EUROPEAN COMMISSION
Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Brussels, 20 September 2016

FISMA/B3

Feedback statement on the public consultation on the non-binding guidelines for reporting on non-financial information by companies having taken place from 15 January to 15 April 2016)

This document provides a factual overview of the contributions to the public consultation on the non-binding guidelines for reporting of non-financial information by companies which took place from 15 January to 15 April 2016. The content should not be regarded as reflecting the position of the Commission. It does not prejudge any feedback received in the context of other consultation activities.

Index

1. EXECUTIVE SUMMARY

A high number of contributions to the public consultation was received with 355 responses from companies, business associations, investors, public authorities, international organisations, professionals, service providers, NGOs, civil society and other stakeholders from EU and EEA Member States, and also from third-party jurisdictions. This shows the importance that respondents attach to Directive 2014/95/EU on disclosure of non-financial and diversity information, and to the non-binding guidelines currently underway.

Most of the responses are of high quality and include extensive and insightful commentary on the issues addressed by the consultation, in many occasions attaching additional documentation, and in some cases with key aspects addressed in cover letters sent to us by respondents.

Responses received provide a balanced, diverse and comprehensive view of the EU landscape, both in terms of participation of relevant stakeholders and of geographic balance.

Responses to the public consultation across all categories of respondents show the importance attached to materiality of non-financial information. .

The contributions received also show that there is a plurality of views about how the main audience of non-financial disclosures is perceived.

Responses reflect that non-financial disclosures are perceived to be about understanding impacts; management of non-financial risks; a company's development, performance and position; and relevant for shareholders or investors' decision-making.

Companies and business organisations consider that the GUIDELINES should be oriented towards general principles, and not be detailed on specific sectoral or thematic issues. On the other hand, other respondents would prefer a higher level of detail.

Many responses show a preference for approaches where the GUIDELINES would make reference to other frameworks, and explain how content produced in the context of other frameworks could be used.

Responses reflect that the approaches to key performance indicators (KPIs) that are perceived more useful would be about identifying key principles, providing flexibility to companies to exercise judgement, and making reference to KPIs proposed in other frameworks.

Most of the contributions received reflect that the GUIDELINES may be useful for companies involved in disclosing non-financial information beyond the requirements of the DIRECTIVE. Nevertheless many respondents support that focus should be put on companies under the scope of the DIRECTIVE.

Many respondents consider that the GUIDELINES should include aspects related to board diversity.

Many respondents consider that the GUIDELINES should reflect examples and best practices as regards reporting on non-financial information.

2. INTRODUCTION

According to Art. 2 of Directive 2014/95/EU on disclosure of non-financial information by certain undertakings and groups, which entered into force in December 2014, the Commission shall prepare non-binding guidelines on methodology for reporting non-financial information. In order to facilitate the process, a web-based public consultation was launched on 15 January 2016, and concluded on 15 April.

Article 2 of the DIRECTIVE refers to "guidance on reporting", and sets out that "the Commission shall prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings." The objective of the non-binding guidelines is to facilitate the disclosure of non-financial information by companies (recital 17 of the DIRECTIVE).

The disclosure requirement applies to large public-interest entities with more than 500 employees. This includes companies listed in EU markets, as well as some unlisted companies, such as credit institutions, insurance companies, and other companies that are so designated by Member States.

Companies are required to disclose material non-financial information, including environmental, social and employee matters, respect of human rights, corruption and bribery matters, and diversity in the boards of directors.

The DIRECTIVE has been designed in a non-prescriptive manner, and leaves significant flexibility for companies to disclose relevant information in the way that they consider most useful. Companies may use international, EU-based or national guidelines that they consider appropriate.

3. GENERAL OVERVIEW[1]

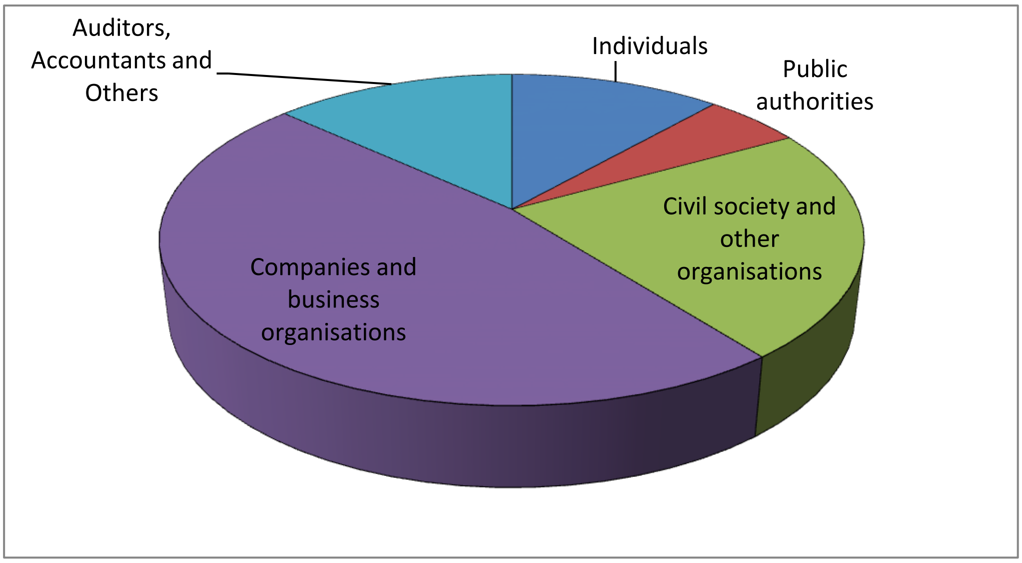
DG FISMA launched on 15 January 2016 a public consultation on the non-binding guidelines for reporting of non-financial information by companies.

The Commission services received a total of **355** responses to the public consultation. These responses have been published online according to the Commission practice and applicable rules. The responses and the list of contributors are available online via:
http://ec.europa.eu/finance/consultations/2016/non-financial-reporting-guidelines/index_en.htm

This feedback statement seeks to provide a factual summary of the contributions received. The public consultation and this summary do not prejudge any future position or decision that the Commission might take in the future. The Commission services are still undertaking additional consultation activities. An overall synopsis report will be drawn up covering the results of all consultation activities relating to this initiative. This report will be published together with the future Commission guidelines to come. Statistics that may be used in this summary refer to the direct analysis of contributions received in the context of the public consultation. They should not be interpreted necessarily as representative of the views of the EU society at large, or of the views of EU stakeholders that have not responded to the public contribution.

