

CDSB position on red lines and tracked changes Non-Financial Reporting Directive (NFRD)

Note: This v0.1 is an update to our original drafted red lines

CDSB welcomes feedback from all stakeholders on its draft positions below. Please contact Michael Zimonyi, Policy & External Affairs Director (michael.zimonyi@cdsb.net).

Despite the entry into force of the Non-Financial Reporting Directive in 2017, reporting often still fails to offer investors a clear understanding of companies' development, performance, position and impact, as it lacks the necessary quality, comparability and coherence.

This lack of material and relevant climate and other environmental information has been illustrated in various work including the Alliance for Corporate Transparency analysis of the sustainability reports of 1000 companies and the European Lab Project Task Force on Climate-related Reporting report: How to Improve Climate-related Reporting - A Summary of Good Practices from Europe and Beyond. CDSB has also performed a similar analysis of the top 50 European companies by market capitalisation, which will be released in May 2020.

To address this lack of decision-useful information for investors as a result of the current shortcomings of NFRD, CDSB has developed 9 red lines to review and make the Directive more effective.

Red lines

1. **Make reporting in the management report mandatory by removing the exemption to allow the non-financial statement to be reported outside the management report**

WHY: The European Commission's ¹(2020) found that "It is hard for investors and other users to find non-financial information even when it is reported" and that reported non-financial information is not sufficiently reliable. Non-financial statements reported outside of the management report are also not required to be filed in the Officially Appointed Mechanisms (OAMs) designated by Member States pursuant to Article 21(2) of the Transparency Directive, further hindering accessibility of this information.

It is although important to note that other forms of reporting outside the management report might be better suited for other stakeholders and more work needs to be done to address this

2. **Increase scope by changing business size to >250 employees, as by definition of PIEs in Accounting Directive as opposed to >500**

WHY: Recognising the need to avoid the overall regulatory burden on SMEs, ESG matters may pose risks and opportunities to businesses irrespective of their size. As Accountancy Europe states: "Expanding the NFRD's scope should capture all those companies that significantly impact the environment due to their sector's environmental and social profile. Stakeholders are interested in non-financial information to better understand a company's performance, its future developments and impact on society. Reporting on non-financial matters make businesses better assess, measure and manage their risks and performance on specific ESG-metrics. That could lead to lower funding costs, fewer and less significant business disruptions, strong consumer loyalty and better relations with stakeholders."²

3. **Apply the TCFD's recommendations for ESG information, such as biodiversity and natural capital**

WHY: So that we have a unified approach, ensuring consistency and connectivity of information, creating a global standard for climate-related metrics as part of TCFD disclosures is essential to establish consistent and comparable reporting with the least reporting burden on companies. ESG information in the management report should cover all four elements of the TCFD (i.e. Governance, Strategy, Risk Management, Metrics & Targets). As stated by the TCFD recommendations, Risk Management and Governance of ESG matters shall be disclosed regardless of materiality.

¹ European Commission (2020) Inception impact assessment - Ares(2020)580716. [PDF]. Available from: <https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-580716>

² Accountancy Europe (2019) Sustainable Finance: Achieving High Quality & Consistent Reporting. [PDF]. <https://www.accountancyeurope.eu/wp-content/uploads/191015-Call-to-action-SF-final-version.pdf>

4. Explain that 'environmental matters' include climate and biodiversity

WHY: *While climate change nor biodiversity are not explicitly referred to in the NFRD under environmental matters, the June 2019 Guidelines on reporting climate-related information refer to the UN SDGs, the Paris Agreement and TCFD. Therefore, despite the absence of the terms from the language of the Directive, the NFRD's intention appears to cover climate and biodiversity under the auspices of "environmental matters". This ambiguity, however, has created uncertainties for preparers and inconsistencies in reporting practice when comparing disclosures, with a lack of disclosures on climate, As found in the CDSB's review of non-financial reporting in the EU.*

5. Recognise investors as the primary users of financial information, by elevating materiality as a useful construct for making decision-useful disclosures from guidance to the Directive and adopt IASB's new definition of materiality – materiality from the accounting world in the Accounting Directive

WHY: *Investors require information presented in a way that is suitable to their decision making. A symptom of the current definition of materiality in the Directive is that "Companies do not report all non-financial information that users think is necessary, and many companies report information that users do not think is relevant" (EC Inception Impact Assessment). CDSB's review of the fifty largest companies reporting in Europe found that there is currently a lack of focus on investor materiality. As a result, double materiality is not currently benefitting investors.*

