



EUROPEAN COMMISSION

Directorate General Internal Market and Services

CAPITAL AND COMPANIES

## **Expert Group on Disclosure of Non-Financial information by EU Companies**

### **Meeting Report**

**Brussels, Friday 30 September 2011**

#### **1. Introduction**

The Expert Group on Disclosure of Non-Financial information by EU Companies held its third meeting on 30 September 2011. The meeting was chaired by Ms Claire Bury, Acting Director, Capital and Companies, DG MARKT. *The list of attendants is provided in Annex 1.*

#### **2. Summary of the discussion**

Experts were asked to provide their inputs on the basis of a discussion non-paper prepared by the Commission services and circulated ahead of the meeting. The non-paper, provided in Annex 2, contained a set of specific questions concerning, inter alia, the nature, content and scope of potential legislation. The following aspects were discussed:

##### **Nature of the requirement**

Experts discussed whether a disclosure requirement should take the form of a general reporting obligation, or rather be translated into a "comply or explain" regime. Most experts agreed that some kind of "comply or explain" approach would be a significant incentive for companies to disclose relevant information and would ensure an appropriate level of flexibility. According to this view, companies should be required to disclose non-financial information, or explain why such information is not disclosed. Most experts also agreed that a mere statement from companies on whether they have a CSR policy or not, without requiring further explanation, would not represent a meaningful obligation. Some experts expressed a preference for a general reporting obligation, while others said that the overall approach to non-financial disclosure should remain voluntary. Several participants also stressed the importance of terminology, suggesting the use of the term "environmental, social and governance (ESG) disclosures" rather than "CSR policy".

##### **Scope of application**

Most experts agreed that a disclosure requirement should only apply to large companies. Nevertheless, some experts invited the Commission to design alternative ways to encourage more and better disclosure of non-financial information by all companies, regardless of their size. One expert also recalled that the Commission should deliver on its commitment to "*think small first*". Overall, the importance of avoiding unnecessary

administrative burdens for companies in general, and the smallest ones in particular, was raised by several participants.

Some participants argued that all listed companies should fall under the scope of application of a potential legislative requirement, while others said that listed SMEs should be exempted. Some experts also highlighted that a mandatory requirement should also be applied to state-owned companies and institutional investors.

### **Reporting boundary**

Most experts agreed that legislation should clearly define the boundary of the disclosure requirement. In this respect, experts agreed that a report should include information at group level (the parent company and its subsidiaries). Most experts said that requirements going beyond group level, (i.e. including undertakings within the sphere of influence of the reporting company), might pose significant problems in terms of legal certainty and administrative burden. Several experts underlined that reports should nevertheless include relevant information as regards how a company approaches risks within its supply chain. Some participants highlighted that non-financial disclosures should at least match financial reporting in scope, or even go beyond where necessary, i.e. providing an assessment of ESG risks/ issues along the value chain.

### **Content of the report**

Most experts agreed that non-financial information should be material, comparable, accurate, timely, reliable, clear, verifiable, forward-looking as well as retrospective, while some experts highlighted the importance of other principles such as stakeholders' inclusiveness and balance. Some participants agreed that the above-mentioned principles should be considered as guidance to companies rather than being operated in a prescriptive manner. In this respect, some experts expressed the view that legislation should nevertheless contain a list of quality principles, while others said that this should be included in a separate guidance document. Moreover, some experts underlined that such a list of principles would be of limited value if not accompanied by other legislative requirements relating to the content of the report. One expert reminded that existing international frameworks contain their own lists of principles. In this respect, reference was also made to the principles currently being developed within the framework of the IIRC. The need to avoid that same principles are interpreted differently in different frameworks was also highlighted.

Furthermore, experts discussed whether legislation should define in more detail the content of the report, i.e. by requiring a minimum set of elements and/or define a set of specific topics to be covered by non-financial disclosures.

Overall, most experts said that non-financial disclosures should cover at least the following elements: the company' assessment of risks and opportunities relevant to its particular business; its policy on identifying, assessing and managing key risk and opportunities, and how this policy is integrated with the overall business strategy; how this policy is implemented in its operational activities (including systems and processes); its results and forward-looking expectations; its measurement methodology; whether the report is based on internationally recognised standards, guidelines or principles and if so, which ones. Some experts added that a report should also include statements concerning the inclusion of stakeholders, due diligence, as well as monetary and non-monetary incentives.