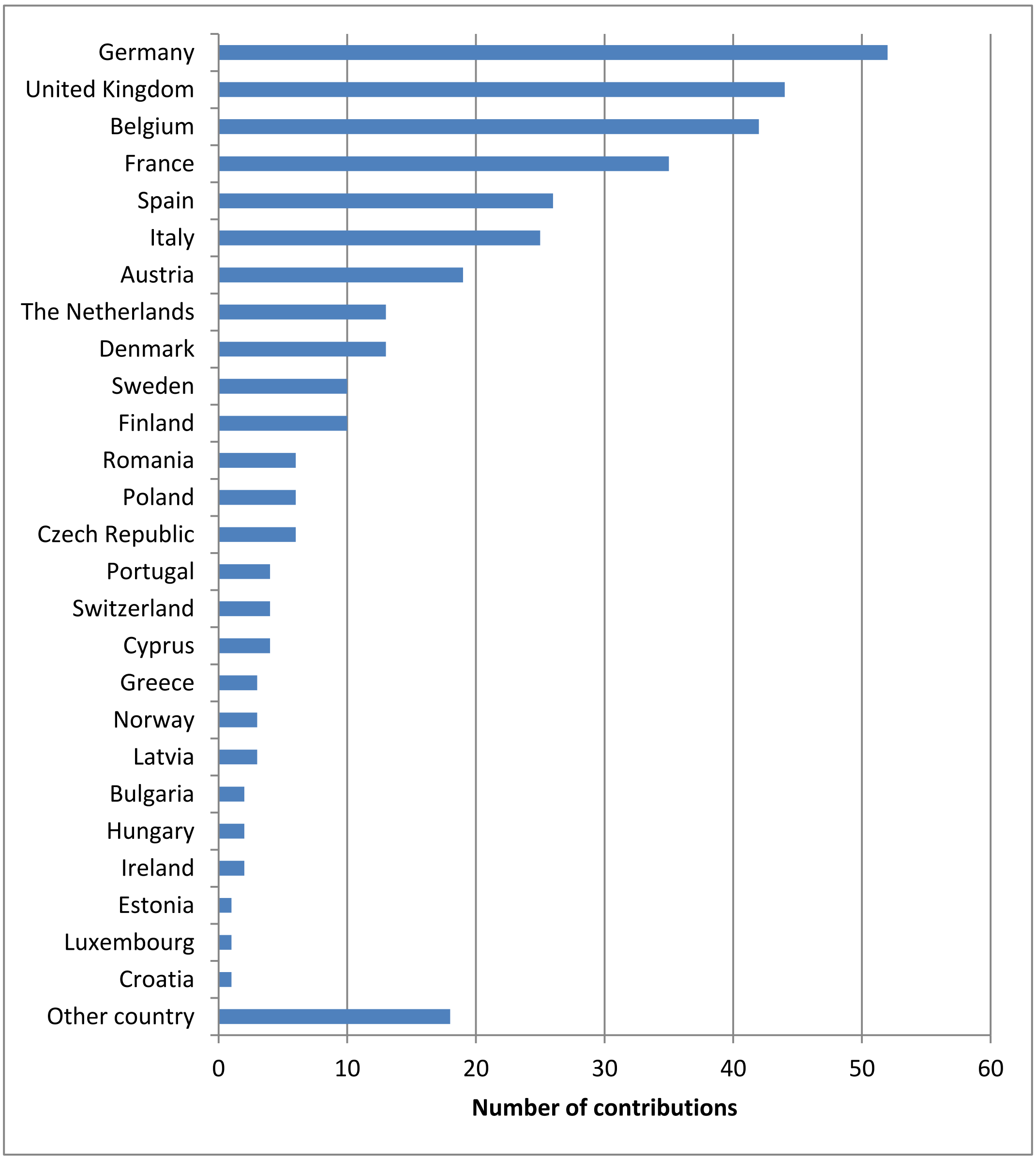
The number of responses received for this consultation (355) is significantly higher than those received at the time of the 2010 public consultation that kicked off the process leading to the adoption of the DIRECTIVE (259). This may reflect a growing interest and recognition of the importance of this subject by EU stakeholders.

About half of the responses (47%) came from companies and business organisations[2] (this includes 10% from investors, insurance companies and banks); nearly a quarter (23%) from civil society and other organisations[3]. The remaining contributions were submitted from auditors, accountants and others[4] (13%), public authorities (5%), and individuals (12%).



[1] **This section includes information relating to question 10.**
[2] This category includes stakeholders which identified themselves as: Companies, SMEs, micro-enterprises, sole traders and industry associations.
[3] Non-Governmental organisations, trade unions, and consumer organisations.
[4] Consultancies, law firms, think tanks, academics.

As regards geographical breakdown, more than 50 contributions came from Germany. Respondents from the United Kingdom, Belgium (including EU and international associations), and France submitted more than 30 contributions each. The remaining responses come from other EU and EEA Member States and from third-party jurisdictions, including: Azerbaijan, Canada, Japan, Peru, Serbia or United States.



Most companies having contributed to the public consultation declare that they disclose annually relevant non-financial information. A majority of these companies explain that they use existing reporting frameworks for disclosing non-financial information. The most frequently mentioned frameworks are: Global Reporting Initiative, UN Global Compact, International Integrated Reporting Council and CDP[5].

A detailed overview of the responses received is included in the next section. Further technical information on methodology and technical aspects is presented in the Annex.

[5] Previously, Carbon Disclosure Project.

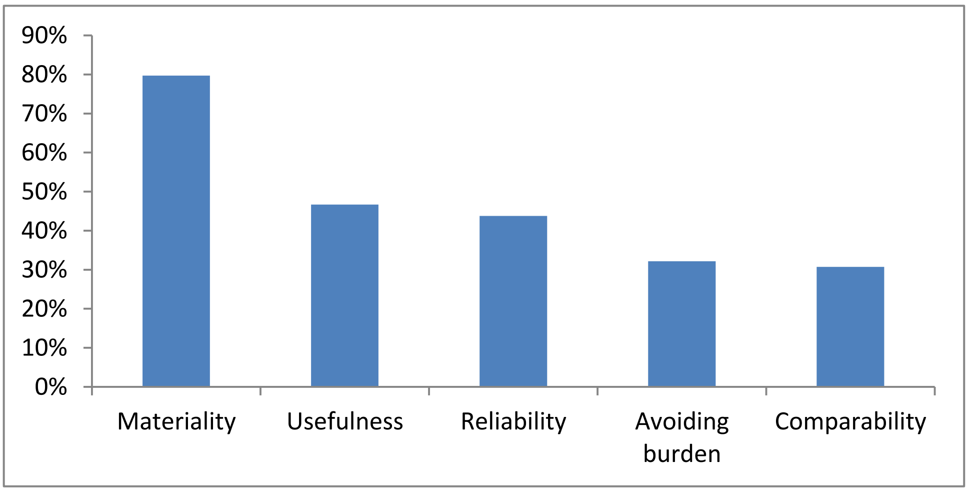
4. SUMMARY OF RESPONSES

I. General principles and key attributes of the non-financial information

Question 1
What aspects of disclosure of non-financial information do you think that should be addressed by the GUIDELINES?   *○ Materiality/Relevance; ○ Usefulness; ○ Comparability; ○ Avoiding undue administrative burden; ○ Comprehensiveness; ○ Fairness and balance; ○ Understandability ; ○ Reliability; ○ Other*

Most respondents across all categories believe that materiality, also referred to as "relevance", is an essential aspect to be addressed in the GUIDELINES. .