IASB definition of materiality is relevant to look at and defines it as "Information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity"³

Having multiple audiences with varying information needs can result in less clarity of the reported information and lengthy disclosures that contain information that is immaterial for investors. The Commission has also recognised this, stating that "Investors cannot take sufficient account of sustainability-related risks and opportunities, or of the social and environmental impacts of their investments. As a result, there are systemic risks to the economy from investments that do not adequately price in sustainability-related risks, and there are inadequate capital flows to companies that contribute to resolving sustainability-related problems."⁴

An entity may disclose other information separate to the management report, to ensure completeness and satisfy wider stakeholder needs. This solution has been suggested elsewhere, such as the CORE and MORE approach suggested by AccountancyEurope⁵

6. Strengthen linkages between non-financial and financial information, in line with the TCFD recommendations

WHY: *The financial impacts of non-financial matters are missing from corporate management reports. Supporting non-financial claims with verifiable financial data and impacts provides an additional layer of reliability to the report and a clear understanding of dependencies on non-financial matters. Several organisations provided feedback to the TCFD on its supplemental guidance for non-financial groups, one of the common themes was clarifying the links among the metrics, climate-related risks and opportunities and potential financial implications. The TCFD recognised the need for further research in a better understanding and measurement of the relationship between climate-related issues and potential financial impacts with a forward-looking perspective.*

³ IASB (2018) IASB clarifies its definition of 'material'. [Online]. Available at: <https://www.ifrs.org/news-and-events/2018/10/iasb-clarifies-its-definition-of-material/>

⁴ European Commission (2020) Inception impact assessment - Ares(2020)580716. [PDF]. Available from: <https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2020-580716>

⁵ AccountancyEurope (2018) CORE and MORE: An Opportunity for Smarter Corporate Reporting. [Online] Available at: <https://www.accountancyeurope.eu/publications/core-more-smarter-corporate-reporting/>

7. Strengthen governance disclosures by incorporating TCFD recommended disclosures a) and b) on governance into the 'corporate governance statement' in Article 20 and in the non-financial statement in 19a and 29a of the Accounting Directive

WHY: Board oversight of environmental and climate change matters is not a disclosure obligation under the NFRD, although the Directive does provide that companies include a corporate governance statement in their management report under Article 20, with disclosures regarding diversity. This approach has worked for diversity, so it would be prudent to adopt the same approach to other ESG issues.

TCFD Governance a) Describe the board's oversight of climate-related risks and opportunities

CDSB's review of corporate reports⁶ found that almost half of companies (49%) disclosed both board oversight and management's role in assessing and managing environmental or climate matters. There were higher disclosures of board oversight of environmental (60%) than climate-related information (15%).

TCFD Governance b) Describe management's role in assessing and managing climate-related risks and opportunities

Similarly, 58% of companies provided information on management's role on environmental matters, but only 20% for climate-related matters. In both cases, this may be attributable to the mandatory obligation for environmental matters in the Directive compared to the voluntary approach of the TCFD.

8. Provide definitions for key terms used in the Directive, such as 'policies' and 'due diligence' to ensure a common understanding and application of the Directive content categories.

WHY: Although companies are disclosing their environmental and climate-related policies and due diligence, there is significant variation due to a lack of clarity of what these mean within the Directive. Defining these terms would ensure a common understanding and application of these requirements. The importance of policies in providing the basis for a coherent and connected disclosure must also be emphasised.

Effective Policies Disclosure

- Include company and context-specific ambition statements within the policies, accompanied by timebound qualitative and/or quantitative targets to enable progress to be tracked over time;
- Use the policies as the basis to structure subsequent disclosures on due diligence, outcomes, risks and KPIs;
- Clearly specify both board and management-level accountabilities regarding environmental and climate-related matters and ensuring the linkages between them are disclosed; and
- Ensure direct linkages between due diligence arrangements and stated policies.
- Reporting on outcomes and KPIs so that the policies used inform understanding of the company's overall progress, performance and position.

Effective Due Diligence Disclosure

- Harmonise the due diligence guidelines with the TCFD recommendations to ensure emphasis is placed on information relevant for an investor audience, including board and management-level responsibilities and risk management processes.

