

# Public consultation: Fitness check on the EU framework for public reporting by companies

Fields marked with \* are mandatory.

## Introduction

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This consultation is also available in [German](#) and [French](#).

Public reporting by companies<sup>1</sup> is based on a number of EU Directives, Regulations and Recommendations that were adopted at different points in time over the last 40 years. The current body of EU law (the "acquis") comprises a range of requirements applying to listed and non-listed companies, sector specific requirements (banks and insurers), as well as additional disclosure requirements applicable to listed companies. The initial Directive on annual accounts aimed at harmonising financial information to capital providers and for creditor protection. More recently, public reporting requirements have been expanded to non-financial reporting for a much broader audience.

The Commission is now conducting a comprehensive check of the fitness of the EU framework on public reporting by companies. The objectives of this fitness check are:

1. to assess whether the EU public reporting framework is overall still relevant for meeting the intended objectives, adds value at the European level, is effective, internally consistent, coherent with other EU policies, efficient and not unnecessarily burdensome;
2. to review specific aspects of the existing legislation as required by EU law<sup>2</sup>; and
3. to assess whether the EU public reporting framework is fit for new challenges (such as sustainability and digitalisation).

Throughout this consultation, certain concepts should be understood as follows:

- **Effectiveness** – whether an intended objective is met;
- **Relevance** – whether a requirement is necessary and appropriate for the intended objectives;
- **Efficiency** – whether the costs associated with the intervention are proportionate to the benefits it has generated;
- **Coherence** – whether requirements are consistent across the board;
- **Added value** – whether the EU level adds more benefits than would have been the case if the requirements were only introduced at the national level.

The Commission published an [action plan on financing sustainable growth](#) that builds on the [recommendations of the High Level Expert Group \(HLEG\) on sustainable finance](#). This fitness check on the EU framework for public reporting by companies is one of the actions announced in the Action plan. Several questions in this fitness check, in particular in the section on non-financial reporting, should be considered also in the context of the HLEG recommendations on sustainability.

The replies to this consultation will feed into a Staff Working Document on the fitness of the EU framework for public reporting by companies, to be published in 2019.


<sup>1</sup>For this consultation "companies" mean limited liability companies of the types listed in the accounting Directive, companies that have issued securities on an EU regulated market, and banks or insurance companies including cooperatives and mutual structures.

<sup>2</sup>According to legislation, a series of reviews will have to be performed by the Commission:

- A report on the implementation of [Non-Financial Reporting Directive 2014/95/EU](#), addressing its scope, particularly as regards large non-listed undertakings, its effectiveness and the level of guidance and methods provided.
- A report on the situation of micro-undertakings having regard to the number of micro-companies and the reduction of administrative burdens resulting from the simplifications introduced in 2013.
- A report on the implementation and effectiveness of the Country-By-Country Reporting by extractive and logging industries, including examining the case for an extension of the Country-By-Country reporting to other sectors.
- A report on the 2013 Amendments to the Transparency Directive, considering the impact on small and medium-sized issuers and the application of sanctions.

**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-public-reporting-by-companies@ec.europa.eu](mailto:fisma-public-reporting-by-companies@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

## 1. Information about you

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\* Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\* Name of your organisation:

Transparency International EU

Contact email address:

**The information you provide here is for administrative purposes only and will not be published**

egaita@transparency.org

\* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\* If so, please indicate your Register ID number:

501222919-71

\* Type of organisation:

- Academic institution
- Company, SME, micro-enterprise, sole trader
- Consultancy, law firm
- Consumer organisation
- Industry association
- Media
- Non-governmental organisation
- Think tank
- Trade union
- Other

\* In what category do you classify your company? (if applicable)

- Group with cross-border subsidiaries
- Group without cross-border subsidiaries
- An individual company
- Not applicable

\* Where are you based and/or where do you carry out your activity?

\* Field of activity or sector (*if applicable*):

*at least 1 choice(s)*


- |  |   |
|--|---|
| <input type="checkbox"/> Accommodation and food service activities           | <input type="checkbox"/> Insurance  |
| <input type="checkbox"/> Accounting  | <input type="checkbox"/> Investment management (e.g. UCITS, hedge funds, private equity funds, venture capital funds, money market funds) |
| <input type="checkbox"/> Administrative and support service activities       | <input type="checkbox"/> Manufacturing  |
| <input type="checkbox"/> Agriculture, forestry and fishing                   | <input type="checkbox"/> Market infrastructure / operators (e.g. CCPs, CSDs, Stock exchanges)   |
| <input type="checkbox"/> Arts, entertainment and recreation                  | <input type="checkbox"/> Mining and quarrying   |
| <input type="checkbox"/> Auditing  | <input type="checkbox"/> Pensions   |
| <input type="checkbox"/> Banking   | <input type="checkbox"/> Professional, scientific and technical activities  |
| <input type="checkbox"/> Construction  | <input type="checkbox"/> Real estate activities   |
| <input type="checkbox"/> Consumer protection                                 | <input type="checkbox"/> Service provider   |
| <input type="checkbox"/> Credit rating agencies                              | <input type="checkbox"/> Transportation and storage   |
| <input type="checkbox"/> Digital   | <input type="checkbox"/> Water supply, sewerage, waste management and remediation activities  |
| <input type="checkbox"/> Electricity, gas, steam and air conditioning supply | <input type="checkbox"/> Wholesale and retail trade, repair of motor vehicles and motorcycles   |
| <input type="checkbox"/> Human health and social work activities             | <input checked="" type="checkbox"/> Other   |
| <input type="checkbox"/> Information and communication                       | <input type="checkbox"/> Not applicable   |

\* Please specify your activity field(s) or sector(s):



## Important notice on the publication of responses

\* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

([see specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

## 2. Your opinion

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This consultation seeks stakeholder views on whether the EU framework for public reporting by companies is fit for purpose.

Considering the size of this public consultation please feel free to respond only to sections or questions of interest to you.

The questionnaire is structured as follows:

- [Assessing the fitness of the EU public reporting framework overall](#)  
(Section I; Questions 1-7)
- [The EU financial reporting framework applicable to all companies](#)  
(Accounting Directive: companies with cross border activities, SMEs, and content of the information) (Section II; Questions 8-18)
- [The EU financial reporting framework for listed companies](#)  
(IAS regulation, Transparency Directive) (Section III; Questions 19-29)
- [The EU financial reporting framework for banks and insurance companies](#)  
(Sectoral Accounting Directives) (Section IV; Questions 30-39)
- [Non-financial reporting framework](#)  
(Non-Financial Reporting Directive, Country-by-Country Reporting for extractive and logging industries and integrated reporting) (Section V; Questions 40-56)

- [The digitalisation challenge](#)  
(Section VI; Questions 57-66)
- [Other comments](#)
- [Acronyms and Abbreviations](#)

## I. Assessing the fitness of the EU public reporting framework overall

Depending on its type, activity or situation, a company has a number of public reporting obligations under EU law. The current EU level public reporting framework considered for this consultation consists of the following:

- **Publication of individual and consolidated financial statements in accordance with national GAAP (Generally Accepted Accounting Principles)** by any limited liability company established in the EU. By virtue of the [Accounting Directive 2013/34/EU](#) Member States must ensure that any company in their jurisdiction with a legal form that limits its liability must prepare financial statements and a management report. These shall be audited / checked by a statutory auditor and published in the relevant business register according to national law that is compliant with this Directive. For companies other than a public-interest entity (bank, insurance company or company with securities listed), EU requirements are proportionate to the company's size.
- **Publication of consolidated financial statements in accordance with the International Financial Reporting Standard (IFRS) adopted** by the EU and other specific items by any company established in the EU that has securities (e.g. shares, bonds) listed on an EU regulated market by virtue of the [IAS Regulation \(EC\) No 1606/2002](#), the [Transparency Directive 2004/109/EC](#) and the [Market Abuse Regulation \(EU\) No 596/2014](#). The use of IFRS makes company accounts comparable within the single market and globally. Companies established in third countries may use their national standards (e.g. US GAAP) if these are accepted on the basis of EU equivalence decisions. The Transparency Directive (2004/109/EC) makes the issuers' activities more transparent, thanks to regular publication of yearly and half-yearly financial reports, as well as the publication of major changes in the holding of voting rights and ad hoc inside information which could affect the price of securities. Issuers have to file such information with the national Officially Appointed Mechanisms (OAMs).
- **Publication of individual and consolidated financial statements in accordance with sectoral layouts and principles** by any bank or insurance company in the EU by virtue of the [Bank Accounting Directive \(86/635/EEC\)](#) and the [Insurance Accounting Directive \(91/674/EEC\)](#). Unless they prepare IFRS financial statements, any bank or insurance company in the EU must publish financial statements in compliance with national accounting rules that are in line with these sectoral

Accounting Directives. Specific sectoral rules provide for, inter alia, layouts (balance sheet and Profit and Loss Account) and accounting treatments for e.g. loans, repurchase agreements or technical provisions.

- **Publication of non-financial information by any public-interest entity (bank, insurance company or listed company) with more than 500 employees** by virtue of [Directive 2014/95/EU](#). The information should be part of the management report, or published in a separate report. Non-binding guidance was issued in 2017 in order to assist companies – [Commission Communication C/2017/4234](#).
- **Publication of [country-by-country reports on payments to governments](#) by any large company that is active in extraction or logging** by virtue of Chapter 10 of [Accounting Directive 2013/34/EU](#) and Article 6 of [Transparency Directive 2004/109/EC](#). This fosters transparency on payments to governments, including third country governments, made in relation to these activities.

The table below provides an overview of the different objectives of the current EU framework mapped to individual legal instruments in the field of public reporting by companies:

| MAIN OBJECTIVES               | OPERATIONAL OBJECTIVES       | EU LEGAL INSTRUMENTS |         |        |         |         |
|-------------------------------|------------------------------|----------------------|---------|--------|---------|---------|
|                               |                              | A<br>D               | IA<br>S | T<br>D | BA<br>D | IA<br>D |
| Stakeholder protection        | → Shareholder protection     | X                    | X       | X      |         |         |
|                               | → Creditor protection        | X                    |         |        |         |         |
|                               | → Depositor protection       |                      |         |        | X       |         |
|                               | → Policy holder protection   |                      |         |        |         | X       |
| Internal market               | <b>Facilitate:</b>           |                      |         |        |         |         |
|                               | → Cross border investments   | X                    | X       | X      | X       | X       |
|                               | → Cross border establishment | X                    |         |        | X       | X       |
| Integrated EU capital markets | <b>Market efficiency:</b>    |                      |         |        |         |         |
|                               | → Access to capital          | X                    | X       | X      |         |         |
|                               | → Capital allocation         |                      | X       | X      |         |         |

|                            |   |   |   |   |   |   |
|----------------------------|---|---|---|---|---|---|
|                            | → Integrated securities market  |   | X | X |   |   |
| <b>Financial stability</b> | → Public confidence in company reporting  | X | X | X |   |   |
|                            | → Trust in the resilience of specific sectors (banking and insurance)             |   |   |   | X | X |
| <b>Sustainability</b>      | → Enhanced corporate responsibilities / accountability/ good corporate governance | X |   | X |   |   |
|                            | → Empower stakeholders  | X |   | X |   |   |
|                            | → Foster globally sustainable activities  | X |   |   |   |   |
|                            | → Foster long term investments  | X |   |   |   |   |
|                            | → Fight corruption  | X |   | X |   |   |

\* Accounting Directive (AD); IAS regulation / IFRS (IAS); Transparency Directive (TD); Bank accounts Directive (BAD); Insurance Accounts Directives (IAD)

## General questions

Question 1. Do you think that the EU public reporting requirements for companies, taken as a whole, have been **effective** in achieving the intended objectives?

|                                 | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---------------------------------|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Ensuring stakeholder protection | <input type="radio"/>   | <input type="radio"/>  | <input checked="" type="radio"/>              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Developing the internal market  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/>       |
|                                 |                         |                        |   |                       |                       |  |



|   |                       |                       |                                  |                       |                       |                                  |
|---|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|----------------------------------|
| Promoting integrated EU capital markets | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Ensuring financial stability            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Promoting sustainability                | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |

Please explain your response to question 1 and substantiate it with evidence or concrete examples:

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive), important benefits and positive results can already be identified. The requirements have increased the information citizens need to hold governments and companies to account for public revenues derived from natural resource extraction. Previously these payments were made largely in secret, making it impossible for citizens to scrutinize payments and track them into government accounts. The requirement to report at project level has been particularly effective in increasing information for citizens. This provision has brought details of payments worth hundreds of billions of dollars into the public domain that otherwise would not have been disclosed. Since their introduction, the EU and equivalent Canadian reporting regulations have resulted in \$382.9 billion-worth of project-level payments being disclosed as of June 2018 (see: [www.resourceprojects.org](http://www.resourceprojects.org)).

A further and related objective of payments to governments reporting is to deter corrupt practices and the misuse of public funds. Although it is difficult to measure the requirements' effectiveness in this regard, we believe their deterrent value has been significantly strengthened by civil society's active use of payment disclosures. For example, in November 2017 Publish What You Pay (PWYP) compiled a set of 23 case examples of mandatory payment disclosures being used in 19 countries to hold industry and governments to account, or to strengthen citizens' capacity to use the data. Many more examples exist from before and after PWYP published these case studies. By using the data in this way, industry and government actors are aware that payment disclosures are being pro-actively monitored by civil society organisations, which in turn should strengthen the reporting requirements' deterrent value.