Civil society and public authorities believe that usefulness and reliability are important issues that should also be part of the GUIDELINES. Some companies believe that avoiding undue administrative burden is important. Some public authorities believe that comparability should be addressed as well.



A few respondents highlighted other aspects such as: understandability, comprehensiveness, fairness and balance.

Other aspects mentioned by respondents include: verifiability, confidentiality and conciseness.

Question 2

Who should be considered in your opinion the main audience of the non-financial statement?

o The shareholders; o The investment community in a broad sense; o Users of information with an economic interest, such as suppliers, customers, employees, etc.; o All users of information (including consumers, local communities, NGOs, etc.)

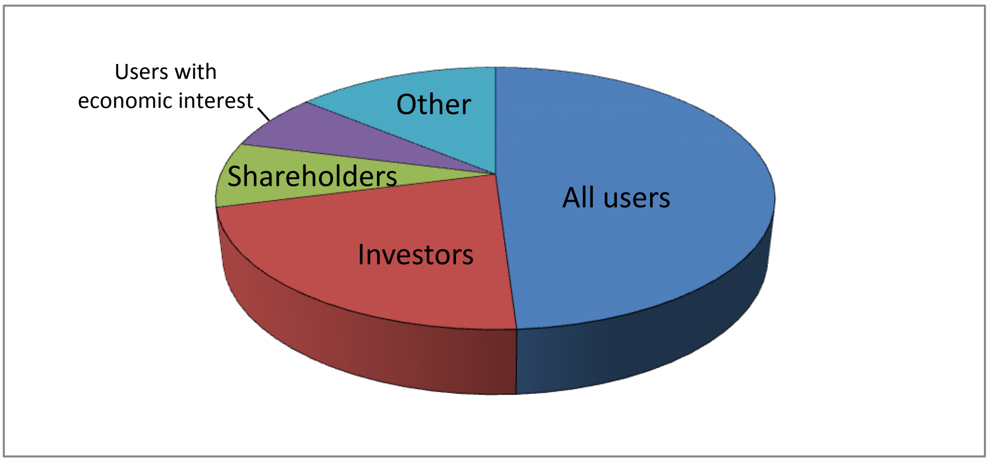
Respondents have shown a plurality of views, showing that there is a broad diversity of perspectives as regards who should be taken into account when considering the main audience of non-financial information disclosed by companies.

Almost half of the respondents, (including consumers, NGOs and others), show an interest in considering all users when disclosing non-financial information. This goes beyond what has been considered traditionally the main audience of financial information.

A large group of respondents argue that investors in general are a more appropriate main audience. This addresses the concept of "providers of capital", and some explain that not only equity investors should be considered, but also debt investors. The latter recognises that lenders (banks, bond holders, etc.) have an interest in material non-financial information. Other respondents have indicated that the main audience should be open as well to stakeholders such as suppliers, customers and employees.

Most companies and business associations prefer a more targeted approach to audience, with investors in a broad sense being the most common. Other companies and business associations are in favour of a company-specific, or ad-hoc audience, while only a minority consider that shareholders alone should be the main audience of non-financial information. Some respondents suggest that this information supports the principal-agent relationship between shareholders and managers and is essential to the effective functioning of capital markets.

The broadest approach to main audience (all users of information) is very common within respondents from civil society and NGOs, but also from auditors, accountants and other professionals, while some companies and business organisations share this opinion too. Some respondents support their view on the fact that the DIRECTIVE requires the disclosure of information necessary for an understanding of the impact of a company's activity.



Some respondents in favour of focussing on the information needs of providers of capital suggest that if the needs of other stakeholders were met via such approach this would be a positive addition.

Question 3

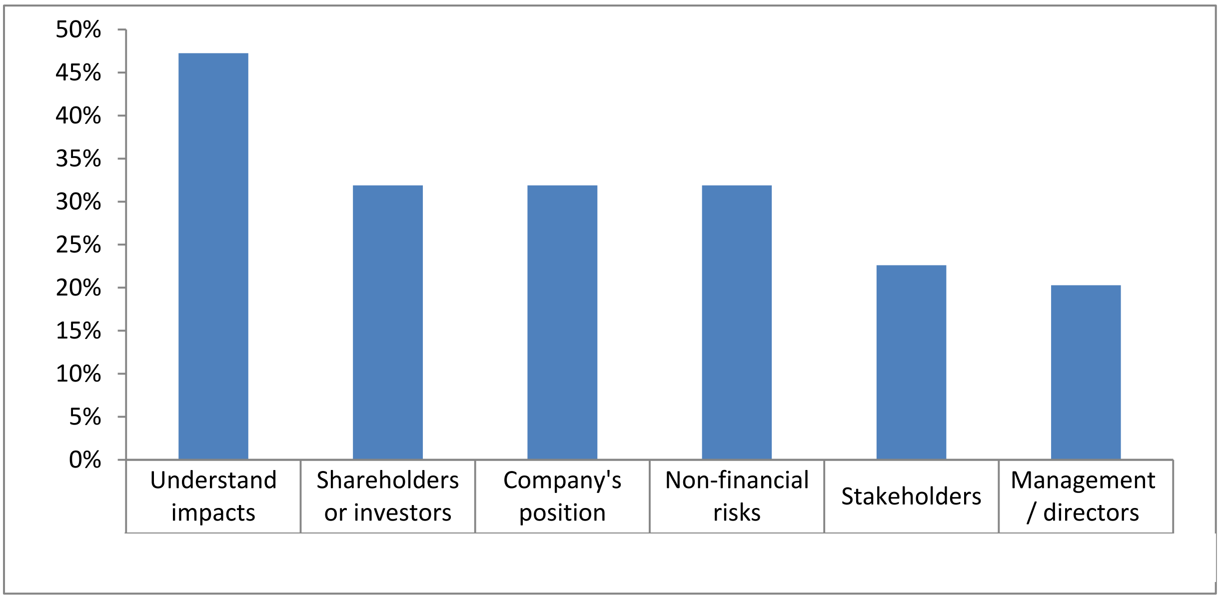
In your opinion, what features make a piece of information material/relevant for the purposes of the non-financial statement?

o Useful for the management/directors of the company; o Relevant for shareholders or investors' decision-making; o Necessary to understand the impacts of the company's activity; o Necessary to understand the company's development, performance and position; o Necessary to understand how the company manages non-financial risks, o Other.

Civil society and NGOs; auditors, accountants and other professionals; and public authorities have expressed the view that information necessary to understand the impacts of the activity of a company is material/relevant for the purposes of the non-financial statement.

The impact of a company's activity is an element explicitly mentioned in the DIRECTIVE to describe to which extent non-financial information needs to be disclosed. This test does not apply to financial information.

Companies and business organisations have mentioned that being necessary to understand a company's development, performance and position makes non-financial information material/relevant. This reflects the actual language of the EU legal requirement for financial information disclosures, and is also included in the DIRECTIVE for disclosures of non-financial information. .