9. Ensure that supervision of non-financial information by National Competent Authorities is at the same level as for financial information, in order to provide authoritative feedback to corporate report preparers.

WHY: Corporate report preparers are unable to receive feedback that facilitates effective disclosure, such information should be subject to the same level of supervisory if embedded within financial reporting.

Separate reports that include non-financial information also hinder appropriate supervision because they are out of the legal mandate of the National Competent Authorities, whose mandate over periodic reports is limited to the annual and semi-annual financial reports (which include the management report).

⁶ CDSB (2018) First Steps Corporate climate and other environmental disclosure under the EU Non-Financial Reporting Directive. [PDF]. Available from: https://www.cdsb.net/sites/default/files/cdsb_nfrd_first_steps_2018.pdf

Supervision by NCAs should be strengthened and is already overseen by ESMA whose last enforcement report stated that during 2019, European enforcers undertook 937 examinations of non-financial statements. Such examinations led to 95 enforcement actions, causing an action rate of 10%. The overwhelming majority of actions were requiring the issuer to make a correction in a future non-financial statement on one or several areas.

It is important to underline that further clarification within the issues to be disclosed on within the text of the Directive will help strengthen and improve further supervision and enforcement activities.

I

(Legislative acts)

DIRECTIVES

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 and diversity information by certain large undertakings and groups

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social

Committee ⁽¹⁾, Acting in accordance with the ordinary legislative

procedure ⁽²⁾,

Whereas:

- (1) In its communication entitled ‘Single Market Act — Twelve levers to boost growth and strengthen confidence — “Working together to create new growth”’, adopted on 13 April 2011, the Commission identified the need to raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors. This is fully consistent with the possibility for Member States to require, as appropriate, further improvements to the transparency of undertakings' non-financial information, which is by its nature a continuous endeavour.
- (2) The need to improve undertakings' disclosure of social and environmental information, by presenting a legislative proposal in this field, was reiterated in the Commission communication entitled ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’, adopted on 25 October 2011.
- (3) In its resolutions of 6 February 2013 on, respectively, ‘Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth’ and ‘Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery’, the European Parliament acknowledged the importance of businesses divulging information on sustainability such as social, economic and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust. Indeed, disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection. In this context, disclosure of non-financial information helps the measuring, monitoring and managing of undertakings'

performance ~~and their impact on society~~. Thus, the European Parliament called on the Commission to bring forward a legislative proposal on the disclosure of non-financial information by undertakings allowing for high flexibility of action, in order to take account of the multidimensional nature of Environmental, Social and Governance (corporate social responsibility (CS-ESG) matters) and the diversity of the CSR-ESG policies implemented by businesses matched by a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on the impact of businesses on society.

(4) The European Union's EU Green Deal aims to strengthen the foundation for sustainable investment, which acknowledges that sustainability shall be further embedded into the corporate governance framework. as well as a It also acknowledges the need to increase their corporate disclosure of a climate and other environmental data information. To ~~he~~ achieve this, the Commission stated that ~~they~~ it will review the Non-Financial Reporting Directive (NFRD) and, as well as supporting businesses and stakeholders in developing approaches for natural capital accounting practices.

(5) The European Commission recognised the need for increased transparency around climate-related issues, acknowledging that the widespread adoption of the Task Force on Climate-related Financial Disclosures (TCFD) recommendations would lead to smarter, more efficient allocation of capital. Therefore, this is addressed in this Directive e-NFRD with the recommendations of the TCFD being integrated within the-its text ~~directive~~.

~~(4)~~(6) The coordination of national provisions concerning the disclosure of non-financial information in respect of certain large undertakings is of importance for the interests of undertakings, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of those undertakings operate in more than one Member State.

~~(5)~~(7) It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that ~~shall~~ ~~ould~~ be made available to the public and authorities by undertakings across the Union. The undertakings subject to this Directive ~~shall~~ ~~ould~~ give a fair and comprehensive view of their governance, strategy, policies, outcomes, and risks and opportunities and management thereof.