However, different views were expressed as regards the specific topics that should be covered by such disclosure. Some experts expressed the opinion that companies should provide information by referring to aspects included in existing international frameworks, such as the OECD guidelines, the UN Global Compact or the relevant ILO Conventions. Others argued that the Commission should build on such frameworks by drawing a minimum list of generally accepted topics, common to different frameworks. According to this view, non-financial disclosure should cover for instance issues related to human-rights, freedom of association, non-discrimination, diversity, equal remuneration, materials and waste, climate change, air quality, energy use and strategy, innovation, and anti-corruption.

Some experts argued that, in order to allow for a sufficient degree of flexibility, legislation should only require companies to disclose material information on environmental, social, human-rights and anti-corruption issues, without further defining the relevant topics. Other participants expressed the view that any minimum list of topics should not be applicable to all companies across all sectors and could unduly increase administrative burdens. According to this view, reporting overlaps should be avoided, and companies should not be required to disclose again information which is already available elsewhere. Several participants stressed out the need to differentiate between defining reporting topics or specific Key Performance Indicators, with the latter not considered as an advisable option.

### **Other issues**

Experts were also asked to provide their advice on a number of other specific issues, including a potential encouragement for SMEs, the involvement of internal stakeholders and whether legislation should require that non-financial information be disclosed in the annual report. As far as the latter point is concerned, many experts argued in favour of including non-financial information in the annual reports, although some experts underlined the need to guarantee flexibility for companies as regards the format of the report. Regarding SMEs, the experts discussed the idea of an opt-in clause, whereby SMEs would be allowed but not obliged to disclose non-financial information.

### **3. Next Steps**

The Commission services thanked the experts for their contributions and for the time spent during three sessions. No next meeting is scheduled for the time being, but the Commission may call for another meeting in the future depending on the developments this initiative may make. More generally, the Commission will try to keep the Expert Group informed about relevant developments concerning this initiative.

## ANNEX 1

### Attendants

Teresa Fogelberg	GRI
Jessica Fries	A4S/ IIRC
Filip Gregor	ECCJ
Luc Hendrickx	UEAPME
Patrick Itschert	ETUC
Petr Kriz	PwC
Claudia Kruse	ICGN
Nicole Notat	Vigeo
Jan Noterdaeme	CSR Europe
François Passant	Eurosif
Roberto Suarez	BusinessEurope
Steve Waygood	Aviva Investor

DG MARKT

Claire Bury  
Jeroen Hooijer  
Nicolas Bernier Abad  
Massimo Zaffiro  
Delphine Langlois  
Christian Danciu

DG ENTR

Pedro Ortun Silvan  
Kim Henrik Holmstrom  
Tom Dodd

DG EMPL

Sue Bird

DG ENV

Imola Bedo

## ANNEX 2

# Meeting of the Expert Group on Disclosure of Non-Financial Information by Companies

Brussels, 30 September 2011

## Discussion Non-Paper

### 1. Introduction

In occasion of the two previous meetings held respectively on 11 July and 12 September 2011 the Expert Group has discussed a number of general issues, including the scope and nature of a potential mandatory requirement, the principles and topics that a non-financial report should be based on, as well as the role and impact that mandatory disclosure of non-financial information might have on the accountability of business, company performance and capital markets.

Building on the outcome of such discussions, the Commission services would like to seek the advice of the Expert Group on some specific options presented below. Please note that the list of questions is not exhaustive, and some of the policy options it refers to are not mutually exclusive.

### 2. Questions

#### Nature of the requirement

The Commission services are considering whether a disclosure requirement should take the form of a **general reporting obligation**, or rather be translated into a "**comply or explain**" approach. Several experts argued that the latter could ensure an adequate level of flexibility, while at the same time representing a significant incentive for all companies to disclose relevant information. However, some other experts also highlighted that a "comply or explain" approach would only be meaningful if, should a company decide not to comply, the reasons for doing so are thoroughly explained and that is also made clear the kind of obligations they need to "comply" with.

#### **Question 1: How strict should the requirement to disclose non-financial information be?**

Option 1: Companies should say whether or not they have a CSR policy.

Option 2: Companies should disclose non-financial information, or explain why not.

Option 3: Companies should disclose non-financial information.

Several experts mentioned that any new reporting requirement should only apply to large companies. It was highlighted that many SMEs do disclose non-financial information in a number of ways other than formal reporting, and that a potential reporting obligation for SMEs would represent an administrative burden. At the same time, a growing tendency amongst SMEs to produce CSR reports, albeit from an extremely low base, was also mentioned. A member of the expert group proposed to include an SME opt-in clause

in legislation, “allow but not obliging” SMEs to disclose non-financial information. The Commission services are aware of the need not to create unnecessary administrative burdens for industry in general, particularly given the current economic climate.