While Chapter 10 and Article 6 requirements have produced important benefits, civil society's experience with analysing and using payments to governments reports has shown that certain ambiguities and omissions need addressing in order to improve the requirements' effectiveness. Supporting evidence is presented below. In summary, the effectiveness of payments to governments reporting could be improved by:

- 1) Improving data accessibility by requiring companies to publish payments reports directly to a central online repository, hosted and maintained by the EC, freely accessible to the public. Companies should also be required to publish the reports both in PDF and HTML, and in an open, machine-readable data format.
- 2) Clarifying the payments to governments requirements, including by a) clarifying the definition of substantially interconnected legal agreements in order to avoid over-aggregation of projects for the purposes of reporting; b) specifying that companies must report all payments larger than €100,000, including payments made indirectly by a third party on the company's behalf; c) clarifying companies must report both the value and the volume of in-kind payments, and include supporting notes to explain how the value was determined; and d) clarifying that companies are required to state the name of the national or subnational government entity or other government body receiving each of their payments, including departments, agencies or undertakings controlled by those authorities.
- 3) Increasing data availability, most critically by including an additional payment category for payments to governments related to the sale of oil, gas and minerals. Moreover, raw data only allows for a limited understanding of the payments and leaves important questions unanswered. Hence, companies should also

be required to provide contextual data per project including: status (exploration, development, production), partners (if any, and the name of the operating partner), date of first production, production volumes and explanatory notes about payments linked to infrastructure improvements.

For the logging sector, the limitation of the scope of the Accounting and Transparency Directives to 'undertakings active in the logging of primary forests' is a major obstacle to the applicability and effectiveness of the EU company reporting rules in the logging sector. The definition of primary forests hinders the Directives' effectiveness in three ways:

- it is too narrow so that few forests fall into the category of "primary forest",
- commercial logging operations often take place outside of primary forests,
- it makes reporting requirements for logging outside EU borders difficult to implement.

Reporting should be mandatory to companies operating in forests in which legal commercial logging operations take place. Another important obstacle to the effectiveness of reporting requirements for the logging sector is that the thresholds determining which undertakings must comply are too high.

Question 2. Do you think that the EU public reporting requirements for companies, taken as a whole, are **relevant** (necessary and appropriate) for achieving the intended objectives?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| Ensuring stakeholder protection         | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Developing the internal market          | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |
| Promoting integrated EU capital markets | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |
| Ensuring financial stability            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Promoting sustainability                | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 2 and substantiate it with evidence or concrete examples of any requirement that you think is not relevant:

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive), the requirements are necessary and appropriate for achieving the intended objectives of enabling citizens in resource-producing countries to hold their governments accountable for revenues derived from natural resource extraction. The reasons for this include:

1 - The high corruption and revenue mismanagement risks associated with the extractive industries. For example, a 2014 OECD study (OECD Foreign Bribery Report, 2014) of 427 international bribery cases found that the highest number of cases covered in the survey (19%) occurred in the extractive sector, ahead of construction, transport and communications. A 2011 IMF study of 31 oil-exporting countries found that an increase in oil rents significantly increases corruption (IMF, 2011, 'Oil rents, corruption, and state stability: evidence from panel data regressions'). Numerous other studies have shown that natural resource rents are highly vulnerable to corruption and mismanagement.

2 - The fact that in many if not most cases, governments' share of natural resource revenues are negotiated and determined on a project-by-project basis. As such, project-level reporting is necessary for incentivising governments to maximise the fiscal benefits for citizens from individual projects, and for creating a deterrent to corruption which, in large part, occurs at the project-level (NRGI, 2017, 'Twelve red flags: corruption risks in the award of extractive sector licenses and contracts').

3 - The fact that payments from individual resource projects can be extremely large, often reaching into several billions of dollars per project. Project-level payment disclosure is necessary for citizens to monitor these large revenue flows and hold their governments accountable for them (see [resouceprojects.org](http://resouceprojects.org)). While companies also report payments in countries that implement the Extractive Industries Transparency Initiative (EITI), the large majority are disclosed at company level. This leads to aggregated data, making it very difficult to scrutinise and track important project-level payments. Project-level transparency is critical for many reasons, as the government share of natural resource revenues is generally negotiated and determined on a project-by-project basis, and because payments from individual projects are often extremely large and vulnerable to misuse.

Furthermore, as the EITI is not being implemented in important resource-producing countries, mandatory payment disclosure has been very effective in providing payment information to citizens in these jurisdictions. Many of these countries perform poorly in Transparency International's Corruption Perceptions Index, including (but not limited to) Angola, Argentina, Bolivia, Brazil, China, Egypt, Equatorial Guinea, India, Russia, South Africa and Zimbabwe.

Payments to governments reporting is a necessary and appropriate measure for promoting financial stability and protecting investors' interests. Extractive firms often operate in jurisdictions characterised by weak governance and a lack of transparency, leaving the sector exposed to unusually high levels of reputational and political risk. Institutional investors with over \$9.8 trillion in assets under management have voiced strong support for mandatory disclosure of payments to governments, citing reduced corruption risk and the enhancement of companies' social licence to operate, which in turn fosters a more stable investment climate (Publish What You Pay, 2016, submission to the US Securities and Exchange Commission, Page 5).

With regard to reporting requirements for European banks, according to Article 89 (1) of the EU's Capital Requirements Directive IV (CRD IV), large financial institutions are obliged to publish a yearly financial report on their operations for each country of operation. The EU is considering extending similar legislation to multinationals of all sectors. Representatives of major European banks, such as HSBC and Barclays, have voiced support for public country-by-country reporting in their testimonies in the European Parliament's TAXE committee (16 November 2015), indicating that they do not fear unjustified tax claims. Recently, Oxfam published a report, *Opening the Vaults*, assessing the first disclosures by the 20 largest European banks, which has shown the usefulness of having this crucial information in the public domain. However, two crucial elements are missing from the reporting template required for European banks, which makes the analysis of their reports very challenging, and therefore limits the achievement of the overall objective of this legislation. They are:

- the value of assets

- the distinction between taxes paid and accrued.

We strongly recommend to add these two elements to the reporting template of Article 89 (1) of the CRD IV.

Question 3. Companies would normally maintain and prepare a level of information that is fit for their own purposes, in a "business as usual situation". Legislation and standards tend to frame this information up to a more demanding level.

With regards to the objectives pursued, do you think that the EU legislation and standards on public reporting are **efficient** (i.e. costs are proportionate to the benefits generated)?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 3 and substantiate it with evidence or concrete examples of requirements that you consider most burdensome:

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive), all the indications are that costs are totally proportionate to the benefits. The recently released UK Government's Post Implementation Review of its Payments to Governments Regulations concludes that the regulation had succeeded in the 'avoidance of unnecessary costs to business' (The Reports on Payments to Governments Regulations 2014, Department for Business, Energy and Industrial Strategy (BEIS), 2018). See response to question 51 below.

Related to the previous point on investor benefits, the fact that EU extractive companies are more transparent than those in many other jurisdictions is likely to have contributed to positive developments in the internal market by reducing corruption risk, enhancing companies' social licence to operate and promoting a more stable investment environment.

Question 4. If you are a preparer company, could you please indicate the **annual recurring costs** (in € and in relation to the total operational cost) incurred for the preparation, audit (if any) and publication of mandatory public reporting:

Total amount in Euros of annual recurring costs for mandatory public reporting:

Amount as a % of total operating costs of annual recurring costs for mandatory public reporting:

 %

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## Coherence

Question 5. Do you agree that the intrinsic coherence of the EU public reporting framework is fine, having regard to each component of that reporting?

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| Financial statements (preparation, audit and publication)                                  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |
| Management report (preparation, consistency check by a statutory auditor, publication)     | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |
| Non-financial information (preparation, auditor's check and publication)                   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |
| Country-by-country reporting by extractive / logging industries (preparation, publication) | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 5 and substantiate it with evidence or concrete examples:

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive), there is a need to improve the coherence of the reporting obligations both in terms of how reporting takes place and of what is reported.

1. Improving data accessibility by requiring companies to publish payments reports directly to a central online repository, hosted and maintained by the EC, freely accessible to the public is essential. This can be achieved by:

- requiring publication of payments to governments reports directly to a central online repository, hosted and maintained by the European Commission, and freely accessible to the public, which will cover both registered company reports under the Accounting Directive and listed company reports under the Transparency Directive, in addition to national reporting requirements;
- ensuring ESMA swiftly develops and operates the EEAP to provide access to companies' information as per the Transparency Directive's requirements;
- requiring EU Member States to set up OAMs as per their obligations under the Transparency Directive in accordance with the ESMA's guide.

2. Clarifying the payments to governments requirements is equally important. This can be achieved by:

- clarifying the definition of substantially interconnected legal agreements in order to avoid the over-aggregation of projects for the purposes of reporting;
- specifying that companies must report all payments larger than €100,000, including payments made indirectly by a third party on the company's behalf;
- clarifying companies must report both the value and the volume of payments in-kind payments, and include supporting notes to explain how the value was determined.

There is also a lack of coherence between Member States in relation to the monitoring and the enforcement of the obligation for companies active in the extractive and logging sector to report their payments to governments. The Commission should take on a more active role in monitoring company reporting and providing guidance to Member States to ensure an effective, proportionate and dissuasive sanctions regime is in place for companies that breach their obligation to adequately report payments to governments.

Question 6. Depending on circumstances, a company may have public reporting obligations on top of those being examined here. Such legislation may have been developed at the EU<sup>3</sup>, national or regional level. Should you have views on the interplay of these additional reporting obligations with the policies examined in this consultation, please comment below and substantiate it with evidence or concrete examples.

<sup>3</sup> For example, under the Shareholders' Rights Directive 2007/36/EC, companies must publicly announce material transactions with related parties, establish remuneration policy and draw up a remuneration report for the attention of the shareholders, etc. Under the Directive on Capital Requirements for banks (2013/36/EU, Art. 96) banks must maintain a website explaining how they comply with corporate governance requirements, country by country reporting and remuneration requirements. The Solvency II Directive (2009/138/EC) requires Insurance and reinsurance undertakings to publish their Solvency and Financial Condition Report. A prospectus, regulated by the Prospectus Directive (2003/71/EC) and Regulation ((EU) 2017/1129) is a legal document that describes a company's main line of

business, its finances and shareholding structure. As regards Market Abuse Directive and Regulation, see specific questions further down.

We would like to comment on the interplay between public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive) and the following reporting requirements:

#### 1. Extractive Industries Transparency Initiative (EITI)

While companies also report payments in countries that implement the Extractive Industries Transparency Initiative (EITI), the large majority are disclosed at company level. This leads to aggregated data, making it very difficult if not impossible to scrutinize and track important project-level payments. As indicated below, project-level transparency is critical for many reasons, not least because the government share of natural resource revenues is generally negotiated and determined on a project-by-project basis, and because payments from individual projects are often extremely large and vulnerable to misuse. Furthermore, as the EITI is not being implemented in important resource-producing countries, mandatory payment disclosure has been very effective in providing payment information to citizens in these jurisdictions. Many of these countries perform poorly in Transparency International's Corruption Perceptions Index, including (but not limited to) Angola, Argentina, Bolivia, Brazil, China, Egypt, Equatorial Guinea, India, Russia, South Africa and Zimbabwe.

#### 2. Shareholders' Rights Directive

While a requirement in the Shareholders' Rights Directive for disclosing related-party transactions is welcome, it appears to lead to consolidated data in company reports (e.g. see Rio Tinto 2017 Annual Report, note 40, page 173). This makes it difficult if not impossible to use the reports for their intended purpose, especially in the case of larger companies. We recommend therefore that the reporting requirements for related-party transactions should ensure that the reported data is broken down by subsidiary and by country, and that details are provided of the nature of each transaction to determine the relevant tax treatment.

It is widely recognised that transfer mispricing deprives governments of significant tax revenues (IMF, OECD, UN and World Bank Group, 2017, 'A toolkit for addressing difficulties in accessing comparables data for transfer pricing analyses'; Davies, B, et al, 2017, 'Knocking on tax haven's door: multinational firms and transfer pricing'; Clausing, K, 2003, 'Tax-motivated transfer pricing and US intrafirm trade prices'). Huizinga & Laeven provide estimates of profit shifting scale and related tax revenue losses for 21 European countries (Huizinga, H, & Laeven, L, 2017, 'International profit shifting within multinationals: A multi-country perspective). Tørsløv et al conclude that 45% of multinational companies' profits are artificially shifted to low tax jurisdictions, amounting to more than €600 billion in 2015. They estimate corporate tax revenue loss to be around €200 billion a year, equivalent 12% of global corporate tax revenue (Tørsløv, T et al, 2017, '€600 Billion and counting: why high-tax countries let tax havens flourish').

Public disclosure of related-party transactions provides citizens with information to help assess the impact that these transactions may have on the tax base, as well as informing shareholders, creditors, employees and other interested parties of the impact that they may have on the value of the company. A requirement for companies to publicly disclose information on related-party transactions is therefore necessary for enhancing transparency and accountability for important tax revenues.

## EU Added value



Question 7. Do you think that, for each respective objective, the EU is the right level to design policies in order to obtain **valuable results**, compared to unilateral and non-coordinated action by each Member State?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| Ensuring stakeholder protection         | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Developing the internal market          | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Promoting integrated EU capital markets | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Ensuring financial stability            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Promoting sustainability                | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 7 and substantiate it with evidence or concrete examples:

The success of public reporting requirements relies on coordinated action at the European level. Given that companies operate with increasingly complex structures across multiple jurisdictions, any push for valuable data on companies needs to be taken above a national level. The need for action at the European level can be shown in the opening of company register data. While some member states have made significant progress to increase transparency of their company registers in the past 10 years (for example, UK, France and Bulgaria), a number of member states continue to push back (for example, Germany, Spain and Italy).