Information relevant for shareholders and investors' decision-making is also identified by some companies and business organisations as relevant/material non-financial information.

Information necessary to understand how a company manages non-financial risks is also considered by most respondents across all categories of respondents, and in particular from civil society and NGOs, as relevant/material non-financial information. .

Other possible aspects of relevant/material information, such as relevance for stakeholders in general, or usefulness for company management/directors, have received less support from respondents.

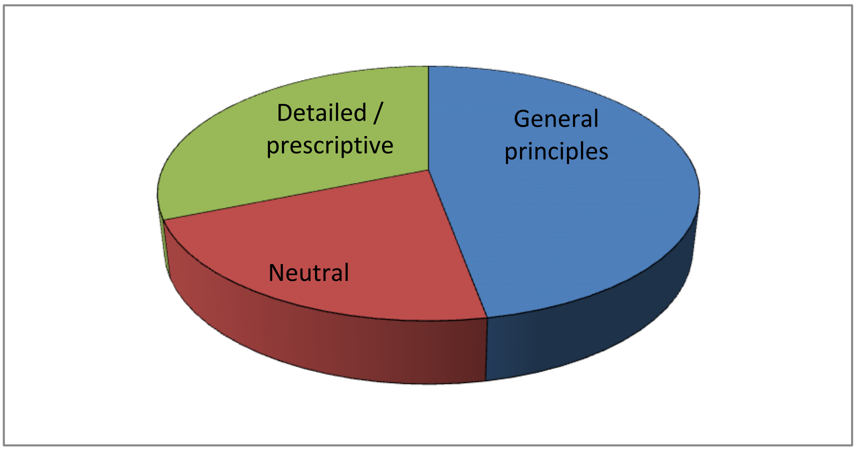
II. Content of the non-binding guidelines

Question 4
Do you think that the GUIDELINES will be more useful for companies and users if they set out general principles and key ideas or if they put forward solutions in a detailed manner, including on specific sectoral issues?

Companies and business organisations; and auditors, accountants and other professionals have expressed the view that the GUIDELINES would be more useful for companies and users if they were oriented towards general principles and key ideas. .

Some respondents suggest that a principle-based approach would be more helpful to stimulate innovation and enable companies to disclose information in the way that they consider most useful. Some explain that it is important to leave flexibility for companies. Others argue that a general principles approach tends to avoid boilerplate, and deliver more relevant reporting.

On the other hand, civil society and NGOs argue that high level of detail/prescription would make the GUIDELINES more useful.



Some respondents suggest that the GUIDELINES should include the "minimum essential elements" where disclosures are required. Others underline that comparability requires some standardisation and accuracy. Some argue that the GUIDELINES should present current best practices. Some suggest that the GUIDELINES should include useful explanations.

The opinion of public authorities is fairly split between those who argue in favour of a principle-based approach, and others in favour of a more prescriptive one.

Some respondents suggest that cross-referencing to existing frameworks could be useful to companies and users of information.

Some respondents suggest that the GUIDELINES should include both principles and specific detail (a balanced approach). Some suggest that the GUIDELINES should be specific enough, but without prescriptive rules.

Question 5

Please, provide a brief description of how you think that the following matters should be treated in the GUIDELINES, including as appropriate how they should be defined and described:

a. Business model; b. Policies; c. Due diligence process; d. Business relationships, e. Key performance indicators –KPIs; f. Outcome of policies; g. Principal risks; h. Impact of the activity; i. Adverse impacts; j. Information omitted in exceptional cases where disclosure would be seriously prejudicial

The contributions to this question show a broad variety of perspectives and interests.

The analysis that follows reflects that diversity, without aiming at an exhaustive description of all comments received. Some respondents express the view that the GUIDELINES should refer to, and be consistent with, existing frameworks. Others argue that new guidance may not be necessary. Some suggest that the GUIDELINES should propose concise, principle-based, clear disclosures.

Some respondents underline that the elements of the non-financial statement referred to in this question are inter-related.

Among others, the following comments were received from respondents:

a. Business Model

- Strategy, objectives and business model are inter-related concepts. The disclosure of a company's business model with its strategy and objectives should explain what a company does, how and why it does it. This relates to core activities of a business that are foundational drivers of value creation. A clear and understandable description is crucial to contextualizing opportunities and risks.
- The business model is a vital and core component of corporate reporting, and provides the basis for understanding how companies create value over the short, medium and long-term.
- Relevant information may include organizational structure, governance, strategy and operations.
- Companies should provide as well a forward looking assessment of how they think their business model will change over time.
- Each company is different and has a different approach.
- It is important that companies may rely on existing national or international frameworks. Therefore, companies should be free to describe their business model in the way they consider more appropriate. Companies should decide content and detail.
- The GUIDELINES should include a description of elements to be present when explaining the business model.
- The aim should be to contribute to understanding the link between strategy, core business and the company's approach to corporate responsibility.
- The GUIDELINES should explain how companies should report on the relationship between their business model and non-financial matters referred to in the Directive.

- The best approach would be providing general explanations in the GUIDELINES, rather than prescribing content. Flexibility is needed for companies to do this in a way that suits them.

b. Policies

- Companies should describe key corporate policies, how they are implemented and monitored, and the problems, or risks, that they are designed to address (context and purpose are important). Policies should be disclosed on the basis of materiality.
- Policies are not likely to change dramatically year on year. If they change significantly, then this should be flagged in the report. Otherwise, a link to the company web-page where the information is posted could be enough.
- Policies should not be part of the GUIDELINES, and refer to regulatory burden.
- Companies should report on policies addressing material issues, e.g.: specific policies playing a substantive role in managing risks or maximizing opportunities; policies related to preventing or mitigating main adverse impacts.
- Companies should report on how policies function, including, for instance, objectives, resources, business decisions, implementation aspects, etc.
- The GUIDELINES should focus on the need for concise reporting, with clear signposting to information published on the company website. Policies should be described succinctly but clearly.
- Important interactions between policies, business model, due diligence, and predictability.
- Relevance of these disclosures as regards company procurement and global supply chains.

c. Due diligence process

- The GUIDELINES should define company due diligence, provide examples of best practice, and explain how to report on due diligence activities.
- It is important to clarify that due diligence is a process against specific adverse impacts. The GUIDELINES should help companies disclose information on how they identify and assess significant, actual or potential, impacts.
- Guidance on the level of detail of the information on due diligence processes would be useful, as well as on how to report progress over time (i.e. should processes be reported every year, should reports rather focus on changes and key outcomes?)
- Information on due diligence should be linked to specific material issues.
- Important links with internal controls and the value of external assurance.
- Audit results may provide useful evidence of due diligence.
- Due diligence includes thorough investigation of all available data.
- Disclosures should include the types of issues companies consider, the approach companies take, how decisions are made, and the actions undertaken as a result of those diligence processes.
- Due diligence processes are vital to assess how companies assess their corporate responsibility, in particular in aspects related to global supply chains.