### **Scope of the requirement**

#### **Question 2: which companies should be targeted by a legislative requirement?**

Option 1: Large companies

Option 2: Large and listed companies

Option 3: All companies

The reporting boundary represents another important issue. In the case of a group, the report should be at least a consolidated report integrating information on the parent company as well as its subsidiaries. However, some stakeholders argue that adverse impacts often occur through the operations of the company subcontractors and that some information on companies operating in the sphere of influence of the company (such as subcontractors, suppliers) is needed<sup>1</sup>.

#### **Question 3: Should legislation stipulate to what extent non-financial disclosure should apply across a group or beyond? If so, how?**

Option 1: The report must include information on the parent company and its subsidiaries.

Option 2: The report must include information on the parent company and its subsidiaries and mention if other companies are included in the analysis.

Option 3: The report must include all entities acting in the sphere of influence of the company.

### **Content of the report**

Stakeholders have underlined on several occasions the need to improve the quality of the non-financial information disclosed. In this respect, some of the international frameworks, including the OECD guidelines<sup>2</sup> and the GRI, propose a set of principles aiming at ensuring the report quality.

#### **Question 4: Should legislation indicate specific principles as regards the quality of the disclosure? If so, which ones?**

Option 1: No mandatory principles concerning the quality of the information

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<sup>1</sup> The GRI has developed a "Decision Tree for Boundary setting" to help companies set up the relevant boundary, depending on the sustainability impacts entities in the sphere of influence can generate. Entities should be included when impacts are significant.

<sup>2</sup> OECD guidelines, chapter III

Option 2: Principles would be: material, comparable, accurate, timely, reliable, clear, verifiable and forward-looking as well as retrospective information.

Option 3: Other principles. Please specify.

Furthermore, the Commission services are considering whether the EU legislation should also define the content of the report or leave it to companies to decide. Some experts are of the opinion that companies need flexibility in these areas, whereas others support a more prescriptive approach.

**Question 5: Should legislation define the content of the disclosure? If so, how?**

Option 1: No prescription as regards the content of the disclosure.

Option 2: Legislation requires that non-financial disclosure contains a minimum set of elements, including:

- A - The company's assessment of risks and opportunities on non-financial issues relevant to its particular business;
- B - Description of the company's policy on non-financial issues, and whether this policy is part of its overall business strategy;
- C - Description of how this policy is implemented in its operational activities (including systems and procedures);
- D - Description of results and forward-looking expectations;
- E - Description of measurement methodology;
- F - Whether the report is based on internationally recognised standards, guidelines or principles and if so, which ones

An additional question concerns whether legislation should include a more prescriptive list of topics to be covered by non-financial reports is also being considered.

**Question 6: Should legislation require a set of specific topics to be covered by non-financial disclosure?**

Option 1: information on environmental and employee matters

Option 2: information on environmental, social (including employee), human rights and corruption matters

Option 3: Provide information by referring to aspects included in international frameworks, for instance OECD guidelines or UN Global Compact, UN Ruggie Framework on business and human rights.

Option 4: legislation should include a detailed and specific list of topics – *please provide suggestions*

**Other issues:**

The following issues are also being considered by the Commission services:

**Question 7: Should the EU legislation include specific reference to SMEs?**

Option 1: No provisions referring to SMEs.

Option 2: Requirement that SMEs state whether they have a CSR policy

Option 3: Some kind of comply or explain regime for SMEs

Option 4: Legislation should set out a voluntary, "lighter" regime for SMEs including some principles and/or SME an opt-in clause.

**Question 8: Should legislation require that non-financial information is disclosed in the annual report?**

Option 1: Companies can choose where/how to disclose non-financial information (i.e. in the annual report, in a separate sustainability report, website, etc).

Option 2: Non-financial information should be disclosed in the annual report.

**Question 9: Should legislation require independent verification of non-financial disclosures?**

Option 1: Legislation should not prescribe independent verification

Option 2: Companies should ensure that the report is subject to appropriate independent verification

Option 3: Non-financial information should be subject to the same requirements as for financial information

**Question 10: Should legislation mandate the involvement of other stakeholders in the disclosure process?**

Option 1: Legislation should not mandate the involvement of stakeholders in the reporting process.

Option 2: Companies shall ensure that the report is subject to prior consultation with concerned stakeholder groups and to involve them in the verification of information disclosed.