## II. The financial reporting framework applicable to all EU companies

The financial reporting framework for any EU company is broadly shaped by the Accounting Directive. Member States' accounting laws, regulations and standards for the preparation of annual accounts

(national GAAP) must incorporate the provisions of the Accounting Directive. The Accounting Directive includes financial statements (balance sheet, profit or loss statement, and notes to the accounts) as well as a management report, depending on the size of the company. Several Member States allow or require the use of IFRS instead of national GAAP for the preparation of annual financial statements. But even when a company prepares financial statements using IFRS, many requirements from the Accounting Directive still apply such as the management report, statutory audit or publication (for further details, see the [guidance on Interaction between IFRS reporting and other EU accounting rules](#)).

## Companies operating cross-border

Companies often structure their cross-border business activities within the EU by establishing local entities in a host Member State controlled by a parent established in the home Member State. Together they form a group of controlled entities. Even though a group usually acts and is seen as a single economic entity, EU law does not recognise the legal personality of a group. Nevertheless, EU law addresses certain specific group situations, for instance, by requiring the preparation of consolidated financial statements as if the group were a single entity ([Accounting Directive 2013/34/EU](#), [IAS Regulation \(EC\) No 1606/2002](#)), structuring bankruptcy ([Regulation \(EU\) 2015/848 on insolvency proceedings](#)) or implementing sectoral regulatory supervision ([Capital Requirement Directive](#) and [Capital Requirement Regulation \(banks\)](#), [Solvency Directive \(Insurance\)](#)).

When doing cross border business, a group usually faces a variety of business, tax and legal environments. These differences tend to hinder the application of consistent policies and procedures within a group and weaken the comparability of financial statements for users.

Some of these differences arise from options or lacunas in the Accounting Directive or the way in which Member States have complemented the minimum European accounting requirements. For example, the Accounting Directive does not address some economically important transactions such as lease contracts, foreign currency transactions, government grants, cash flows statements, income recognition or deferred taxes. These lacunas are addressed by each Member States in their own way.

More recently the Commission has proposed to harmonise the basis for the taxation of corporate profits for certain groups by ways of a proposal for a Directive on a Common Corporate Tax Base (CCTB) ([COM \(2016\)685 final](#)). It also seeks to organise the free flow of non-personal data by ways of a proposal for a Regulation on a framework for the free flow of non-personal data in the European Union ([COM\(2017\)495](#)), which would legally enable centralised storage and processing of the group's non-personal data by removing unjustified data localisation restrictions within the EU.

Question 8. In your view, to what extent do the addition of, and differences in, national reporting rules hinder the ability of companies to do cross border business within the EU single market?

- Differences seriously hinder the ability to do business within the EU
- Differences hinder to some extent
- Differences do not hinder the ability to do business within the EU / are not significant
- Don't know / no opinion / not relevant

Please explain your response to question 8 and substantiate it with evidence or concrete examples:

- While efforts by member states to increase reporting rules by companies should be valued, national requirements make it harder to combine and compare data.
  
- Collecting additional, granular data appropriate for Member State is useful, but the European Commission should ensure open data standard.
  
- A possible solution to this would be to publish reports as open data on a European level – reducing loopholes for bad actors, and enabling the reports to be used for effective investigation and due diligence across national barriers.
  
- Publishing reports as open data additionally makes it easier for companies to do business (KYC/AML checks).
  
- It also encourages innovative new use cases, easier to vet potential business partners, enabling companies to make better decisions.

Question 9. To what extent to you think that the following differences, because they affect public reporting by companies, are significant impediments to cross-border establishment in the EU?

Areas covered by EU requirements

|   | <b>1</b><br>(totally disagree) | <b>2</b><br>(mostly disagree) | <b>3</b><br>(partially disagree and partially agree) | <b>4</b><br>(mostly agree) | <b>5</b><br>(totally agree) | Don't know / no opinion / not relevant |
|---|--------------------------------|-------------------------------|--|----------------------------|-----------------------------|--|
| Differences and lacunas in accounting standards or principles           | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
| Differences in corporate governance standards                           | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
| Differences and overlaps arising from the presentation of the financial | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |

|   |                       |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| statements (balance sheet, etc.)  |                       |                       |                       |                       |                       |                       |
| Differences arising from publication rules / filing with business registers (publication deadlines, publication channels, specifications) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Differences arising from audit requirements   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Differences arising from dividends distribution rules or capital maintenance rules  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

### Areas not covered by EU requirements

|   | <b>1</b><br>(totally disagree) | <b>2</b><br>(mostly disagree) | <b>3</b><br>(partially disagree and partially agree) | <b>4</b><br>(mostly agree) | <b>5</b><br>(totally agree) | Don't know / no opinion / not relevant |
|---|--------------------------------|-------------------------------|--|----------------------------|-----------------------------|--|
| Differences arising from specific bookkeeping requirements such as charts of accounts, audit trail requirements, data storage and accessibility | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
| Differences arising from language requirements (Bookkeeping documentation, publication of financial statements)                                 | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
| Differences arising from the determination of taxable profit  | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
| Differences arising from digital filing requirements (for instance taxonomies used)   | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input type="radio"/>      | <input type="radio"/>       | <input type="radio"/>                  |
|   |                                |                               |  |                            |                             |  |

|  |                       |                       |                       |                       |                       |                       |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Differences arising from software specifications       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other differences (please rate here and specify below) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your response to question 9 and substantiate it with evidence or concrete examples:

Question 10. How do you evaluate the impact of any hindrances to cross border business on costs relating to public reporting by companies?

- The impact of hindrances on costs are negligible or not significant
- The impact of hindrances on costs are somehow significant
- The impact of hindrances on costs are very significant
- Don't know / no opinion / not relevant

Please explain your response to question 10 and substantiate it with evidence or concrete examples:

Question 11. On top of differences in national accounting rules, national tax laws will usually require the submission of a tax return in compliance with self-standing national tax rules, adding another layer of reporting standard.

Once a Common Corporate Tax Base is adopted at the EU level, would you consider that the profit before tax reported in the Profit or Loss statement and the determination of the taxable profit should be further aligned across EU Member States?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree

Don't know / no opinion / not relevant

Please explain your response to question 11 and substantiate it with evidence or concrete examples:

Question 12. As regards the **preparation of consolidated and individual financial statements** how do you assess the ability of the following approaches to reduce barriers to doing business cross-borders?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| The EU should reduce the variability of standards from one Member State to another through more converged national GAAPs, possibly by removing options currently available in the EU accounting legislation | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The EU should reduce the variability of standards from one Member State to another by converging national GAAPs on the basis of a European Conceptual Framework   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The EU should reduce the variability of standards from one Member State to another by converging national GAAPs and in  |                         |                        |   |                       |                       |  |

|  |                       |                       |                       |                       |                       |                       |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| addition by addressing current lacunas in the Accounting Directive (leases, deferred taxes, etc.)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The EU should reduce the variability of standards from one Member State to another by establishing a "pan-EU GAAP" available to any company that belongs to a group. Such "pan-EU GAAP" may be the IFRS, IFRS for SMEs, or another standard commonly agreed at the EU level. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Do nothing (status quo)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other approaches (please rate here and specify below)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your response to question 12 and substantiate it with evidence or concrete examples:

Question 13. As regards the publication of individual financial statements, the Accounting Directive (Article 37) allows any Member State to exempt the subsidiaries of a group from the **publication of their individual financial statements** if certain conditions are met (inter alia, the parent must declare that it guarantees the commitments of the subsidiary). Would you see a need for the extension of such exemption from a Member State option to an EU wide company option?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your response to question 13 and substantiate it with evidence or concrete examples:

## SMEs

Since 2016, EU law requires small companies to prepare and publish **only** a balance sheet, a profit or loss statement and a few notes, thanks to the harmonisation agreed at the EU level. Each Member State may fine-tune this regime as regards the level of detail in the balance sheet or profit and loss, and as regards the need for an audit or for a management report. In addition Member State can simplify even further the regime of micro companies and bring it down to only a super simplified balance sheet, a super simplified profit or loss statement and lightweight publication regime. The Member States have used these possibilities to varying extents. The Commission has commissioned a consortium led by the Centre for European Policy Studies (CEPS) to conduct a study on the accounting regime of micro companies with limited liability (FISMA/2017/046/B)). These simplifications are not available to banks, insurance companies or listed companies which are considered as public-interest entities.

Question 14. Do you agree that the EU approach is striking the right balance between preparers' costs and users' needs, considering the following types of companies?

|              | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--------------|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Medium-sized | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Small        | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Micro        | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 14 and substantiate it with evidence or concrete examples:





Question 15. EU laws usually define size categories of companies (micro, small, medium-sized or large) according to financial thresholds. Yet definitions may vary across EU pieces of legislation. For instance, the metrics of size-criteria for a micro-company in the Accounting Directive (for the financial statements) differ from those in the Commission Recommendation 2003/361/EC ([Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises](#) (for the support by certain EU business-support programmes). For instance, the turnover may not exceed €700,000 for micro-companies in the Directive whereas it may not exceed €2,000,000 in the Recommendation).

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| In general, should the EU strive to use a single definition and unified metrics to identify SMEs across all the EU policy areas?              | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| In particular, should the EU strive to align the SME definition metrics in the Accounting Directive with those in Recommendation 2003/361/EC? | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 15 and substantiate it with evidence or concrete examples:

### Relevance of the content of financial reporting

A company’s financial statement, together with the management report and related documents (corporate governance report, non-financial information) aim to provide a reliable picture of a company’s performance and financial position at the reporting date. However, certain users argue that financial statements give only an image of the (recent) past and lack forward-looking information (see for instance [Conference Shaping the future of corporate reporting, panel 5 – Matching expectations with propositions, investors' views](#)). The financial statements may also fail to provide a complete picture of the long term value creation, business model, cash flows (non-IFRS financial statements) and internally generated intangible assets (See for instance [expert group's report on Intellectual Property Valuation, 2013](#)). There is also only scarce information required at the EU level on dividend distribution policies and risks (see for instance the [UK FRC Lab](#)). The search for other sources of information to remedy this situation may increase costs for users and undermine the level playing field.

Question 16. How do you think that the current EU framework as regards the content of financial reporting is relevant (necessary and appropriate), having regards to the following information:

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| A company's or group's <b>strategy, business model, value creation</b> | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| A company's or group's <b>intangible assets</b> , including goodwill,  |                         |                        |   |                       |                       |  |

|  |                       |                       |                       |                       |                       |                       |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| irrespective of whether these appear on the balance sheet or not   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A company's or group's <b>policies and risks on dividends</b> , including amounts available for distribution | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| A company's or group's <b>cash flows</b>   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your response to question 24 and substantiate it with evidence or concrete examples:

Please explain, including if in your view additional financial information should be provided:

Question 17. Is there any other information that you would find useful but which is not currently published by companies?

- Yes
- No
- Don't know / no opinion / not relevant

If you answered yes to question 17, please explain what additional information you would find useful:

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive), the following additional reporting requirements are needed to increase the utility of this data to investors and civil society stakeholders and meet the intended objectives of enabling citizens in resource-producing countries to hold

their governments accountable for revenues derived from natural resource extraction. The following additional reporting requirements should be introduced:

- Additional categories of payments to governments on which companies have to report, in particular, payments related to the sale of oil, gas and minerals, as well as payments for transportation and export activities, for social expenditures and to state security forces for security services
- Requiring companies to name all projects even where payments during the reporting period were less than €100,000
- Requiring companies to provide contextual data per project including: status (exploration, development, production), partners (if any, and the name of the operating partner), date of first production, production volumes and explanatory notes about payments linked to infrastructure improvements
- Requiring a limited assurance report on the disclosed data from independent auditors, together with a statement that reconciles at least the aggregate of all payments with the sum of corresponding accrued figures in the annual report
- Requiring companies to disclose additional country-by-country tax-related data based on the information included in the European Parliament's final report on disclosure of income tax information by certain undertakings and branches

For the logging sector, the list in Article 41 (5) of the Accounting Directive should be expanded to all payments to governments that are closely linked to the logging activities. The list should therefore include payments for connected operations taking place before or after the logging activity itself. These can be:

- fees associated with the use of forested land (land rental/area fees) – this should be encompassed in the existing category of “rental fees”
- payments under social responsibility agreements (e.g. mandatory CSR type payments which exist in Ghana)
- bid premiums
- fees paid for the development of a forest area (forest management, reforestation, surveillance)
- timber transport taxes
- customs and export taxes (such as log export fees, timber export licence fees for example).

Current public reporting requirements do not include payments to governments for the sale of oil, gas and minerals as a payment category on which companies should report. For countries such as Iraq, Libya and Nigeria, oil sales have in past years generated over half of total government revenues. From 2011 to 2013, oil sales by the governments of Africa's top 10 producers totalled USD 254 billion, an amount equivalent to 56% of those countries' total public revenues. However, these transactions are highly opaque and prone to corruption ('Initial evidence of corruption risks in government oil and gas sales', Natural Resource Governance Institute 2016). Since 2013, the EITI has included trading payments among its requirements. EITI countries, including state-owned companies, are now required to disclose the volumes of commodities sold and the revenues received, broken down by buyer. The EU should therefore align the Directives with the new EITI standard on commodity trading transparency. This can be achieved by:

- including a requirement for companies to report on payments made to governments that arise from trading activities;
- requiring that companies disclose, as a minimum, the following information: the seller (government entity), the date of the sale, volumes received, the value of the payment, price information and how it was determined.