~~(6)~~(8) In order to enhance the consistency and comparability of non-financial information disclosed throughout the Union, certain large undertakings shall prepare a non-financial statement containing information relating to ESG matters, including at least climate and other environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement shall include a description of the strategy, policies, outcomes and risks and opportunities related to those matters and shall be included in the management report of the undertaking concerned. The non-financial statement shall also include information on the governance and due diligence (including risk management) processes implemented by the undertaking. , also regarding, ~~W~~Where relevant and proportionate, the undertaking shall also state such processes in respect of its supply and subcontracting chains, in order to identify, prevent and mitigate existing and potential adverse impacts. ~~It shall be possible for Member States to exempt undertakings which are subject to this Directive from the obligation to prepare a non-~~

~~financial statement when a separate report corresponding to the same financial year and covering the same content is provided.~~

~~(7)~~(9) Where undertakings are required to prepare a non-financial statement, that statement shall contain, as regards climate and other environmental matters, details of the current and foreseeable impacts of the undertaking's operations on the environment, and, as appropriate, on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, land use, water use and air pollution, use of materials, and consideration of natural capital assets, impacts and dependencies, and of the impacts of climate change on the business. As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities. With regard to human rights, anti-corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery.

~~(8)~~(10) The undertakings which are subject to this Directive shall provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts shall be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and, where relevant and proportionate, its products, services and business relationships, including its supply and subcontracting chains. This shall not lead to undue additional administrative burdens for small and medium-sized undertakings. The undertaking shall consider the impacts of climate change on the business, including on its position and performance across short, medium and long-term time horizons.

~~(9)~~(11) In providing this information, undertakings which are subject to this Directive may rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks and standards such as the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organisation's Tripartite Declaration of principles concerning multinational enterprises and social policy, the Climate Disclosure Standards Board (CDSB), CDP, International Integrated Reporting Council (IIRC), Global Reporting Initiative (GRI), and Sustainability Accounting Standards Board (SASB) or other recognised international frameworks and standards.

~~(10)~~(12) Member States shall ensure that adequate and effective means exist to guarantee disclosure of non-financial information by undertakings in compliance with this Directive. To that end, Member States shall ensure that effective national procedures are in place to enforce compliance with the obligations laid down by this Directive, and that

those procedures are available to all persons and legal entities having a legitimate interest, in accordance with national law, in ensuring that the provisions of this Directive are respected.

~~(11)~~(13) Paragraph 47 of the outcome document of the United Nations Rio+20 conference, entitled ‘The Future We Want’, recognises the importance of corporate sustainability reporting and encourages undertakings, where appropriate, to consider integrating sustainability information into their reporting cycle. It also encourages industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice, and facilitate action for the integration of financial and non-financial information, taking into account experiences from already existing frameworks.

~~(12)~~(14) Investors' access to non-financial information is ~~a step towards reaching the milestone of having in place by 2020~~necessary to achieve market and policy incentives rewarding business investments in efficiency under the roadmap to a resource-efficient Europe.

~~(13)~~(15) The European Council, in its conclusions of 24 and 25 March 2011, called for the overall regulatory burden, in particular for small and medium-sized enterprises (‘SMEs’), to be reduced at both European and national levels, and suggested measures to increase productivity, while the Europe 2020 Strategy for smart, sustainable and inclusive growth aims to improve the business environment for SMEs and to promote their internationalisation. ~~Thus, in accordance with the ‘think small first’ principle, the new disclosure requirements shall apply only to certain large undertakings and groups.~~

~~(14)~~(16) The scope of those non-financial disclosure requirements shall be defined by reference to the average number of employees, balance sheet total and net turnover. SMEs shall be exempted from additional requirements, and the obligation to disclose a non-financial statement shall apply only to those large undertakings which are public-interest entities and to those public-interest entities which are parent undertakings of a large group, in each case having an average number of employees in excess of ~~250~~500, in the case of a group on a consolidated basis. This shall not prevent Member States from requiring disclosure of non-financial information from undertakings and groups other than undertakings which are subject to this Directive.

~~(15)~~(17) Many of the undertakings which fall within the scope of Directive 2013/34/EU of the European Parliament and of the Council ⁽³⁾ are members of groups of undertakings. Consolidated management reports shall be drawn up so that the information concerning such groups of undertakings may be conveyed to members and third parties. National law governing consolidated management reports shall therefore be coordinated in order to achieve the objectives of comparability and consistency of the information which undertakings shall publish within the Union.

~~(16)~~(18) Statutory auditors and audit firms shall only check that the non-financial statement ~~or the separate report~~ has been provided. In addition, it shall be possible for Member States

to require that the information included in the non-financial statement ~~or in the separate report~~ be verified by an independent assurance services provider.

