



Banking & Payments
Federation **Ireland**

Response to 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.

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Introduction

Banking & Payments Federation Ireland (BPMI) is pleased to be offered the opportunity to respond to this consultation from the Department of Jobs, Enterprise & Innovation, on the transposition of EU Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. BPMI is the voice of banking and payments in Ireland, representing over 70 member institutions and associates, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

Our overall comments and responses to the questions raised in this consultation paper are provided below.

General Observation

Where existing Irish companies with over 500 employees are already reporting on the proposed requirements via their parent companies, either through the annual report or sustainability report or a combination of both, and where such reporting is subject to independent auditing, we suggest that these companies should not also be required to duplicate such reporting through a separate directors' report or other mechanism. However we recognise that many may in practice opt to do so in the interests of visibility and transparency.

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

Question 1.

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

Answer

Yes. We believe that there will be limited circumstances where it is necessary and desirable that entities should withhold certain information, owing to its commercial sensitivity. This is an accepted principle in international accounting standards and we consider that it should apply here in certain limited circumstances.

For example, IAS 37 “Provisions, Contingent Liabilities and Contingent Assets” states that:

In extremely rare cases, disclosure of some or all of the information required by paragraphs 84–89 can be expected to prejudice seriously the position of the entity in a dispute with other parties on the subject matter of the provision, contingent liability or contingent asset. In such cases, an entity need not disclose the information, but shall disclose the general nature of the dispute, together with the fact that, and reason why, the information has not been disclosed.

Whilst IAS37 is specific in citing “extremely rare cases”, for the purposes of Irish Company Law, care must be made so as not to make this definition too narrow. “Limited circumstances” should be determined by the Board of Directors on a case by case basis as part of Director’s broader duties to produce a Directors’ report. Such circumstances will differ from company to company.

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.

Answer

BPMI members are of the view that this requirement can be implemented by adding the required information to the Annual Report as its natural ‘home’. We also believe that this will give it a natural prominence.

With disclosure incorporated into the Directors’ report this would further support the directive’s objective to promote consistency and comparability of information. It also links back to the Companies Act 2014 requirements, (with reference to Directors’ Reports) a) to include particulars of any important events affecting the company (s326) and b) provide an indication of likely further developments in the business of the Company (s327).

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 answer.

Answer

None of this information is currently required to be audited by the Auditors of the Group Accounts, as per auditing standard ISA 720. The reasoning is that none of these policies are directly linked to the financial information disclosed in the annual report or provide additional insight around this financial information.

The information in these policies is subjective by nature and may change depending on the beliefs of the Board and Management of the Group. It is therefore difficult to see how an auditor would verify such information.

In addition, on the basis that the information disclosed will be incorporated into the Directors' report, the Directors have a statutory duty to ensure that it includes all relevant information (as outlined in Q2 above). Further, in many large organisations which already apply comprehensive sustainability reporting, component information will likely already be subject to assurance and verification processes.

Article 1(2) – Amendment to Article 20 of Directive 2013/34/EU on content of 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?

Answer

We agree that institutions 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.

Although the purpose of the directive is to strengthen transparency and accountability on a consistent approach in CSR matters, there should be an exemption for smaller entities. The need for a board diversity policy and publication of same on the company's website would perhaps be onerous in the case of small institutions. Not all small companies are required to have a corporate governance section on their website where such a policy would be maintained.