Furthermore, the legislation permits companies to aggregate important types of payments within the same category, and does not require companies explain their interpretation of payment categories. For example, capital gains tax, corporate income tax and withholding tax can currently be aggregated and reported within the tax payment category. Each of these types of payments are materially important to governments, and need to be disaggregated in payment reports to enable citizens to hold their governments accountable.

With regard to public country-by-country reporting requirements for European banks under Article 89 (1) of the EU's Capital Requirements Directive IV (CRD IV), two crucial elements are missing from the reporting template, which makes the analysis of their reports very challenging, and therefore limits the achievement of the overall objective of this legislation. They are:

- the value of assets

- the distinction between taxes paid and accrued.

We strongly recommend to add these two elements to the reporting template of Article 89 (1) of the CRD IV.

Question 18. Financial statements often contain alternative performance measures such as **t h e E B I T D A**. (An APM is a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework.)

Do you think that the EU framework should define and require the disclosure of the most commonly used alternative performance measures?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 18 and substantiate it with evidence or concrete examples:

### III. The EU financial reporting framework for listed companies

#### The IAS Regulation and International Financial Reporting Standards (IFRS)

The IAS Regulation adopted in 2005 made the use of IFRS mandatory for the consolidated accounts of listed companies. The [Commission Evaluation of the IAS Regulation in 2015](#) found that the use of IFRS had led to greater transparency and comparability of financial reporting within the single market, but that complexity had increased. It also concluded that the use of IFRS in the EU has significantly increased the credibility of IFRS and its use worldwide.

However, the current level of commitment to IFRS by third country jurisdictions differs significantly. Very few of the major capital markets and large jurisdictions have made the use of IFRS as issued by the IASB mandatory<sup>4</sup>. As a result, the level of global convergence achieved is sub-optimal compared to the initial objective on global use.

Before becoming EU law IFRSs have to be endorsed to ensure that they meet certain technical criteria, are not contrary to the true and fair view principle, and are conducive to the European public good<sup>5</sup>. The current endorsement process prevents the Union from modifying the content of the standards issued by the IASB. Some stakeholders, as mentioned in the [final report of the High-Level Expert Group \(HLEG\)](#), are concerned that this lack of flexibility would prevent the EU from reacting if these standards were to pose an obstacle to broader EU policy goals such as long-term investments and sustainability.

The IASB is addressing the complexity of the standards and the volume of disclosure requirements as part of its ["Better Communication" project](#). In addition, the Commission will continue to monitor progress on IASB commitment to improve disclosure, usability and accessibility of IFRS (see the [Communication on the Mid-Term Review of the Capital markets Union Action Plan](#)). This initiative is one of the actions set in motion by the Commission in order to make it easier for companies to enter and raise capital on public markets, notably on [SME Growth Markets](#).

<sup>4</sup> As per the Pocket guide to IFRS standards 2017 published by the IFRS Foundation: Very few of the major capital markets and large jurisdictions require the use of IFRS as issued by the IASB. Some allow the use of IFRS by any listed company, or restrict the option to third country issuers. Many others have transposed IFRS into national GAAP which then become "substantially converged" with IFRS issued by the IASB. Several jurisdictions require IFRS as issued by the IASB albeit often relabelled as national GAAP.

<sup>5</sup> The IAS Regulation does not define the criterion "European public good". As a result the Commission has so far followed a [pragmatic approach that allows identification of key matters of concern on a case by case basis](#).

Question 19. Given the different levels of commitment to require IFRS as issued by the IASB around the globe, is it still appropriate that the IAS Regulation prevents the Commission from modifying the content of IFRS?

- Yes
- No, due to the risk of uneven level playing field for EU companies vis-à-vis companies established in third countries that do not require the use of IFRS as issued by the IASB.
- No, due to the risk that specific EU needs may not properly be addressed during the IASB standard setting process.
- No, due to other reasons.
- Don't know / no opinion / not relevant

Question 20. Since the adoption of IFRS by the EU in 2005, topics such as sustainability and long-term investment have come to the forefront of the regulatory agenda. Is the EU endorsement process appropriate to ensure that IFRS do not pose an obstacle to broader EU policy objectives such as sustainability and long-term investments?

- Yes
- No
- Don't know / no opinion / not relevant

Question 21. How could the EU ensure that IFRS do not pose an obstacle to sustainability and long-term investments:

- By retaining the power to modify the IFRS standards in well-defined circumstances;
- By making explicit in the EU regulatory framework that in order to endorse IFRS that are conducive to the European public good, sustainability and long term investment must be considered;
- Other
- Don't know / no opinion / not relevant

Question 22. The True and Fair view principle should be understood in the light of the general accounting principles set out in the Accounting Directive . By requiring that, in order to be endorsed, any IFRS should not to be contrary to the true and fair view principle, a link has been established between IFRS and the Accounting Directive. However, the principle of true and fair view is not laid down in great detail in the Accounting Directive, nor is it underpinned by e.g. a European Conceptual Framework that would translate these principles into more concrete accounting concepts such as recognition and measurement, measurement of performance, prudence, etc. Do you think that an EU conceptual framework should underpin the IFRS endorsement process?

- Yes
- No
- Don't know / no opinion / not relevant

Question 23. The EU has not endorsed the IASB Conceptual Framework for Financial Reporting. The conceptual framework is a set of concepts used to develop IFRSs but can also be helpful in interpreting how IFRS standards have to be understood and applied in specific circumstances. This could enhance a common application of IFRSs within the EU.

Should the EU endorse the IASB Conceptual Framework for Financial Reporting?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 23 and substantiate it with evidence or concrete examples:



Question 24. Contrary to the Accounting Directives the EU endorsed IFRSs do not require companies to present financial information using a prescribed (minimum) lay-out for the balance sheet and income statement. Mandatory use of minimum layouts could enhance comparability of human readable financial statements (Electronic structured data reporting based on the IFRS taxonomy have an implicit layout as relationships between elements for which amounts shall be presented are defined).

Do you agree that prescribed (minimum) layouts enhance comparability of financial statements for users and should therefore be introduced for companies using IFRS.

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 24 and substantiate it with evidence or concrete examples:

## Transparency Directive

The Transparency Directive requires issuers of securities traded on regulated markets within the EU to ensure appropriate transparency through a regular flow of information to the markets. The Transparency Directive was last amended in 2013 in order:

- To reduce the administrative burden on smaller issuers and promote long-term investment by abolishing the requirement to publish quarterly financial reports and,
- To strengthen investor protection by improving the efficiency of the disclosure regime of major holdings of voting rights, particularly regarding voting rights held through derivatives.

Question 25. Do you agree that the Transparency Directive requirements are **effective** in meeting the following objectives, notably in light of increased integration of EU securities markets?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Protect investors                           | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Contribute to integrated EU capital markets | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Facilitate cross border investments         | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 25 and substantiate it with evidence or concrete examples:

Question 26. Do you agree that abolishing the quarterly reporting requirement in 2013 by issuers contributed to the following?

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree) | 5<br>(totally agree) | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|---------------------|----------------------|--|
|  |                         |                        |   |                     |                      |  |

|   |                       |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Reducing administrative burden, notably for SMEs  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Promoting long-term investment (i.e. discouraging the culture of short-termism on financial markets). | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Promoting long-term and sustainable value creation and corporate strategies                           | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Maintaining an adequate level of transparency in the market and investors' protection                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your response to question 26 and substantiate it with evidence or concrete examples:

Question 27. Do you consider that the notifications of major holdings of voting rights in their current form is **effective** in achieving the following?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Strengthening investor protection           | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Preventing possible market abuse situations | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 27 and substantiate it with evidence or concrete examples:

Question 28. Do you agree that the disclosure and notification regime of major holdings of voting rights in the Transparency Directive is overall **coherent** with the following EU legislation?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Coherent with EU company law  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Coherent with the shareholders' rights directive  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Coherent with the obligation to disclose managers' transactions under Article 19 of the Market Abuse Regulation<br>(Article 19(3) of MAR sets out the following disclosure obligations: The issuer (...) shall ensure that the information [on transactions carried out by managers or persons closely associated to the managers] is made public promptly and no later than three business days after the transaction in a manner which enables fast access to this information on a non-discriminatory basis) | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Coherent with other EU legislation  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 28 and substantiate it with evidence or concrete examples:

Question 29. As regards the following areas, did you identify a lack of coherence of legislation from one Member State to another that could jeopardise to some extent the objectives of investor protection, integrated capital markets and cross-border investment?

- Yearly and half-yearly financial information
- On-going information on major holdings of voting rights
- Ad hoc information disclosed pursuant to the Market Abuse Directive
- Administrative sanctions and measures in case of breaches of the Transparency Directive requirements
- Don't know / no opinion / not relevant

Please explain your response to question 29 and substantiate it with evidence or concrete examples:

With regard to sanctions and measures in case of breaches of reporting requirements under Article 6 of the Transparency Directive, it is clear that Member States have very different interpretations of “effective, proportionate and dissuasive”. The Commission should take on a more active role in monitoring company reporting and providing guidance to Member States to ensure an effective, proportionate and dissuasive sanctions regime is in place for companies that breach their obligation to adequately report payments to governments.

We have seen that in the regulations in Denmark and the UK, for example, there is board level responsibility for ensuring compliance with the implementing regulations, which can escalate to fines, jail sentences or market caps for non-reporting or misreporting. Stringent requirements like these make it highly unlikely that companies will not comply. Other countries, however, have far flimsier requirements - France, for example, charges just €3,750 for not reporting/misreporting. This could well explain why some companies, such as Maurel et Prom, have produced such inadequate company reports (e.g. in the case of Maurel et Prom, the company does not report by project, as required by the Directive).

Question 30. Should anything be done to improve public reporting by listed companies (documents, information, frequency, access, harmonisation, simplification)?

With regard to the public reporting of payments to governments by oil, gas, mining and logging companies (Article 6 of the Transparency Directive), requirements have produced important benefits, civil society's experience with analysing and using payments to governments reports has shown that certain ambiguities and omissions need addressing in order to improve the requirements' effectiveness. There are three main

areas of public reporting that should be improved to increase the utility of this data to investors and civil society stakeholders (see also answer to question 17).

#### 1. Accessing data

Improving data accessibility by requiring companies to publish payments reports directly to a central online repository, hosted and maintained by the EC, freely accessible to the public. This can be achieved by:

- requiring publication of payments to governments reports directly to a central online repository, hosted and maintained by the European Commission, and freely accessible to the public, which will cover both registered company reports under the Accounting Directive and listed company reports under the Transparency Directive, in addition to national reporting requirements ;
- ensuring ESMA swiftly develops and operates the EEAP to provide access to companies' information as per the Transparency Directive's requirements;
- requiring EU Member States to set up OAMs as per their obligations under the Transparency Directive in accordance with the ESMA's guide.

#### 2. Clarifying the payments to governments requirements: this can be achieved by:

- clarifying the definition of substantially interconnected legal agreements in order to avoid the over-aggregation of projects for the purposes of reporting
- specifying that companies must report all payments larger than €100,000, including payments made indirectly by a third party on the company's behalf
- clarifying companies must report both the value and the volume of payments in-kind payments, and include supporting notes to explain how the value was determined.

#### 3. Increasing data availability, most critically by including the following additional information:

- additional categories of payments to governments on which companies have to report, in particular, payments related to the sale of oil, gas and minerals, as well as payments for transportation and export activities, for social expenditures and to state security forces for security services.
- requiring companies to name all projects even where payments during the reporting period were less than €100,000.
- requiring companies to provide contextual data per project including: status (exploration, development, production), partners (if any, and the name of the operating partner), date of first production, production volumes and explanatory notes about payments linked to infrastructure improvements.
- requiring a limited assurance report on the disclosed data from independent auditors, together with a statement that reconciles at least the aggregate of all payments with the sum of corresponding accrued figures in the annual report.
- requiring companies to disclose additional country-by-country tax-related data based on the information included in the European Parliament's final report on disclosure of income tax information by certain undertakings and branches.

## IV. The EU financial reporting framework for banks and insurance companies

### Bank Accounts Directive (BAD)

All banks (credit institutions) and groups of banks established in the EU - irrespective of their legal form - have to prepare and publish annual financial statements in order to achieve comparability of financial statements. Member State accounting laws, regulations and standards for the preparation of banks'

financial statements must incorporate EU law on bank accounting: the Bank Accounts Directive (BAD) adopted in 1986.

Following the endorsement of IFRS by the EU in 2002 all large banks, accounting for more than 65% of total European banking assets, are obliged to use EU endorsed IFRS for their consolidated financial statements. In addition to the mandatory use of IFRS for the consolidated accounts by listed banks, 15 Member States currently require IFRS for the consolidated accounts of non-listed banks and 12 Member States *require* IFRS for the individual accounts of non-listed banks instead of national GAAP (See for more details the table on [page 64 of the Staff Working Document on the evaluation on the IAS Regulation](#))

The use of IFRS has reduced the relevance of the Bank Accounts Directive for achieving harmonised financial statements. The BAD has also lost relevance over time as it has not been updated to include more recent accounting treatments, for example on expected credit losses, (operational) leases or revenues from digital business models.