~~(17) With a view to facilitating the disclosure of non-financial information by undertakings, the Commission shall prepare non-binding guidelines, including general and sectoral non-financial key performance indicators. The Commission shall take into account current best practices, international developments and the results of related Union initiatives. The Commission shall carry out appropriate consultations, including with relevant stakeholders. When referring to environmental aspects, the Commission shall cover at least land use, water use, greenhouse gas emissions and the use of materials.~~

(19) Diversity of competences and views of the members of administrative, management and supervisory bodies of undertakings facilitates a good understanding of the business organisation and affairs of the undertaking concerned. It enables members of those bodies to constructively challenge the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, also known as the ‘group-think’ phenomenon. It contributes thus to effective oversight of the management and to successful governance of the undertaking. It is therefore important to enhance transparency regarding the diversity policy applied. This would inform the market of corporate governance practices and thus put indirect pressure on undertakings to have more diversified boards.

(20) The obligation to disclose diversity policies in relation to the administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender or educational and professional backgrounds shall apply only to certain large undertakings. Disclosure of the diversity policy shall be part of the corporate governance statement, as laid down by Article 20 of Directive 2013/34/EU. If no diversity policy is applied there shall not be any obligation to put one in place, but the corporate governance statement shall include a clear explanation as to why this is the case

(1) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

~~(18)~~(21) Initiatives at Union level, including country-by-country reporting for several sectors, as well as the references made by the European Council, in its conclusions of 22 May 2013 and of 19 and 20 December 2013, to country-by-country reporting by large companies and groups, similar provisions in Directive 2013/36/EU of the European Parliament and of the Council (1), and international efforts to improve transparency in financial reporting have been noted. Within the context of the [G8G7](#) and the G20, the OECD has been asked to draw up a standardised reporting template for multinational undertakings to report to tax authorities where they make their profits and pay taxes around the world. Such

developments complement the proposals contained in this Directive, as appropriate measures for their respective purposes.

~~(19)~~(22) Since the objective of this Directive, namely to increase the relevance, consistency and comparability of information disclosed by certain large undertakings and groups across the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

~~(20)~~(23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including freedom to conduct a business, respect for private life and the protection of personal data. This Directive has to be implemented in accordance with those rights and principles.

~~(21)~~(24) Directive 2013/34/EU shall therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(1) The following Article is inserted:

Article 19a

Non-financial statement

1. Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of ~~250~~~~500~~ employees during the financial year shall include in the management report a non-financial statement containing material information to the extent necessary for an understanding of the on the undertaking's impact of its activity, its development, performance, position and principal risks and impact of its activity, relating to, ~~as a minimum~~, environmental, social and ~~employee governance (ESG)~~ matters, including climate change, biodiversity, respect for human rights, diversity, employee matters and anti-corruption and anti-bribery matters: The non-financial statement in the management report shall include: ,including:

(a) a brief description of the undertaking's business model and the undertaking's strategy including the resilience of its strategy to future plausible climate states;

- (b) a description of the policies pursued by the undertaking in relation to those ESG matters, including the governance and due diligence processes implemented;
- (c) the outcome of those policies;

[\(4\) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC \(OJ L 176, 27.6.2013, p. 338\).](#)

- (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, as well as ~~–~~, and how the undertaking manages those risksAlong with the risk management processes for identifying, assessing and managing climate-related risks and opportunities and how these relate to the position and performance of the undertaking's business strategy;

- (e) non-financial key performance indicators relevant to the particular business, and identifying their relationship to financial position and performance, whilst also considering the linkages between non-financial and financial information.

Risk management and governance of ESG matters shall be disclosed irrespective of whether it is financially material.

~~Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.~~

The non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements and other elements of the management report, therein stating the linkages between financial impacts of ESG matters and a company's financial position and operating results.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

2. In requiring the disclosure of the information referred to in the first subparagraph, Member States shall provide that undertakings may rely on national, Union-based or international frameworks and standards, and if they do so, undertakings shall specify which frameworks they have relied upon through a statement of conformance.

2.3. Undertakings fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in the third subparagraph of Article 19(1).

4. An undertaking which is a subsidiary undertaking shall be exempted from the obligation set out in paragraph 1 if that undertaking and its subsidiary undertakings are included in the

consolidated management report or the separate report of another undertaking, drawn up in accordance with Article 29 and this Article.