- Due diligence should be defined as a structured process to assess actual and potential sustainability impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
- The guidance should focus on the overall process by which company boards satisfy themselves that their policies are implemented in accordance with the stated strategy.
- Due diligence should be a workers-centred approach because workers are important right-holders.

d. Business relationships

- The GUIDELINES should define the term "business relationships" as relationships on which business depends on to provide goods and services, and generate revenue. Business relationships should be linked to the business model of a company.
- The GUIDELINES should encourage a description of strategic business relationships, engagement mechanisms and outcomes.
- It is important to determine how deep in a company's value chain the disclosure should reach.
- Disclosures on business relationships should cover only tier-one suppliers (direct suppliers to a company).
- Companies should be encouraged to identify the most important business relationships, and to provide information relevant to understanding how they strategically manage those relationships.
- The reporting focus should be on main clients and suppliers, explaining the review of financial, operational and reputational risks associated with each of them.
- An approach based on material information about the business environment, specifically the supply chain, including risks and impacts that are outside the legal boundary of a company.
- Companies should track their non-financial impact throughout their supply chains – not just their own operations – and also consider the impact of their products and services.
- Companies should report on actions implemented to prevent corruption.
- Reporting on business relationships should reflect the importance of relationships with key stakeholders in terms of value creation.
- Detailed, specific definitions should be avoided. Concepts used in the DIRECTIVE should not be defined in the GUIDELINES if the DIRECTIVE has not done it.
- GUIDELINES should clarify that activities of subcontractors and of suppliers having a significant impact on environmental and social matters should be included in the non-financial statement.

e. Key performance indicators (KPIs)

- KPIs can be an effective way to connect quantitative and qualitative information. KPIs should be designed to elicit insights from management about how the business is run. Qualitative KPIs can provide deep insights.

- The GUIDELINES should highlight the role of KPIs in supporting and tracking improvements in non-financial performance;
- Non-financial information may be quantitative or qualitative.
- KPIs should relate to material matters.
- KPIs should show progress in managing those matters, and also provide a basis for assessing their impact.
- KPIs should track the effectiveness of a company's sustainability efforts, linked to its strategy and societal impact. Others suggest that companies should involve stakeholders to identify main KPIs.
- A comprehensive list of KPIs would not be desirable.
- KPIs should be standardised to allow consistency and comparability.
- This issue should not be addressed in the GUIDELINES. Companies should decide themselves which KPIs to use, especially since relevant KPIs can vary widely from one company to the next.
- The GUIDELINES should steer companies towards KPIs that are specific and measurable in order to allow tracking of the effectiveness of their activities, manage risks and mitigate/remedy adverse impacts over time. Clear definitions of KPIs would be necessary for consistency and comparability.
- It is important that the GUIDELINES synergize KPIs already available from existing frameworks. KPIs should be detailed and should include compulsory and optional ones.
- The GUIDELINES should ask for disclosures that are sufficiently granular (e.g. plant by plant, car production by model/country), and forward-looking (capacity addition plans, production forecasts).
- Only few KPIs are capable of being used by a vast array of companies and sectors. It would not be appropriate to have a one-size-fits-all approach that would specify one set of KPIs for all sectors. Rather than proposing KPIs the GUIDELINES should signpost companies towards established and emerging best practice.

f. Outcome of policies

- Companies should explain the results achieved from the policy choices made. The outcome of policies should be measured through qualitative and quantitative indicators.
- Good reporting practices would include information on the coverage and scope of the results of policies.
- The GUIDELINES should be general, pointing out overarching reporting principles and requirements, and make reference to existing reporting frameworks for details.
- The GUIDELINES should specify that reports should include information about whether policy objectives have been met or progress is being made towards their realization, and how existing procedures have enabled the company to meet/progress towards these objectives, and/or where gaps/weaknesses might exist that need correcting via grievance mechanisms and corrective action plans. This assessment should draw from and disclose stakeholder feedback.
- The GUIDELINES should ask for companies' measurable targets, explanation of target achievement and corrective measures if targets are not reached. Outcomes should be the

result of action plans with concrete goals and milestones, and be linked to KPIs. Outcomes should be about the positive and negative impacts.

- The GUIDELINES should highlight general principles and key ideas, and allow flexibility for companies including in determining whether the outcomes of policies are treated quantitatively or qualitatively.
- The GUIDELINES should provide examples and best practices.

g. Principal risks

- The GUIDELINES should clarify that the principal risks cover the main risks which may have a material impact on the company value creation in the short, medium and long term.
- The GUIDELINES should explain how to identify which risks are material and should be disclosed.
- Risks should be viewed in a broad sense, not limited to financial risks, and could be described as risks that could hinder the company's ability to continue to generate value in the long term. Risks affecting company's immaterial assets (reputation, goodwill,...) should be disclosed.
- Disclosed risks should cover all potentially affected stakeholders.
- The disclosure of principal risks should not be a stand-alone paragraph, but be clearly linked to the company's priorities, strategy, management approach, targets and performance measurement.
- Material risks vary by industry, and have industry-specific impacts.
- Only principal risks should be disclosed.
- The GUIDELINES should explain how companies may disclose information on potential impacts, timeframe, likelihood, magnitude of impact, estimated financial implications, as well as how risks will be managed, and the methodology used for identifying risks to be disclosed.
- No further guidance on risks is necessary. However, some examples could illustrate how companies can best communicate on risks they identify.
- The GUIDELINES should be principles-based, and provide flexibility to companies.
- The GUIDELINES should mention best practices, including, for example, risk management processes at board and senior management level.

h. Impact of the activity

- The GUIDELINES should cover positive and negative impacts, and encourage companies to disclose both.
- Companies should describe how the sustainability of their business model and strategy is affected by their impact on the wider community. The GUIDELINES should confirm that this term covers the impact on society.
- Companies should detail the processes they have put in place to assess, monitor and control their impacts.

- The impact should be measured for direct and indirect implications. The GUIDELINES should refer to the company value chain because the impact of a company's activities may be located outside its organizational boundaries.
- The disclosure of impacts should be forward looking. According to them, both actual and foreseeable impacts should be disclosed
- Only material impacts should be disclosed.
- It is important to rely on precise, quantitative KPIs and impact indicators.
- The GUIDELINES should be principles-based and allow flexibility for companies.
- The GUIDELINES could provide examples of impacts so that companies that are less experienced with non-financial reporting can get an overview of possible impacts caused by economic activity.
- Impact should be clearly defined in the GUIDELINES as it is not used consistently among companies and frameworks.

i. Adverse impacts

- Adverse impacts are negative impacts caused or contributed to by the activities of a company and business relationships.
- Adverse impacts may influence the company's performance overtime.
- Disclosure is important in order to ensure a fair and balanced reporting.
- This reporting is not needed.
- It is important to include due diligence processes to identify and address actual or potential adverse impacts.
- Importance of materiality.
- The GUIDELINES should allow for flexibility for companies.
- This disclosure should include both negative impacts identified by the company and other issues identified through stakeholder engagement.
- Both direct and indirect adverse impacts that may occur in the supply chain should be reported.
- Negative impacts of using the products made by a company should be reported.
- Companies should describe the principles used to mitigate any relevant and significant adverse impact resulting from the company's activities. Remedial actions taken or planned should be disclosed.
- The disclosure should also include the company's plan to prevent adverse impacts for happening. In doing so, it is important to disclose clear targets, monitoring systems in place and internal responsibility on such measures.
- A forward-looking disclosure is needed. Expected adverse impacts in the medium and long term should be disclosed. Companies should also disclose the likelihood and risks of future adverse impacts. Disclosed information should allow for an understanding of the scale of impacts.
- Stakeholders affected should be mentioned.