Harmonising banks' financial statements is not only important for the comparability of banks' financial statements. Bank prudential requirements and capital ratios are based on accounting values. Differences between national GAAPs or between national GAAPs and IFRS lead to different prudential outcomes, which hamper the comparability of capital ratios.

Question 31. Do you agree with the following statements:

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| The BAD is still sufficiently <b>effective</b> to meet the objective of comparability                            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The BAD is still sufficiently <b>relevant</b> (necessary and appropriate) to meet the objective of comparability | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The costs associated with the BAD are still <b>proportionate</b> to the benefits it has generated                | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |



|   |                       |                       |                       |                       |                       |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The current EU legislative public reporting framework for banks is sufficiently <b>coherent</b> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
|---|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|

Please explain your response to question 31 and substantiate it with evidence or concrete examples:

Question 32. Do you agree with the following statement:

The BAD could be suppressed and replaced by a requirement for all EU banks to use IFRS 1.

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 32 and substantiate it with evidence or concrete examples:

Question 33. Do you think that the objective of comparability of financial statements of banks using national GAAP could be improved by including accounting treatments in the BAD for:

|  |     |    |  |
|--|-----|----|--|
|  | Yes | No | Don't know / no opinion / not relevant |
|--|-----|----|--|

|                                   |                       |                       |                       |
|-----------------------------------|-----------------------|-----------------------|-----------------------|
| Expected Credit risk provisioning | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Leases                            | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Intangible assets                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Derivatives                       | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other                             | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your response to question 33 and substantiate it with evidence or concrete examples:

Question 34. Do you agree with the following statement:

The current **number of options** in the BAD may hamper the comparability of financial statements and prudential ratios 1.

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 34 and substantiate it with evidence or concrete examples:

Question 35. Do you agree with the following statements:

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Mandatory use of national GAAPs for the preparation of individual financial statements of bank subsidiaries reduces the efficiency of preparing consolidated financial statements      | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Allowing the use of IFRS for the preparation of individual financial statements by (cross border) banking subsidiaries, subject to consolidated supervision, would increase efficiency | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 35 and substantiate it with evidence or concrete examples:

Question 36. Do you agree with the following statement:

Cross border bank subsidiaries of an EU parent should be allowed not to publish individual financial statements subject to

1. being included in the consolidated financial statements of the group,
2. consolidated supervision and
3. the parent guaranteeing all liabilities and commitments of the cross border subsidiary?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 36 and substantiate it with evidence or concrete examples:

### Insurance Accounting Directive (IAD)

The Directive on the annual and consolidated accounts of insurance undertakings was adopted in 1991 in order to set a common European Framework consistent with the Accounting Directive. Where applicable, its scope includes the statutory accounts, which implies a strong interplay with National Legal Frameworks pertaining to insurance contract obligations, dividend distribution, taxation and prudential requirements applicable to small entities outside the scope of the Solvency II Directive.

Unlike in the banking sector where prudential requirements and ratios are based on accounting values, the Solvency II Directive applicable from 2016 includes dedicated measurement principles and public disclosure requirements independent from accounting standards.

IFRS 17 "insurance contracts" was issued by the IASB in May 2017 and should apply from 2021 onwards to the consolidated financial statements of listed companies (and to other companies depending on Member States options). In the context of the European endorsement process of IFRS 17, consultations have highlighted concerns that some provisions of IFRS 17 might contradict the Insurance Accounting Directive and that the interaction between IFRS 17 and Solvency II public disclosure requirements may duplicate information.

Overall depending on Member States' use of options, the European accounting and prudential framework requires listed insurance groups to prepare multiple sets of financial statements (Statutory accounts as per National GAAPs, Solvency and Financial Condition Report under the Solvency II Directive and IFRS financial statements for consolidation purpose). This possibility of overlaps between the various pieces of legislation potentially affects their relevance, efficiency and consistency.

Question 37. Do you agree with the following statements:

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|--|--|--|--|

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| The Insurance Accounting Directive meets the objective of comparable financial statements within the European insurance industry (the Insurance Accounting Directive is <b>effective</b> ) | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The Insurance Accounting Directive is still sufficiently <b>relevant</b> (necessary and appropriate) to meet the objective of comparable financial statements                              | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| The costs associated with the Insurance Accounting Directive are still proportionate to the benefits it has generated (the Insurance Accounting Directive is <b>efficient</b> )            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 37 and substantiate it with evidence or concrete examples:

Question 38. Do you agree with the following statements:

|  |  |  |   |  |  |              |
|--|--|--|---|--|--|--------------|
|  |  |  | 3 |  |  | Don't know / |
|--|--|--|---|--|--|--------------|

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | (partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | no opinion / not relevant |
|--|-------------------------|------------------------|--|-----------------------|-----------------------|---------------------------|
| There are contradicting requirements between the IAD and IFRS 17 which prevent Member States from electing IFRS 17 for statutory and consolidated accounts | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |
| The Insurance Accounting Directive should be harmonized with the Solvency II Framework   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |
| The Insurance Accounting Directive should be harmonized with the IFRS 17 Standard  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |
| Preparers should be allowed to elect for a European-wide option to apply Solvency II valuation principles in their financial statements                    | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |

Please explain your response to question 38 and substantiate it with evidence or concrete examples:

Question 39. Do you think that the current prudential public disclosure requirements and general public disclosure requirements applicable to insurance and reinsurance undertakings are **consistent** with each other?

|  |  |  |   |  |  |              |
|--|--|--|---|--|--|--------------|
|  |  |  | 3 |  |  | Don't know / |
|--|--|--|---|--|--|--------------|

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | (partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | no opinion / not relevant |
|---|-------------------------|------------------------|--|-----------------------|-----------------------|---------------------------|
| For European insurance and reinsurance companies under the scope of the mandatory application of IFRS according to the IAS regulation | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |
| For European insurance and reinsurance companies required to apply IFRS according to Member States options                            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |
| For European insurance and reinsurance companies not required to apply the IFRS Standards   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>     |

Please explain your response to question 39 and substantiate it with evidence or concrete examples:

## V. Non-financial reporting framework

### Non-Financial Reporting Directive

Directive 2014/95/EU on disclosure of non-financial Information and diversity information (the NFI Directive) requires around 6.000 large companies with more than 500 employees listed on EU regulated markets or operating in the banking or insurance sectors to disclose relevant environmental and social information in their management report. The directive also requires the large listed companies to make a statement about their diversity policy in relation to the composition of their boards. The first reports have to be published in 2018 regarding financial year 2017. In addition to the NFI Directive, the Commission adopted guidelines in June 2017 to help companies disclose relevant non-financial information in a consistent and more comparable manner. The Commission is required to submit a review report on the effectiveness of the Directive by December 2018.

Question 40. The impact assessment for the NFI Directive identified the quality and quantity of non-financial information disclosed by companies as relevant issues, and pointed at the insufficient diversity of boards leading to insufficient challenging of senior management decisions. Do you think that these issues are still **relevant**?

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| The quality and quantity of non-financial information disclosed by companies remain relevant issues.                              | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| The diversity of boards, and boards' willingness and ability to challenge to senior management decisions, remain relevant issues. | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 40 and substantiate it with evidence or concrete examples:

Concerning the quantity of NFI, the Commission's impact assessment (IA) estimated that at that time ~2500 large EU companies disclosed voluntarily NFI and that 94% of the total ~ 42000 EU large companies did not. The IA identified regulatory failure as one of the reasons for this under reporting. Yet, the regulatory response in form of the NFI Directive covers only approximately 6000 - 8000 large companies. For the about 80 % of EU large companies (based on the numbers and assessment of the IA) not falling into the scope of the NFI Directive the need for regulation remains relevant.

The OECD Due Diligence Guidance for Responsible Business Conduct (OECD RBC Guidance, Principle 5.1) was recently developed, outlining international standards for due diligence including reporting standards. The NFI falls behind this standard, for instance concerning the requirement to report on actual adverse impacts or enterprise's provision of or co-operation in any remediation. A review of the NFI Directive should address this.

The quality and quantity of corporate NFI disclosure remains an incredibly relevant issue. For example, the 2017 study by EY shows that the majority of investors surveyed are disappointed by today's disclosures. They often believe disclosures are not adequately linked to material risks and opportunities, they don't reflect



the full value of businesses, nor do they clearly articulate environmental and social challenges. Such studies show investors believe reporting would benefit from being more integrated. More than 80% of the survey respondents agreed with the opinion expressed by Larry Fink, CEO of Black Rock in his 2016 letter to CEOs of listed companies.

The quality of corporate NFI disclosure remains problematic even under mandatory reporting schemes if these schemes do not specify in sufficient detail what exactly companies should disclose and do not provide an effective verification and enforcement framework.

Company reporting under the UK Modern Slavery Act for 2017, for instance, reveals that over half of the companies covered by the Act did not even meet basic minimum reporting requirements; nor did they provide details on the complexity of their supply chains and risks they have identified (the latter not mandated by the Act). These results prove the issues of quality and quantity remain incredibly relevant; in this instance the lackluster reporting results stem from the weakness of the legislative scheme, namely that it doesn't mandate companies to specifically report on the functioning of, and risks in, their operations.

The concept of materiality used by the NFI Directive/CSR RUG is not compatible or only in parts with the frameworks recommended by the Guidelines on non-financial reporting. These differences lead to a different understanding of the concept of materiality and standards. It is not astonishing that the study of the Global Compact Germany in cooperation with Econsense ("Neue Impulse für die Berichterstattung zu Nachhaltigkeit", June 2018) has found that only 33% of 212 German companies use the concept of the NFI Directive, 10% the concept of GRI and the rest a mix of different concepts included in different frameworks. This results in different and non-comparable statements in the reports of different companies, both national and international. The absence of a binding concept of materiality is one of the causes of the lack of binding standards and KPIs. According to the abovementioned study, 59% of German companies see the KPI as the greatest challenge followed by the description of the management processes and the due diligence processes (31% and 38%).

Question 41. Do you think that the NFI Directive's disclosure framework is **effective** in achieving the following objectives?

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|-----------------------|--|
| Enhancing companies' performance through better assessment and greater integration of non-financial risks and opportunities into their business strategies and operations. | <input type="radio"/>   | <input type="radio"/>  | <input checked="" type="radio"/>              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

|   |                       |                       |                                  |                       |                       |                                  |
|---|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|----------------------------------|
| Enhancing companies' accountability, for example with respect to the social and environmental impact of their operations.                         | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Enhancing the efficiency of capital markets by helping investors to integrate material non-financial information into their investment decisions. | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Increasing diversity on companies' boards and countering insufficient challenge to senior management decisions                                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Improving the gender balance of company boards  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please explain your response to question 41 and substantiate it with evidence or concrete examples:

There is a well-documented correlation between sustainability disclosure and corporate financial performance. The effect of NFI disclosure on company's performance in real economy, as well in the capital market, depends on whether the company addresses material ESG issues and discloses relevant information.

The potential of NFI Directive's disclosure framework in this respect, however, is limited by the fact that it does not specify which concrete risks and what information companies should assess and disclose. As explained in the answer to question 40, while investors increasingly recognise that ESG issues are material, they remain dissatisfied with the quality of corporate disclosure in this regard, and broadly formulated legislative requirements do not necessarily improve the quality of disclosure. Instead, mandatory disclosure laws may improve corporate accountability for their environmental and social impacts in two ways.

First, companies may seek to change their behaviour if they believe that information they are mandated to disclose would lead to non-legal sanctions, such as reputational harm. This effect, however, depends on clarity of legal mandate and on enforcement. Since the NFI Directive does not specify what concrete information on risks and impacts companies should disclose, this effect will be most likely insignificant.

Second, mandatory disclosure provisions may facilitate the establishment of corporate liability after harm has occurred. Mandatory disclosure requirements make it more difficult for a company to argue that it did not know, or could not have known, about adverse impacts. The strength of this effect depends on one hand on specificity of disclosure requirements and on the other on clarity of due diligence standards and conditions of liability. This is particularly relevant in the context of debate on mandatory human rights due diligence. Disclosure requirements would amplify the effect of such legislation, but where such legislation is absent, disclosure requirements on their own would not significantly reduce the uncertainty related to outcomes of litigation.

Notably, the French “Loi du Vigilance” also provides an actual in-force reporting scheme that compels a company to identify, assess and plan response to their human rights impacts in their global operations, as well as mitigate potential harms that may arise. This approach is fully in line with the United Nations Guiding Principles on Business & Human Rights and represents the way forward in terms of corporate reporting and responsible business operations.

As regards accountability in the context of global supply chains, the current framework falls significantly short of this objective by not even requiring companies with supply chains in high-risk countries to disclose actual, certifiable information concerning their supply chain, such as supplier lists, thereby empowering civil society, consumers, and investors to know exactly where the businesses’ products are being produced, and to learn under what conditions. Such information is not, notably, privileged by trade secrecy rules and in numerous jurisdictions is made public by customs authorities (e.g. US). Already numerous market leaders, particularly in the garment sector, have been taking these measures voluntarily releasing their supplier lists for the purposes of being held voluntarily accountable. However, these companies are in a leading minority. Regulation is needed in order to make this a standard.