~~3.—Where an undertaking prepares a separate report corresponding to the same financial year whether or not relying on national, Union-based or international frameworks and covering the information required for the non-financial statement as provided for in paragraph 1, Member States may exempt that undertaking from the obligation to prepare the non-financial statement laid down in paragraph 1, provided that such separate report: (a) is published together with the management report in accordance with Article 30; or (b) is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the undertaking's website, and is referred to in the management report.~~

~~Paragraph 2 shall apply *mutatis mutandis* to undertakings preparing a separate report as referred to in the first subparagraph of this paragraph.~~

5. Member States shall ensure that the statutory auditor or audit firm checks whether the non-financial statement referred to in paragraph 1 ~~or the separate report referred to in paragraph 4~~ has been provided.

6. Member States may require that the information in the non-financial statement referred to in paragraph 1 ~~or in the separate report referred to in paragraph 4~~ be verified by an independent assurance services provider².

(2) Article 20 is amended as follows:

(a) in paragraph 1, the following point is added:

‘(g) a description of the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case.’;

(b) paragraph 2 is replaced by the following:

‘(g) the governance statement shall include aspects concerning ESG issues, for the environment, and, as appropriate, on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, land use, water use and air pollution, use of materials, and consideration of natural capital assets, impacts and dependencies, and of the impacts of climate change on the business.

Mandatory risk management disclosures

Disclose both environmental and climate matters

~~(b)~~(c) paragraph 3 is replaced by the following:

‘3. The statutory auditor or audit firm shall express an opinion in accordance with the second subparagraph of Article 34(1) regarding information prepared under points (c)

and (d) of paragraph 1 of this Article and shall check that the information referred to in points (a), (b), (e), (f) and (g) of paragraph 1 of this Article has been provided.’;

~~(e)~~(d) paragraph 4 is replaced by the following:

‘4. Member States may exempt undertakings referred to in paragraph 1 which have only issued securities other than shares admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC from the application of points (a), (b), (e), (f) and (g) of paragraph 1 of this Article, unless such undertakings have issued shares which are traded in a multilateral trading facility within the meaning of point (15) of Article 4(1) of Directive 2004/39/EC.’;

~~(e)~~(e) the following paragraph is added:

‘5. Notwithstanding Article 40, point (g) of paragraph 1 shall not apply to small and medium-sized undertakings.’.

(3) The following Article is inserted:

Article 29a

[Changes to Article 29a will for the most part mirror the changes made to Article 19a]

Consolidated non-financial statement

~~1. Public interest entities which are parent undertakings of a large group exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500~~250~~ employees during the financial year shall include in the consolidated management report a consolidated non-financial statement containing information to the extent necessary for an understanding of the group's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:~~

~~(a) a brief description of the group's business model;~~

~~(b) a description of the policies pursued by the group in relation to those matters, including due diligence processes implemented;~~

~~(c) the outcome of those policies;~~

~~(d) the principal risks related to those matters linked to the group's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the group manages those risks;~~

~~(e) non-financial key performance indicators relevant to the particular business.~~

~~Where the group does not pursue policies in relation to one or more of those matters, the consolidated non-financial statement shall provide a clear and reasoned explanation for not doing so.~~

~~The consolidated non-financial statement referred to in the first subparagraph shall also, where appropriate, include references to, and additional explanations of, amounts reported in the consolidated financial statements.~~

~~Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity. In requiring the disclosure of the information referred to in the first subparagraph, Member States shall provide that the parent undertaking may rely on national, Union-based or international frameworks, and if it does so, the parent undertaking shall specify which frameworks it has relied upon.~~

~~2.— A parent undertaking fulfilling the obligation set out in paragraph 1 shall be deemed to have fulfilled the obligation relating to the analysis of non-financial information set out in the third subparagraph of Article 19(1) and in Article 29.~~

~~3.— A parent undertaking which is also a subsidiary undertaking shall be exempted from the obligation set out in paragraph 1 if that exempted parent undertaking and its subsidiaries are included in the consolidated management report or the separate report of another undertaking, drawn up in accordance with Article 29 and this Article.~~

