



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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Re: Consultation by DJEI on non-financial and diversity reporting

Dear Mr Ó Ciardha

I refer to the consultation that the Department of Jobs, Enterprise and Innovation (DJEI) is currently conducting in relation to the Member State options in Directive 2014/95EU amending Accounting Directive 2013/34/EU regarding disclosure of non-financial and diversity policy information. I attach the Central Bank of Ireland's response in an appendix to this letter.

Yours sincerely

Pamela Farrell
Deputy Head of Governance, Accounting and Auditing Policy Division



APPENDIX

The Central Bank of Ireland's ('the Central Bank') response to the specific questions raised by DJEI on Directive 2014/95/EU regarding disclosure of non-financial and diversity policy information is as follows:

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

Article 19a (1) and Article 29a (1)

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.

Yes, the Central Bank is of the view that company law should permit information to be withheld in certain circumstances. There may be instances whereby it would not be appropriate to disclose commercially sensitive information, information on matters in the course of negotiation where the outcome is not certain and thus may be misleading or any information that may put the company at an unfair competitive disadvantage.

Articles 19a (4) and 29a (4)

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.

The Central Bank is of the view that the inclusion or otherwise of the non-financial statement in the Annual Report should be aligned to Section 327 (3)(b) of the Companies Act 2014 i.e. *“The review required by subsection (1)¹ shall, to the extent necessary for an understanding of such development, performance or financial position or assets and liabilities, include.... (b) where appropriate, an analysis using non-financial key performance indicators, including information relating to environmental and employee matters”*. Thus companies should only be permitted to publish the non-financial statement separate from the annual report whereby the information is not considered necessary for an understanding of the development, performance or financial position of the company’s business.

Article 19a (6) and 29a (6)

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.

No, the Central Bank is of the view that it may be difficult to identify a suitable service provider to give assurance specifically on such information. In any event if the non-financial statement is included within the Annual Reports’ of companies the statutory auditor will be required, in accordance with International Standard of Auditing (ISA) 700, to read the full Annual Report and *“identify information that is materially inconsistent with the audited financial statement or is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by the auditor in performing the audit or that is otherwise misleading”*.

¹ The directors’ report for a financial year shall contain – (a) a fair review of the business of the company, and (b) a description of the principal risks and uncertainties facing the company.



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?

Yes, given the nature of 'debt issuers'/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, the Central Bank is of the view that they should be exempted from making disclosures relating to their diversity policy.