Question 42. Do you think that the NFI Directive’s current disclosure framework is **effective** in providing non-financial information that is:

|                              | 1<br>(totally disagree) | 2<br>(mostly disagree)           | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)              | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|------------------------------|-------------------------|----------------------------------|---|----------------------------------|-----------------------|--|
| Material                     | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>                         | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                  |
| Balanced                     | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>                         | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                  |
| Accurate                     | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>                         | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                  |
| Timely                       | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Comparable between companies | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>                         | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                  |
| Comparable over time         | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>                         | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>                  |

Please explain your response to question 42 and substantiate it with evidence or concrete examples:

As explained above, legislative schemes that do not clearly specify and mandate reporting areas and topics

are unable to deliver readily comparable information. Allowing a high degree of reporting discretion with unspecific guidance, as is the case of the NFI Directive's current disclosure framework, opens the door to reporting that is neither relevant, material nor balanced, focusing merely on positive aspects of the company rather than on risks. In case of NFI Directive this problem is exacerbated by the Directive's indiscriminate endorsement of all international, European, and national reporting frameworks, which often differ in purpose, focus, clarity and specificity.

Furthermore, it is not reasonable to expect that in the absence of more specific disclosure requirements in law, companies will report useful information on their risks and impacts, where such disclosure may show them in unfavourable light. Current examples of annual reports, such as the one by Italian oil giant ENI (Annual Report 2017) frame risks in terms of harm to the company rather than the local communities affected by their business operations. In its reporting on risks associated with its oil spills in Nigeria, these are not framed as human rights, health or environmental risk of harm to affected communities, for which ENI is currently being sued, but rather as a risk for the company in terms of exposure to actual and ongoing litigation as a result. Likewise, French company Lafargue provides no information in its 2017 Annual Report on relevant human rights impacts and serious harm to local communities resulting from its professional dealings with designated terrorist groups in Syria (for which it which it was criminally convicted in May 2018). Beyond stating that internal investigations confirmed a breach of internal company rules and codes, leading to a renewal of integrity processes, there is no elaboration on the material harm of these actions for affected persons. This type of information and awareness is essential not only for consumer and investors, but for the purposes of changing a corporate culture that hides the impacts of corruption and illicit business malpractices. The subsequent three pages elaborating on risks are self-reflective only concerning risks to the company itself. There is also no information detailing the company's operations in its supply chain, the names and locations of suppliers and its business relationships, information which may have exposed such criminal acts. Such information, we note, is not protected by trade secret laws nor within the scope of corporate privacy.

Nonetheless, under the existing mandatory reporting schemes, such as UK MSA for instance, there have been a few examples of best-practice, which provide guidance for specification of legislative requirements. One such example is the Burberry's anti-slavery statement which describes in detail the company's main products, the risks its operations pose for modern slavery, the company structure & subsidiaries (including outside the UK) and locations of its operations. In addition, the statement provides extensive detail about the structure and complexity of its supply chains by company division, including the locations of its suppliers by region. As mentioned, a minority of leaders particularly in the textile sector (e.g. H&M or C&A) also provide positive best practices exceeding the requirements of the MSA in this regard, and must be compared with over half of the companies who did not meet the minimum requirements of the UK MSA.

Guidance is particularly weak with regard to the section focusing on reporting on anti-corruption and bribery matters in the Commission's non-binding Guidelines. In addition to the information and KPIs suggested by the Commission in this section we recommend to include disclosures and clarifications on the following aspects (see also response to question 47):

- scope of application of anti-corruption policy to include all employees, management and directors as well as all agents, contractors and suppliers
- companies' structures, including all of their subsidiaries
- beneficial ownership information
- trainings also applicable to directors, not only to employees
- gifts and hospitality rules
- revolving doors
- conflicts of interests
- political contributions

Question 43. Do you agree with the following statement:

The current EU non-financial reporting framework is sufficiently **coherent** (consistent across the different EU and national requirements)?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 43 and substantiate it with evidence or concrete examples:

There are several aspects of the NFI Directive that give rise to incoherence in the transposition at the Member State level and will likely result in incoherence in implementation by companies.

First, the Directive requires company reporting on risks and their management, which is not subject of comply-or-explain, after requiring company reporting on policies, which on the contrary is subject to a comply-or-explain clause. This leads to different interpretations in Member States with regard to mandatory reporting on risks.

Second, the Directive subjects the requirements to report on risks linked to the company by its business relationships, products or services by the criterion of 'where relevant and appropriate'; however, it does not provide any explanation or guidance on how this should be interpreted vis-a-vis the requirement to report material information. This may lead to widely diverging interpretations of the legal mandate. Most Member States copied this provision in their transposition laws. However, Italy did not, thus requiring companies to report on these risks whenever they are material.

Third, at least Italy and France specified in more detail than the NFI Directive which environmental and social issues companies should report on, showing the way forward for future clarification of minimum requirements regarding materials issues and information. In addition, France requires its largest companies to disclose "a plan of vigilance" in order to identify and address human rights and environmental violations, which has analogous scope to the concept of human rights due diligence outlined in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Fourth, some Member States (e.g. France and the UK) require companies to include NFI in their annual management reports, which will contribute to greater standardisation and comparability of information, as well as the conciseness and materiality of disclosure. However, other Member States (e.g. Germany), allow companies to disclose this information in a separate report. The study "Neue Impulse für die Berichterstattung zu Nachhaltigkeit" illustrates the diversity of reporting in Germany: 73% of 212 German companies published the non-financial report as a separate report not included in the annual management report. Out of the 26,5% of the companies which included the non-financial report in the annual management report 23,5% did this in a separate chapter.

Overall, the Directive suffers from incoherence between its stated objectives and some of its auxiliary provisions that relativise its core requirements. First, the Directive’s recitals mention that its purpose is to “enhance the consistency and comparability of non-financial information”. However, the Directive leaves it up to companies to determine what information is considered material. Second, the Directive’s impact on consistency and comparability of non-financial disclosure is further undermined by encouragement to use different international, European or national reporting frameworks. Third, with respect to the objective of “Enhancing companies’ accountability with respect to the social and environmental impact of their operations”, there is incoherence with the provision of the Directive which relieves companies that are part of consolidated groups from the obligation to prepare non-financial statement, and in particular to describe risks of adverse impacts and their management. In the context of consolidated reports, the information on specific risks of individual consolidated companies may not meet the consolidating entity’s threshold for materiality, even though it may concern risks of severe impacts at local level and may be important from the perspective of consolidated company’s accountability to its stakeholders.

In this respect, the Directive should also be clearer with regard to requiring European companies to report on the impacts of their foreign subsidiaries, business partners, and supply chains, especially if they operate in high-risk areas and sectors.

Question 44. Do you agree with the following statement:

The costs of disclosure under the NFI Directive disclosure framework are proportionate to the benefits it generates.

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 44 and substantiate it with evidence or concrete examples:

The financial cost of enhanced reporting to companies is significantly outweighed by the potential benefits of a more sophisticated NFI framework for society, human rights and the environment, as well as for companies’ themselves, provided that this framework effectively contributes to the integration of salient risks in business decision-making.

The actual costs of irresponsible business conduct – the result of not properly considering essential environmental and social factors - is routinely not borne by companies themselves but “externalised” to individuals, society, and the environment. Even in scenarios where companies do bear a direct cost for irresponsible business conduct, it is typically only a financial cost (by way of fines, settlements, reputational damage). In comparison, financial compensation for damages suffered by victims of irresponsible business practices is not sufficient and does not constitute a fair remedy. The International Labour Organisation estimates the global value of forced labour at \$150 billion per annum, but the cost to the estimated 21 million people who live in forced labour is incalculable.

Some studies have attempted to measure the aggregate economic impacts of irresponsible business

operations. A consortium of scientific experts, including Nigeria's Ministry of Environment, assessed the financial cost of environmental damages caused by over 50 years of negligent oil and gas extraction in the Niger Delta into the tens of billions of dollars. (See, for example, Cohen, M. J., "Economic impacts of the Exxon Valdez oil spill" in J. S. Picou, D. A. Gill, and M. J. Cohen (eds.), *The Exxon Valdez disaster: Readings on a modern social problem* (pp.133-164). New York: Kendall/Hunt, 1997.) Moreover, numerous studies highlight the positive correlation between responsible business practice (which includes comprehensive and detailed ESG reporting) and increased market value and stability, which are far greater than the costs of reporting estimated in the European Commission's impact assessment. A comprehensive literature review of such studies done by the OECD can be found here: <https://mneguidelines.oecd.org/Quantifying-the-Cost-Benefits-Risks-of-Due-Diligence-for-RBC.pdf> (see pp33-44 for literature review).

However, hesitation on the issue of costs vis-à-vis benefits of reporting on their supply chain is still widespread among SMEs. The reporting requirements should take this into account and provide more adequate guidance and recommendations for them on how to tackle reporting about their own supply chain.

Question 45. Do you agree with the following statement:

The scope of application of the NFI Directive (i.e. limited to large public interest entities) is a p p r o p r i a t e  
("Public-interest entities" means listed companies, banks, insurance companies and companies designated by Member States as public-interest entities).

- 1 - far too narrow
- 2 - too narrow
- 3 - about right
- 4 - too broad
- 5 - way too broad
- Don't know / no opinion / not relevant

Please explain your response to question 45 and substantiate it with evidence or concrete examples:

Large private companies have considerable societal and environmental impacts. They also operate in high risk sectors and areas of the world. One of the stated objectives of the NFI Directive is to promote corporate accountability and transparency for the business sector as a means toward sustainability. In light of this reality, there is therefore no justification for excluding privately listed companies from these reporting obligations. One clear example is that of the German textile brand KiK, Konsumer ist Koenig, a privately-listed company whose Pakistani operations resulted in the death of almost 300 workers when the factory from where it was sourcing (with no fire-safety measures) caught fire.

Question 46. It has been argued that the NFI Directive could indirectly increase the reporting burden for SMEs, as a result of larger companies requiring additional non-financial information from their suppliers.

Do you agree that SMEs are required to collect and report substantially more data to larger companies as a result of the NFI directive?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 46 and substantiate it with evidence or concrete examples:

The NFI Directive will not increase reporting burden on SMEs that already have at least one customer that requests them to report environmental and social data. On the contrary, non-financial reporting will increase the benefits to reputation and risk assessments to SMEs. Irrespective of the NFI Directive, it is reasonable to expect that in the foreseeable future a vast majority of SMEs involved in large companies' value chains will be required to collect and report such data. With this respect, the NFI Directive has the potential to standardise what data buyer companies monitor and thus regulate the reporting burden for SMEs. This may be done by establishing what specific information on salient issues large companies should monitor in their supply chains.

Moreover, multinational companies should take more responsibility for their supply chain by providing adequate training to SMEs on how to establish relevant compliance policies and report on them, for instance initiatives such as the Alliance for Integrity, which organises company-for-company trainings (see here: <https://www.allianceforintegrity.org/en/events-and-training-activities/trainings/details.php?id=164>).

Question 47. Do you agree with the following statement?

The non-binding Guidelines on Non-Financial Reporting issued by the Commission in 2017 help to improve the quality of disclosure.

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

Please explain your response to question 47 and substantiate it with evidence or concrete examples:

It is not yet possible to answer this question with certainty. The Guidelines are helpful in that they clarify the new definition of materiality and that they provide a comprehensive list of potentially material issues that companies should consider. However, they do not identify which concrete issues and information companies in different sectors should disclose. Hence, their impact on quality of disclosure will be limited. They also do not provide clear disclosure information neither regarding supply chain disclosure (suppliers' lists etc) nor vigilance reporting.



With regard to the section focusing on reporting on anti-corruption and bribery matters, the Guidelines are particularly weak. In addition to the information and KPIs suggested by the Commission in this section we recommend to include disclosures and clarifications on the following aspects (see also response to question 42 above):

- scope of application of anti-corruption policy to include all employees, management and directors as well as all agents, contractors and suppliers
- companies' structures, including all of their subsidiaries
- beneficial ownership information
- trainings also applicable to directors, not only to employees
- gifts and hospitality rules
- revolving doors
- conflicts of interests
- political contributions
- lobby practices and payments.

Moreover, for further developments of the Commission's non-binding Guidelines we recommend using the extensive guidance on anti-corruption reporting for companies developed by Transparency International over the years, which provides a framework for companies to develop comprehensive anti-corruption and anti-bribery programmes. These include the Business Principles for Countering Bribery ([https://www.transparency.org/whatwedo/publication/business\\_principles\\_for\\_countering\\_bribery](https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery)) and the 10 Anti-Corruption Principles for State-Owned Principles ([https://www.transparency.org/whatwedo/tools/10\\_anti\\_corruption\\_principles/0](https://www.transparency.org/whatwedo/tools/10_anti_corruption_principles/0)). A further tool, jointly developed by Transparency International and the UN Global Compact, is the Reporting Guidance on the 10th Principle against Corruption ([https://www.transparency.org/whatwedo/publication/un\\_global\\_compact\\_ti\\_reporting\\_guidance\\_on\\_the\\_10th\\_principle\\_against\\_corru](https://www.transparency.org/whatwedo/publication/un_global_compact_ti_reporting_guidance_on_the_10th_principle_against_corru)), which sets the standard for companies signatories of the UN Global Compact.