~~4.— Where a parent undertaking prepares a separate report corresponding to the same financial year, referring to the whole group, whether or not relying on national, Union-based or international frameworks and covering the information required for the consolidated non-financial statement as provided for in paragraph 1, Member States may exempt that parent undertaking from the obligation to prepare the consolidated non-financial statement laid down in paragraph 1, provided that such separate report:~~

~~(a) is published together with the consolidated management report in accordance with Article 30; or~~

~~(b) is made publicly available within a reasonable period of time, not exceeding six months after the balance sheet date, on the parent undertaking's website, and is referred to in the consolidated management report.~~

~~Paragraph 2 shall apply *mutatis mutandis* to parent undertakings preparing a separate report as referred to in the first subparagraph of this paragraph.~~

~~5.— Member States shall ensure that the statutory auditor or audit firm checks whether the consolidated non-financial statement referred to in paragraph 1 or the separate report referred to in paragraph 4 has been provided.~~

~~6.— Member States may require that the information in the consolidated non-financial statement referred to in paragraph 1 or in the separate report referred to in paragraph 4 be verified by an independent assurance services provider.’.~~

~~(4) In Article 33, paragraph 1 is replaced by the following:~~

~~‘1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that:~~

~~(a) the annual financial statements, the management report, the corporate governance statement when provided separately and the report referred to in Article 19a(4); and~~

~~(b) the consolidated financial statements, the consolidated management reports, the consolidated corporate governance statement when provided separately and the report referred to in Article 29a(4),~~

~~are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.’.~~

~~(5) In Article 34, the following paragraph is added:~~

~~‘3. This Article shall not apply to the non-financial statement referred to in Article 19a(1) and the consolidated non-financial statement referred to in Article 29a(1), or to the separate reports referred to in Articles 19a(4) and 29a(4).’.~~

~~(6) In Article 48, the following paragraph is inserted before the last paragraph:~~

~~—‘The report shall also consider, taking into account developments in the OECD and the results of related European initiatives, the possibility of introducing an obligation requiring large undertakings to produce on an annual basis a country-by-country report for each Member State and third country in which they operate, containing information on, as a minimum, profits made, taxes paid on profits and public subsidies received.’.~~

~~— [7) In Article ?? the following paragraph is added:~~

~~‘The report shall also consider the linkages between non-financial and financial reporting, including linkages between ESG issues and their governance, strategy, risk management and metrics and targets.’.~~

~~— 8) In article ?? the following paragraph is added:~~

~~The undertaking shall designate a senior management function holder responsible for~~

~~overseeing material ESG risks/disclosures. [check wording from the PRA FCA — for senior function holder for climate risk and replicate~~

(4) ~~9) Materiality — IAASB new definition — Couldn't locate
Elevating from guidance~~

The following Article is inserted:

'Article 20

~~[Article 20 contains a requirement in the corporate governance statement to make certain disclosures as regards diversity. This shall be expanded in relation to ESG matters, including climate. The relationship between the non-financial statement and the corporate governance statement requires further consideration.]~~

~~[Article titled "Guidance on reporting" removed]~~

~~Article 2~~

~~Guidance on reporting~~

~~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. In doing so, the Commission shall consult relevant stakeholders. climate guidance? — we need to put something in the preamble that we have elevated certain aspects of the guidance — i.e. anywhere in the guidance there is a an obligation on the reporting entity to do something that could stand the test of a few years time e.g. going concern~~

~~The Commission shall publish the guidelines by [X6 December 2016.]~~

~~Article 3~~2~~~~

~~Review~~

The Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive (as amended), including, among other aspects, its scope, particularly as regards large non-listed undertakings, its effectiveness ~~and the level of guidance and methods provided~~. The report shall be published by 6 December 2018 months after the first year of reporting under the Directive, as well as in the two following years and shall be accompanied, if appropriate, by legislative proposals.

Article 34

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ~~[X]6 December 2016~~. They shall immediately inform the Commission thereof.

Member States shall provide that the provisions referred to in the first subparagraph are to apply to all undertakings within the scope of Article 1 for the financial year starting on 1 January ~~[2021/22+7]~~ or during the calendar year ~~[2021/22]+7~~.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 45

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 56

Addressees

This Directive is addressed to the Member States.

Done at ~~Strasbourg~~~~[X]~~, ~~[X]22 October 2014~~.

For the European Parliament

The President

~~[X]~~

For the Council

The President

~~[X]~~