

Consultation Paper by the Department of Jobs, Enterprise & Innovation

On transposition of EU Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

Subject of the Public Consultation

The Department of Jobs, Enterprise and Innovation is seeking the views of interested parties on the transposition of EU Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial information and diversity policies by certain large undertakings and groups¹. These directives will be transposed as amendments to the Companies Act 2014.

The Directive allows some options to Member States when transposing into national law, and these are the focus of this consultation. However, respondents should feel free to address any related issues in their submissions.

Provisions of the EU Directive

The first objective of this Directive is to increase the transparency of certain large European companies on environmental and social matters. Accordingly, the new measures will require certain large companies to draw up, on a yearly basis, a statement relating to environmental, social and employee-related matters, respect for human rights, anti-corruption and bribery policies. Where a company does not pursue policies in relation to these matters, it will have to explain why this is the case.

The second objective of the Directive is to promote diversity in corporate boards. To that end it provides that certain companies include a description of the diversity policy applied to their administrative, management and supervisory boards in their corporate governance statement. This policy should refer to aspects such as age, gender, educational and professional background. If no such policy is applied, the company shall give an explanation as to why this is the case.

¹ Copy of Directive available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0095>

Who is covered by the Directive?

1. Non-financial Information:

The obligation to disclose non-financial information applies to those companies and groups who, under the Companies Act 2014 (amended by Directive 2013/34/EU, to be transposed as part of Companies (Accounting) Bill 2015), satisfy all 3 of the following criteria:

- Are “Public Interest Entities”ⁱ
- Are large undertakings/parents of large groups²ⁱⁱ
- Have an average of over 500 employees on their balance sheet date

2. Diversity Policy:

The obligation to prepare a diversity policy, applies to any company that is required to prepare a corporate governance statement as provided for in section 1373 of the Companies Act 2014.

What options are for Member States to decide?

Articles 19a and 29a – Non-financial statement and consolidated non-financial statement

Article 19a (1) and Article 29a (1) of the Directive provide for the disclosure of non-financial information. They also state that Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted from the non-financial statement, which is part of the management report (also known as the directors’ report) in exceptional circumstances where the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking.

Question 1 – Do you consider that Irish company law should permit information to be withheld in certain circumstances? Please give reasons for your preference.

Article 19a(4) and 29a(4) of the Directive say that Member States may exempt an undertaking from the obligation to prepare a non-financial statement where it prepares a separate report corresponding to the same financial year, subject to conditions. The intention here is to allow companies the flexibility to produce the information at a time that is different from the date they produce their management report.

Question 2 – Do you consider that Irish company law should permit companies to publish the non-financial information in a report separate from the management report? Please give reasons for your preference.

Article 19a (6) and 29a (6) of the Directive says that Member States may require that the information in the non-financial statement (or in the separate report) be verified by an independent assurance services provider. The Directive does not clarify what might constitute such an independent assurance services provider.

Question 3 – Do you consider that Irish company law should require information to be verified by an independent assurance service provider and, if so, how would that service be provided? Please give reasons for your preference.

Article 1(2) – Amendment to Article 20 of Directive 2013/34/EU on content of the corporate governance statement

The Directive adds a new requirement to the list of content in the corporate governance statement. That requirement is to give a description of the diversity policy that is applied to the companies' Board of Directors with regard to such aspects as, for instance, age, gender, or educational and professional backgrounds. The disclosure should also include a description of the objectives of that policy, how it has been implemented and the results in the reporting period.

Where companies do not have shares admitted to trading on either a regulated market or a "multilateral trading facility", but do have other forms of securities admitted to trading on a regulated market, Member States may exempt them from making these diversity disclosures in the corporate governance statement.

Question 4 – Do you consider that companies with securities other than shares admitted to trading on a regulated market, and which do not have shares admitted to trading on any market, should be exempted from making disclosures relating to their diversity policy?

Other relevant issues

Please include your views on any other issues that you might see as relevant to the transposition of this Directive.

Date for implementation of the Directive

EU Directive 2014/95/EU must be implemented into Irish national law by 6 December 2016. It will apply to all undertakings within the scope of the Directive for their financial years starting on or after 1 January 2017.

Deadline for submission to this public consultation

The deadline for submissions is Friday, 29 May 2015.

Submissions should be sent, preferably by email, to Mr. Seán Ó Ciardha at –

E-mail: sean.ociardha@djei.ie

Post: Company Law
Department of Jobs, Enterprise & Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2

Telephone: (01) 631 2623

Publication of Responses to Consultation Paper

It is proposed to make the responses to this consultation paper available on the website of the Department of Jobs, Enterprise & Innovation. Any material contained in submissions made in response to this consultation that respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. The Department will consult with respondents regarding such information before making a decision to disclose it either on its website or following a request under the Freedom of Information Act 1997 (as amended).

^{i i} “Public Interest Entities” means undertakings which are:

- a) Governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
- b) Credit institutions as defined in point (1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions other than those referred to in Article 2 of that Directive.
- c) Insurance undertakings within the meaning of Article (2)1 of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings; or
- d) Designated by member states as “public interest entities”, for instance undertakings that are of significant public relevance because of the nature of their business, their size, or the number of their employees

^{ii ii} Companies that satisfy 2 of the following 3 criteria: (i) turnover exceeding €40 million, (ii) balance sheet total exceeding €20 million, (iii), average number of employees exceeding 250.