Question 48. The Commission action plan on financing sustainable growth includes an action to revise the 2017 Guidelines on Non-Financial Reporting to provide further guidance to companies on the disclosure of climate related information, building on the FSB TCFD recommendations. The action plan also states that the guidelines will be further amended regarding disclosures on other sustainability factors. Which other sustainability factors should be considered for amended guidance as a priority?

|                                      | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree) | 5<br>(totally agree) | Don't know / no opinion / not relevant |
|--------------------------------------|-------------------------|------------------------|---|---------------------|----------------------|--|
| Environment (in addition to climate) |                         |                        |   |                     |                      |  |

|   |                       |                       |                       |                       |                                  |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|-----------------------|
| change already included in the Action Plan) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Social and Employee matters                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Respect for human rights                    | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Anti-corruption and bribery                 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Question 49. If you are a preparer company, could you please estimate the **increased cost** of compliance with national laws on non-financial disclosure that were adopted or amended following the adoption of the NFI Directive in 2014, compared to annual non-financial disclosure costs incurred before the adoption of the NFI Directive?

Increased amount in Euros of cost of compliance with national laws - **one-off costs of reporting for the first time:**

Increased amount as a % of total operating cost of compliance with national laws - **one-off costs of reporting for the first time:**

 %

Increased amount in Euros of cost of compliance with national laws - **estimated recurring costs:**

Increased amount as a % of total operating cost of compliance with national laws - **estimated recurring costs:**

 %

Question 50. How would you assess, overall, the impact of the NFI Directive disclosure framework on the competitiveness of the reporting EU companies compared to companies in other countries and regions of the world?

- Very positive impact on competitiveness
- Somewhat positive impact on competitiveness
- No significant impact on competitiveness
- Somewhat negative impact on competitiveness
- Very negative impact on competitiveness

Don't know / no opinion / not relevant

Please explain your response to question 50 and substantiate it with evidence or concrete examples:

Responsible investing is no longer a niche market. It is a multi-trilliondollar industry and is growing with ever-increasing awareness. EU companies will benefit from foreign tenders as a result of the indication of more sophisticated reporting, a process that will greatly improve their operational reputation. EU companies will be less prone to scandals; the mark "made in EU" can become synonymous with profitable, responsible, reliable, sustainable business practices. For more concrete evidence on firms with good ratings on material sustainability issues significantly outperforming firms with poor ratings, you may find more information here: <https://insights.arabesque.com/research/>

### Country-by-country reporting by extractive and logging industries

Since 2017, companies that are active in the extractive industry or in the logging of primary forests have to be more transparent on the payments they make to governments. Through amendments made in 2013 to the Accounting and Transparency directives, such companies established in the European Union should publish each year a so-called "country-by-country report" summarising payments to governments. These reporting requirements were introduced to help governments of resource-rich countries manage their resources as well as to enable civil society to better hold governments and business into account. This should also help governments of resources-rich countries to implement the Extractive Industries Transparency Initiative (EITI) principles.

Question 51. Do you think that the public reporting requirements on payments to governments ("country-by-country reporting") by extractive and logging industries are:

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| effective (successful in achieving its objectives)                   | <input type="radio"/>   | <input type="radio"/>  | <input checked="" type="radio"/>              | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>                  |
| efficient (costs are proportionate to the benefits it has generated) | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
|  |                         |                        |   |                       |                                  |  |

|   |                       |                       |                       |                       |                                  |                       |
|---|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|-----------------------|
| relevant (necessary and appropriate)  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| coherent (with other EU requirements)   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| designed at the appropriate level (EU level) in order to add the highest value (as compared to actions at Member State level) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please explain your response to question 51 and substantiate it with evidence or concrete examples:

1. Effectiveness: Reporting obligations for EU extractive companies have had a positive impact by hugely increasing the information available to citizens and oversight actors such as parliamentarians, journalists and NGOs to hold governments and companies to account for natural resource revenues. Previously these payments were made largely in secret. This provision and equivalent Canadian and Norwegian regulations have resulted in almost \$400 billion of oil, gas and mining company payments (data from [www.resourceprojects.org](http://www.resourceprojects.org)) being disclosed to public scrutiny. The requirements' value in deterring and preventing corruption is strengthened by civil society's active use of payment disclosures. In 2017 Publish What You Pay UK compiled 28 case examples of civil society using mandatory payment disclosures in over 20 countries to hold governments and companies accountable and for citizen empowerment. Governments and companies increasingly recognise that civil society monitors these disclosures. However, changes are needed to enhance effectiveness: Data accessibility should be improved by requiring EU-incorporated and -listed companies to publish payments in iXBRL format, which is both open/machine-readable and human-readable, directly to a central online repository maintained by the EU Commission and freely accessible to the public. Clarifications are needed: a) to avoid project over-aggregation, "substantially interconnected legal agreements" must be both operationally and geographically integrated and have substantially similar terms; b) companies must report their proportionate share of all payments larger than €100,000 when made by a third party operator or agent on their behalf; c) companies must state the name of each national or subnational government entity or other government body receiving each payment, including state-controlled departments, agencies or undertakings; d) companies must report the volume as well as the value of each in-kind payment, disaggregated by commodity type and disaggregating cash from in-kind; e) companies must disaggregate different types of tax payments (e.g. corporate income tax, capital gains tax, withholding tax); f) companies must disclose the exchange rate used between the currency in which payments are made and the reporting currency; g) companies must explain their interpretation of payment categories consistent with articles 41 (definitions) and 43.4 (principle of substance rather than form). Data availability should be increased by including additional payment types: a) payments to governments for the sale of oil, gas and minerals (commodity trading); b) payments for transportation and export; c) payments for social expenditures; d) payments to state security forces for security services. Data should be assured through a limited assurance report and aggregate reconciliation with accrued figures in annual reports.

2. Efficiency: Benefits of improved transparency and accountability outweigh implementation costs. This was confirmed by the UK Government's recent Post Implementation Review of its implementing regulations, which found that costs were usually "absorbed into business-as-usual costs", "[f]ive companies estimate there will be a marginal financial benefit" and "key success criteria have been met in terms of greater levels of transparency, compliance levels and avoidance of unnecessary costs to business" ([www.legislation.gov.uk/uksi/2014/3209/resources](http://www.legislation.gov.uk/uksi/2014/3209/resources)).

3. Relevance: The reporting requirements are necessary and appropriate to enable citizens and oversight actors to monitor extractive revenue flows and hold governments and companies accountable. Project-level payment disclosure ensures meaningful granularity of data for local communities. Key factors: the high corruption and revenue mismanagement risks associated with extractive industries ([www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm](http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm); [https://resourcegovernance.org/sites/default/files/nrgi\\_Resource-Curse.pdf](https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf)); governments' share of natural resource revenues is often determined at project level (<https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and>); payments from individual resource projects can be extremely large, reaching into several billions of dollars per project ([www.resouceprojects.org](http://www.resouceprojects.org); [www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew/](http://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-knew/)).

While companies also report payments under the Extractive Industries Transparency Initiative, the EITI is currently implemented in only 51 countries; EITI data is usually out of date compared with mandatory data; and for political reasons some countries may stop implementing EITI (e.g. Azerbaijan, Niger, USA).

Question 52. As a preparer company, could you please indicate the annual recurring costs (in € and in relation to total operating costs) incurred for the preparation, audit (if any) and publication of the “country-by-country report”:

Total amount in Euros of **one-off costs of reporting** for the first time for the “country-by-country report”:

Amount as a % of total operating costs of **one-off costs of reporting for the first time** for the “country-by-country report”:

 %

Total amount in Euros of annual recurring costs for the “country-by-country report” - **estimated recurring costs**:

Amount as a % of total operating costs of annual recurring costs for the “country-by-country report” - **estimated recurring costs**:

 %

Question 53. How would you assess, overall, the impact of country-by-country reporting on the competitiveness of the reporting EU companies?

- Very positive impact on competitiveness
- Somewhat positive impact on competitiveness
- No significant impact on competitiveness
- Somewhat negative impact on competitiveness

- Very negative impact on competitiveness
- Don't know / no opinion / not relevant

Please explain your response to question 53 and substantiate it with evidence or concrete examples:

There has been no concrete evidence of any negative impact on companies' competitiveness of public country-by-country reporting and project-level reporting for EU companies operating in the extractive and logging sectors. Prior to the adoption of the legislation in 2013, the debate strongly focused on the alleged negative impact of public disclosure on EU companies' competitiveness vis-à-vis companies from third countries. However, these impacts do not seem to have materialised. Initial feedback by a group of major implementing companies revealed that they did not experience any negative effect caused by the added transparency requirements after complying with the legislation. This is supported by UK Government's recently published findings of its Post Implementation Review (PIR) of the UK Reports on Payments to Governments Regulations. Thirty-two companies covered by the regulations gave responses to a survey carried out for the review. In its concluding section, the PIR final report states that "the research indicates that this type of reporting does not disadvantage company business interests, including their relationships with governments" (UK Department for Business, Energy & Industrial Strategy, The Reports on Payments to Governments Regulations 2014, PIR No: BEIS024(PIR)-18-BF).

As a matter of fact, mandatory payments to governments reports contain no commercially sensitive information that could harm a company's competitiveness. Competitors cannot "reverse-engineer" the information made available in these reports to reproduce a company's return on investment. Neither payment transparency nor confidentiality of payments is a decisive factor in determining an extractive company's success in bargaining and winning bids with host governments. Transparency International EU assessed the impact that public country-by-country reporting would have on the competitiveness of firms across all sectors. The research found is that there is no definitive correlation between public reporting and standard measures of competitiveness. The analysis of the performance of 28 multinationals over a three-year period using publicly available information and sector performance at the global and regional level shows that the claim that corporate competitiveness could be harmed by greater public disclosure of financial data is not backed up by evidence. (Do corporate claims on public disclosure stack up? Impact of public reporting on corporate competitiveness, Transparency International EU, 2016: [http://transparency.eu/wp-content/uploads/2016/10/Impact\\_of\\_Public\\_Reporting\\_FINAL.pdf](http://transparency.eu/wp-content/uploads/2016/10/Impact_of_Public_Reporting_FINAL.pdf))

On the contrary, increased transparency has had a positive impact on trust-building by both investors and consumers. The fact that EU extractive companies are more transparent than those in many other jurisdictions is likely to have contributed to positive developments in the internal market by reducing corruption risk, enhancing companies' social licence to operate and promoting a more stable investment environment. Numerous investor groups – both ethical and mainstream – have made it clear that they are more likely to invest in transparent and responsible companies. The public response to corruption scandals involving large oil and mining companies shows that EU citizens are sensitive about the behaviour and accountability of their companies.

Payments to governments reporting is also a necessary and appropriate measure for promoting financial stability and protecting investors' interests. Extractive firms often operate in jurisdictions characterised by weak governance and a lack of transparency, leaving the sector exposed to unusually high levels of reputational and political risk. Institutional investors with over \$9.8 trillion in assets under management have voiced strong support for mandatory disclosure of payments to governments, citing reduced corruption risk and the enhancement of companies' social licence to operate, which in turn fosters a more stable investment

climate (Publish What You Pay, Submission to the US Securities and Exchange Commission, 2016).

The positive impacts of reporting for investors and other stakeholders could be enhanced if reporting requirements are clarified, data accessibility is increased through reporting in open, machine-readable data format to a central European online repository and if additional data are made available. A more level playing field between European companies could also be achieved by addressing the widely divergent implementation of the Accounting and Transparency directives across Member States in relation to sanctions and measures in case of breaches of the public reporting requirements.

## Integrated reporting

In addition to a demand to broaden the range of information to be included in corporate reports, there is an ongoing debate on whether and how to integrate financial, non-financial, and other related reports in a meaningful way.

Question 54. Do you agree that integrated reporting can deliver the following **benefits**?

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)              | 5<br>(totally agree)  | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|----------------------------------|-----------------------|--|
| More efficient allocation of capital, through improved quality of information to capital providers   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Improved decision-making and better risk management in companies as a result of integrated thinking and better understanding of the value-creation process | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Costs savings for preparers  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Cost savings for users   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |
| Other differences (please rate here and specify below)   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>                  |

Please specify what other benefit(s) can integrated reporting deliver:

Please explain your response to question 54 and substantiate it with evidence or concrete examples:

Integrated reports which reconcile various pieces of information would have many benefits. There would be benefits for the quality of the reporting as integration/reconciliation would require a degree of auditing input. Integration/reconciliation of the various reports promoted in practice would be particularly helpful in terms of cost savings for preparers while, if done well, enhancing the quality of reporting for users. It is very important, however, that in achieving greater integration there should be no dilution in relevant and detailed disclosure.

A possible confusion arises with the use of the construct 'integrated reporting' as there is a very specific type of reporting labelled 'integrated reporting' in the accounting/reporting realm. There is an 'International Integrated Reporting Council' and an 'Integrated Reporting Framework'. And companies in practice have voluntarily produced reports following the latter framework. In some of the world's stock exchanges, listed companies or some category thereof are required to follow this framework (e.g. South Africa, Turkey). We assume that this specific meaning was not intended. If it was, our answers would be similar but we would note that we would not want to see a move away from legislation in favour of a voluntary approach (in practice much integrated reporting following the integrated reporting framework is currently voluntary) and the integrated reporting framework does not prescribe all the disclosures currently desired in public reporting (for instance, the provisions on extractives improve disclosure for users and these disclosures are being used but they are not clearly and explicitly as yet referred to under the integrated reporting framework).