- Examples of adverse impacts and of how disclosures may be done should be provided in the GUIDELINES.

j. Information omitted in exceptional cases where disclosure would be seriously prejudicial

- No specific guidance is required because the circumstances for omitting seriously prejudicial information are already clearly defined in the Directive.
- No guidance is needed because companies should decide themselves what information they want to publish.
- A definition of "seriously prejudicial" is necessary.
- The GUIDELINES should list arguable reasons not to disclose information.
- The GUIDELINES need to emphasize that companies should report in a comprehensive manner in order to ensure a fair, balanced and comprehensive review of the impact of their activities.
- The report should include all material matters, both positive and negative, in a balanced way. Companies should not disclose specific information which might cause a significant loss of competitive advantage.
- It is crucial to leave companies the greatest possible latitude for the reporting on non-financial information. The GUIDELINES should make clear that it is possible to omit information where disclosure would be seriously prejudicial.
- A clear statement should be disclosed regarding why some information has not been reported.
- These reasons should be disclosed with as much detail as possible, and/or a description on a policy level should be included.
- The omission should be possible only if discussed with stakeholders and agreed by the Board and senior management.
- An appropriate body should be able to access that information (government, supervisor, NGO).
- Suggested possible reasons for not disclosing information: negotiations, confidential information, prejudice the competitive position, risk of the safety or security of individuals/employees, name of employees, business relations, trade secrets, marketing plans, new product plans, new business model plans, expansion plans, patents, customer information, supplier information, investigations, legal prohibitions, lack of reliable information, third-party / governmental constraints, tendering procedure, protection of business know-how. For some respondents, the lack of data should not be a valid reason for omission.

Question 6

How do you think that the GUIDELINES should approach the disclosure of key performance indicators (KPIs)?

o The GUIDELINES should highlight key principles on how to disclose relevant KPIs and complementariness with narrative and/or financial information as applicable

o The GUIDELINES should make reference to KPIs proposed by other frameworks where addressing concrete matters or issues

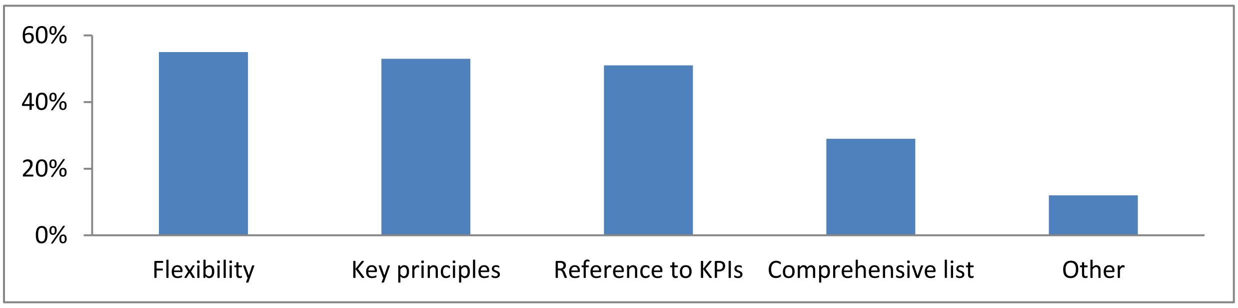
o The GUIDELINES should include a comprehensive list of KPIs, general and sectoral

o The GUIDELINES should provide flexibility for companies to exercise judgement in deciding what KPIs should be included in their disclosures

o Other

Many respondents across all categories of respondents[6].express the view that, when approaching key performance indicators, the GUIDELINES should identify key principles, provide flexibility for companies to exercise judgement, and/or make reference to other frameworks.

Including a comprehensive list of KPIs in the GUIDELINES is less supported by respondents[6]. This is particularly the case as regards companies and business organisations.



Some respondents explain the link between KPIs and comparability of information, arguing that clear definitions of KPIs are important in order to facilitate data collection, and comparison.

Companies and business organisations, highlight the importance of flexibility, leaving companies a margin of manoeuvre when using KPIs in a relevant and useful manner, and avoiding unnecessary burden and clutter. Some argue that a principle-based framework should be preferable to a pre-defined set of KPIs, suggesting that companies are different and have different impacts. Some explain that an overarching principle would be that company management should have the responsibility of identifying and explaining the most relevant KPIs.

Others suggest that the GUIDELINES should explain how companies may select KPIs that enable tracking performance and impact. Some respondents argue that the GUIDELINES should consolidate existing frameworks.

Some argue that the GUIDELINES should be general enough to enable companies to explain their business model. Others argue that the choice of KPIs used by a company reflects its specific business strategy, and is the result of its own materiality analysis.

Some suggest that it would not be appropriate to include a list of KPIs in the GUIDELINES.

Some explain that KPIs are relevant as well to measure the impact of a company on society.

[6] Except for individual respondents.

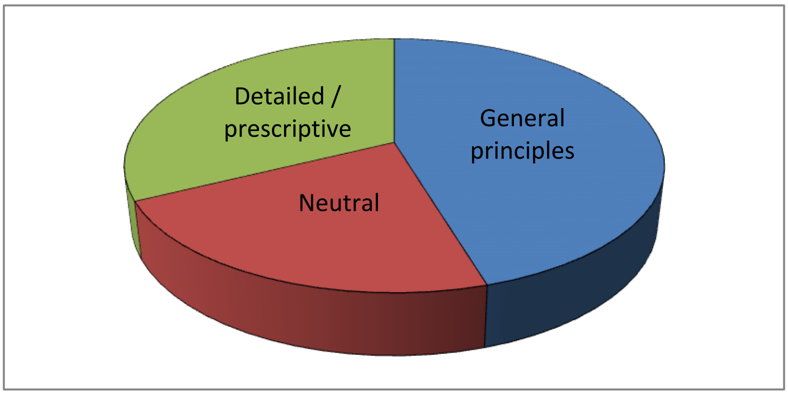
Question 7

Do you think that the GUIDELINES should include guidance on specific sectoral issues such as responsible supply chain management of conflict minerals?

Companies and business organisations suggest that the GUIDELINES should not include guidance on specific sectoral issues, but be geared towards general principles. . Some argue that a more prescriptive or detailed approach would lead to less relevant information and a box-ticking approach. Some suggest that high prescription might lead to overlook relevant company-specific issues.

Others suggest that the GUIDELINES could approach sectoral aspects by referring to existing frameworks.

