
- There was very strong support for adopting a common standard. 82 percent of the respondents believe that the adoption of a standard would solve the existing problems.

### 2.3 INTERACTION WITH OTHER REGULATORY REGIMES

There are concerns about the interaction between different sustainability reporting schemes.

### 3. ASSESSMENT

#### 3.1 APPLICATION TO MORE COMPANIES

The presentation of the results suggests a future expansion of the NFRD to other groups of companies and a lowering of the 500 employee threshold. This is most probably a question of political will and enforceability. It can already be deduced from the query results that the compilers of reports are less willing to commit themselves than the users. Overall results from both groups are likely to shift the balance in favour of the users. Furthermore, only 32 percent of the participants in the consultation are companies, with the focus on Germany and Belgium, followed by France and Spain. The extension of the scope of application to non-EU companies will meet with less criticism than a lowering of the 500-employee threshold while in future an orientation towards the EU Accounting Directive 2013/34/EU is obviously envisaged, i.e. companies with more than 250 employees would be covered.

#### 3.2 MORE CLARITY ON THE CONTENT OF THE REPORT

In terms of content, the aspects relating to a more precise formulation of the reporting obligations themselves are likely to be (more) complex, i.e. the question of how the output to be reported is structured and arranged in such a way that the reports become

comparable and thus achieve greater reliability and relevance. In this case, diversity does not lead to transparency.

### 3.3 AVOIDING AN OVERLAPPING OF SEVERAL REGULATORY REGIMES

It is also of relevance here how different reporting obligations under different reporting schemes can be avoided. For instance, with regard to the forthcoming work on the German “Due Diligence Act”, the question arises as to how the planned reporting obligations relate to the already existing legal framework. This applies at both national and EU level. Throughout the EU, there should be no contradictions or inconsistencies if it is not possible to avoid sustainability reporting obligations arising from different reporting schemes.

### 3.4 THE TREND TOWARDS INDIVIDUALISATION – GLOBAL REPORTING INITIATIVE (GRI) TRANSPARENCY INTERNATIONAL

The recent publication “Sustainability Reports of Large German Enterprises, 4th Investigation of Reporting in Accordance with GRI Standards” by Transparency International Deutschland e. V. (“TID”) shows that there is a need for action in this area. TID points out that the requirements of the German CSR Directive Implementation Act (“CSR-RUG”) largely coincide with the requirements of the Global Reporting Initiative (“GRI”) and that it would make sense to combine the “non-financial statement” according to CSR-RUG with the previous sustainability reporting according to GRI. TID recommends establishing a common reporting framework, “possibly supported by GRI and the EU”. Otherwise, there is a risk that the current trend observed in GRI reporting will be reinforced, namely that sustainability reporting will be more individualised and adapted to the specific business model of the respective company. Such a development jeopardises comparability – and thus the goal of reporting itself.

### 3.5 DIGITISATION IN SUSTAINABILITY REPORTING

One last remark on digitisation: It is addressed in the consultation as one element, even as a possible “game changer”.

Digitisation has an almost magical fascination and appeal in general and also in this context. Among other things, the “5th Digitisation Study” of the German Property Federation (ZIA), the central association of the real estate industry, and EY recently emphasised that digitisation is the key to a professional implementation of ESG guidelines in the real estate sector, according to 84 per cent of the respondents there. According to this study, a solid database is the prerequisite for being able to verify ESG requirements such as the reduction of consumption and emissions; without digitisation, the climate targets cannot be achieved.

However, the Commission also points out in its summary that a majority of respondents see the difficulty of making information machine-readable when it is of a qualitative or narrative nature. However, the Commission also points out in its summary that a majority of respondents see the difficulty of making information machine-readable when it is of a qualitative or narrative nature. In fact, digitisation might even bear the risk of driving the setting of standards, which could lead to inferior or misleading information.

It will thus have to be closely monitored whether digitisation can be a “game changer” if the focus is not only on precise facts and figures.



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