Question 55. Do you agree with the following statement?

|   | <b>1</b><br>(totally disagree) | <b>2</b><br>(mostly disagree) | <b>3</b><br>(partially disagree and partially agree) | <b>4</b><br>(mostly agree)       | <b>5</b><br>(totally agree) | Don't know / no opinion / not relevant |
|---|--------------------------------|-------------------------------|--|----------------------------------|-----------------------------|--|
| A move towards more integrated reporting in the EU should be encouraged | <input type="radio"/>          | <input type="radio"/>         | <input type="radio"/>                                | <input checked="" type="radio"/> | <input type="radio"/>       | <input type="radio"/>                  |



The costs of a more integrated reporting would be proportionate to the benefits it generates (would be efficient)



Please explain your response to question 55 and substantiate it with evidence or concrete examples:

We are assuming again the broader meaning of 'integrated reporting' (see our explanation in relation to the response to question 54). In any encouragement of a movement towards more integrated reporting we would in particular not be supporting a move away from the law in favour of a voluntary approach.

Question 56. Is the existing EU framework on public reporting by companies an obstacle to allowing companies to move freely towards more integrated reporting?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your response to question 56 and substantiate it with evidence or concrete examples:

Please refer to our comments in relation to questions 54 and 55. The answer to question 56 is no in that companies could now voluntarily follow a more integrated approach with more reconciliation in practice. Some companies do actually follow such an approach – for instance, in relation to the extractives provisions, some companies in complying with those provisions reconciled key figures to the audited financial statements. In the sense that pursuing a more integrated report goes beyond current legal prescription there would be potentially some additional preparer costs involved and hence it may be possible that building an integrated approach into legal prescriptions could reduce costs. Again, we would not support a diminishing of legally prescribed disclosure.

## VI. The digitalisation challenge

In the area of public reporting by companies technology is changing 1) the way companies prepare and disseminate corporate reports and 2) the way investors and the public access and analyse company information. On 6 October 2017, the '[eGovernment Declaration](#)' was signed in Tallin in the framework of the eGovernment Ministerial Conference. It marked a clear political commitment at EU level towards ensuring high quality, user-centric digital public services for citizens and seamless cross-border public services for businesses.

Digitalisation is soon to become reality for issuers with securities listed on European regulated markets (“listed companies”). These companies must file their Annual Financial Reports with the relevant Officially Appointed Mechanisms (OAMs). An Annual Financial Report mainly contains the audited financial statements, the management report and some other statements. In 2013, the Transparency Directive was amended to introduce as from 1 January 2020 a structured electronic reporting for Annual Financial Reports based on a so-called "European Single Electronic Format" (ESEF). It also established a single European Electronic Access Point (EEAP) in order to interconnect the different national OAMs. The objectives were to facilitate the filing of information by listed companies, and facilitate access to and use of company information by users on a pan-EU basis, thus reducing operational costs for both parties.

Beyond listed companies, the Commission is currently working, as announced in the 2017 Commission Work Programme, on an EU Company Law package making the best of digital solutions and providing efficient rules for cross-border operations whilst respecting national social and labour law prerogatives, which is not subject to this public consultation.

Question 57. Do you consider the existing EU legislation to be an obstacle to the development and free use by companies of digital technologies in the field of public reporting?

- Yes
- No
- Don't know / no opinion / not relevant

Question 58. Do you consider that increased digitalisation taking place in the field diminishes the relevance of the EU laws on public reporting by companies (for instance, by making paper based formats or certain provisions contained in the law irrelevant)?

- Yes
- No
- Don't know / no opinion / not relevant

### The impact of electronic structured reporting

Question 59. Do you think that, as regards public reporting by listed companies, the use of electronic structured reporting based on a defined taxonomy (ESEF) and a single access point (EEAP) will meet the following intended objectives:

|  |   |   |                           |   |   |                           |
|--|---|---|---------------------------|---|---|---------------------------|
|  | 1 | 2 | 3<br>(partially disagree) | 4 | 5 | Don't know / no opinion / |
|--|---|---|---------------------------|---|---|---------------------------|

|   | (totally disagree)    | (mostly disagree)     | and partially agree)  | (mostly agree)        | (totally agree)                  | not relevant          |
|---|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|-----------------------|
| improve transparency for investors and the public   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| improve the relevance of company reporting  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| reduce preparation and filing costs for companies   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| reduce costs of access for investors and the public   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| reduce other reporting costs through the re-use of companies' public reporting of electronic structured data for other reporting purposes (e.g. tax authorities, national statistics, other public authorities) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please provide an estimated order of magnitude or qualitative comments for such cost reductions (e.g. % of preparation costs or % of costs of accessing and analysing data...):

Question 60. In your opinion, on top of the financial statements, do you think that the following documents prepared by listed companies should contain electronic structured data?

Financial reporting

|  |  |  |          |  |  |              |
|--|--|--|----------|--|--|--------------|
|  |  |  | <b>3</b> |  |  | Don't know / |
|--|--|--|----------|--|--|--------------|

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | (partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | no opinion / not relevant |
|---|-------------------------|------------------------|--|-----------------------|----------------------------------|---------------------------|
| Half-yearly interim financial statements  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>     |
| Management report   | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>     |
| Corporate governance statement  | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>     |
| Other disclosure or statements requirements under the Transparency Directive such as information about major holdings | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                    | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>     |

## Non-financial reporting and other reports

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| Non-financial information                            | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Country-by-country report on payments to governments | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Other documents (please rate here and specify below) | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |

Please specify what other non-financial reporting document(s) should contain electronic structured data:

- All reporting documents should contain electronic structured data made available as open data. Digitalisation as the norm, open as default.
- Comprehensive replacement of all reporting with structured data will deliver useful and customisable reporting, reducing compliance costs for issuers, and increasing the effectiveness of reporting requirements.
- Reduces burden of reporting on companies, adding value, including for non-listed companies.

Question 61. Once the ESEF is fully developed and in place for listed companies, would this EU language add value as a basis to structure the financial statements, management reports etc. published by any limited liability company in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your response to question 61 and substantiate it with evidence or concrete examples:

Yes. The ESEF, which requires companies with equity and debt listed on EU regulated markets to publish annual financial reports in XBRL – a format that is both human and machine readable – will certainly add value to public reporting by companies. As a report by the Financial Reporting Council highlights (<https://www.frc.org.uk/getattachment/9279091c-a4e9-4389-bdd6-d8dc5563b14a/DigFutureXBRLDec.pdf>), publishing financial statements as structured data, rather than as documents, has a number of key benefits, including:

- Increasing reliability and sustainability of reporting,
- Facilitating analysis, comparability and accessibility of annual reports published by companies,
- Improving data governance across the EU.

In fact, the benefits of publishing as XBRL can be seen by the tools developed by a number of startups following the publication of 10-K and 10-Q forms by the Securities and Exchange Commission in the United States. Companies such as Idaciti, Calcbench and RankAndFiled.com have all used these filings to create searchable, user friendly data products, enabling stakeholders of all types to benefit from this information. ESEF will only truly add value for all stakeholders if this data is published under an open licence in an easily accessible, pan European central repository. Publishing reports in this format allows data to be easily found and repurposed, driving innovative new tools and solutions for all stakeholders, and in turn maximising the value of public reporting.

Question 62. As regards the non-financial information that listed companies, banks and insurance companies must publish, do you think that digitalisation of this information could bring about the following benefits?

|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|

|   | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|---|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| Facilitate access to information by users         | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Increase the granularity of information disclosed | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| Reduce the reporting costs of preparers           | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/>       |

Please explain your response to question 62 and substantiate it with evidence or concrete examples:

Digitalisation of non-financial information should be considered as vital as financial reporting for increasing transparency and trust of corporate world. More information about environmental impact, pay gaps, sustainability of a company, health and safety, employee conditions, diversity is essential. Again, however, we argue all three benefits will only be met if published as open data in a central European repository – only way to ensure access to information, increasing granularity and reducing the reporting costs.

Question 63. Digitalisation facilitates the widespread dissemination and circulation of information. Besides, the same corporate reporting information may be available from different sources, such as a company's web site, an OAM, a business register, a data aggregator or other sources. In a digitalised economy, do you consider that electronic reporting should be secured by the reporting company with electronic signatures, electronic seals and/or other trust services?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your response to question 63 and substantiate it with evidence or concrete examples:

## Data storage mechanisms – data repositories

Today, the self-standing national databases maintained by each Officially Appointed Mechanisms (OAMs) are not interconnected to each other, or to a central platform.

The [European Financial Transparency Gateway \(EFTG\)](#) is a pilot project funded by the European Parliament that aims to virtually connect the databases using the distributed ledger technology in order to provide a single European point of access to investors searching for investment opportunities on a pan-EU basis. The European Financial Transparency Gateway could be used as a basis for achieving a single European Electronic Access Point (EEAP).

Question 64. Considering the modern technologies at hand to interconnect databases on information filed by listed companies with the OAMs, do you agree with the following statements?

|  | 1<br>(totally disagree) | 2<br>(mostly disagree) | 3<br>(partially disagree and partially agree) | 4<br>(mostly agree)   | 5<br>(totally agree)             | Don't know / no opinion / not relevant |
|--|-------------------------|------------------------|---|-----------------------|----------------------------------|--|
| A pan-EU digital access to databases based on modern technologies would improve investor protection                                    | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| A pan-EU digital access to databases based on modern technologies would promote cross border investments and efficient capital markets | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |
| The EU should take advantage of a pan-EU digital access to make information available for free to any user                             | <input type="radio"/>   | <input type="radio"/>  | <input type="radio"/>                         | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>                  |



Question 65. Public reporting data in the form of structured electronic data submitted by listed companies could potentially be re-used for different purposes by different authorities. For instance, by filing a report once with an OAMs and re-using it for filing purposes with a business register. In your opinion, should the EU foster the re-use of data and the “file only once” principle?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your response to question 65 and substantiate it with evidence or concrete examples:

Publishing reporting data openly and allowing it to be reused under an open licence both reduces the administrative burden of reporting by companies, and provides valuable oversight for governments, business, and civil society to understand the corporate world. For example, since the UK began publishing corporate records as open data through Companies House, multiple other government agencies have started to rely on this dataset.

However, we argue that without publishing as open data, the benefits of “file only once” will still be lost. Publishing as open data will not only reduce the burden on filing companies, it will also improve the quality of data itself. As the reporting currently stands, different datasets are published at different sources, asking subtly different questions of reporters. This makes it difficult to combine datasets, spotting inconsistencies and patterns across data.

### Coherence with other Commission initiatives in the field of digitalisation

On 1 December 2017, the Commission launched a [Fitness Check on the supervisory reporting frameworks](#). In parallel, the financial data standardisation (FDS) project, launched in 2016, aims for a ‘common financial data language’ across the board for supervisory purposes. The Commission will report by summer 2019 (for more details, see [Commission report on the follow up to the call for evidence - EU regulatory framework for financial services](#), December 2017 section 3.3).

Question 66. Should the EU strive to ensure that labels and concepts contained in public reporting by companies are standardised and aligned with those used for supervisory purposes?

- 1 - totally disagree
- 2 - mostly disagree
- 3 - partially disagree and partially agree
- 4 - mostly agree
- 5 - totally agree
- Don't know / no opinion / not relevant

## Other comments

Question 67. Do you have any other comments or suggestions?

## Acronyms and Abbreviations

AD

Accounting Directive

BAD

Bank Accounts Directive

CEP

Centre for European Studies

CBCR

Country by Country Reporting

CLD

Company Law Directive

CMD

Capital Maintenance Directive

CMU

Capital Markets Union

CRD  
Capital Requirements Directive

CRR  
Capital Requirements Regulation

DG FISMA  
Directorate General Financial Stability, Financial Services and Capital Markets Union

DLT& API  
Distributed Ledger Technology & Application Programme Interface

EC  
European Commission

EFRAG  
European Financial Reporting Advisory Group

EFTG  
European Financial Transparency Gateway

EITI  
Extractive Industries Transparency Initiative

ESG  
Environmental, Social & Governance factors

ESMA  
European Securities and Markets Authority

ESRB  
European Systemic Risk Board

FSB  
Financial Stability Board

GAAPs  
General Accepted Accounting Principles

HLEG  
High-Level Expert Group

IAD  
Insurance Accounts Directive

IAS  
International Accounting Standards

IASB  
International Accounting Standards Board

IFRS

## International Financial Reporting Standards

### IFRS 4

International Financial Reporting Standards on Insurance contracts

### IFRS 9

International Financial Reporting Standards on Financial Instruments

### IFRS 17

will replace IFRS 4 as of 1 January 2021

### IIRC

International Integrated Reporting Council

### KPIs

Key Performance Indicators

### NFR

Non-Financial Reporting Directive (also called NFI for Non-Financial Information)

### NGOs

Non-governmental Organisation

### OAMs

Officially Appointed Mechanisms

### OECD

Organization for Economic Co-operation and Development

### PIE

Public Interest Entities

### P&L

Profit and Loss account

### SMEs

Small and Medium Enterprises

### SRB

Single Resolution Board

### SSM

Single Supervisory Mechanism

### TCFD

Task Force on Climate-related Financial Disclosures

### TD

Transparency Directive

## 3. Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

**783838c0-9761-4882-8b1a-0db48cd870cf/2017-**

**11\_Case\_study\_examples\_\_PWYPUK\_submission\_\_UK\_review.pdf**

**d8cbb400-1e7d-4447-9a46-046ae43a6a4c/EU\_extractives\_review\_coalition\_paper-final.docx**

## Useful links

[Consultation details \(http://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting\\_en\)](http://ec.europa.eu/info/consultations/finance-2018-companies-public-reporting_en)

[Specific privacy statement \(http://ec.europa.eu/info/files/2018-companies-public-reporting-consultation-document\\_en\)](http://ec.europa.eu/info/files/2018-companies-public-reporting-consultation-document_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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## Contact

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