Some suggest that the GUIDELINES should be non-prescriptive and take a principle-based approach, but acknowledge that the need for more granular information on particular issues could evolve over time.



Civil society and NGOs, and individual respondents consider that a higher level of detail/prescription as regards specific sectoral issues would be preferable and that the GUIDELINES should provide examples of relevant disclosure on sectoral issues, but that companies should undertake their own full assessment. Some consider the GUIDELINES should facilitate, as regards climate-change aspects, stress-testing relating to a 2-degree scenario (global increase of average temperature by 2 degrees Celcius), and that relevant sectoral associations and platforms should be involved in the development of specific sectoral guidance.

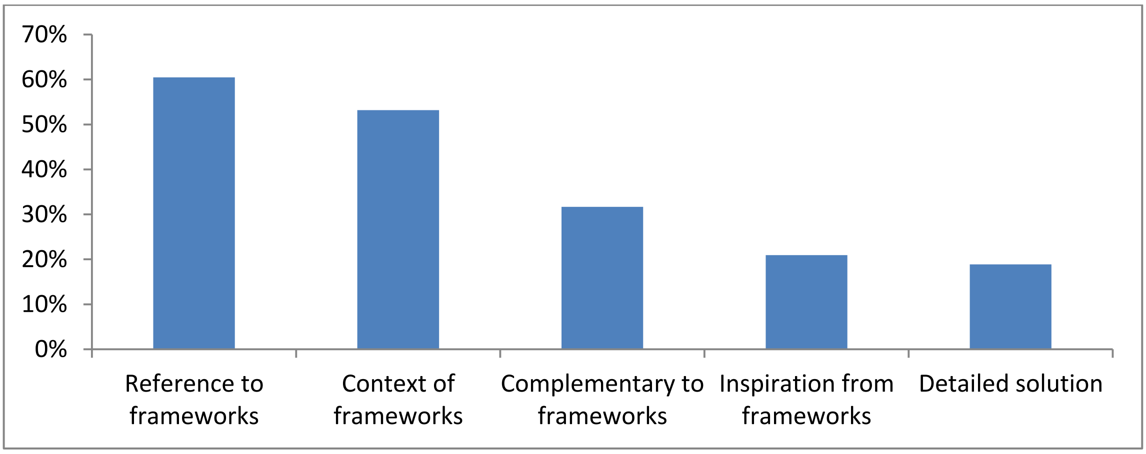
Issues most commonly mentioned by respondents include: climate change, environmental aspects, supply chain matters, human rights, and conflict minerals.

III. Interaction with other frameworks and other aspects

Question 8
How do you think that the GUIDELINES should relate to existing national, international or other EU-based frameworks (such as UN Global Compact, the UN Guiding Principles on Business and Human Rights, OECD guidelines for multinational enterprises, the ILO Tripartite Declaration of principles concerning multinational enterprises and social policy, EMAS, etc.)? *o The GUIDELINES should include detailed solutions and be an exhaustive document in a way that could make unnecessary for companies the use of other guidelines* *o The GUIDELINES should be complementary to other frameworks* *o The GUIDELINES should make reference to other frameworks where addressing concrete matters or specific issues* *o The GUIDELINES should get general inspiration from other frameworks* *o The GUIDELINES should explain how content produced in the context of other frameworks could be used in the non-financial statement* *o Other*

Most respondents across all categories believe that the GUIDELINES should make reference to other frameworks or explain how content produced in the context of other frameworks could be used in the non-financial statement.

The least shared view among respondents is that the GUIDELINES should include detailed solutions.



Many companies and business organisations explain that the GUIDELINES should be principle-based, consistent and complementary with existing frameworks, without duplicating them. They argue that companies should be left with the flexibility to choose their preferred reporting framework. Some respondents express the view that there is no need for the GUIDELINES to be a new framework, and that it is unlikely that the GUIDELINES may render the use of other guidelines unnecessary.

Several respondents have expressed the view that the GUIDELINES should explain what the specific requirements of the DIRECTIVE are, and where and how other frameworks can help companies to understand and fulfil these requirements.

Several civil society organisations and NGOs mentioned that the UN Guiding Principles, the OECD Guidelines and the ILO Conventions are the most authoritative international frameworks, and that the GUIDELINES should make reference to them.

Some respondents suggest that the GUIDELINES should not give preference to any frameworks. Other respondents express the view that the GUIDELINES should refer to best-practice reporting frameworks. This would reduce the administrative burden on companies.

Several companies believe that the multiplicity of frameworks is a burdensome challenge for companies. There is a need for convergence. Correlation tables between frameworks would be useful, according to some respondents.

Several public authorities express the view that the GUIDELINES should be a stand-alone document, avoiding the need for companies to consult other frameworks.

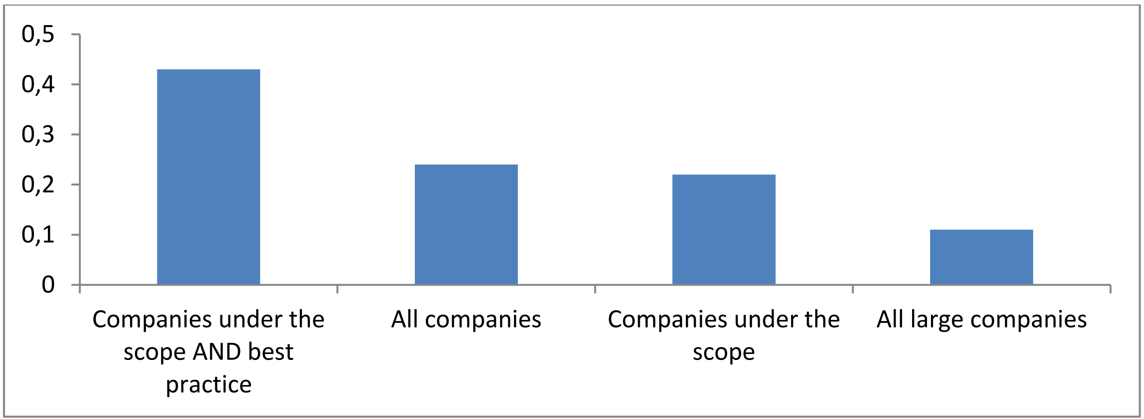
Question 9
Do you think that when preparing the GUIDELINES only the companies included in the scope of the DIRECTIVE should be considered, or that the interests, characteristics and/or requirements of other companies that prepare management reports should be taken into account as well? *o Specific to the requirements of the companies under scope of the DIRECTIVE* *o Consider all large companies* *o Consider all companies* *o Focus on the requirements of the companies under the scope of the DIRECTIVE, but also propose best practice for other companies that prepare management reports* *Accordingly, do you think that the content of the guidelines should be different according to the targeted companies?*

Companies and business organisations; auditors, accountants and other professionals; and public authorities express the view that the GUIDELINES should focus on the requirements of the companies under the scope of the DIRECTIVE, but also propose best practice for other companies that prepare management reports.

Civil society and NGOs consider that the interests, characteristics and/or requirements of all companies should be taken into account when preparing the GUIDELINES. .

Some companies and business organisations; and public authorities consider that the GUIDELINES should address only the specific requirements of companies under the scope of the DIRECTIVE. .

Considering all large companies is the alternative that has received less support from companies and business organisations; auditors, accountants and other professionals; and public authorities.



Some respondents consider that the DIRECTIVE puts a regulatory burden on companies, and argue that it would be difficult to understand that the GUIDELINES consider a broader scope.

Some suggest that there is no need to go beyond the legal requirements of the Directive.

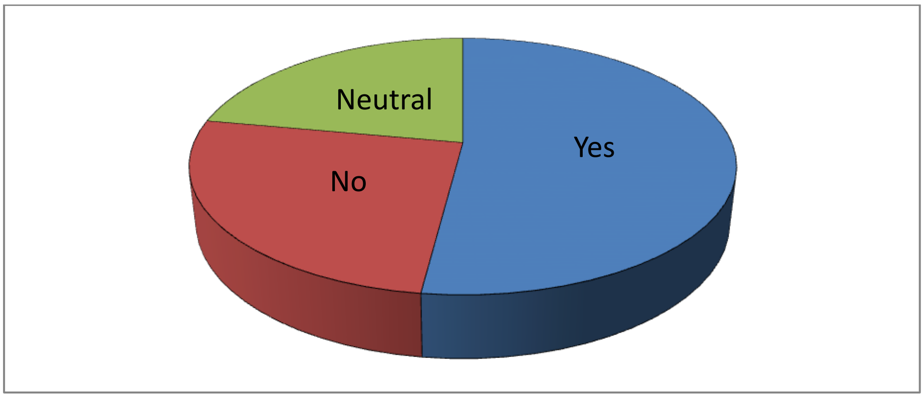
Some respondents argue that appropriately drafted guidance should be capable of indicating best practice for all companies. Others suggest that useful methodology for assessing and communicating impacts is independent of the legal scope of the DIRECTIVE. Some argue that differences have more to do with sectoral aspects than with size.

Some suggest that a general, principle-based approach is consistent with a broader consideration of companies outside the scope of the DIRECTIVE, as principles are relevant to all companies. Some suggest that the principles set out in the DIRECTIVE should work for non-listed and smaller companies as well – the GUIDELINES should provide useful methodology to all companies seeking to improve their reporting.

Others suggest that, as a minimum, the GUIDELINES should focus on companies under the scope of the DIRECTIVE, but companies outside the scope would surely benefit from high quality guidance. Some explain that smaller companies which are in the supply chain of larger ones are likely to receive information demands from the latter. Therefore, some guidance would be useful.

IV. Disclosures related to board diversity policy

Question 11
Should the GUIDELINES provide more clarity on what companies should disclose as regards their board diversity?



The large majority of auditors, accountants and civil society organisations support the development of diversity guidelines. The most common elements of their arguments are the following:

- board diversity policies are important to ensure the necessary breadth of perspectives at board level to increase sensitivity to a wider range of risks, to improve corporate governance, increase efficiency and, according to some associations, to promote the social responsibility of the company. The GUIDELINES would be useful to raise awareness about these positive effects.
- the GUIDELINES would be necessary to ensure sufficient comparability of disclosures across Europe.
- the GUIDELINES should promote the use of performance data, but also information about processes. It should not be only about the current state of diversity but also forward looking policies, including recruitment.
- the DIRECTIVE's list of diversity aspects could be extended and clarified.

Enterprises and business associations are more divided on this issue with some companies being against developing guidelines. Large company associations predominantly do not see the need for additional guidance and prefer the flexibility offered by the Directive. Some point to a number of existing requirements and recommendations in this area. However, an important number of individual companies see the benefit of clarifying in more detail what is expected on the basis of the DIRECTIVE on diversity. Respondents from the investor and investor organisation side generally support more guidance, except the biggest asset manager association. Some investors emphasise the benefits of diversity (for example for creativity and innovation), and that additional guidance would be an opportunity to strengthen buy-in from companies, and provide more clarity and homogeneity among the existing regimes and expectations.

The majority of individuals and public authorities support guidelines on diversity.

5. ANNEX

5.1 Methodology and technical aspects

This section provides explanation on the methodology used in preparing this document.

Question 1

Expressing an order of priority on characteristics of non-financial information for them to be addressed by the GUIDELINES does not imply that other characteristics are not important or necessary. All of them add value and contribute to adequate and appropriate reporting. It does not mean either that characteristics not proposed on the list could not be important or necessary as well (which is the reason for having proposed a final item "other" for respondents to suggest other options). Characteristics of information have not been presented in a mutually exclusive way.

When analysing to what extent each characteristic is considered important in the view of respondents to the consultation, we have used the metric: *"respondents having a significantly favourable position".* In particular, it covers respondents which have selected the weights 7, 8 or 9 for the aspects proposed in the question.

Questions 2, 9, 11

When analysing the responses to these questions, we have used the metric: *"respondents having indicated a position favourable to a given alternative".*

Question 3

Expressing an order of importance on the features of relevant non-financial information does not imply that other features are not important. All of them add value. It does not mean either that features not proposed on the list could not be important as well (which is the reason for having proposed a final item "other" for respondents to suggest other options). Features of relevant information have not been presented in a mutually exclusive way.

When analysing to what extent each feature is considered important in the view of respondents to the consultation, we have used the metric: *"respondents having a significantly favourable position".* In particular, it covers respondents which have selected the weights 6 or 7 for the features proposed in the question.

Question 4

When analysing to what extent respondents' views are geared towards general principles, or towards a high level of detail prescription, we have used the metrics: *"respondents having a position favourable to general principles",* which covers respondents which have selected the weights 1 or 2; compared to *"respondents having a position favourable to high level of detail/prescription"*, which covers respondents having selected the weights 4 or 5.

Question 5

This question provides qualitative comments provided by respondents.

Question 6

When analysing how the GUIDELINES should approach the disclosure of KPIs, we have used the metric: *"respondents having indicated a preference either as best option or as second preferred option"*.

Question 7

When analysing the approach to guidance on specific sectoral issues, we have used the metrics: *"respondents having a position favourable to general principles"*, which covers respondents which have selected the *weights* 1 or 2; compared to *"respondents having a position favourable to high level of detail/prescription"*, which covers respondents having selected the weights 4 or 5.

Question 8

When analysing how the GUIDELINES should relate to other frameworks, we have used the metrics: *"respondents whose views are least in line with the statements"* which covers respondents which have selected the *weights* 1 or 2 compared to *"respondents whose views are most in line with the statements"* which covers respondents having selected the weights 5 or 6.

5.2 Vocabulary

"The GUIDELINES": the non-binding guidelines on methodology for reporting non-financial information that the Commission will prepare in accordance with Article 2 of Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups (**"the DIRECTIVE"**).

"KPIs": Key performance indicators.

"EU": European Union.

"EEA": European Economic Area.

"NGOs": Non-governmental organisations.